

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

April 21, 2022
Virtual Meeting Only
12:00 PM

This virtual meeting will be held by video and telephonic participation only. To join the webinar, paste this URL into your browser: <https://juneau.zoom.us/j/89494517447>. To participate telephonically, call: 1-346-248-7799 or 1-669-900-6833 or 1-253-215-8782 or 1-312-626-6799 or 1-929-436-2866 or 1-301-715-8592 and enter Webinar ID: 894 9451 7447.

I. ROLL CALL

II. APPROVAL OF AGENDA

III. AGENDA TOPICS

- A.** AME2017 0001: Proposed Revisions to the Juneau Coastal Management Program, 49.70.310

IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS

V. ADJOURNMENT



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/community-development
155 S. Seward Street • Juneau, AK 99801

DATE: April 19, 2022

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner, CFM 

SUBJECT: AME2017 0001: Proposed Revisions to the Juneau Coastal Management Program, 49.70.310

INTRODUCTION

The purpose of this memo is to present staff recommendations and proposed revisions from the Title 49 Committee's October 28, 2021 and March 31, 2022 reviews of the former Juneau Coastal Management Program (JCMP).

At the March 31, 2022 Title 49 meeting, the Committee recommended retention of the modified mariculture standard, deletion of the rivers, lakes, and streams standard, and requested the following:

- Clarification on where the public need standard applies.
- Additional analysis regarding the general standards criteria that allow approval of intertidal fill outside of Special Waterfront Areas, specifically lines 55-57, and further analysis of the checklist to determine if duplication with state and federal reviews can be eliminated or reduced.
- An example of where the public need standard and intertidal fill criteria have been applied.

Attachments include: A) the original JCMP ordinance, B) the March 2022 JCMP version with new revisions in track changes, C) a clean copy with track changes accepted, and D) Alaska Glacier Seafoods USE2002-00027 staff report.

SUMMARY OF RECENT REVISIONS

In response to the Committee recommendations at the March 2022 meeting, staff has proposed the following revisions for consideration:

- Language clarifying that the public need standard applies to the mariculture habitat standard and to the special waterfront area general standards regarding intertidal fill, line 26.
- Deletion of the fourth criterion for allowing intertidal fill for expansion of the upland area outside of special waterfront areas, regarding state and federal regulations, lines 56-57 (additional explanation provided in comment).
- Deletion of language that requires fill proposals within special waterfront areas to be evaluated to minimize fill and other habitat impacts, lines 65-70. As explained in the comment, this language is not necessary because these areas have low habitat value.

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DISCUSSION ITEMS

Public Need Standard and Intertidal fill exception examples in the former JCMP

Staff has been with the department for 22 years, as the former Coastal District Coordinator in the Alaska Coastal Management Program (ACMP), and with a planning emphasis on habitat reviews. Staff researched 8 cases and also consulted with other long-time employees (Senior Planner Beth McKibben, GIS Specialist Quinn Tracy, and Building Official Charlie Ford) to find examples of where the former JCMP public need and intertidal fill exception code sections were being used in the past. The public need standard applied only to cases where habitat standards couldn't be met by either minimizing impacts or through mitigation. The intertidal fill exception criteria applied only to cases where intertidal fill for expansion of the upland area is proposed outside of special waterfront areas.

Staff found that among projects with significant habitat impacts (both coastal and upland), those impacts were sufficiently mitigated in all cases except for the Alaska Glacier Seafoods plant, which was approved in October 2002 as USE2002-0027. Specifically, neither the public need criteria nor the intertidal fill exception criteria were necessary in the review of any of the following major projects:

- UAS Recreational Facility (2003)
- Jacobsen Trust Cruise Ship Dock (2003)
- Lena Subdivision (2006)
- Montana Creek Subdivision (2006)
- Juneau Airport Expansion (2007)
- Renninger Subdivision (2015)
- Statter Harbor (2013 and 2018)

The Alaska Glacier Seafoods plant is located just outside of the Auke Bay special waterfront area that included the ferry terminal, Gitkov marine dock, and other commercial facilities. Initial construction of the seafood plant required intertidal fill for expansion of the upland area. This specific intertidal fill area had mapped eelgrass beds identified as Essential Fish Habitat by the National Marine Fisheries Service. The impact on these eelgrass beds could not be mitigated.

The USE2002-00027 Alaska Glacier Seafoods review addressed three of the former JCMP policies relevant to the Committee's current discussion:

- 1) Commercial and industrial use location. The original JCMP section 49.70.905(18)(A and B) stated that commercial and industrial uses must be located within a special waterfront area unless there is no feasible and prudent alternative to meet the public need, and the nature of the use requires a specific location and no other location will suffice (Attachment A). The staff report analysis demonstrated that the seafood plant met the criteria (Attachment D, USE2002-00027 staff report page 7). Staff has deleted this requirement in the proposed revision.
- 2) Exception criteria to allow intertidal fill outside of Special Waterfront Areas. The original criterion are listed in section 49.70.905(13)(A-G), Attachment A. The staff report analysis noted that the subject property did not have uplands available for development; adjacent properties within the special waterfront area also utilized intertidal fill; less than the proposed fill would not meet the

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project purpose; other standards were met; the project would not be detrimental to public health; and the project was an authorized use by state and federal agencies (Attachment D, USE2002-00027 staff report page 8-9). The seafood plant met the criterion. In the proposed revision, staff has deleted former criterion 49.70.905(13)(D-F), and part of (G).

- 3) Public need standard. The original criterion are listed in JCMP section 49.70.950(d)(1-3), Attachment A. The staff report analysis demonstrated the significant public need for the seafood plant; there was no feasible and prudent alternative to meet the need; and that all steps to maximize conformance had been taken (Attachment D, USE2002-00027 staff report page 13-14). Staff has retained this language in the proposed revision.

“Feasible and prudent” language

Staff overlooked the discussion item from the March 2022 Title 49 Committee regarding “feasible and prudent” language versus “reasonable.” That explanation is repeated below for reference.

At the October 2021 meeting, the Committee noted the “feasible and prudent” language included through the JCMP and recommended deletion, because the phrase is not defined in code. Staff has replaced “feasible and prudent” with “reasonable” and “unreasonable” throughout the document. However, staff has also found that “feasible and prudent” does have a definition in Title 49:

Feasible and prudent means consistent with sound engineering practice and not causing environmental, social, or economic costs that outweigh the public benefit to be derived from compliance with the standard which is modified by the term “feasible and prudent.”

Staff requests feedback from the Committee on these terms, and the terms will also be flagged for CBJ Law.

ATTACHMENTS

Attachment A – Original Juneau Coastal Management Program
Attachment B – Revised Draft Ordinance in Tracked Changes
Attachment C – Clean Copy of the Revised Draft Ordinance with Tracked Changes Accepted
Attachment D – Alaska Glacier Seafoods USE2002-00027 Staff Report

ARTICLE IX. COASTAL MANAGEMENT

49.70.900 General provisions.

- (a) This article establishes the coastal management enforceable policies of the Juneau Coastal Management Program.
- (b) The director shall be responsible for carrying out the provisions of this article except as such is specifically delegated to other parties. The director is specifically authorized to carry out and is responsible for:
 - (1) All functions allocated to the City and Borough under the state's consistency decision making procedure set forth in 6 AAC 50;
 - (2) The rendering of local consistency decisions for the City and Borough on all building permit applications;
 - (3) The rendering of consistency decisions for the City and Borough on all development applications under the authority of the planning department established under this article;
 - (4) The receipt, storage and management of all records pertaining to decisions and actions carried out under this article.

(Serial No. 87-49, § 2, 1987)

49.70.905 Coastal development.

The following policies apply to coastal development throughout the coastal zone:

- (1) To the extent feasible and prudent, coastal development shall be designed using best available technology to minimize hazards associated with physical conditions such as soil characteristics, slopes, geological features, surface and subsurface drainage, water tables, floodplains and shore forms of the site.
- (2) To the extent feasible and prudent, coastal development shall be designed and operated to prevent adverse impact upon beaches and other physical shore features in the coastal zone.
- (3) The placement of structures and the discharge of dredged or fill material into coastal water shall, at a minimum, comply with Parts 320—330, et seq., Title 33, Code of Federal Regulations (Vol. 51 of the Federal Register, pp. 4120641260, November 13, 1986)
- (4) Dredging and filling shall be prevented in highly productive tideflats and wetlands, subtidal areas important to shellfish, and water important for migration, spawning and rearing of salmon and other sportfish species, unless there is a significant public need for the project and there is no feasible and prudent alternative to meet the public need.
- (5) Shoreline industrial developments, ports, harbors and marinas shall be sited, designed, constructed and operated such that:
 - (A) Lawful navigation is not impaired;
 - (B) Facilities for proper handling of sewage, refuse, fuel and waste oil are provided;

- (C) All feasible and prudent steps are taken to prevent water pollution by incorporating best management practices; and
- (D) Adequate access and utility access are available or can be provided.
- (6) To the extent feasible and prudent, ports, harbors and docks shall be located away from extensive tideflats and wetlands and so as not to obstruct fish passage along the coast or in waters used by anadromous fish.
- (7) To the extent feasible and prudent, piers, wharfs, and floating docks shall be installed in waters that have adequate natural flushing capacities. If solid fill must be used, it shall be located and constructed to maintain water circulation in the harbor.
- (8) Excavation, shoreline alteration and disturbance of anadromous streams, tideflats and wetlands shall be minimized in the construction and operation of port, harbor, dock and industrial facilities.
- (9) To the extent feasible and prudent, the area immediately surrounding small boat harbors shall be reserved for water-related and water-dependent uses.
- (10) To the extent feasible and prudent, port and harbor uses shall minimize the negative aesthetic impact of their use and activities, shall enhance and maintain the positive visual aspects of their development, and shall provide opportunities for public viewing of such positive aspects.
- (11) Navigable waters shall be kept free of unnecessarily hazardous or obstructive development.
- (12) To the extent feasible and prudent, development shall not detract from the scenic qualities of the shorelines, shall be compatible with its surroundings and shall not significantly block scenic vistas.
- (13) Filling of intertidal areas below mean high tide, not specifically addressed in section 49.70.960, for the expansion of upland area is specifically prohibited unless clear and convincing evidence is provided showing that all of the following conditions exist that:
 - (A) Strict compliance with the policy would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome;
 - (B) Fill is the only means to allow development of the property which is similar to other properties in the vicinity;
 - (C) Less than the proposed fill would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome;
 - (D) The proposed project meets the requirements of the other enforceable policies of the Juneau Coastal Management Plan;
 - (E) The proposed project will not be detrimental to the public health, welfare and safety or to other properties in the vicinity;
 - (F) Approval of the project will not authorize uses on the property otherwise not allowed by other state, federal and local laws and regulations; and
 - (G) If applicable, the meaning of the phrase "feasible and prudent" has been considered and found to support approval of the proposal to fill.

Provided, log and mining transfer facilities and the following public facilities are exempt from this policy: bridges, causeways, boat ramps, utility transmission facilities, pipelines, treatment plant lines and outfalls, and transportation facilities.
- (14) Floathomes, or any floating structures or watercraft intended for moored or anchored residential use, shall be approved through the conditional use process before they may be anchored or moored in one location for more than 30 days. Floathomes must also have state department of natural resources or

City and Borough tideland permits as applicable. Such structures must either be connected to an approved onshore sewage disposal system or have United States Coast Guard approved marine sanitation devices, and may not dispose of sewage by any other means. In addition, floathomes must meet all of the following standards:

- (A) Floathomes shall not ground at low tide and must be located at least 300 feet from any anadromous fish streams. Mooring shall not obstruct recreational use of the shore. Fuel tanks shall be designed to protect against accidental contamination of the water. Seawater must be protected from contamination by fuel spills, and solid and liquid wastes;
- (B) Floathomes shall not be located in the "prohibited area" shown on Juneau Coastal Management Plan Map 2, or areas with concentrations of shellfish, waterfowl, shorebirds, marine mammals, extensive tide-flats, salt marshes and kelp or eelgrass beds; sites within 330 feet of eagle nest trees; developed recreation sites; heavily used recreation sites; or known historic and archeological sites. Floathomes may be allowed on privately owned tidelands within the prohibition area provided other provisions of this section are met;
- (C) The placement of floathomes shall avoid blockage or interference to waterway channels used by waterborne traffic;
- (D) Views from adjacent shoreline residences shall not be blocked if the main floor of the residence is located below 25 feet above sea level. The owner of any such residence within 500 feet on either side of the proposed floathome location may prevent that site from being used, by submitting a written objection at or before the time of consistency review or planning commission action, under the conditional use process. Such objection may not be considered after the consistency determination is issued, or planning commission action under the conditional use process;
- (E) Where feasible and prudent, no more than one floathome shall be allowed for every 500 feet of lineal shoreline measured at mean high tide unless multiple floathome moorage is specifically allowed under subsection (15) of this section;
- (F) Floathomes shall be constructed and maintained to avoid a dilapidated, abandoned, derelict or unattended appearance;
- (G) All refuse shall be securely stored pending removal;
- (H) Floathomes shall float generally level and have at least one foot of freeboard;
- (I) Where the need for upland access to the floathome is anticipated, the floathome shall be sited to ensure that there is proper and adequate legally recorded upland access to the site;
- (J) Floathomes shall be placed so that required or desired onshore services and facilities can be efficiently extended;
- (K) Floathomes shall be allowed in an area only after adjacent upland owners are notified;
- (L) Floathomes shall be sited and operated to avoid creating or increasing noise and air pollution. Emissions from heaters and stoves, if otherwise lawful, may be allowed;
- (M) Persons wishing to place floathomes adjacent to shorelines having road access must show that at least two onshore legally recorded parking places not on a public right-of-way are available and that floathome residents will have clear access to these parking places across the shoreland adjacent to the floathome; and
- (N) Floathomes may be allowed without conditional use approval in developed marinas if the owner or operator assumes responsibility for providing fresh water, sewage disposal and solid waste disposal.

- (15) Floating camps or multipurpose floating structures intended in whole or in part for residential purposes and meant to support mining, fishing, logging, tourist or other activities may be allowed under the conditional use procedure provided they meet all of the standards for floathomes set forth in subsection (14) of this section.
 - (16) Development intended to provide moorage for two or more floathomes may be allowed as conditional uses in the nonprohibited areas shown on Juneau Coastal Management Plan Map 2, provided the developer:
 - (A) Owns, or has a nonrevocable lease, for at least 30 years in duration, for the upland area adjacent to the water area to be developed;
 - (B) Provides at least two off-road parking spaces for each floathome;
 - (C) Provides fresh water, sewer with approved onshore disposal, and electricity to each floathome;
 - (D) Provides fire control protection approved by the City and Borough fire chief; and
 - (E) Provides to the floathomes, by site selection, physical improvements, or design of the floathomes, protection from storms, such that the floathomes will be safe from waves higher than two feet.
 - (17) Floating structures, other than those addressed in subsections (14), (15) and (16) of this section, intended for commercial or industrial purposes including, fish propagation, mineral extraction, mineral processing, timber extraction or processing, lodging, seafood processing, research, marine service and repairs, which will be fixed in one location for more than 30 days, may do so only after having obtained approval through the conditional use process. Provided, the following are exempt from the conditional use process requirement:
 - (A) Mooring devices for watercraft;
 - (B) Watercraft transiting the City and Borough that are not intended for residential use in excess of 30 days in any 12 calendar months;
 - (C) Seafood processors whose primary purpose is to receive fish and shellfish from harvesting boats and prepare it for further transportation; and
 - (D) Watercraft intended to transport cargo to, from or within the City and Borough.
 - (18) Industrial and commercial uses on or adjacent to the shorelines of navigable waters must be located in the appropriate special waterfront designation established in section 49.70.960 unless:
 - (A) There is no feasible and prudent alternative to meet the public need for the use; and
 - (B) The nature of the use requires a specific location and no other location will suffice.
 - (19) In approving development in coastal areas, priority shall be given, in the following order, to:
 - (A) Water-dependent uses and activities;
 - (B) Water-related uses and activities; and
 - (C) Uses and activities which are neither water-dependent nor water-related, for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.
- (Serial No. 87-49, § 2, 1987; Serial No. 92-41, § 2, 1992)

49.70.910 Geophysical hazards.

- (a) Surface modification that would induce excessive erosion, undermine the support of nearby land or unnecessarily scar the landscape is prohibited. Any other modification shall be limited to the smallest extent that is needed for development.
- (b) Development in areas having known hazards may not be approved until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.
- (c) Developers shall retain existing vegetative cover to the greatest extent feasible and prudent. In cases where development necessitates removal of vegetation, erosion shall be prevented through revegetation or, if revegetation is not feasible, by other appropriate measures.
- (d) Industrial and resource extraction activities in high landslide or avalanche areas are prohibited unless it is determined that these activities will reduce the threat of landslides and avalanches on existing and potential development.
- (e) Mitigating measures are required for development in areas of moderate hazard. These may include dissipating structures or dams, appropriate structural engineering, or other techniques that respond to the specific site hazards.
- (f) Residential, commercial and industrial development is prohibited in floodways. Culverts and bridges are not subject to this prohibition.
- (g) Structures near watercourses shall be designed to reduce the impact of flooding and to allow for natural drainage.
- (h) Sand and gravel operations, recreation activities, open space, and parking lots may be allowed in 100-year floodplains only if they do not increase the flood hazard.
- (i) Industrial equipment and raw materials stored in 100-year floodplains shall be adequately bermed or otherwise protected.
- (j) Disposal of hazardous materials in 100-year floodplains is prohibited. No new development which will involve storage of hazardous materials will be permitted in the 100-year floodplain unless there is no feasible and prudent alternative and unless safety measures are provided to prevent accidental discharge.
- (k) Establishment of sanitary landfills in floodplains is prohibited.

(Serial No. 87-49, § 2, 1987)

49.70.915 Recreation.

- (a) In developing areas:
 - (1) Recreational developments adjacent to bodies of water shall be located, designed, constructed, and managed to minimize adverse effects on other uses and to provide safe, healthy conditions for recreationists.
 - (2) Recreational developments shall, wherever feasible and prudent, preserve or enhance scenic views and vistas as well as improve the aesthetic value of the area.
 - (3) Access to natural areas, such as fishing streams and hunting areas, shall be a combination of linear trails or easements and small parking areas to minimize user concentration on small portions of the shore or upland areas.

- (b) Facilities for water-dependent recreation, such as fishing, swimming, and boating, and water-oriented recreation, such as picnicking, hiking, and walking, shall be located near the shoreline. Non-water-related recreation facilities shall be located away from the shoreline unless no feasible and prudent inland alternative exists to meet the public need.
- (c) Auke Creek, the east bank of Auke Lake, and Lake Creek outside federal lands shall be protected with shoreline public easements and greenbelts for public access and habitat purposes.

(Serial No. 87-49, § 2, 1987)

49.70.920 Energy facilities.

Siting for the development of major energy facilities must be based, to the extent feasible and prudent, on the following standards:

- (1) Site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;
- (2) Site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;
- (3) Consolidation of facilities;
- (4) Consider the concurrent use of facilities for public or economic reasons;
- (5) Cooperate with landowners, developers, and federal agencies in the development of facilities;
- (6) Select sites with sufficient acreage to allow for reasonable expansion of facilities;
- (7) Site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;
- (8) Select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;
- (9) Encourage the use of vessel traffic control and collision avoidance systems;
- (10) Select sites where development will require minimal site clearing, dredging, and construction in productive habitats;
- (11) Site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries, haulout grounds and waterfowl nesting areas;
- (12) Site facilities so that the design and construction of these facilities and support infrastructures in coastal areas will allow for free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;
- (13) Site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;
- (14) Site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;
- (15) Select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

- (16) Select sites in areas where vessel movements will not result in overcrowded harbors or interfere with fishing operations.

(Serial No. 87-49, § 2, 1987)

49.70.925 Transportation and utilities.

- (a) Highway and airport design, construction and maintenance shall take all feasible and prudent steps to prevent alteration of water courses, wetlands and intertidal marshes, and aesthetic degradation.
- (b) Where roads and trails cross anadromous streams, the design and construction of bridges and culverts shall allow free passage of fish, and shall take all feasible and prudent steps to prevent habitat disturbance. Phasing of construction shall be done to avoid critical migration periods for salmon and other anadromous species.
- (c) Roads and utilities shall be designed and built so as to protect shore features and other uses that may be affected by pollution, flooding, erosion and other adverse effects.
- (d) Prior to disposal of state or City and Borough lands, public access routes, such as roads and trails, shall be identified and dedicated.
- (e) Where feasible and prudent, bike trails shall be provided.
- (f) Transportation and utility routes and facilities shall be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility.
- (g) Parking areas shall include suitable drainage controls to prevent ponding and excessive concentrated runoff. Such areas shall be buffered by a minimum ten-foot-wide natural vegetation strip, as feasible and prudent, from shorelines and adjacent uses, and shall be sited, screened, and maintained to minimize dust.
- (h) Development shall only locate in areas where utilities are available, or can be economically extended, or can be developed as part of the project, or where suitable on-site utilities are possible.
- (i) Utility corridors shall, wherever feasible and prudent, be integrated with roads and other transportation corridors.
- (j) Where feasible and prudent, overhead lines shall be located so as not to interfere with scenic vistas.

(Serial No. 87-49, § 2, 1987)

49.70.930 Fish and seafood propagation and processing.

- (a) Shoreline use shall not adversely impact important fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Shorelines having banks, beaches, and beds critical to the preservation or enhancement of the fisheries resource base shall be maintained in, or restored to, their original condition wherever and whenever feasible and prudent. Upland areas shall be managed to maintain water quality standards necessary for the propagation of anadromous fish species.
- (b) Fisheries enhancement and aquaculture shall maintain or restore quality and normal circulation patterns of affected waters at optimum levels consistent with applicable state standards. Aquaculture hatcheries and fisheries shall be protected from significant water quality degradation by other users.
- (c) Aquaculture development and fisheries enhancement shall be located, designed and operated so that aesthetic values of local shorelines are maintained to the extent feasible and prudent.

- (d) Fisheries enhancement and aquaculture practices, including disposal of wastes, viscera or fish scrap, shall be conducted so as not to violate applicable state water quality and litter control standards.

(Serial No. 87-49, § 2, 1987)

49.70.935 Timber harvest and processing.

- (a) AS 41.17, Forest Resources and Practices, and the regulations and procedures adopted under that chapter with respect to the harvest and processing of timber, are incorporated into the Juneau Coastal Management Plan and constitute, in part, the components of the Juneau Coastal Management Plan, with respect to those purposes.
- (b) Commercial timber harvest activities and land clearing in the coastal area shall be conducted so as to meet the following standards:
 - (1) The location of facilities and the layout of logging systems shall be sited so as to take all feasible and prudent steps to prevent adverse environmental impacts.
 - (2) Free passage and movement of fish in coastal waters shall be assured.
- (c) Commercial timber transport and land clearing, storage, and processing in the coastal area shall be conducted so as to meet the following standards:
 - (1) Sites for in-water dumping and storage of logs shall be selected and these activities conducted so as to minimize adverse affects on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms and not constitute a hazard to navigation. Shared use of such facilities shall be required wherever feasible.
 - (2) Roads for log transport and harvest area access shall be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and shall be adequately maintained until they are returned to their pre-road natural drainage patterns unless the roads can be converted to another use, such as recreational access. Approvals and permits for logging activities shall specify what will be done with the roads after logging is completed.
 - (3) Stream crossings, including bridges and culverts, shall be kept to a minimum number, shall be designed to withstand seasonal high water and flooding, and shall provide free passage and movement of fish.
- (d) Fuelwood cutting practices shall be conducted so as to meet the following standards:
 - (1) Fuelwood cutting within 100 feet of the centerline of any trunk roadway shall be done in a manner that minimizes visual impact.
 - (2) Felling and bucking shall be done so that traffic on roadways is not endangered or delayed.
 - (3) Slash shall be reduced in height by lopping, scattering and laying as close to the ground as practicable.

(Serial No. 87-49, § 2, 1987)

49.70.940 Mining and mineral processing.

- (a) Mining and mineral processing in the coastal areas shall be regulated, designed, and conducted so as to be compatible with the standards in this article, adjacent uses and activities, statewide and national needs, and district programs.

- (b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for sand or gravel.

(Serial No. 87-49, § 2, 1987)

49.70.945 Subsistence.

Project proposals shall be designed so that opportunities for subsistence usage of coastal areas and resources are recognized and assured.

(Serial No. 87-49, § 2, 1987)

49.70.950 Habitat.

- (a) Habitats in the coastal area which are subject to the Alaska Coastal Management Program include:
 - (1) Offshore areas;
 - (2) Estuaries;
 - (3) Wetlands and tideflats;
 - (4) Rocky islands and seacliffs;
 - (5) Barrier islands and lagoons;
 - (6) Exposed high energy coasts;
 - (7) Rivers, streams, and lakes; and
 - (8) Important upland habitat.
- (b) The habitats contained in subsection (a) of this section shall be managed so as to maintain or enhance the biological, physical and chemical characteristics of the habitat which contribute to its capacity to support living resources.
- (c) In addition to the standard contained in subsection (b) of this section, the following standards shall apply to the management of the following habitats:
 - (1) Offshore areas shall be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;
 - (2) Estuaries shall be managed so as to ensure adequate waterflow, natural circulation patterns, nutrients, and oxygen levels, and to avoid the discharge of silt, toxic wastes and the destruction of productive habitat;
 - (3) Wetlands and tideflats shall be managed so as to ensure adequate waterflow, nutrients, and oxygen levels, to avoid the adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;
 - (4) Rocky islands and seacliffs shall be managed so as to avoid the harassment of wildlife, the destruction of important habitat, and the introduction of competing or destructive species and predators;
 - (5) Barrier islands and lagoons shall be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

- (6) High-energy coasts shall be managed so as to ensure the adequate mix and transport of sediments and nutrients and avoid redirection of transport process and wave energy; and
- (7) Rivers, streams and lakes shall be managed so as to protect natural vegetation, water quality, important fish or wildlife habitat and natural waterflow.
- (d) Uses and activities in the coastal area which will not conform to the standards contained in subsections (b) and (c) of this section may be allowed if the following standards are met:
 - (1) There is a significant public need for the proposed use or activity;
 - (2) There is no feasible and prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in subsections (b) and (c) of this section; and
 - (3) All feasible and prudent steps to maximize conformance with the standards contained in subsections (b) and (c) of this section will be taken.
- (e) Each development which adjoins a river or stream which has been degraded by previous human activity shall, as part of its development plan, include provisions for rehabilitation of the stream or river, and shall be approved by the state department of fish and game. Such provisions shall be limited to removal of debris, removal of abandoned machinery and vehicles, grading and stabilization of banks and related clean up activities, and shall include preservation or restoration of riparian vegetation. Restoration shall not be required beyond that needed to return the area to natural appearance and function; provided, the following are exceptions to this policy:
 - (1) Construction of one single-family or duplex dwelling on a lot of record;
 - (2) Construction of single-family or duplex dwellings on lots created by subdivisions of four or fewer lots.
- (f) All structures and foundations located adjacent to streams or lakes listed in Table VI-2 of Appendix C of the Juneau Coastal Management Plan, shall have a 50-foot setback from each side of the stream or lake measured from the ordinary high water mark, where feasible and prudent; provided, docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake are not subject to this policy, and provided further, uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses, are exempt from the setback requirement. The setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream.
- (g) Where feasible and prudent, watershed areas which contribute to existing drinking water supplies, as defined by the state department of environmental conservation, shall be protected by buffer strips at least 50 feet in width along each side of streams, the edges of wetlands, and lakes. Measures shall be taken to prevent erosion. The side or edge of the water body shall be the ordinary high water mark. The buffer shall be vegetated or revegetated.
- (h) Development in buffer areas prescribed in subsections (f) and (g) of this section shall incorporate measures to prevent erosion and subsequent increases in turbidity and sediment within the waterway and adjacent wetlands within the buffer.

(Serial No. 87-49, § 2, 1987)

49.70.955 Air, land and water quality.

- (a) Notwithstanding any other provision of this article, the statutes, regulations and procedures of the state department of environmental conservation, protecting air, land and water quality are incorporated into the Juneau Coastal Management Plan and, as administered by that agency, constitute the components of the Juneau Coastal Management Plan with respect to those purposes.

- (b) Streamside and lakeside development shall not cause downstream water degradation below state standards.
 - (c) Berms and planting strips shall be placed along highways and major arterials wherever feasible and prudent.
- (Serial No. 87-49, § 2, 1987)

49.70.960 Special waterfront areas.

(a) *General standards.*

- (1) The Juneau Coastal Management Plan Special Waterfront Area Map, dated December 1, 1990, shows the boundaries of each special waterfront area, and the maximum seaward limits for permanent development in each special waterfront area. The land or water inside the boundaries shown on the Juneau Coastal Management Plan Special Waterfront Area Map is subject to the provisions of this section. Uses allowed within the special waterfront areas as provided in this section are not allowed along other waterfronts within the City and Borough unless such uses are allowable outside the special waterfront areas under the terms of subsections 49.70.905(13) or (18) and other applicable provisions of the Juneau Coastal Management Plan.
- (2) Fill proposals within the special waterfront areas are not subject to the fill prohibition of subsection 49.70.905(13) relating to coastal development. Each fill proposal shall be individually reviewed to ensure that configuration, timing, composition and construction practices will minimize impacts on habitats and meet the water quality standards and other Juneau Coastal Management Plan provisions. The size of any fill shall not exceed that necessary for the use unless a larger fill is needed to maintain integrity of the fill, maintain or enhance habitat values, or to fulfill other enforceable provisions of this section.
- (3) Existing uses or activities in the subject areas may continue, provided, if conversion to another use or other modification is to be made, it shall conform to the requirements of the special waterfront areas.
- (4) Uses identified as permissible in this article may be conditioned, through the coastal management consistency review process, to be consistent with or conform to the habitat standards contained in subsections 49.70.950(b) and (c). However, if new site-specific information becomes available after May 22, 1986, which clearly indicates that crucial habitats exist within the subject areas and if the state division of governmental coordination, after consultation with the City and Borough and state resource agencies, concurs, a specific evaluation pursuant to subsection 49.70.950(d) will be immediately required for projects within the crucial habitat areas.
- (5) A change to the special waterfront areas may be initiated by the submittal of new information regarding habitats to both the division of governmental coordination and the City and Borough, by the state department of fish and game, the state department of environmental conservation, the state department of natural resources, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the National Marine Fisheries Service, the City and Borough, or other interested parties. The division of governmental coordination shall expeditiously process new information as a routine program change in accordance with 6 AAC 85.120(c). To initiate a program change new information must be based on detailed site-specific studies which indicate that the habitat is substantially more productive than was indicated in the information which was available on May 22, 1986.
- (6) Except as provided in subsection (a)(4) of this section, the significant public need and feasible and prudent alternative analysis under subsection 49.70.950(d) will not apply to state, federal or local permit applications previously submitted for all, or a part, of the affected area unless a change to the affected special waterfront area has become effective.

- (7) Proponents of land and water uses shall be advised that in cases where the use of dredged or fill materials in waters of the United States is proposed, the requirements of the Clean Water Act Section 404(B)(1) guidelines shall apply and must be met before development may proceed.
- (8) When the use of dredged or fill materials in the waters of the United States is required, uses that do not require direct siting in or access to the water to fulfill their basic purpose will generally be directed to upland areas unless it is clearly demonstrated that upland alternatives are not available.
- (b) *Land and water uses permissible in the special waterfront areas.*
 - (1) *Generally.* The land and water uses listed below as permissible in the special waterfront areas may be further restricted in zoning classifications within the special waterfront areas. The uses and activities listed below are deemed to meet the water-relevancy requirements of section 49.70.905. Other uses and activities may be allowed if they meet the requirements of the zoning districts under chapter 49.25, and the water-relevancy requirements of section 49.70.905.
 - (A) Maritime activities including private boating, commercial boating of all types, visitor industry, including cruise ships and transient pleasure vessels, commercial fishing, charter fishing and boating, floatplane activity, and any other activity not involving a structure for the use of waterbodies for sport, recreation, or commerce;
 - (B) Floats, docks, jetties, groins, bulkheads, ramps, shore defense works, piers, wharfs, dolphins, and other structures needed to provide access between shore and waterbody or to protect and stabilize the shoreline;
 - (C) All forms and structures related to handling and storage of cargo which arrived by water and/or is intended to depart by water, including storage yards, warehouses, cranes and similar machinery, and marine railways;
 - (D) Any form or structure for manufacturing or repair which is related to maritime activity and which substantially requires or benefits from a shoreline location;
 - (E) Any form or structure associated with uses which need or substantially benefit from a shoreline location;
 - (F) Marine fuel, water and sanitation facilities including services and support for transient and permanent vessels;
 - (G) All forms of public, private, and commercial moorage;
 - (H) Public access facilities, including boat ramps, parks, promenades, sidewalks, viewing areas, benches, plazas, and other forms of public open spaces;
 - (I) Research and education facilities related to the waterbody they abut;
 - (J) Fish and shellfish propagation and management;
 - (K) Offices which are related to and a necessary part of permissible uses;
 - (L) Public utilities including lines, pump stations, transformer stations, and similar uses;
 - (M) Hotels, motels and other types of transient lodging which are designed to take advantage of the shoreline amenity and which will result in increased visual or physical public access to the shoreline;
 - (N) Restaurants, cafes, and other food or beverage facilities which are designed to take advantage of the shoreline amenity and which will result in increased visual or physical access to the shoreline;
 - (O) Gift shops, entertainment facilities, ticketing agencies, and other visitor industry services;

- (P) Retail services directly linked to a maritime clientele, such as gear and supply stores, boat sales, and laundries. To be directly linked, the proposed use must show by design and orientation that the primary clientele will be persons arriving from or going to watercraft or working on or in conjunction with watercraft, and that the proposed use is reasonably located to be convenient to foot borne customers that are already found in the area or that can be expected to be in the area;
 - (Q) Retail establishments and restaurants catering to the needs of persons working in the special waterfront areas when close proximity is important to the function of permissible uses;
 - (R) Water-oriented retail and/or office complexes where the value and income potential from retail or office uses will enable provision of public access and other water-related amenities for use by the public. Such amenities must be provided at the same time as the facilities are completed, or earlier in time. An overall plan for the entire development must be presented with the permit application showing spaces and features that will be available to the public;
 - (S) Residences;
 - (T) The following accessory uses when associated with the uses set forth above: parking lots, spaces and structures, driveways, sidewalks, entrance structures, decorative structures, benches, landscaping features, awnings and similar improvements, and utility facilities.
- (c) *Special policies for the special waterfront areas.*
- (1) No additional intertidal fill may be allowed in the Tee Harbor special waterfront area except that necessary to construct a public boat ramp.
 - (2) Gold Creek Mouth Protection Area. No structures or activities shall be allowed in this area except as needed by the U.S. Coast Guard for its purposes or as allowed by the state department of fish and game for habitat maintenance and enhancement.
 - (3) No floating structures are allowed within 300 feet of the mouths of streams in the Thane special waterfront area.
 - (4) A public fishing pier on the south side of the Juneau-Douglas Bridge may be allowed.
 - (5) A portion of the intertidal area near the mouth of Salmon Creek has been set aside as a natural beach for salmon resting.
 - (6) Seawalk. A pedestrian access easement and walkway intended to provide a continuous pedestrian path along the entire downtown waterfront area, shall be included with all future development or redevelopment along the downtown waterfront shoreline. This walkway, to be known as the seawalk, shall be a continuous path along the entire downtown waterfront as depicted in the Long Range Waterfront Plan. In lieu of constructing the required seawalk, property owners developing or redeveloping property along the waterfront shoreline within the area encompassed by the Long Range Waterfront Plan shall pay a fee to the City and Borough equal to 20 percent of the final project cost for a seawalk constructed to public assembly standards for the section abutting their property. Unless the alignment of the seawalk requires otherwise, owners of property along the waterfront shoreline within the area encompassed by the Long Range Waterfront Plan developing or redeveloping their property shall dedicate all easements necessary for construction of a seawalk 16 feet in width.
 - (A) Reserved.
 - (B) Reserved.
 - (C) The seawalk shall not be required for existing buildings located along the water's edge until additions or alterations, or both, in excess of 50 percent of the gross square footage of the existing structure are proposed or undertaken within a 36-month period as determined by the

City and Borough building division. General maintenance or repair work is exempt from this requirement.

(D) Reserved.

- (d) Interpretation of the Juneau Coastal Management Plan Special Waterfront Area Map. The purpose of this subsection is to assist users of the Juneau Coastal Management Plan Special Waterfront Area Map.
- (1) Lines which apparently follow street or right-of-way centerlines shall be construed as following such centerlines.
 - (2) Lines which apparently follow property or lot boundary lines shall be construed as following such boundary lines.
 - (3) Lines at the first and second rock dumps shall represent a line 100 feet upland from the mean high water line. Lines on other land and water areas where there are no survey lines shall be construed by using the scale of the Juneau Coastal Management Plan Special Waterfront Area Map. Where doubt arises over the location of a line, the parties shall first establish the true scale of the map by using a known distance between points visible on the map. The outside, or seaward edge of the line appearing on the map shall then be construed as the line.

(Serial No. 87-49, § 2, 1987; Serial No. 90-51, § 2, 1990; Serial No. 92-41, § 3, 1992; Serial No. 2005-29(am), § 2, 10-10-2005)

49.70.310(c) Coastal Development and Special Habitats

(1) The purpose of this section is to manage and protect the natural resource values of Juneau's coastline and special habitats.

(2) The following ~~policies~~ standards shall apply:

(a) Fish and seafood propagation, processing, and mariculture

(i) Shoreline use shall not adversely impact important fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Shorelines having banks, beaches, and beds critical to the preservation or enhancement of the fisheries resource base shall be maintained in, or restored to, their original condition whenever reasonable. Upland areas shall be managed to maintain water quality standards necessary for the propagation of anadromous fish species.

(ii)

Fisheries enhancement and mariculture practices, including disposal of wastes, viscera or fish scrap, shall be conducted so as not to violate applicable state water quality and litter control standards.

~~(b) The following standards shall apply to the management of the following habitats:~~

~~(1) Rivers, streams and lakes shall be managed so as to protect natural vegetation, water quality, important fish or wildlife habitat and natural waterflow.~~

~~(b)~~ Uses and activities in the coastal area which will not conform to the standards contained in subsections ~~a-b~~ of this section or to the standards of 49.70.310(d)(2) may be allowed if the following standards are met:

- (1) There is a significant public need for the proposed use or activity;
- (2) There is no reasonable alternative to meet the public need for the proposed use or activity which would conform to the standards contained in subsections a-b of this section; and
- (3) All feasible and prudent steps to maximize conformance with the standards contained in subsections (b-c) of this section will be taken.

Commented [TC1]: Recommended for retention despite some duplication of state authority because these policies provide more specific standards of review for the Conditional Use Permit process and support the 2013 Juneau Comprehensive Plan implementing action 5.13-1A4, page 60, which states "Support mariculture that does not have unacceptable impacts on important fish and wildlife habitat and other maritime-related activities and ensure adherence with state law and protocols on mariculture practices. Use of invasive species or harmful food or waste products in these operations shall be prohibited." At a minimum, these policies ensure that fisheries development must have all required state permits. Staff has proposed definitions at the end of this section.

Commented [TC2]: Retain in Habitat section. This section has been used to allow approval of developments that have unavoidable habitat impacts but have a high public need and no feasible alternatives. One example is the Alaska Glacier Seafoods Seafood processing plant, which filled important intertidal habitat but had mitigation to minimize impacts and was considered a public need. Without this section, an important public project could potentially be denied based on habitat impacts.

Commented [TC3]: Clarifying language added per Committee request. If the final numbering on the ordinance should change, staff notes that this is intended to refer to Special Waterfront Area General Standards.

49.70.310(d) Special waterfront areas.

(1~~i~~) Purpose. The purpose of this section to encourage development of marine and marine-related facilities in established Special Waterfront Areas coastal areas with lower habitat value. Other purposes include:

Commented [TC4]: Purpose statement that covers all sections added per Committee request.

(a~~1~~) to provide greater protection for coastal areas outside of Special Waterfront Areas with higher habitat value, including a prohibition on intertidal fill used for expansion of upland areas;

(b~~2~~) to promote pedestrian access to the downtown waterfront with a seawalk; and

(c~~3~~) to provide special policies for other unique Special Waterfront Areas.

(2~~ii~~) General standards.

(a) The Special Waterfront Area Map, dated December 1, 1990, shows the boundaries of each special waterfront area, and the maximum seaward limits for permanent development in each special waterfront area. The land or water inside the boundaries shown on the Special Waterfront Area Map is subject to the provisions of this section.

(b) Filling of intertidal areas below mean high tide outside of Special Waterfront Areas for the expansion of upland area is specifically prohibited unless clear and convincing evidence is provided showing that all of the following conditions exist such that:

Commented [TC5]: Criteria have been substantially cut per Committee's direction

(i~~A~~) Strict compliance with the policy would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome;

(ii~~B~~) Fill is the only means to allow development of the property which is similar to other properties in the vicinity;

(iii~~C~~) Less than the proposed fill would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome; and

~~(D) Approval of the project will not authorize uses on the property otherwise not allowed by other state, federal and local laws and regulations; and~~

(iv) Provided, log and mining transfer facilities and the following public facilities are exempt from this policy: bridges, causeways, boat ramps, utility transmission facilities, pipelines, treatment plant lines and outfalls, and transportation facilities.

Commented [TC6]: The Committee requested further analysis of this section at the March 2022 meeting. Staff has concluded that this language was part of the JCMP as part of past agency cooperation efforts and to ensure that CBJ was not approving uses that would be denied by other agencies. This also served as a courtesy to the applicant. However the standard requires additional review by CBJ, is difficult to conclusively determine, and could create delays. Therefore staff is recommending deletion.

(v~~F~~) Fill for expansion of the upland area is fill intended for structural support. Examples include structural support of buildings, parking lots, and related facilities. Fill for expansion of the upland area does not include fill used for rock walls, bank stabilization, and similar uses.

Commented [TC7]: Upland area is defined in code

(c) Fill proposals within the special waterfront areas are not subject to the fill prohibition of subsection 49.70.310(d)(ii)(b) relating to coastal development. ~~Each fill proposal shall be individually reviewed to ensure that configuration, timing, composition and construction practices will minimize impacts on habitats and meet the water quality standards and other coastal development and special habitat provisions. The size of any fill shall not exceed that necessary for the use unless a larger fill is needed to maintain integrity of the fill, maintain or enhance habitat values, or to fulfill other requirements of this section.~~

Commented [TC8]: Same intent as original language but minimized with state agency references deleted.

Commented [TC9]: The Committee requested further analysis of this section at the March 2022 meeting. Staff recommends deleting this text, except for the first clarifying statement, on the premise that Special Waterfront Areas are areas of established industrial development with low habitat value. Therefore this additional review of the fill area is not necessary.

(d~~4~~) If new site-specific information becomes available which clearly indicates that crucial habitats exist within the Special Waterfront Areas, and if after consultation with the City and Borough

and state resource agencies, these entities concur, a specific evaluation pursuant to subsection 49.70.310(c)(2)(b) will be immediately required for projects within the crucial habitat areas.

(e) A change to the special waterfront areas may be initiated by the submittal of new information regarding habitats to the department. To initiate a program change new information must be based on detailed site-specific studies which indicate that the habitat is substantially more productive than was indicated in the information which was available on May 22, 1986.

(3e) *Special policies for the special waterfront areas.*

(a) No additional intertidal fill may be allowed in the Tee Harbor special waterfront area except that necessary to construct a public boat ramp.

(b) Gold Creek Mouth Protection Area. No structures or activities shall be allowed in this area except as needed by the U.S. Coast Guard for its purposes or as allowed by the state department of fish and game for habitat maintenance and enhancement.

(c) No floating structures are allowed within 300 feet of the mouths of streams in the Thane special waterfront area.

(d) A public fishing pier on the south side of the Juneau-Douglas Bridge may be allowed.

(e) A portion of the intertidal area near the mouth of Salmon Creek has been set aside as a natural beach for salmon resting.

(f) Seawalk. A pedestrian access easement and walkway intended to provide a continuous pedestrian path along the entire downtown waterfront area, shall be included with all future development or redevelopment along the downtown waterfront shoreline. This walkway, to be known as the seawalk, shall be a continuous path along the entire downtown waterfront as depicted in the Long Range Waterfront Plan. In lieu of constructing the required seawalk, property owners developing or redeveloping property along the waterfront shoreline within the area encompassed by the Long Range Waterfront Plan shall pay a fee to the City and Borough equal to 20 percent of the final project cost for a seawalk constructed to public assembly standards for the section abutting their property. Unless the alignment of the seawalk requires otherwise, owners of property along the waterfront shoreline within the area encompassed by the Long Range Waterfront Plan developing or redeveloping their property shall dedicate all easements necessary for construction of a seawalk 16 feet in width.

(iA) Reserved.

(Bii) Reserved.

(iiiC) The seawalk shall not be required for existing buildings located along the water's edge until additions or alterations, or both, in excess of 50 percent of the gross square footage of the existing structure are proposed or undertaken within a 36-month period as determined by the City and Borough building division. General maintenance or repair work is exempt from this requirement.

Commented [TC10]: This refers back to the public need standard in the previous section

Commented [TC11]: This is the same language as in the original JCMP, except that references to state agencies and the state program have been removed. Special Waterfront Areas were determined long ago to be areas of low habitat value. This section is for the situation (which has never happened) where new information indicates that a Special Waterfront Area has crucial habitats. If CBJ and state resource agencies accept that, then regulation refers back to the public need standard, which says that if a development has unavoidable habitat impacts, it can still be approved if there is demonstrated public need and impacts have been minimized. The specific evaluation referred to here is not a habitat evaluation—it's the evaluation of the public need criteria.

Commented [TC12]: This is the same language as in the original JCMP, except that references to state agencies and the state program have been removed.

Commented [TC13]: This section has been moved but otherwise not changed.

- 113 (iv~~D~~) Reserved.
- 114 (g~~d~~) Interpretation of the Special Waterfront Area Map. The purpose of this subsection is to assist users
115 of the Special Waterfront Area Map.
- 116 (i~~1~~) Lines which apparently follow street or right-of-way centerlines shall be construed as
117 following such centerlines.
- 118 (ii~~2~~) Lines which apparently follow property or lot boundary lines shall be construed as following
119 such boundary lines.
- 120 (iii~~3~~) Lines at the first and second rock dumps shall represent a line 100 feet upland from the mean
121 high water line. Lines on other land and water areas where there are no survey lines shall be
122 construed by using the scale of the Special Waterfront Area Map. Where doubt arises over
123 the location of a line, the parties shall first establish the true scale of the map by using a
124 known distance between points visible on the map. The outside, or seaward edge of the line
125 appearing on the map shall then be construed as the line.
- 126 Specified Use Provisions. 49.65.1300 Floathomes and Floating Structures
- 127 (1) Floathomes located outside of public marinas and on privately-owned tidelands may be allowed with
128 a Conditional Use Permit. Floathomes in other areas are prohibited.
- 129 (2) Floating camps or multipurpose floating structures intended in whole or in part for residential
130 purposes and meant to support mining, fishing, logging, tourist or other activities may be allowed with a
131 conditional use permit.
- 132 (3) Floating structures, other than those addressed in subsections intended for commercial or industrial
133 purposes including, fish propagation, mineral extraction, mineral processing, timber extraction or
134 processing, lodging, seafood processing, research, marine service and repairs, which will be fixed in one
135 location for more than 30 days, may do so only after having obtained approval through the conditional
136 use process. Provided, the following are exempt from the conditional use process requirement:
- 137 (A) Mooring devices for watercraft;
- 138 (B) Watercraft transiting the City and Borough that are not intended for residential use in
139 excess of 30 days in any 12 calendar months;
- 140 (C) Seafood processors whose primary purpose is to receive fish and shellfish from
141 harvesting boats and prepare it for further transportation; and
- 142 (D) Watercraft intended to transport cargo to, from or within the City and Borough.

Commented [TC14]: The former floathome prohibition area covers almost the entire borough, and the former language included a section allowing floathomes on privately-owned tidelands with a Conditional Use Permit. This language distills that language and drops the extensive list of additional requirements. The other requirements in the original list regarding public safety, impacts on surrounding neighborhoods, etc. may be addressed through the Conditional Use Permit process.

153 Definitions 49.80

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155 *Banks, beaches, and beds critical to the preservation of the fisheries resource base* means areas that that
156 are either catalogued or documented as critical to the fisheries resource base, or expressed as such by a
157 state or federal resource agency.

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159 *Important fish and wildlife habitat* means the waters and/or surrounding land areas that are either
160 catalogued or documented habitats or expressed as important by a state or federal resource agency.

161

162 *Significant fish or shellfish species* means species that are either catalogued or documented as important
163 to Southeast Alaska, or expressed as such by a state or federal resource agency.

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49.70.310(c) Coastal Development and Special Habitats

(1) The purpose of this section is to manage and protect the natural resource values of Juneau's coastline and special habitats.

(2) The following standards shall apply:

(a) Fish and seafood propagation, processing, and mariculture

(i) Shoreline use shall not adversely impact important fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Shorelines having banks, beaches, and beds critical to the preservation or enhancement of the fisheries resource base shall be maintained in, or restored to, their original condition whenever reasonable. Upland areas shall be managed to maintain water quality standards necessary for the propagation of anadromous fish species.

(ii)

Fisheries enhancement and mariculture practices, including disposal of wastes, viscera or fish scrap, shall be conducted so as not to violate applicable state water quality and litter control standards.

(b) Uses and activities in the coastal area which will not conform to the standards contained in subsection a of this section or to the standards of 49.70.310(d)(2) may be allowed if the following standards are met:

- (1) There is a significant public need for the proposed use or activity;
- (2) There is no reasonable alternative to meet the public need for the proposed use or activity which would conform to the standards contained in subsections a-b of this section; and
- (3) All feasible and prudent steps to maximize conformance with the standards contained in subsections (b-c) of this section will be taken.

49.70.310(d) Special waterfront areas.

(1) Purpose. The purpose of this section to encourage development of marine and marine-related facilities in established Special Waterfront Areas coastal areas with lower habitat value. Other purposes include:

(a) to provide greater protection for coastal areas outside of Special Waterfront Areas with higher habitat value, including a prohibition on intertidal fill used for expansion of upland areas;

Commented [TC1]: Recommended for retention despite some duplication of state authority because these policies provide more specific standards of review for the Conditional Use Permit process and support the 2013 Juneau Comprehensive Plan implementing action 5.13-1A4, page 60, which states "Support mariculture that does not have unacceptable impacts on important fish and wildlife habitat and other maritime-related activities and ensure adherence with state law and protocols on mariculture practices. Use of invasive species or harmful food or waste products in these operations shall be prohibited." At a minimum, these policies ensure that fisheries development must have all required state permits. Staff has proposed definitions at the end of this section.

Commented [TC2]: Retain in Habitat section. This section has been used to allow approval of developments that have unavoidable habitat impacts but have a high public need and no feasible alternatives. One example is the Alaska Glacier Seafoods Seafood processing plant, which filled important intertidal habitat but had mitigation to minimize impacts and was considered a public need. Without this section, an important public project could potentially be denied based on habitat impacts.

Commented [TC3]: Clarifying language added per Committee request. If the final numbering on the ordinance should change, staff notes that this is intended to refer to Special Waterfront Area General Standards.

Commented [TC4]: Purpose statement that covers all sections added per Committee request.

- 37 (b) to promote pedestrian access to the downtown waterfront with a seawalk; and
- 38 (c) to provide special policies for other unique Special Waterfront Areas.
- 39 (2) *General standards.*
- 40 (a) The Special Waterfront Area Map, dated December 1, 1990, shows the boundaries of each
- 41 special waterfront area, and the maximum seaward limits for permanent development in
- 42 each special waterfront area. The land or water inside the boundaries shown on the Special
- 43 Waterfront Area Map is subject to the provisions of this section.
- 44 (b) Filling of intertidal areas below mean high tide outside of Special Waterfront Areas for the
- 45 expansion of upland area is specifically prohibited unless clear and convincing evidence is
- 46 provided showing that all of the following conditions exist such that:
- 47 (i) Strict compliance with the policy would prevent the applicant from making a reasonable
- 48 use of the property or would make compliance unreasonably burdensome;
- 49 (ii) Fill is the only means to allow development of the property which is similar to other
- 50 properties in the vicinity;
- 51 (iii) Less than the proposed fill would prevent the applicant from making a reasonable use of
- 52 the property or would make compliance unreasonably burdensome; and
- 53 (iv) Provided, log and mining transfer facilities and the following public facilities are exempt
- 54 from this policy: bridges, causeways, boat ramps, utility transmission facilities, pipelines, treatment
- 55 plant lines and outfalls, and transportation facilities.
- 56 (v) Fill for expansion of the upland area is fill intended for structural support. Examples
- 57 include structural support of buildings, parking lots, and related facilities. Fill for expansion of
- 58 the upland area does not include fill used for rock walls, bank stabilization, and similar uses.
- 59 (c) Fill proposals within the special waterfront areas are not subject to the fill prohibition of
- 60 subsection 49.70.310(d)(ii)(b) relating to coastal development.
- 61 (d) If new site-specific information becomes available which clearly indicates that crucial habitats
- 62 exist within the Special Waterfront Areas, and if after consultation with the City and Borough
- 63 and state resource agencies, these entities concur, a specific evaluation pursuant to
- 64 subsection 49.70.310(c)(2)((b) will be immediately required for projects within the crucial
- 65 habitat areas.
- 66 (e) A change to the special waterfront areas may be initiated by the submittal of new information
- 67 regarding habitats to the department. To initiate a program change new information must be
- 68 based on detailed site-specific studies which indicate that the habitat is substantially more
- 69 productive than was indicated in the information which was available on May 22, 1986.
- 70
- 71
- 72 (3) *Special policies for the special waterfront areas.*
- 73 (a) No additional intertidal fill may be allowed in the Tee Harbor special waterfront area except
- 74 that necessary to construct a public boat ramp.

Commented [TC5]: Criteria have been substantially cut per Committee's direction

Commented [TC6]: The Committee requested further analysis of this section at the March 2022 meeting. Staff has concluded that this language was part of the JCMP as part of past agency cooperation efforts and to ensure that CBJ was not approving uses that would be denied by other agencies. This also served as a courtesy to the applicant. However the standard requires additional review by CBJ, is difficult to conclusively determine, and could create delays. Therefore staff is recommending deletion.

Commented [TC7]: Upland area is defined in code

Commented [TC8]: Same intent as original language but minimized with state agency references deleted.

Commented [TC9]: The Committee requested further analysis of this section at the March 2022 meeting. Staff recommends deleting this text, except for the first clarifying statement, on the premise that Special Waterfront Areas are areas of established industrial development with low habitat value. Therefore this additional review of the fill area is not necessary.

Commented [TC10]: This is the same language as in the original JCMP, except that references to state agencies and the state program have been removed. Special Waterfront Areas were determined long ago to be areas of low habitat value. This section is for the situation (which has never happened) where new information indicates that a Special Waterfront Area has crucial habitats. If CBJ and state resource agencies accept that, then regulation refers back to the public need standard, which says that if a development has unavoidable habitat impacts, it can still be approved if there is demonstrated public need and impacts have been minimized. The specific evaluation referred to here is not a habitat evaluation—it's the evaluation of the public need criteria.

Commented [TC11]: This is the same language as in the original JCMP, except that references to state agencies and the state program have been removed.

Commented [TC12]: This section has been moved but otherwise not changed.

- 75 (b) Gold Creek Mouth Protection Area. No structures or activities shall be allowed in this area
76 except as needed by the U.S. Coast Guard for its purposes or as allowed by the state
77 department of fish and game for habitat maintenance and enhancement.
- 78 (c) No floating structures are allowed within 300 feet of the mouths of streams in the Thane
79 special waterfront area.
- 80 (d) A public fishing pier on the south side of the Juneau-Douglas Bridge may be allowed.
- 81 (e) A portion of the intertidal area near the mouth of Salmon Creek has been set aside as a
82 natural beach for salmon resting.
- 83 (f) Seawalk. A pedestrian access easement and walkway intended to provide a continuous
84 pedestrian path along the entire downtown waterfront area, shall be included with all future
85 development or redevelopment along the downtown waterfront shoreline. This walkway, to
86 be known as the seawalk, shall be a continuous path along the entire downtown waterfront
87 as depicted in the Long Range Waterfront Plan. In lieu of constructing the required seawalk,
88 property owners developing or redeveloping property along the waterfront shoreline within
89 the area encompassed by the Long Range Waterfront Plan shall pay a fee to the City and
90 Borough equal to 20 percent of the final project cost for a seawalk constructed to public
91 assembly standards for the section abutting their property. Unless the alignment of the
92 seawalk requires otherwise, owners of property along the waterfront shoreline within the
93 area encompassed by the Long Range Waterfront Plan developing or redeveloping their
94 property shall dedicate all easements necessary for construction of a seawalk 16 feet in
95 width.
- 96 (i) Reserved.
- 97 (Bii) Reserved.
- 98 (iii) The seawalk shall not be required for existing buildings located along the water's edge
99 until additions or alterations, or both, in excess of 50 percent of the gross square
100 footage of the existing structure are proposed or undertaken within a 36-month period
101 as determined by the City and Borough building division. General maintenance or repair
102 work is exempt from this requirement.
- 103 (iv) Reserved.
- 104 (g) Interpretation of the Special Waterfront Area Map. The purpose of this subsection is to assist users
105 of the Special Waterfront Area Map.
- 106 (i) Lines which apparently follow street or right-of-way centerlines shall be construed as
107 following such centerlines.
- 108 (ii) Lines which apparently follow property or lot boundary lines shall be construed as following
109 such boundary lines.
- 110 (iii) Lines at the first and second rock dumps shall represent a line 100 feet upland from the mean
111 high water line. Lines on other land and water areas where there are no survey lines shall be
112 construed by using the scale of the Special Waterfront Area Map. Where doubt arises over
113 the location of a line, the parties shall first establish the true scale of the map by using a

known distance between points visible on the map. The outside, or seaward edge of the line appearing on the map shall then be construed as the line.

Specified Use Provisions. 49.65.1300 Floathomes and Floating Structures

(1) Floathomes located outside of public marinas and on privately-owned tidelands may be allowed with a Conditional Use Permit. Floathomes in other areas are prohibited.

(2) Floating camps or multipurpose floating structures intended in whole or in part for residential purposes and meant to support mining, fishing, logging, tourist or other activities may be allowed with a conditional use permit.

(3) Floating structures, other than those addressed in subsections intended for commercial or industrial purposes including, fish propagation, mineral extraction, mineral processing, timber extraction or processing, lodging, seafood processing, research, marine service and repairs, which will be fixed in one location for more than 30 days, may do so only after having obtained approval through the conditional use process. Provided, the following are exempt from the conditional use process requirement:

- (A) Mooring devices for watercraft;
- (B) Watercraft transiting the City and Borough that are not intended for residential use in excess of 30 days in any 12 calendar months;
- (C) Seafood processors whose primary purpose is to receive fish and shellfish from harvesting boats and prepare it for further transportation; and
- (D) Watercraft intended to transport cargo to, from or within the City and Borough.

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Definitions 49.80

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Banks, beaches, and beds critical to the preservation of the fisheries resource base means areas that are either catalogued or documented as critical to the fisheries resource base, or expressed as such by a state or federal resource agency.

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Important fish and wildlife habitat means the waters and/or surrounding land areas that are either catalogued or documented habitats or expressed as important by a state or federal resource agency.

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Significant fish or shellfish species means species that are either catalogued or documented as important to Southeast Alaska, or expressed as such by a state or federal resource agency.

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Commented [TC13]: The former floathome prohibition area covers almost the entire borough, and the former language included a section allowing floathomes on privately-owned tidelands with a Conditional Use Permit. This language distills that language and drops the extensive list of additional requirements. The other requirements in the original list regarding public safety, impacts on surrounding neighborhoods, etc. may be addressed through the Conditional Use Permit process.

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MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

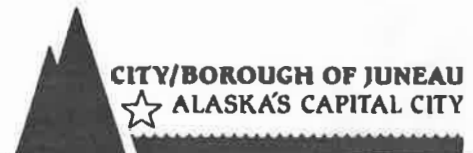
DATE: October 3, 2002
TO: Planning Commission
FROM: Teri Camery, Planner 
Community Development Department

FILE NO.: USE2002-00027 - Conditional Use

PROPOSAL: A conditional use permit to construct and operate a seafood processing plant.

GENERAL INFORMATION

Applicant: Chris Crenshaw
Property Owner: Michael Erickson
Property Address: Glacier Hwy
Legal Description: ATS 357 Lt 2
Parcel Code Number: 4-B31-0-100-001-1
Site Size: 27,399 square feet
Zoning: Waterfront Commercial
Utilities: public water, on-site sewer
Access: Glacier Highway
Existing Land Use: vacant
Surrounding Land Use: North - Glacier Highway
South - Auke Nu Cove
East - Alaska Marine Highway Ferry Terminal
West - vacant



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PROJECT DESCRIPTION

The applicant, on behalf of Alaska Glacier Seafoods, requests a conditional use permit for the development of seafood processing plant. The proposed project is located in Auke Nu Cove on privately owned tidelands, immediately west of the Alaska Marine Highway ferry terminal. The applicant proposes construction of an 80' x 100' pre-engineered metal building. The building design consists of "H" pile supporting structures with a concrete panel retaining wall system installed two feet inside the property lines. Clean non-frost susceptible fill will be placed in 8" lifts and compacted to 95% standard proctor to an elevation of 24.50' (See Attachment 4, 7/2/02 applicant letter). From this elevation a foundation will be constructed for the metal building and a 20' x 20' icehouse. The remaining area will be used for parking and traffic flow. The proposed project will fill in tidelands to the elevation of minus one foot. The project will utilize deep-water waste disposal methods for seafood waste with an NPDES permit that has current approval (Attachments 22 and 23).

The seafood plant will operate as a wholesale business with no direct retail sales, and will process primarily halibut, with some salmon and crab. The facility will have an average of 20 employees and will operate year-round, with slow periods during winter months. A peak of 25 employees will occur in the months of June and July, with the rest of the year having 15 employees, including office staff (Attachment 6, 8/2/02 applicant letter).

Currently Alaska Glacier Seafoods operates from a dock on lease from CBJ Harbors in Harris Harbor, and shuttles fish to its warehouse located near Western Auto. The CBJ lease expires in 2002, and the downtown location, with no processing area at the point of unloading fish, is not cost-effective for the operation. The Auke Bay location will save commercial fishing vessels eight hours of travel time and allow direct processing.

BACKGROUND

An earlier proposal for a seafood processing plant, proposed on the east side of the ferry terminal, completed Alaska Coastal Management Program review in 2000 and was deemed consistent. This proposal was to be located on DOT land under lease. The applicant did not complete the Conditional Use permit process and abandoned the project because the terms of the DOT lease were too restrictive to support the seafood operation. These terms included prohibiting any permanent structures on the lot, and limiting the lease to four years.

Alaska Glacier Seafoods applied for a Corps of Engineers permit on the current proposed site in September 1999. The scope of that project included the lot in this application and leasing a quarter acre of tidelands from the State Department of Natural Resources. That application was denied by

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DNR due to the possibility of ferry terminal expansion (Attachment 4, 7/2/02 letter). Due to this denial, the current application encompasses only privately-owned tidelands and does not require a DNR tidelands lease.

Earlier proposals also incorporated on-site waste disposal for fish processing waste, which received significant opposition from resource agencies. The current proposal has approval from EPA for deep-water disposal. All wastes and by-products will be barged out to a deep water site in accordance with the permit (Attachments 22 and 23).

DOT has long been interested in the subject property for future ferry terminal expansion, but has not made an offer for purchase. If the ferry terminal does expand in the future, DOT will have to purchase the property from Mr. Erickson at market value. No comments were received from DOT on the project regarding ferry expansion or potential conflict between fishing vessels and ferries.

According to the 15 day agency review requirements of CBJ Code 49.15.330(d)(4), notice of the project and project information was sent to CDD's established list of agency contacts via email on August 2, 2002, with a comment deadline of August 19th, 2002. CBJ Fire Marshal Randy Waters responded with a brief comment, which the applicant addressed. DOT responded regarding the driveway permit. No other agency comments were received. The CBJ Wetland Review Board reviewed the project at the 8/15/02 monthly board meeting.

The applicant has submitted letters of support for the project dating from the 2000 ACMP review process on the lot east of the ferry terminal, which are included in Attachment 27.

ANALYSIS

Project Site and Design

The proposed project is located entirely within privately-owned tidelands on a cobble beach. The DOT Glacier Highway right-of-way, an area of filled uplands, is immediately north of the project site and includes a gravel parking area noted on the site plan (Attachment 2). The applicant will not utilize this area and is not applying for a DOT right-of-way permit. CBJ Engineering has reviewed the proposed retaining wall and drainage and has no concerns with the project.

CBJ Assessors Office records initially noted a lot size of 39,988 square feet, which conflicted with the applicant's records which indicated a lot of approximately 27,000 square feet. Staff worked with the applicant and Assessors to reconcile the discrepancy, and on 10/1/02 the Assessors Office found the source of the error and revised official records to note a lot size of 27, 399 square feet, which is consistent with the applicant's survey. This error may lead to some confusion for the public, since

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CBJ public notices on the project referred to original Assessor's Office records with the 39,988 square foot lot. The revised Assessors record is included here as Attachment 7. The original tidelands survey is included as Attachment 8.

Parking, Circulation, and Traffic

Parking for this project is based on two different standards, according to CBJ Code 49.40.210. The warehouse, storage, and wholesale business category has a parking requirement of one space per 1,000 square feet of gross floor area. Offices not providing customer service have a requirement of one space per 300 square feet of gross floor area. In addition, one accessible space is required. According to the applicant, the office will not provide customer service because it is a wholesale operation, not retail. Therefore, with 7,400 square feet of warehouse space (7 parking spaces), and 600 square feet of non-customer office space (2 spaces), the required parking comes to 9 spaces plus one accessible space. The applicant has included 11 spaces plus one accessible space on the site plan, and therefore exceeds the requirement by two. The parking area also includes the required 30' x 12' loading zone, and a truck dock (Attachment 2, site plan).

The project will employ an average of 20 people and a peak of 25 people, which would exceed the available parking if each employee had a car. However the owner reports that most seafood workers are very young and few have cars. In addition, employees may be bussed from the existing warehouse near Western Auto if needed.

A driveway permit for the project has not yet been issued, but an email from DOT and a staff phone conversation with DOT Official Fred Thorsteinson on 9/18/02 indicates that DOT has no outstanding concerns over the proposal and the chosen driveway location is acceptable. The project is expected to generate minimal traffic. CDD did not receive any comments from DOT or the Coast Guard regarding vessel traffic in the area.

Noise

Primary noise impacts from the project will be from unloading the catch from commercial fishing boats. This noise is expected to be less than the vehicle traffic along Glacier Highway.

Public Health or Safety

No evidence indicates any threat to public health or safety from the proposed project.

Lighting

The applicant has proposed limited exterior lighting located on the exterior four corners of the building (Attachment 2, site plan). Lighting impacts will be minimal since the site is located next to the ferry terminal.

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Neighborhood Harmony

The proposed project is located west of the Alaska Marine Highway ferry terminal near the mouth of Auke Nu Cove, as the last in line among a number of marine-related businesses which include Allen Marine Tours and ferry services to Greens Creek Mine. Most of this area is within a Special Waterfront Area specifically designated in the JCMP as appropriate for development. The proposed seafood operation is located just outside the Special Waterfront Area boundary (Attachment 25). Condominiums are located at the mouth of the Cove, approximately 2,500 feet (1/2 a mile) from the proposed development. Two residences are located across the highway from the subject property. DOT has allowed these owners to park within the Glacier Highway right-of-way immediately next to the proposed plant. A vacant tideland lot of nearly identical size is immediately west and adjacent of the subject property (Attachment 8, tideland survey). The remaining land in the vicinity, on the north, upland side of Glacier Highway, is owned by CBJ or part of an accessory parking area for the ferry terminal.

The proposed project is adjacent to a line of established commercial and industrial development. The project will not generate any significant level of noise, and lighting will be minimal. The project will impact the view of the cove for condominium residents, however the view is already significantly impacted by the much larger development of the adjacent ferry terminal (Attachment 10, photo view from the condominiums). In addition, the ferry terminal is a major source of noise and lighting impacts for area.

The proposed project is directly across from two residences on the other side of Glacier Highway. The project will impact the view of the cove for these residents, and these residents will most directly experience any increase in traffic or noise from the project. However these residences also experience direct impacts from the ferry terminal. Additional noise and traffic from the proposed seafood plant should be negligible by comparison.

The property most directly affected by the proposal is the vacant tideland lot immediately adjacent and west of the subject property. The proposal certainly affects the value of this lot, and limits its future use to a development that is compatible with a seafood plant. This would likely eliminate the option of a private home. However the lot is vacant, with no known plans for the future. The owners of this lot have submitted comments to CDD (Attachment 26) which describe the Cove and the habitat and public safety impacts they foresee resulting from this proposal.

Auke Nu Cove area is utilized for small boat and kayak access, and by beachcombers, including the stretch of cobble beach along Glacier Highway that includes the subject parcel. Those users will be impacted by this proposal with increased development and activity and the loss of that stretch of beach for walking. However the subject property is private land, and there is no established public beach access to the Cove from Glacier Highway. Auke Recreation Area, a maintained U.S. Forest Service area with trails and shelters, is approximately one half mile farther west.

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In conclusion, the proposed seafood plant will change the area and will have a direct impact on the adjacent tideland lot, and the two residences across Glacier Highway. It will substantially alter the view of the Cove for condominium residents. However the development is adjacent to an established and heavily used waterfront industrial zone, and will cause minimal traffic or noise. With consideration of existing operations in the area, the addition of a seafood processing plant is compatible with other uses and should not significantly lower property values or impact neighborhood harmony, with the exception of the adjacent vacant lot.

CBJ Comprehensive Plan

The proposed development is part of the Comprehensive Plan Subarea Three, which includes Auke Bay, Mendenhall Peninsula, and West Mendenhall Valley. The parcel falls within the "OPL" category, which means Other Public Lands, though the parcel is privately owned. The OPL area encompasses Auke Nu Cove. The area adjacent to the parcel, including the ferry terminal and east shoreline, is categorized as WCI, Waterfront/Commercial/Industrial. Comprehensive Plan designations do not always correspond with code zoning, and this is one such case, since the subject parcel is zoned Waterfront Commercial in the land use code and "other public lands" in the Comprehensive Plan.

Relevant Guidelines and Considerations under Subarea Three include:

- 1) Provide for continued water-dependent and water-related development at the Ferry Terminal and in Auke Bay.
- 2) Preserve valuable public tidelands, shorelines, and stream corridors as public open space.
- 3) Encourage beautification and buffering along major roadways.

The proposed development is water-dependent and adjacent to existing water-dependent development and is therefore compatible with Guideline #1. Guideline #1 is important for public lands in the area, however the subject parcel is privately owned and does not extend into state-owned tidelands. Guideline #3 presents a challenge for this development. Glacier Highway is state-maintained, and DOT has granted parking within the right-of-way to adjacent residences on the opposite side of the street. The applicant has a small lot and proposes a small processing plant that requires maximum use of all space, and has requested a waiver of the vegetative cover requirement (VAR2002-00038), which staff has recommended in favor. Buffering around the property is preferred but does not appear to be a feasible option with this development.

Relevant Comprehensive Plan policies include the following:

***Policy 2.17.** It is the policy of the CBJ to support the development and expansion of the seafood industry and of services and facilities which benefit commercial fishing activity and attract fish processors and harvesters to Juneau.*

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Policy 5.3. It is the policy of the CBJ to minimize conflicts between residential areas and commercial/industrial areas through appropriate land use locational decisions and regulatory measures.

Policy 5.9. It is the policy of the CBJ to designate and reserve waterfront land with adequate services and in appropriate locations for water-dependent or related commercial/industrial activities while protecting important wildlife, habitat, and other coastal resources.

The proposed development supports Policy 2.17 by expanding the commercial fishing industry. Policy 5.3 has been addressed under the Neighborhood Harmony section of this staff report, which notes that area is already substantially developed and the major residential development, Auke Nu Condominiums, is located 2500 feet from the proposed development. The project will not generate significant noise or traffic, therefore conflict with the residential area is expected to be minimal. Policy 5.9 is also compatible with the development. Habitat and coastal resource issues will be addressed under the JCMP section of this report.

JUNEAU COASTAL MANAGEMENT PROGRAM

Section 49.70.905 Coastal Development

As noted earlier, the proposed project lies just outside the boundary of a Special Waterfront Area (Attachment 25, JCMP map). Special Waterfront Areas are areas specifically designated for development in the JCMP, and allow some relaxation of habitat standards, including allowance of inter-tidal fill. If an industrial or commercial waterfront use cannot be located within a Special Waterfront Area, it must meet the criteria of Section 49.70.905(18)(A and B), which states:

“Industrial and commercial uses on or adjacent to the shorelines of navigable waters must be located in the appropriate special waterfront designation established in section 49.70.960 unless:

- (A) There is no feasible and prudent alternative to meet the public need for the use; and*
- (B) The nature of the use requires a specific location and no other location will suffice.”*

Regarding Criteria A, Alaska Glacier Seafood’s lease from CBJ for dock space in Harris Harbor expires at the end of this year, and a future lease is uncertain. This location is not cost-effective due to the long travel time for fishing boats through Gastineau Channel and the lack of a processing facility at the site, which results in constant shuttling of fish product to the owner’s warehouse. Developing a facility in Auke Bay reduces fishing boat travel time by eight hours and enables extensive cost-saving by having processing at the site where the catch is unloaded. As noted in the Background Section of this report, Alaska Glacier Seafoods previously completed ACMP review at a site located on the east side of the ferry terminal, away from the Cove. This was DOT land for lease. However DOT’s terms on the lease were too restrictive to allow operation of the plant. Therefore

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the proposal was dropped, and this site is no longer an option. The subject lot is on privately-owned tidelands. Staff is unaware of any additional waterfront commercial or waterfront industrial properties available that could meet the needs of this development. In addition, there is a significant need for a seafood processing plant in Juneau, as evidenced by letters from fishermen and supporting industries (Attachment 27). Therefore Criteria A is met. Regarding Criteria B, the nature of a seafood processing plant requires a site with adequate marine and land access. The site east of the terminal is not an option due to the prohibitive terms of the DOT lease, and other appropriately zoned property is unavailable, therefore this criteria is also met.

Because the project is outside of the Special Waterfront District, it must also meet the exemption criteria to allow intertidal fill, in accordance with JCMP 49.70.905(13)(A through G). The project will fill the intertidal area to a tidal elevation of approximately minus one. Staff will address each of these criteria as they are listed. The section reads:

"Filling of intertidal areas below mean high tide, not specifically addressed in section 49.70.960, for the expansion of upland area is specifically prohibited unless clear and convincing evidence is provided showing that all of the following conditions exist that:

"(A) Strict compliance with the policy would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome;"

The subject property has no available uplands for development. This limits to development of the property to two options: 1) intertidal fill; or 2) building on pilings. According to the applicant, the submitted design using intertidal fill will have a total project cost of \$500,000 to \$700,000. If a pile design was used for the entire site, the piles in place and the concrete decking would run up to \$1,100,000, which would put the overall project in the range of \$1,400,000, which is prohibitively expensive (Attachment 6, 8/2/02 applicant letter). This criteria is met.

"(B) Fill is the only means to allow development of the property which is similar to other properties in the vicinity;"

Other properties in the vicinity, across the boundary within the Special Waterfront Area, have extensively utilized inter-tidal fill. As noted above, a pile-driven design for the project is cost-prohibitive. This criteria is met.

"(C) Less than the proposed fill would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome;"

Due to the demands of a seafood processing plant, boat mooring, loading/unloading activities, traffic, waste disposal and the small size of this commercial lot, every foot of the lot is needed to run and maintain the operation (Attachment 5, 7/22/02 applicant letter). Less than the proposed fill would prevent use of the property for this purpose. This criteria is met.

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“(D) The proposed project meets the requirements of the other enforceable policies of the Juneau Coastal Management Plan;”

The project will have habitat impacts, but meets additional criteria for exemption, as described in the analysis that follows, and therefore meets the requirements of other JCMP policies. This criteria is met.

“(E) The proposed project will not be detrimental to the public health, welfare and safety or to other properties in the vicinity;”

No evidence indicates that the project will have health, welfare, or safety impacts. This criteria is met.

“(F) Approval of the project will not authorize uses on the property otherwise not allowed by other state, federal and local laws and regulations;”

The project is an authorized use. This criteria is met.

“(G) If applicable, the meaning of the phrase ‘feasible and prudent’ has been considered and found to support approval of the proposal to fill.”

Fill is the only feasible and prudent alternative for development of the lot. This criteria and all criteria necessary for allowing intertidal fill have been met.

In addition to the criteria for industrial use outside of a Special Waterfront Area and criteria for intertidal fill, the Coastal Development section also addresses navigation and scenic values.

Coastal Development Section 49.70.905(5) states:

“Shoreline industrial developments, ports, harbors and marinas shall be sited, designed, constructed and operated such that: (A) Lawful navigation is not impaired; (B) Facilities for proper handling of sewage, refuse, fuel and waste oil are provided; (C) All feasible and prudent steps are taken to prevent water pollution by incorporating best management practices; (D) Adequate access and utility access are available or can be provided.”

The proposed plant will be located in an area with heavy marine traffic next to the ferry terminal at the mouth of Auke Nu Cove. However CDD has no evidence to indicate that lawful navigation will be impaired, and has received no comments regarding boat traffic from DOT or the Coast Guard. The project will utilize deep water disposal methods for seafood waste (Attachments 22 and 23). Refuse, fuel, and waste oil will be handled according to DEC standards. Staff will recommend incorporation of oil/water separators into the lot drainage design to ensure that all feasible and prudent steps are taken to prevent water pollution. Adequate access and utility access can be provided at the site.

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Coastal Development Section 49.70.905(12) states:

"To the extent feasible and prudent, development shall not detract from the scenic qualities of the shorelines, shall be compatible with surroundings, and shall not significantly block scenic vistas."

The development will impact the scenic quality at the mouth of Auke Nu Cove. However the project is adjacent to existing industrial development and is therefore compatible with surroundings to the east of the cove. No feasible and prudent alternatives exist to place the development elsewhere, as noted under the criteria reviewed above.

JCMP Habitat Standard, 49.70.950 and Related Policies

The JCMP Coastal Development Section includes broader policies, which overlap closely with the Seafood Processing Section and JCMP Habitat Standard. We will list these policies together and address them as a whole, with final emphasis on the JCMP Habitat Standard, which is the most all-encompassing.

Coastal Development Section 49.70.905(4) states:

"Dredging and filling shall be prevented in highly productive tideflats and wetlands, subtidal areas important to shellfish, and water important for migration, spawning and rearing of salmon and other sportfish species, unless there is a significant public need for the project and there is no feasible and prudent alternative to meet the public need."

Seafood Processing Section 49.70.930(a) states:

"Shoreline use shall not adversely impact important fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Shorelines having banks, beaches, and beds critical to the preservation or enhancement of the fisheries resource base shall be maintained in, or restored to, their original condition wherever and whenever feasible and prudent."

Lastly, the relevant sections of the JCMP Habitat Standard, 49.70.950(c)(3) states:

"(3)Wetlands and tideflats shall be managed so as to ensure adequate waterflow, natural circulation patterns, nutrients, and oxygen levels, to avoid the adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances."

The project was reviewed by the Wetland Review Board at the August 2002 monthly meeting on 8/15/02 (Attachment 21, Board Minutes). According to the Juneau Wetland Management Plan, the Wetland Review Board has an advisory role on all projects requiring a Corps of Engineers permit. The Board did not write any formal recommendations regarding the project. Discussion primarily addressed the use of pile construction versus fill and water quality impacts from oil contaminants. The Board recommended use of oil/water separators. Board members also noted that the site was shallow,

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and that the cove was formerly very productive and once supported a vibrant herring fishery. Concern was expressed over impact to eelgrass beds from turbulence and discharge from boat traffic. Overall, board members appeared to support the project, especially with respect to existing development in the area, but had reservations about potential habitat impacts.

CDD did not receive formal comment from ADFG on the development. An email from ADFG Habitat Biologist Carl Schrader indicated that ADFG has reservations about the project due to the significant habitat resources in the area, but has no funding to adequately review the project (Attachment 20).

On August 19, 2002, CDD received a request from the National Marine Fisheries Service to extend the agency review comment deadline by one month, from August 19th to September 19th, for purposes of completing an eelgrass study in Auke Nu Cove (Attachment 17). CDD Director Dale Pernula did not grant a formal extension, since CBJ staff, with cooperation from ADFG, could conduct an informal survey of the area within timelines. However we agreed to use information from NMFS if it could be obtained prior to the final deadline for the conditional use staff report. NMFS' report was received and will be addressed shortly.

CBJ Planning Supervisor Oscar Graham and ADFG Habitat Biologist Carl Schrader conducted a site visit on September 6th, during a minus three tide, for purposes of identifying eelgrass beds near the site. The nearest eelgrass bed was estimated to be 20-30 feet west of the site. Mr. Graham noted the beds as isolated colonies, which were several square feet in size at the largest.

NMFS Research Biologists conducted an intertidal dive study of eelgrass beds in the area on the same date, September 6th, 2002, and have produced a report and map from the study (Attachments 18 and 19). NMFS estimates the area of the continuous eelgrass bed in Auke Nu Cove at 3.82 acres. Approximately 89.5% of the eelgrass is in the intertidal zone. Divers observed pollack and dungeness crab within the eelgrass bed. The "Harris Transect" noted on the map indicates a long-term monitoring transect of the NMFS Auke Bay Laboratory.

The NMFS report indicates that the proposed fill footprint is approximately 48.5 m (145 feet) from the continuous eelgrass bed. Two smaller patches are located 4.6 m (13.8 feet) and 24.4 m (73.2 feet) from the proposed fill. The Auke Nu Cove eelgrass bed covered approximately 14 acres in 1984, and was reduced to 4.5 acres by 1996. Measurements indicate that the bed has been reduced by an additional 5 % since the ferry terminal expansion in 1997. The report states,

"The decrease in the size of the eelgrass bed is strongly correlated with the progressive loss or alteration of approximately 10 acres of intertidal habitat along 2500 feet of shoreline immediately adjacent to Auke Nu Cove. The cumulative effects from the loss or alteration of the adjacent habitat and associated activities have stressed the eelgrass community significantly."

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Eelgrass beds are highly productive marine habitats which support a diversity of fish and invertebrates. Eelgrass beds help prevent erosion, provide bank stability near shore, and provide food, breeding areas, and protective nurseries for many species, particularly herring. Eelgrass beds are important habitat for juvenile crabs. Eelgrass beds are considered "special aquatic sites" according to North Pacific Fishery Management Council regulations. According to NMFS, "the presence of essential fish habitat in Auke Nu Cove has been exhaustively documented by state and federal agencies in review of similar projects since 1981." Numerous resource agency letters from the earlier consistency review at this site (DNR denied the tideland lease, so the project did not go forward; see Background Section of this staff report) support this statement. NMFS writes, "This proposed activity will result in continued loss of eelgrass habitat by causing further alteration to the current regime and increased sedimentation due to fill activities and propeller wash."

The NMFS report continues with expressing support for locating the plant east of the ferry terminal, which would offer much-reduced habitat impact and offer better access. The proposed site, due to the shallow vicinity, will be accessible only during higher tides of at least 6 feet. This will add to the potential of scraping the ocean floor and stirring up sediment, which harms eelgrass. However as noted earlier in this staff report, the eastern site is not an option for the owner at this time due to DOT restrictions on the lease, which included prohibition of any permanent structures. In conclusion, NMFS states, "Due to the immediate proximity of the proposed fill to the eelgrass habitat in Auke Nu Cove (the only remaining eelgrass in Auke Bay) and the certain effect it will have on that habitat, we recommend that approval of this action be denied."

Staff spoke with NMFS Research Biologist Bob Stone, who was part of the study, and NMFS Habitat Biologist Linda Shaw to determine if any mitigation measures were available to reduce habitat impacts from the project. They both responded that mitigation was not an option, that the shallow nature of the Cove would result in sedimentation from fishing boats and propeller wash regardless of the design of the facility and where the boats are docked.

In conclusion, there is significant evidence indicating that the proposed development will harm important habitat and highly productive tideflats, and fail to meet the enforceable policies of the Coastal Development and Habitat Standard, outlined earlier in this section of the staff report. These sections offer exemption from the habitat policies if certain criteria are met. The Coastal Development section states that filling shall be prevented, "*unless there is a significant public need for the project and there is no feasible and prudent alternative to meet the public need.*" (49.70.905(4)). The JCMP Habitat Standard states the following as exemption criteria, under 49.70.950(d)(1-3):

"Uses and activities in the coastal area which will not conform to the standards contained in subsections (b) and (c) of this section [the Habitat Standard quoted earlier] may be allowed if the following standards are met:

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- (1) There is a significant public need for the proposed use or activity;*
- (2) There is no feasible and prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in subsections (b) and (c) of this section; and*
- (3) All feasible and prudent steps to maximize conformance with the standards contained in subsections (b) and (c) of this section will be taken."*

Since the Habitat exemption is similar but more stringent than the Coastal Development exemption, we will address these criteria.

The applicant has sufficiently documented the significant public need for the project with the multiple letters of support from fishermen and supporting industries, included in Attachment 27. The CBJ Comprehensive Plan supports expansion of the seafood industry. Juneau currently has only one seafood processing plant, Taku Smokeries, which is an 8 hour round-trip for fishermen on the west side of Auke Bay. There is a strong need for another facility for fishermen to unload and re-supply. The economic benefits of a seafood processing plant support many side industries including marine industries and marine transport, in addition to providing jobs and a significant amount of tax revenue to the city (\$200,000 in 2001, Attachment 5, 7/22/02 applicant letter). Staff therefore determines that the proposal meets Criteria One.

Regarding Criteria Two, feasible alternatives, the DOT lot in the east side of the ferry terminal is not an option for the owner. The applicant completed the ACMP Consistency Review process on this lot, but could not accept terms of the lease from DOT, which prohibited any permanent structures on the lot and limited the lease period to four years. A seafood processing plant can only be on a lot zoned Waterfront Commercial or Waterfront Industrial, according to CBJ Land Use requirements. There are no currently available lots in this zone. Lastly, the applicant's dock lease at Harris Harbor downtown will expire at the end of this year. Even if the lease may be renewed, the site has no on-site processing capacity and is cost-prohibitive for a longer term seafood operation. Staff determines that the proposal meets Criteria Two.

Regarding Criteria Three, staff will recommend use of oil/water separators on the lot and best management practices to limit impacts during project construction. The project will utilize deep-water waste disposal methods in accordance with the EPA NPDES permit (Attachments 22 and 23), and must meet DEC standards for water quality, toxics, and septic. Staff concludes that the project is in maximum conformance with standards with acceptance of project conditions, and Criteria Three is met.

With use of the JCMP Habitat Exemption Criteria, staff determines that the project is consistent with the JCMP.

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FINDINGS

CBJ §49.15.330 (e)(1), Review of Director's Determinations, states that the Planning Commission shall review the director's report to consider:

1. Whether the application is complete; and,
2. Whether the proposed use is appropriate according to the Table of Permissible Uses;
3. Whether the development as proposed will comply with the other requirements of this chapter.

The commission shall adopt the director's determination on the three items above unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

CBJ §49.15.330 (f), Commission Determinations, states that even if the commission adopts the director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

1. Materially endanger the public health or safety;
2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ §49.15.300 (e)(1)(A thru C), Review of Director's Determinations, the director makes the following findings on the proposed development:

1. Is the application for the requested conditional use permit complete?

Yes. We find the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. Is the proposed use appropriate according to the Table of Permissible Uses?

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is listed at CBJ §49.25.300, Section 4.220 for the Waterfront Commercial zoning district.

3. Will the proposed development comply with the other requirements of this chapter?

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Yes. The proposed development complies with the other requirements of this chapter. An advertising notice was provided in the Juneau Empire under Your Municipality, which ran on September 27, 2002. A public notice sign was posted on site at least 14 days prior to the meeting. A notice to abutting property owners was mailed on September 26, 2002. The notice area expanded beyond the 500 radius requirement to a 2,500 foot radius to include property owners in the Auke Nu Cove Condominiums. On September 30, 2002, staff received a call from Mal Earhart, a neighboring property owner. Mr. Earhart informed staff that the written project description on the notice was incorrect and stated that the project would be located on the east side of the ferry terminal, though the accompanying vicinity map shows it on the west side of the ferry terminal. The project is located on the west side of the terminal. Staff noted this as a typographical error in the notice, and a corrected notice was sent out to all neighbors on September 30, 2002.

4. *Will the proposed development materially endanger the public health or safety?*

No. No evidence indicates that the proposed development will materially endanger public health or safety.

5. *Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?*

No. The proposed development is adjacent to a heavily used, established waterfront industrial area that includes the state ferry terminal. Though two residences are located across Glacier Highway, the next major residential area is the Auke Nu Condominiums, 2500 feet from development. The project will impact the view corridor of Auke Nu Cove for condominium residents and the two homes across Glacier Highway, however the view corridor is already substantially affected by the ferry terminal. The most significant impact of the project will be on the adjacent tideland lot, which is currently vacant. The approval of a seafood processing plant may lower the value of this lot and limit options for future development. The project will not generate significant noise, traffic, or lighting impacts. In conclusion, the project does have visual impacts and may lower the value of the adjacent lot, however as part of an already industrialized area, the proposal is not substantially out of harmony with the neighboring area.

6. *Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?*

Yes. The proposed development is in conformity the CBJ Comprehensive Plan and specifically supports Policies 2.17, 5.3, and 5.9 regarding support for the commercial fishing industry, reserving waterfront land for commercial activities while protecting habitat, and minimizing conflict between residential areas and commercial/industrial areas.

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7. Will the proposed development comply with the Juneau Coastal Management Program?

Yes. Substantial evidence indicates that proposed development will impact valuable eelgrass habitat in Auke Nu Cove, which is unacceptable according to the JCMP Habitat Standard, §49.70.950. However the proposal complies with the criteria for exemption from this standard, including public need, no feasible alternative, and maximum conformance with standards. With this exemption, the proposed development complies with the enforceable policies of the JCMP.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the director's analysis and findings and grant the requested conditional use permit, which would allow the development of a seafood processing plant on privately owned tidelands, Lot 2 ATS 357. The approval is subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a drainage plan which includes oil/water separators and a maintenance plan for the separators.
- 2) Preparation of the fill site and placement of fill material must be accomplished so that entry of fines and suspendible material into the ocean is kept to the minimum practicable.
- 3) Fill material must consist of rock fill and riprap that are free from fines and suspendible material to the extent practicable, and free from contamination by petroleum products or toxic substances.
- 4) Disturbance of tidelands must be kept to the minimum necessary to practicably accomplish the work. Operation of machinery and equipment on tidelands must remain within the fill footprint to the extent practicable.
- 5) The fill structure must be designed and constructed to ensure long-term stability.
- 6) Material such as sorbent pads and booms must be available on site, and must be used to contain and clean up any petroleum product spilled as a result of construction activity.