

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

January 6, 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/81409025382>. 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: 814 0902 5382.

I. ROLL CALL

II. APPROVAL OF AGENDA

III. AGENDA TOPICS

- A.** Proposed Amendment to Marijuana Establishments - Five-Year Renewal
- B.** Update on Title 49 Amendments
- C.** Anadromous Waterbody Ordinance Draft

IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS

V. ADJOURNMENT

PART II - CODE OF ORDINANCES
TITLE 49 - LAND USE
Chapter 49.65 - SPECIFIED USE PROVISIONS
ARTICLE XI. MARIJUANA ESTABLISHMENTS

ARTICLE XI. MARIJUANA ESTABLISHMENTS¹

49.65.1200 Purpose.

It is the purpose of this article to establish reasonable regulations that allow for the operation of marijuana establishments within the City and Borough in a manner that promotes public health, safety, and general welfare. It is not the intent of this chapter to authorize anything specifically prohibited by state law.

(Serial No. 2015-38(b)(am), § 2(49.65.1100), 5-2-2016, eff. 6-2-2016)

49.65.1205 License required.

- (a) No person may operate a marijuana establishment within the City and Borough without a conditional use permit, a valid license issued by the City and Borough, and a valid license issued by the State of Alaska. The following types of licenses may be issued under this article:
 - (1) Marijuana retail store license;
 - (2) Marijuana cultivation facility license;
 - (3) Marijuana product manufacturing facility license; and
 - (4) Marijuana testing facility license.
- (b) A separate license shall be required for each specific business or business entity or for each specific location identified on the license as the licensed premise.
- (c) Upon denial or revocation of a marijuana establishment license issued by the State of Alaska, any license issued by the City and Borough under this article shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates state or federal law, all licenses issued under this article shall be deemed immediately revoked by operation of law, with no grounds for appeal or redress on behalf of the licensee.

(Serial No. 2015-38(b)(am), § 2(49.65.1105), 5-2-2016, eff. 6-2-2016)

49.65.1210 Prohibited acts.

- (a) It is unlawful for any licensee to engage in business contrary to any term or condition of any City and Borough of Juneau marijuana establishment license or any provision of this article.
- (b) It is unlawful for any person to obtain or attempt to obtain a license by making a false statement in any application for a license, or by any other fraudulent or deceptive means.

¹Editor's note(s)—Sec. 2 of Serial No. 2015-38(b)(am), adopted May 2, 2016, enacted provisions to be designated as Art. X, §§ 49.65.1100—49.65.1170. Inasmuch as there already exists an Art. X, §§ 49.65.1100, 49.65.1120, said new provisions have redesignated as Art. XI, §§ 49.65.1200—49.65.1270, per City's instructions. Original section designations have been maintained in the history notes following each section.

- (c) It is unlawful for any person to forge, counterfeit, or fraudulently alter a license issued under this chapter.
 - (d) It is unlawful for any person to obstruct, impede or otherwise refuse to allow an administrative inspection authorized under CBJ 49.65.1240.
 - (e) It is unlawful for any person licensed or regulated under this article to knowingly or willfully authorize, order, instruct, or permit an employee, agent or person under the licensee's control to act in connection with the licensed activity which violates any provision of this article or any license issued under this article.
- (Serial No. 2015-38(b)(am), § 2(49.65.1110), 5-2-2016, eff. 6-2-2016)

49.65.1215 Application for license.

- (a) An applicant for a marijuana establishment license shall submit an application on a form provided by the director accompanied by the appropriate fee. Applications must include the following documentation:
 - (1) If the applicant is not a natural person, the organizational documents for all entities identified in the application;
 - (2) A copy of the lease or deed for the property upon which the marijuana establishment will be located;
 - (3) A list of all other uses on the property;
 - (4) A statement verifying compliance with any buffer requirements imposed by 3 AAC Chapter 306 of the Alaska Administrative Code;
 - (5) A copy of the Notice of Decision approving the conditional use permit by the City and Borough of Juneau Planning Commission; and
 - (6) Any additional documentation determined by the director to be necessary to make a decision whether to approve or deny the license application, or approve with conditions.

(Serial No. 2015-38(b)(am), § 2(49.65.1110), 5-2-2016, eff. 6-2-2016)

49.65.1220 Term of license; renewal.

- (a) No license granted or issued under any of the provisions of this title shall be in any manner assignable or transferable.
- (b) Licenses are valid only as long as the applicant holds a current license from the state and is in compliance with the applicable conditional use permit.
- (c) Licenses issued under this chapter are effective from the date of issuance through December 31 of the same year.
- (d) In order to be eligible for renewal, a licensee must submit proof of inspection by the department or the department's designees for compliance with this chapter and any applicable permit. The licensee shall schedule the inspection no later than 60 days prior to the annual expiration of the license.
- (e) Licenses shall automatically renew on January 1, conditional upon the timely remittance of the annual license fee, no outstanding corrective orders or enforcement actions, and proof of inspection. Failure to timely remit proof of inspection or the annual license fee shall result in the license expiring and will require a new license application.

(Serial No. 2015-38(b)(am), § 2(49.65.1115), 5-2-2016, eff. 6-2-2016 ; Serial No. 2021-04, § 2, 3-1-2021, eff. 3-31-2021)

49.65.1225 Corrective orders.

- (a) The director may issue a corrective order whenever a licensee:
- (1) Has violated any provision of this chapter;
 - (2) Has relinquished legal control of the licensed establishment to any other person;
 - (3) Has failed, refused or neglected to comply with any provision of the license issued under this chapter, any conditional use permit issued for the marijuana establishment, or any provision of AS Chapter 17.38 or regulations adopted pursuant to that chapter;
 - (4) Is delinquent in the remittance of any sales tax or penalty or interest on sales tax arising out of the operation of the licensed premises;
 - (5) Has delinquent property taxes or local improvement district assessments or penalty or interest thereon arising out of real or personal property owned in whole or in part by any person named in the application as an applicant or on the permit which is to be continued where such property is used, or is to be used, in whole or in part in the business conducted or to be conducted under the license;
 - (6) Has a delinquent charge or assessment owing the City and Borough by the licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the municipality at the request of or arising out of an activity of the business conducted under the license;
 - (7) Is in violation of state or local fire, health, or safety codes; or
 - (8) Any reason identified by state statute or regulation as appropriate grounds to protest a license.
- (b) A corrective order shall be served on the licensee by hand-delivery or certified mail and shall specify:
- (1) The provision of the license, state law, or CBJ Code that has been violated;
 - (2) The corrective action, if any, the licensee may take to prevent suspension or revocation of the license, and the time limit for such corrective action, which shall be no earlier than seven days following date of issuance of the corrective order;
 - (3) Notification of the penalties provided by this title; and
 - (4) That the licensee may request an informal meeting before the director prior to suspension or revocation of the license in order to allow the licensee to contest the grounds for issuance of the corrective order and to provide the licensee the opportunity to provide information to the director relevant to the grounds for the corrective order.
- (c) Based on information timely received from the licensee, or from any other source, the director may amend the terms or conditions of the corrective order, or after consideration of the information provided by the licensee, affirm the corrective order as issued.

(Serial No. 2015-38(b)(am), § 2(49.65.1125), 5-2-2016, eff. 6-2-2016 ; Serial No. 2021-04, § 3, 3-1-2021, eff. 3-31-2021)

49.65.1230 License suspension or revocation.

- (a) Upon the expiration of the time allowed in a corrective order issued in CBJ 49.65.1225, if the licensee has not complied with the corrective order, the marijuana establishment license may be suspended or revoked, as determined by the director. Upon suspension or revocation of any license, the director shall notify the person whose license has been suspended or revoked by certified mail or by hand-delivery. Following such

suspension or revocation and after notification, it is unlawful for the licensee to continue to operate the marijuana establishment.

- (b) In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the director shall consider:
 - (i) The nature and seriousness of the violation;
 - (ii) Corrective action, if any, taken by the licensee;
 - (iii) Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of any prior corrective action;
 - (iv) The likelihood of recurrence;
 - (v) All circumstances surrounding the violation;
 - (vi) Whether the violation was willful;
 - (vii) The length of time the license has been held by the licensee;
 - (viii) The number of violations by the licensee within the applicable 12-month period;
 - (ix) Previous sanctions imposed, if any, against the licensee; and
 - (x) Any other factor making the situation with respect to the licensee or the licensed premises unique or the violation of greater concern.
- (c) Any person whose marijuana establishment license has been revoked shall be prohibited from applying for a license under this chapter for a period of one year.

(Serial No. 2015-38(b)(am), § 2(49.65.1130), 5-2-2016, eff. 6-2-2016)

49.65.1235 Appeal.

The denial, revocation, or suspension of a marijuana establishment license is appealable to the assembly in accordance with CBJ 01.50.

(Serial No. 2015-38(b)(am), § 2(49.65.1135), 5-2-2016, eff. 6-2-2016)

49.65.1240 Inspection of premises.

- (a) A marijuana establishment or an applicant for a marijuana establishment license under this chapter shall, upon request, make the licensed premises or the proposed licensed premises, including any place for storage, available for inspection by the director for the purpose of ensuring compliance with this chapter and any applicable marijuana establishment license. Inspection shall include access to any marijuana or marijuana product on the premises, equipment used in cultivating, processing, manufacturing, testing or storing marijuana, the inventory tracking system and business records of the licensee or applicant.

(Serial No. 2015-38(b)(am), § 2(49.65.1140), 5-2-2016, eff. 6-2-2016)

49.65.1245 Marijuana establishment conditional use permits.

- (a) In addition to the permit application and supporting materials required by CBJ 49.15.330(c), an applicant for a conditional use permit for a marijuana establishment must submit the following additional materials:

- (1) A site plan of all buildings on the property where the marijuana use will be located, including, but not limited to: A floor plan showing how the floor space is or will be used to include, but not limited to, restricted access areas and the total floor area of the building(s);
 - (2) A security plan indicating how the applicant will comply with the requirements imposed by state law;
 - (3) A waste disposal plan indicating how the applicant will comply with the requirements imposed by state law;
 - (4) A screening plan illustrating the applicants compliance with AS 17.38.070 making it unlawful to display marijuana or marijuana products in a manner that is visible to the general public from a public right-of-way;
 - (5) If the establishment is to be served by a private septic system, certification from a registered, qualified engineer licensed by the State of Alaska that the system has adequate capacity for the proposed use, or will with improvements;
 - (6) Marijuana cultivation facility license applicants must provide a ventilation and filtration plan describing the systems that will be used to ensure compliance with CBJ 49.65.1260 and whether the applicant intends on using carbon dioxide. The applicant shall specify if carbon dioxide enrichment will be used in cultivation and by what means the carbon dioxide will be produced. Plans should indicate the storage area for fuels used to produce carbon dioxide;
 - (7) Marijuana product manufacturing facility license applicants, marijuana cultivation facility license applicants, and marijuana testing facility license applicants must specify all means to be used for cultivating, growing, extracting, heating, washing or otherwise changing the form of the marijuana plant, along with proposed ventilation and safety measures to be implemented for each process;
 - (8) Marijuana cultivation facility license applicants and marijuana product manufacturing facility license applicants must specify the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system; and
 - (9) Any additional documentation determined by the director to be necessary for the commission to make a decision whether to approve or deny the permit, or approve with conditions, to ensure compliance with this chapter or CBJ 49.15.330(f).
- (b) If a licensee desires to modify the licensed premises by changes to equipment, increased use, such as in accordance with an approved state license endorsement, or any approved plan, an amendment to the original application and required fee shall be submitted for review and approval.
- (c) In addition to any conditions imposed under CBJ 49.15.330(g), the commission may impose any conditions necessary to ensure compliance with this chapter or state law or designed to mitigate impacts of the development on surrounding residences.
- (d) The commission shall impose as a condition of any permit issued by the commission under this title a requirement that the applicant submit a complete copy of the applicant's approved state license application to the department for review prior to operating. If the director determines there are substantive inconsistencies between the state license application and the conditional use permit application, the commission shall review the development for consistency with this title.
- (e) ~~Conditional use permits issued to marijuana establishments under this chapter shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title. If an appeal challenging the amendments to a conditional use permit is filed, the new conditions shall be stayed and the existing permit shall govern the operations of the marijuana establishment until the conclusion of the appeal. The scope of review on appeal is restricted solely to the amended conditions.~~

(Serial No. 2015-38(b)(am), § 2(49.65.1145), 5-2-2016, eff. 6-2-2016)

49.65.1250 Hours of operation—Marijuana retail stores.

Unless otherwise specified by a conditional use permit, licensed premises may not be open between the hours of 1:00 a.m. and 8:00 a.m., Monday through Sunday. No marijuana may be distributed, sold or dispensed at a licensed premises when the licensed premises is required to be closed pursuant to this section.

(Serial No. 2015-38(b)(am), § 2(49.65.1150), 5-2-2016, eff. 6-2-2016)

49.65.1255 Documents to be displayed.

- (a) A licensee shall prominently display the marijuana establishment license, in the same size and font as the original license issued by the director, in a conspicuous location inside the licensed premises near the main entrance.
- (b) A licensee shall display two separate warning signs as follows:
 - (1) A sign containing the following health warnings:
 - (A) "Marijuana has intoxicating effects and may be habit forming.";
 - (B) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence.";
 - (C) "There may be health risks associated with consumption of marijuana.";
 - (D) "For use only by adults twenty-one and older. Keep out of the reach of children."; and
 - (E) "Marijuana should not be used by women who are pregnant or breastfeeding."
 - (2) A sign containing the following warnings:
 - (A) "Consumption of marijuana in public is prohibited by law. AS 17.38.040; CBJ 42.20.230."; and
 - (B) "The transportation or shipment of marijuana and marijuana products outside of the City and Borough of Juneau by U.S. mail, air travel or in the waters of the United States is prohibited by federal law. AS 17.38.010(d)."
- (c) The warning signs required by subsection (b) of this section must be at least 11 inches by 14 inches in size, and the lettering must be at least one-half inch high and in contrasting colors. The warning signs must be displayed in conspicuous locations inside the licensed premises near the main entrance.

(Serial No. 2015-38(b)(am), § 2(49.65.1155), 5-2-2016, eff. 6-2-2016)

49.65.1260 Odor.

All marijuana establishments shall utilize a ventilation and odor system that prohibits the detection of noxious odors from outside the licensed premises. For purposes of this section, noxious odors are those odors detectable outside of the licensed premises that a reasonable person of ordinary sensibilities would find negatively affects the person's enjoyment of life, health or property.

(Serial No. 2015-38(b)(am), § 2(49.65.1160), 5-2-2016, eff. 6-2-2016)

49.65.1265 Marijuana cultivation in the D-1 zoning district.

- (a) Marijuana cultivation facilities located in the D-1 zoning district shall be an accessory use. An owner or manager must live on the same lot as the licensed premises.
- (b) In the D-1 zoning district, the minimum setback for marijuana facilities shall be at least 25 feet from the facility to any property line.

(Serial No. 2015-38(b)(am), § 2(49.65.1165), 5-2-2016, eff. 6-2-2016)

49.65.1270 Penalty.

- (a) A person who violates or causes or permits to be violated a provision of this chapter is guilty of a civil violation. Each and every day during which a violation of this chapter is committed, permitted, or continued shall be treated as a separate offense and subject the offender to separate charges and fines, in accordance with CBJ 03.30.075. Civil fines and penalties for violations of this chapter may be imposed in addition to any other remedies provided by law, including the imposition of corrective orders or license actions authorized by this chapter.
- (b) In addition to any other remedies provided by law, the City and Borough may seek a court order enjoining the continued operation, within the municipality, of any business whose owner or operator fails to comply with correction orders issued under CBJ 49.65.1225, terms of any decision on appeal under CBJ 49.65.1235, or who fails to cease operation following suspension or revocation of a license under CBJ 49.65.1230.

(Serial No. 2015-38(b)(am), § 2(49.65.1170), 5-2-2016, eff. 6-2-2016)

Presented by:
Presented:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2021-_____

An Ordinance Amending the Land Use Code Regarding Pre-Application Conference Requirements.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

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

Section 2. Amendment of Section. CBJC 49.15.310 is amended to read:
49.15.310 Department approval.

- (a) *Purpose.* The department shall review minor developments to ensure compliance with this title.
- (b) *Application form.* The director shall provide a minor development application form to be submitted as part of the application process for a building permit.
- (c) *Preapplication conference.* Prior to submitting an application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. No statement made by either party shall be regarded as binding, and the result of the conference shall not constitute approval by the department. A development application is not required to have a preapplication conference.

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Section 3. Amendment of Section. CBJC 49.15.320 is amended to read:

49.15.320 Allowable use permit.

- (a) *Purpose.* An allowable use permit is established for uses allowed in a particular zoning district but which, due to size, intensity or particular characteristics must be reviewed and approved by the planning commission. To ensure the compatibility of the use with the location, the commission may attach conditions to the permit to help mitigate external impacts. Conditions that may be attached to the permit are limited to those listed in subsection (f) of this section.
- (b) *Preapplication conference.* Prior to submission of an application, the developer ~~may shall~~ meet with the director for the purpose of discussing the site, the proposed development activity, and the allowable use permit procedure. The director shall discuss with the developer, regulations which may limit the proposed development as well as the standards or bonus regulations which may create opportunities for the developer. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this title. A copy of this subsection shall be provided to the developer at the conference.

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Section 4. Amendment of Section. CBJC 49.15.330 is amended to read:

49.15.330 Conditional use permit.

- (a) *Purpose.* A conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses. The conditional use permit procedure is intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites. The commission may attach to the permit those conditions listed in subsection (g) of this section as well as any further conditions necessary to mitigate external adverse impacts. If the commission determines that these impacts cannot be satisfactorily overcome, the permit shall be denied.
- (b) *Preapplication conference.* Prior to submission of an application, the developer shall be afforded the opportunity to meet with the director for the purpose of discussing the site, the proposed development activity, and the conditional use permit procedure. A development application is not required to have a preapplication conference. The director ~~should~~ shall discuss with the developer, regulation which may limit the proposed development as well as standards or bonus regulations which may create opportunities for the developer. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code. A copy of this subsection shall be provided to the developer at the conference.

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Section 5. Amendment of Section. CBJC 49.15.401 is amended to read:

49.15.401 Minor subdivisions.

- (a) ~~{Permit required.}~~ A minor subdivision permit is required for the following:

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2 ...
3 (b) Preapplication ~~Pre-application~~ conference. Prior to submitting an minor subdivision
4 application, the applicant shall be afforded the opportunity to discuss with the director such
5 facts, issues and proceedings as may be relevant to the application. No statement made by
6 either party shall be regarded as binding, and the result of the conference shall not constitute
7 approval by the department. A development application is not required to have a
8 preapplication conference. A pre-application conference is required prior to submitting an
9 application for a minor subdivision. A sketch plat (CBJ 49.15.410) may be required for the
10 preapplication conference at the director's discretion.
11

12 ...
13
14 **Section 6. Amendment of Section.** CBJC 49.15.402 is amended to read:
15 **49.15.402 Major subdivisions.**

16 (a) ~~{Permit required.}~~ A major subdivision permit is required for subdivisions resulting in 14
17 or more lots.
18
19 (b) Preapplication ~~Pre-application~~ conference and sketch plat. Prior to submitting a major
20 subdivision application, the applicant shall be afforded the opportunity to discuss with the
21 director such facts, issues and proceedings as may be relevant to the application. No
22 statement made by either party shall be regarded as binding, and the result of the conference
23 shall not constitute approval by the department. A development application is not required to
24 have a preapplication conference. A sketch plat (CBJ 49.15.410) may be required for the
25 preapplication conference at the director's discretion. A pre-application conference and sketch
plat (CBJ 49.15.410) is required prior to submitting an application for a major subdivision.

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Section 7. Amendment of Section. CBJC 49.15.404 is amended to read:

49.15.404 Public way vacations.

- (a) ~~{Applicability of section.}~~ This section applies to petitions to vacate any portion of an existing public way, public easement, or any other area dedicated to the public. This section does not apply to property owned by the City and Borough in its proprietary capacity.
- (b) Preapplication ~~Pre-application~~ conference. Prior to submitting a public way vacation application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. No statement made by either party shall be regarded as binding, and the result of the conference shall not constitute approval by the department. A development application is not required to have a preapplication conference. A pre-application conference is required prior to submitting an application for a public way vacation.

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Section 8. Amendment of Section. CBJC 49.15.620 is amended to read:

49.15.620 Planned unit development review process.

- (a) *General procedure.* A proposed planned unit development shall be reviewed according to the requirements of section 49.15.330, conditional use permit, and in the case of an application proposing a change in the number or boundaries of lots, section 49.15.402, major subdivisions, except as otherwise provided in this article. Approval shall be a two-step process, preliminary plan approval and final plan approval. In cases involving a change in

the number or boundaries of lots, the preliminary and final plat submissions required by section 49.14.430 shall be included with the preliminary and final plan submissions required by this chapter.

(b) *Preapplication conference.* Prior to submitting a planned unit development application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. A development application is not required to have a preapplication conference. ~~Prior to submission of an application, the director shall conduct an informal preapplication conference with the developer to discuss the proposed planned unit development.~~ The purpose of the preapplication conference shall be to exchange general and preliminary information and to identify potential issues. The developer may discuss project plans and the director may provide an informal assessment of project permit eligibility, but no statement made by either party shall be regarded as binding, and the result of the conference shall not constitute preliminary approval by the department. The conference should ~~shall~~ include a discussion of the zoning, size, topography, accessibility, and adjacent uses of the development site; the uses, density and layout of buildings, parking areas, the open space and landscaping proposed for the development; the common facilities; the street layout and the vehicle and pedestrian circulation; the development schedule and the planned unit development permit procedures. The developer should ~~shall~~ provide a sketch of the proposed planned unit development.

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Section 9. Amendment of Section. CBJC 49.15.720 is amended to read:

49.15.720 Cottage housing development review process.

- (a) *General procedure.* A proposed cottage housing development shall be reviewed according to the requirements of section 49.15.330, conditional use permit, and this article. Approval shall be a two-step process, preliminary plan approval and final plan approval.
- (b) *Preapplication conference.* Prior to submitting a cottage housing application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. A development application is not required to have a preapplication conference. ~~Prior to submission of an application, the applicant shall attend an informal preapplication conference with the community development department to discuss the proposed cottage housing development.~~ The purpose of the preapplication conference shall be to exchange general and preliminary information and to identify potential issues. The developer should ~~shall~~ provide a sketch, drawn to scale, of the proposed cottage housing development. The developer may discuss project plans and the director may provide an informal assessment of project permit eligibility, but no statement by either party shall be regarded as binding, and the result of the conference shall not constitute preliminary approval by the department.

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Section 10. Amendment of Section. CBJC 49.15.930 is amended to read:

49.15.930 Alternative residential subdivision review process.

- (a) *General procedure.* A proposed alternative residential subdivision shall be reviewed according to the requirements of section 49.15.330, conditional use permit, and in the case of

an application proposing a change in the number or boundaries of unit-lots, section 49.15.402, major subdivisions, except as otherwise provided in this article. Approval shall be a two-step process, preliminary plan approval and final plan approval. In cases involving a change in the number or boundaries of unit-lots, the preliminary and final plat submissions required by section 49.15.402 shall be included with the preliminary and final plan submissions required by this chapter.

(b) *Preapplication conference.* Prior to submitting an alternative residential subdivision application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. A development application is not required to have a preapplication conference. ~~Prior to submission of an application, the director shall conduct an informal preapplication conference with the developer to discuss the proposed alternative residential subdivision.~~ The purpose of the preapplication conference ~~is shall be~~ to exchange general and preliminary information and to identify potential issues and bonuses. The developer may discuss project plans and the director may provide an informal assessment of project permit eligibility, but no statement made by either party shall be regarded as binding, and the result of the conference shall not constitute preliminary approval by the department. The conference should ~~shall~~ include a discussion of the zoning, size, topography, accessibility, and adjacent uses of the development site; the uses, density and layout of buildings, parking areas, the open space and landscaping proposed for the development; the common facilities; provision of utilities, including solid waste and recycling collection; the access, the vehicle and pedestrian circulation, and winter maintenance including snow removal locations; the development schedule and the

alternative residential subdivision permit procedures. The developer should ~~shall~~ provide a sketch of the proposed alternative residential subdivision.

Section 11. Amendment of Section. CBJC 49.60.130 is amended to read:

40.60.130 Procedure.

The developer shall state any intent to apply for a bonus and shall show the nature and extent of such bonus in the application and at the preapplication conference, if any.

Section 12. Amendment of Section. CBJC 49.65.970 is amended to read:

49.65.970 Special use permit applications.

(a) As of the effective date of this article, no person shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of WCF, except for those WCF identified in section 49.65.940, Table 1, without having first obtained a special use permit.

All applicants for a special use permit and any modification of such facility shall comply with the requirements set forth in this section.

(b) Preapplication conference ~~Pre-application meeting~~. Prior to submitting a WCF application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. Prior to submission of an application, the applicant shall meet with the director for the purpose of discussing The purpose of the preapplication conference is to discuss the site and development proposal, and to address any issues that will help to expedite the review and permitting process, including the scope of the visual assessment the applicant will be required to provide as part of the special use permit process. A pre-application meeting may also include a site visit, as determined by the

director. No statement by either the applicant or director shall be regarding as binding or authoritative for purposes of this section. A development application is not required to have a preapplication conference.

(c) Additional required application submittals.

(1) In addition to the fee required in subsection 49.65.940(b), the applicant shall pay an additional special use permit application fee as set forth in section 49.85.100.

(2) In addition to the documentation required by section 49.65.960, the following documentation must be submitted with any special use permit application:

(A) *Design criteria.* A narrative describing compliance with the design criteria listed in section 49.65.930;

(B) *Visual impact assessment.* The scope of the required assessment should ~~will~~ be reviewed at the preapplication conference ~~pre-application meeting~~, but the planning commission may require submission of a more detailed visual analysis after submittal of the following required information. The visual impact assessment must include:

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Section 13. Amendment of Section. CBJC 49.70.130 is amended to read:

49.70.130 Concept review.

(a) *Preapplication conference.* Prior to submitting a new growth area application, the applicant shall be afforded the opportunity to discuss with the director such facts, issues and proceedings as may be relevant to the application. A development application is not required to have a preapplication conference. The purpose of the preapplication conference is to:

- (1) Provide an opportunity for the proponents of a new growth area to explain the concept of their development to the department;
- (2) Allow the department to explain to the developer the requirements of City and Borough land use laws and the potential impacts of this title and the plans adopted therein; and
- (3) Allow the department to outline the concerns of the City and Borough with regard to the potential hazards inherent in the development of wetlands, steep slopes and hazard areas, and the conservation of marginal lands and open spaces having environmental value.

(b) *Submittal requirements.* The submittal requirements for a preapplication conference should ~~shall~~ be:

- (1) Documents.
 - (A) A legal description;
 - (B) A statement of the goals and objectives of the development; and
 - (C) An explanation of any unique features of the property proposed for new growth area.
- (2) Maps showing existing site and vicinity conditions and including:
 - (A) Topography contour lines at intervals of ten feet or less;
 - (B) The location of streams, lakes, wetlands, drainage courses, floodplain areas, and other water features;
 - (C) The nature and extent of existing stands of trees and shrubs, ground cover and other vegetation;
 - (D) Existing access to and within the site including roads, peripheral roads, trails and sidewalks;

(E) Avalanche and landslide hazard areas, soils, and surface geology; and

(F) Sensitive area boundaries.

(3) A sketch plan showing proposed:

(A) Topography and water features;

(B) Streets, pedestrian, and bicycle access;

(C) Conceptual uses and densities; and

(D) Open space and recreational areas.

(c) *Preapplication conference comments.* The department ~~should~~ will review the preapplication conference submittal materials and provide written comments to the applicant not more than 30 days after the date of the conference. The comments should ~~shall~~ advise the applicant on the consistency of the proposal with the intent of this chapter, with adopted City and Borough plans, laws, and regulations, and on the compatibility of the proposed development with the surrounding area. No statement made by either party shall be regarded as binding, and the result of the conference shall not constitute approval by the department.

...

Section 14. Amendment of Section. CBJC 49.70.1230 is amended to read:

49.70.1230 Alternative development procedure.

(a) *Alternative development permit.* The planning commission shall hear all applications pursuant to this article.

(b) *Preapplication* ~~Pre-application~~ *conference.* Prior to submitting an alternative development application, the applicant shall be afforded the opportunity to discuss with the director such

facts, issues and proceedings as may be relevant to the application. A development application is not required to have a preapplication conference. ~~Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the alternative development permit procedure.~~ It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this Code. A copy of this article should ~~shall~~ be provided to the developer at the conference.

...

Section 15. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2021.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Article III. Sensitive Areas

49.70.310 - Habitat.

(a) Development in the following areas is prohibited:

(1) On Benjamin Island within the Steller sea lion habitat.

~~(2) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the~~

~~(3) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.~~

~~(b) In addition to the above requirements there shall be no disturbance in the following areas:~~

~~(1) Within 25 feet from the ordinary high water mark of stream corridors designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and~~

~~(2) Within 25 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.~~

~~(eb)~~ The following developments or disturbances are exempt from the setback prohibitions of this section, if not related to an anadromous waterbody:

(1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and

(2) 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.

Except for the setback area necessary for such developments or disturbances, the remaining 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 or lake. ~~A variance is required for any other development or disturbance in the setback prohibitions of this section.~~

Commented [JM1]: Now new 49.70.330
Note: Appendix B is anadromous waterbody index

Commented [JM2]: This is not anadromous waterbodies, rather it's other types of waterbodies

Commented [JM3]: Not needed

49.70.320 – Watersheds.

Commented [JM4]: No change proposed

49.70.330 – Anadromous Waterbody Protection.

Commented [JM5]: I've left out the sections of BMPs – they're referenced throughout and don't belong in code; the BMPs were at the end prior to Emergency Permits

(a) *Purpose.* The purpose of this section is to protect and preserve the stability of anadromous fish habitat through:

(1) Controlling alteration and mitigating disturbances to riparian buffers;

(2) Preserving riparian habitat and restricting the removal of natural riparian vegetation;

(3) Controlling pollution sources;

(4) Prohibiting certain uses and structures detrimental to anadromous waters and riparian habitat;

(5) Decreasing erosion, sedimentation, and damage to riparian buffers; and

(6) Regulating access to and within the riparian buffer.

(b) *Applicability.*

(1) This section applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* [hereafter, Catalog].

(c) *Establishment of buffers.* ~~All~~ Waterbodies listed in the Catalog shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet.

(1) ~~Measurement of buffers~~ The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by a ~~licensed professional land~~ surveyor licensed in the State of Alaska.

(2) On shoreline properties, the transition point from the anadromous waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet, as determined by a licensed surveyor.

(d) *Anadromous waterbody permit.* ~~Any development~~ within the inner (0- ~~to~~ 25 feet) or outer (25- ~~to~~ 50 feet) buffer requires an anadromous waterbody permit, unless otherwise directed or exempted.

(1) Uses not requiring an anadromous waterbody permit:

- (A) Mining activities conducted entirely below the Ordinary High Water Mark;
- (B) Placement of fish weirs by a resource agency; or
- (C) Placement of water quality or water quantity monitoring equipment by a resource agency.

(2) Uses requiring an anadromous waterbody permit.

- (A) An anadromous waterbody permit must be obtained prior to beginning development within the inner or outer buffer.
- (B) Vegetation that crosses a buffer line shall follow the regulation applicable to the location of the primary element.

(3) Prohibited uses in the inner and outer buffer:

- (A) Storage of fuel;
- (B) Storage of explosives; or
- (C) Storage of other hazardous materials.

(4) Uses not listed. Similar use determinations shall be made by the director. Uses not listed, not eligible for a similar use determination, or not otherwise prohibited may be allowed with a conditional use permit issued by the commission.

(e) Uses ~~allowed-permissible~~ within the zero to 25 inner buffer. The following uses and types of development are allowed with approval of an anadromous waterbody permit, provided that those uses meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in 49.70.13XX:

- (1) Bank and buffer restoration, including but not limited to removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation;
- (2) Stream channelization or relocation of a stream;
- (3) Bridges, utilities, and related public and private infrastructure, including culverts;
- (4) Construction-Installation of a fence;
- (5) Placement of surveillance equipment;
- (6) Removal of individual or select trees that present an immediate and direct threat of falling onto a structure or to mitigate damage to a structure and visually documented;

Commented [JM6]: Insert image for explanation

Commented [JM7]: Back to wondering if the table is a better method to show what's permissible in each buffer rather than listing here, and then re-listing again depending on minor / major permit

Commented [JM8]: Add this as definition for *Bank and buffer restoration*

Commented [JM9]: Does this use really belong in the inner buffer? It can't be placed at 25.5 ft.?

- (7) Removal of non-invasive plant species;
- (8) Stormwater management to improve water quality and/or water quantity, **which conforms to the 2010 CBJ Manual of Stormwater Best Management Practices**; or
- (9) Trail construction or trail maintenance for accessing a waterbody or crossing a waterbody.

(f) ~~Uses allowed-permissible in the 25 to 50 foot outer buffer.~~ In addition to the uses and types of development ~~allowed-permissible~~ in the inner buffer, the following uses and types of development are allowed within the outer buffer with approval of an anadromous waterbody permit, provided that those uses meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in **49.70.13XX**:

- (1) Grading, vegetation removal, and placement of utilities associated with construction of a development;
- (2) Viewshed and light enhancement;
- (3) Trail construction and trail maintenance parallel to a waterbody.

(g) *Minor and major development review.* Minor review is intended for development with minimal impacts to the buffer, which may be approved by the director. Major review is intended for developments with the potential for higher impacts to the buffer and require commission approval. If the director determines that a series of applications for minor review, taken together, constitute a major review, the application(s) shall be subject to the appropriate major review procedures and standards.

(1) Minor review of anadromous waterbody permit is required for the following types of uses or development:

- (A) ~~Bank and buffer restoration, including removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation;~~
- (B) Bridges, utilities, and related public and private infrastructure, including culverts;
- (C) ~~Construction-Installation~~ of a fence;
- (D) ~~Placement of surveillance equipment;~~
- (E) ~~Removal of individual or select trees that present an immediate and direct threat of falling onto a structure and visually documented;~~
- (F) Grading, vegetation removal, and placement of utilities associated with construction of a ~~development structure or development of a subdivision;~~
- (G) Removal of non-native invasive plant species;
- (H) Stormwater management to improve water quality and/or water quantity, **which conforms to the 2010 CBJ Manual of Stormwater Best Management Practices**;
- (I) ~~Trail construction and trail maintenance parallel to a waterbody;~~ or
- (J) Trail construction or trail maintenance for accessing or crossing a waterbody.

(2) Major review of anadromous waterbody permit is required for the following types of uses or development:

Commented [JM10]: Same comment as above re: table format

Commented [JM11]: Add to 49.80

Bank, buffer restoration means removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation

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- (A) Stream channelization or relocation of a stream that ~~affects~~ impacts anadromous waterbody buffers crossing adjacent property lines that is under different ownership;
- (B) Viewshed and light enhancement not associated with development; and
- (C) Uses not listed, not eligible for a similar use determination, or not otherwise prohibited.

(h) *Minor development application requirements.* The developer must submit one copy of the completed application and permit fee, including:

- (1) A graphic description of the property and all property boundaries to scale;
- (2) A site plan ~~or graphic drawn~~ to scale depicting the location of the proposed project on the lot;
- (3) A narrative statement describing the proposed development explaining why the development must be located within the inner or outer buffer, potential impacts to riparian habitat, and an explanation of conformance with the Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards in 49.70.xxx; ~~and measures to mitigate impacts to riparian habitat, if applicable;~~ and
- (4) Additional information as determined by the director.

Commented [JM12]: Presuming this is covered by the BMP

(i) ~~Minor development approval process~~ *Director determinations.* The director shall review the application, consult with the developer, and approve an anadromous waterbody permit unless:

- (1) The application is incomplete; or
- (2) The director determines that the specific nature or scale of the development has the potential for higher impacts to the buffer and must be reviewed as a major application;
- ~~(3) The development as proposed will not comply with one or more requirements of this title.~~
- ~~(3) A developer may request review as a major application following written notification that the director intends to deny the application.~~

(j) *Major development application requirements.* The planning commission shall hear all applications pursuant to this section.

(1) Pre-application conference. Prior to submission of an anadromous waterbody permit application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the anadromous waterbody permit procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code.

(2) Application. The developer shall submit to the director one copy of the completed permit application with supporting materials and permit fee, including:

- (iA) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale of existing conditions, including existing topography, drainage features, structures, significant natural and artificial conditions of the land, and vegetation; and
- (C) A narrative statement describing:
 - i. The proposed development explaining why the development must be located within the inner or outer buffer;
 - ii. Potential impacts to riparian habitat;

- iii.Explanation of conformance with the Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards in 49.70.xxx;
- iv.Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;
- v.Existing species of vegetation and proposed species to be used for revegetation;
- vi.Schedule for development activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;
- vii.Maintenance schedule, if applicable; and
- viii.Additional information as determined by the director.

(k) ~~Major development approval process~~ Director's review procedure.

- (1) The director shall endeavor to determine whether the application accurately reflects the developer's intentions, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.
- (2) After accepting the application, the director shall schedule it for a hearing before the planning commission and shall give notice to the developer and the public in accordance with 49.15.230.
- (3) The director shall forward the application to the planning commission together with a report setting forth the director's recommendation for approval or denial, with or without conditions, and the reasons therefor. The director shall make the determinations specified in subsection (e) of this section.
- (4) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.
- (5) Even if the proposed development complies with all the requirements of this title and all recommended conditions of approval, the director may nonetheless recommend denial of the application if it is found that the development:
 - (A) Will materially endanger the public health or safety;
 - (B) Will substantially decrease the value of or be out of harmony with property in the neighboring area; or
 - (C) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.

(l) Review of director's determinations.

- (1) At the hearing on the anadromous waterbody permit, the planning commission shall review the director's report to consider:
 - (A) Whether the proposed development is appropriate according to the anadromous waterbody protection section;
 - (B) Whether the application is complete; and
 - (C) Whether the development as proposed will comply with the other requirements of this title.
- (2) The planning commission shall adopt the director's determination on each item set forth in paragraph (1) of this subsection 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.

(m) *Planning Commission determinations.* Even if the planning commission adopts the director's determinations pursuant to subsection (e) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the 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) Lack general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

(n) ~~Conformance with anadromous waterbody permit.~~ After approval of the permit, the department shall inspect the site prior to commencement of activity to ensure that the site ~~matches-is consistent with~~ the plans submitted with the application. ~~Subsequent to completion of work permitted, t~~The department shall inspect the ~~site upon completion of~~ work within the anadromous waterbody buffer to ensure maintenance of vegetation, ~~and~~ conformance with approved ~~planspermits, and conformance with title.~~

Commented [JM13]: Consider striking

(o) *Emergency temporary permits.* ~~In an emergency, the~~

(1) The director may issue an emergency temporary permit, ~~in writing,~~ to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency providing that:

(A) The emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation and any additional work shall follow applicable permitting procedures set forth in this chapter; and

~~(B) The emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter; and~~

(B) Work shall be conducted using Best Management Practices to ensure that any adverse effect on the anadromous water body and buffers is minimized.

(2) The application shall include the following:

(A) A description of the activity;

(B) A description of the emergency; and

(C) A narrative describing why the activity is necessary to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.

(3) Conditions of approval. Conditions may be attached to emergency permits to comply with this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the department within 60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous waterbody or adjacent buffers, and ensure conformance with the section. All ~~permitting shall be defined and be started~~ within emergency repair work must be completed within two weeks of the ~~emergency issuance of~~ the emergency permit.

49.80 Definitions.

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources ~~or causes~~.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that affect water quality and habitat.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio for purposes of addressing a threat to public safety.

Article III. Sensitive Areas

49.70.310 - Habitat.

(a) Development in the following areas is prohibited:

(1) On Benjamin Island within the Steller sea lion habitat.

(b) The following developments or disturbances are exempt from the setback prohibitions of this section, if not related to an anadromous waterbody:

(1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and

(2) 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.

Except for the setback area necessary for such developments or disturbances, the remaining 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 or lake.

49.70.320 – Watersheds.

49.70.330 – Anadromous Waterbody Protection.

(a) *Purpose.* The purpose of this section is to protect and preserve the stability of anadromous fish habitat through:

(1) Controlling alteration and mitigating disturbances to riparian buffers;

(2) Preserving riparian habitat and restricting the removal of natural riparian vegetation;

(3) Controlling pollution sources;

(4) Prohibiting certain uses and structures detrimental to anadromous waters and riparian habitat;

(5) Decreasing erosion, sedimentation, and damage to riparian buffers; and

(6) Regulating access to and within the riparian buffer.

(b) *Applicability.*

(1) This section applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* [hereafter, *Catalog*].

(c) *Establishment of buffers.* Waterbodies listed in the *Catalog* shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet.

(1) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by a professional land surveyor licensed in the State of Alaska.

(2) On shoreline properties, the transition point from the anadromous waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet, as determined by a licensed surveyor.

(d) *Anadromous waterbody permit.* Development within the inner (0 to 25 feet) or outer (25 to 50 feet) buffer requires an anadromous waterbody permit, unless otherwise directed or exempted.

(1) Uses not requiring an anadromous waterbody permit:

(A) Mining activities conducted entirely below the Ordinary High Water Mark;

Commented [JM1]: Now new 49.70.330
Note: Appendix B is anadromous waterbody index

Commented [JM2]: This is not anadromous waterbodies, it's other types of waterbodies

Commented [JM3]: No change proposed

Commented [JM4]: I've left out the sections of BMPs – they're referenced throughout and don't belong in code; in the previous draft, the BMPs were at the end prior to Emergency Permits

- (B) Placement of fish weirs by a resource agency; or
 (C) Placement of water quality or water quantity monitoring equipment by a resource agency.
 (2) Uses requiring an anadromous waterbody permit.
 (A) An anadromous waterbody permit must be obtained prior to beginning development within the inner or outer buffer.
 (B) Vegetation that crosses a buffer line shall follow the regulation applicable to the location of the primary element.
 (3) Prohibited uses in the inner and outer buffer:
 (A) Storage of fuel;
 (B) Storage of explosives; or
 (C) Storage of other hazardous materials.
 (4) Uses not listed. Similar use determinations shall be made by the director. Uses not listed, not eligible for a similar use determination, or not otherwise prohibited may be allowed with a conditional use permit issued by the commission.

Commented [JM5]: Insert image for explanation

Commented [JM6]: Could this be a 1 or 3?

(e) *Minor and major development review.* Minor review is intended for development with minimal impacts to the buffer, which may be approved by the director. Major review is intended for developments with the potential for higher impacts to the buffer and require commission approval. If the director determines that a series of applications for minor review, taken together, constitute a major review, the application(s) shall be subject to the appropriate major review procedures and standards.

(f) *Listed uses.* There is adopted the table of permissible uses in anadromous waterbody buffers, table 49.70.330. The uses permitted in an anadromous waterbody buffer shall be determined through the table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the buffer thus located shall be as indicated thereat by the digits "1," or "3" as more fully set out in this section. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified buffer.

(1) *Unlisted uses.* The permissibility of a use not listed shall be determined pursuant to section 49.20.320.

(2) *Uses listed more than once.* Where a use might be classified under more than one category, the more specific shall control. If equally specific, the more restrictive shall control.

(3) When used in conjunction with a particular use in the table of permissible uses, the number "1" indicates that the use requires department approval pursuant to chapter 49.15, article III, in conjunction with the issuance of a building permit. The use is permissible in the buffer, but limited conditions may be attached to the approval.

(4) The number "3" indicates the use requires a conditional use permit from the commission. The commission may attach any condition to ensure the compatibility of the proposed use. The conditional use permit procedure is outlined in chapter 49.15, article I.

A combination of digits such as "1, 3" indicates that the approval procedure for the identified use in the identified buffer will vary depending on whether the project is a minor or major development.

(1) If the project is a minor development the first number of the combination shall indicate the applicable procedure.

(2) If the project is a major development or in conjunction with a major development, the second number shall indicate the applicable procedure.

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Table of Permissible Uses in Anadromous Waterbody Buffers 49.70.330

		Anadromous Waterbody Buffers	
Use Description		Inner Buffer (zero to 25 feet)	Outer Buffer (25 to 50 feet)
1.00	Bank, buffer restoration	1, 3	1, 3
	Removal of non-native invasive plant species	1, 3	1, 3
	Stormwater management to improve water quality or water quantity	1, 3	1, 3
	Removal of individual or select trees that present an immediate and direct threat of falling onto a structure	1, 3	1, 3
	Grading, vegetation removal, and placement of utilities associated with construction of a development		1, 3
	Bridges, utilities, and related public and private infrastructure, including culverts	1, 3	1, 3
	Installation of a fence	1, 3	1, 3
	Placement of Surveillance Equipment	1, 3	1, 3
	Trail construction or trail maintenance for accessing or crossing a waterbody	1, 3	1, 3
	Trail construction and trail maintenance parallel to a waterbody		1, 3
	Stream channelization or relocation of a stream that impacts anadromous waterbody buffers and crosses property lines under common ownership	1,3	1,3
	Stream channelization or relocation of a stream that impacts anadromous waterbody buffers crossing adjacent property lines that is under different ownership	3	3
	Viewshed and light enhancement not associated with development		3
	Uses not listed, not eligible for a similar use determination, or not otherwise prohibited		3

Commented [JM7]: Does this use need to be in the inner buffer? Seems that 25.5 ft. would fine

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96 (h) *Minor development application requirements.* The developer must submit one copy of the completed
97 application and permit fee, including:

98 (1) A graphic description of the property and all property boundaries to scale;

99 (2) A site plan drawn to scale depicting the location of the proposed project on the lot;

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- (3) A narrative statement describing the proposed development explaining why the development must be located within the inner or outer buffer, potential impacts to riparian habitat, and an explanation of conformance with the Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards in 49.70.xxx; and
- (4) Additional information as determined by the director.

Commented [JM8]: Presuming this is covered by the BMP

(i) *Director determinations.* The director shall review the application, consult with the developer, and approve an anadromous waterbody permit unless:

- (1) The application is incomplete; or
- (2) The director determines that the specific nature or scale of the development has the potential for higher impacts to the buffer and must be reviewed as a major application;
- (3) The development as proposed will not comply with one or more requirements of this title.

(j) *Major development application requirements.* The planning commission shall hear all applications pursuant to this section.

(1) Pre-application conference. Prior to submission of an anadromous waterbody permit application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the anadromous waterbody permit procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code.

(2) Application. The developer shall submit to the director one copy of the completed permit application with supporting materials and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale of existing conditions, including existing topography, drainage features, structures, significant natural and artificial conditions of the land, and vegetation; and
- (C) A narrative statement describing:
 - i. The proposed development explaining why the development must be located within the inner or outer buffer;
 - ii. Potential impacts to riparian habitat;
 - iii. Explanation of conformance with the Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards in 49.70.xxx;
 - iv. Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;
 - v. Existing species of vegetation and proposed species to be used for revegetation;
 - vi. Schedule for development activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;
 - vii. Maintenance schedule, if applicable; and
 - viii. Additional information as determined by the director.

(k) *Director's review procedure.*

- (1) The director shall endeavor to determine whether the application accurately reflects the developer's intentions, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.
- (2) After accepting the application, the director shall schedule it for a hearing before the planning commission and shall give notice to the developer and the public in accordance with 49.15.230.
- (3) The director shall forward the application to the planning commission together with a report setting forth the director's recommendation for approval or denial, with or without conditions,

and the reasons therefor. The director shall make the determinations specified in subsection (e) of this section.

(4) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.

(5) Even if the proposed development complies with all the requirements of this title and all recommended conditions of approval, the director may nonetheless recommend denial of the application if it is found that the development:

(A) Will materially endanger the public health or safety;

(B) Will substantially decrease the value of or be out of harmony with property in the neighboring area; or

(C) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.

(l) Review of director's determinations.

(1) At the hearing on the anadromous waterbody permit, the planning commission shall review the director's report to consider:

(A) Whether the proposed development is appropriate according to the anadromous waterbody protection section;

(B) Whether the application is complete; and

(C) Whether the development as proposed will comply with the other requirements of this title.

(2) The planning commission shall adopt the director's determination on each item set forth in paragraph (1) of this subsection 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.

(m) *Planning Commission determinations.* Even if the planning commission adopts the director's determinations pursuant to subsection (e) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the 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) Lack general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

(n) *Conformance with anadromous waterbody permit.* After approval of the permit, the department shall inspect the site prior to commencement of activity to ensure that the site is consistent with the plans submitted with the application. Subsequent to completion of work permitted, the department shall inspect the work within the anadromous waterbody buffer to ensure maintenance of vegetation and conformance with approved permits.

(o) *Emergency temporary permits.*

(1) The director may issue an emergency temporary permit, to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency providing that:

(A) The emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation and any additional work shall follow applicable permitting procedures set forth in this chapter; and

Commented [JM9]: Consider striking

Commented [JM10]: Changed this to require work to be completed within 2 weeks

(B) Work shall be conducted using Best Management Practices to ensure that any adverse effect on the anadromous water body and buffers is minimized.

(2) The application shall include the following:

(A) A description of the activity;

(B) A description of the emergency; and

(C) A narrative describing why the activity is necessary to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.

(3) Conditions of approval. Conditions may be attached to emergency permits to comply with this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the department within 60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous waterbody or adjacent buffers, and ensure conformance with the section. All emergency repair work must be completed within two weeks of the issuance of the emergency permit.

49.80 Definitions.

Bank and buffer restoration means removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that affect water quality and habitat, which conforms to the 2010 CBJ Manual of Stormwater Best Management Practices.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio for purposes of addressing a threat to public safety.

49.70.310 Anadromous Waterbody Protection

(a) Purpose

The purpose of this chapter is to protect and preserve the stability of anadromous fish habitat through:

1. Controlling alteration and mitigating disturbances to riparian buffers;
2. Preserving riparian habitat and restricting the removal of natural riparian vegetation;
3. Controlling pollution sources;
4. Prohibiting certain uses and structures detrimental to anadromous waters and riparian habitat;
5. Decreasing erosion, sedimentation, and damage to riparian buffers; and
6. Regulating access to and within the riparian buffer.

(b) Applicability

This chapter applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* [hereafter, Catalog].

(c) Establishment of Buffers

All waterbodies listed in the Catalog shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody and an outer buffer measuring from 25 feet to 50 feet.

(1) Measurement of Buffers

- (A) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by a licensed surveyor.
- (B) On sShoreline properties, the transition point from the anadromous waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet, as determined by a licensed surveyor.

(d) Anadromous ~~w~~Waterbody permit

Any development within the inner (0-25 feet) or outer (25 -50 feet) buffer requires an ~~a~~Anadromous ~~w~~Waterbody ~~p~~Permit, unless otherwise directed or exempted.

(1) Uses not requiring an anadromous waterbody permit

- (A) Mining activities conducted entirely below the Ordinary High Water Mark.
- (B) Placement of fish weirs by a resource agency.
- (C) Placement of water quality or water quantity monitoring equipment by a resource agency.

(2) Prohibited Uses in the Inner and Outer Buffer

- (A) Storage of fuel, explosives, or other hazardous materials.

(3) Uses not listed

Similar use determinations shall be made by the director. Uses not listed, not eligible for a similar use determination, or not otherwise prohibited may be allowed with a ~~c~~Conditional ~~u~~Use ~~p~~Permit issued by the commission.

~~(e)~~ Uses requiring an anadromous waterbody permit

~~(1)~~(1) An ~~a~~Anadromous ~~w~~Waterbody ~~p~~Permit must be obtained prior to beginning development within the inner or outer buffer.

~~(2) Vegetation that crosses a buffer line shall follow the regulation applicable to the is governed by the location of where the primary element resides.~~

~~(2) An applicant/developer who requires a permit under this chapter must file an application with the department according to the requirements established in XXX, Contents of Application.~~

~~(3) Limbs that overhang the waterbody immediately adjacent to the stream shall be subject to the standards of the inner buffer.~~

~~(4) When a development is both above and below the Ordinary High Water Mark, an Anadromous Waterbody Permit shall be required unless otherwise exempted.~~

~~(5) Uses that overlap buffers shall be subject to the most restrictive buffer standard.~~

~~(6) Anadromous waterbody permits shall undergo a Tier One or Tier Two review process as outlined in sections 49.70.310(h).~~

~~(fA)~~(f) Uses allowed within the 0 to 25 foot inner buffer

The following uses and types of development are allowed within the 0 to 25 foot inner buffer with approval of an ~~a~~Anadromous ~~w~~Waterbody ~~p~~Permit, ~~approved by the director, provided that those uses cannot be reasonably completed outside of the inner buffer, provided that those uses and~~ meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in **49.70.13XX**:

(A) ~~(1)~~ Bank and buffer restoration, including but not limited to removal of debris, removal of abandoned machinery and vehicles, grading ~~and~~, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation;

~~(B) Bank stabilization conducted in accordance with the ADF&G 2005 revised edition of Streambank Revegetation and Protection: A Guide for Alaska. Additional requirements, including a grading permit and/or Floodplain Development Permit may apply. Bank stabilization must conform with CBJ 47.70 Article IV, Flood Hazard Areas.~~

~~(2)~~ Bridges, utilities, and related public and private infrastructure, including culverts

~~(3)~~ Construction of a fence;

~~(4)~~ Placement of surveillance equipment

~~(5)~~ Removal of individual or select trees that present an immediate and direct, visually-documented threat of falling onto a structure

~~(4)~~ Placement of surveillance equipment;

~~(5)~~ Removal of individual or select trees that present an immediate and direct, visually-documented threat of falling onto a structure;

~~Removal of individual or select trees to mitigate potential damage to a structure, with a letter of documentation from a licensed arborist;~~

~~Removal of individual or select trees or vegetation to improve visibility in an area with criminal activity as documented by the Juneau Police Department. Removal of vegetation shall be allowed only after less damaging alternatives have been evaluated and proven unsuccessful;~~

~~(6)~~ Removal of non-native invasive plant species, ~~as listed in an official document specific to the State of Alaska, with documentation that removal and disposal methods will not contribute to invasive species spread;~~

Commented [TC1]: No word changes here, I just retyped to fake out the auto-correct

- (7) Stormwater management to improve water quality and/or water quantity, which conforms with the 2010 CBJ Manual of Stormwater Best Management Practices;
(8) Trail construction or trail maintenance for accessing a waterbody or crossing.

~~(g)~~ (qB) *Uses allowed within the 25 to 50 foot outer buffer*

In addition to the uses and types of development allowed in the inner buffer, the following uses and types of development are allowed within the outer buffer with approval of an aAnadromous wWaterbody pPermit, provided that those uses and meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in [REDACTED]: buffer with approval of an Anadromous Waterbody Permit, approved by the Director, provided that those uses cannot reasonably take place outside of the buffer, and provided that those uses meet the Riparian Vegetation Standards and Best Management Practices listed in 49-70. [REDACTED]:

(1) Trail construction and trail maintenance parallel to a waterbody;

(2) Grading, vegetation removal, and placement of utilities associated with construction of a structure [REDACTED] development of a subdivision; and

(3) Viewshed and light enhancement. Selective removal of woody vegetation shall be allowed with the following special requirements:

Vegetation removal shall be the minimum necessary to meet the applicant/developer's stated purpose and need for the development;

a. Vegetation removal shall be mitigated with the placement of additional vegetation in other areas of the inner and outer buffer where possible.

~~(h)~~ (C) *Minor and major review. Minor review is intended for developments with minimal impacts to the buffer. Major review is intended for developments with the potential for higher impacts to the buffer [REDACTED] requires agency review.*

(A) Minor aAnadromous wWaterbody pPermits are required for the following types of development:

(1) Bridges, utilities, and related public and private infrastructure, including culverts;

(2) Construction of a fence;

(3) Grading, vegetation removal, and placement of utilities associated with construction of a structure or development of a subdivision;

(4) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska, with documentation that removal and disposal methods will not contribute to species spread;

(5) Stormwater management to improve water quality and/or water quantity;

(6) Trail construction or trail maintenance for accessing a or crossing or parallel or enhancement to the waterbody;

(7) Trail construction or trail maintenance parallel to a waterbody;

(8) Viewshed and light enhancement;

(9) Bank or buffer restoration and stabilization; and

(10) Stream channelization or relocation that does not affect anadromous waterbody buffers on adjacent property that is under different ownership.

Commented [TC2]: Deleted because this use is listed in 0-25, and uses in 0-25 are already allowed in the outer buffer.

Commented [TC3]: See comment in line 110

Commented [TC4]: Deleted due to redundancy; agency review is part of major review under the CU process.

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Commented [TC5]: I rejected the committee's deletion of "associated with construction of a structure" and added "or development of a subdivision." This item was requested by Dan Miller at a past T49 Committee meeting. Without the phrase "associated with construction of a structure or subdivision," vegetation and grading could occur without cause, which contradicts other changes that the Committee has made.

Commented [TC6]: I could not understand the Committee's change on this item so I just cleaned up the language.

Commented [TC7]: Added for clarification per Committee discussion that the major review only applies if it affects a different landowner, not just a different property.

(B) Major Anadromous Waterbody Permits are required for the following developments:

- (1) Stream channelization or relocation that affects anadromous waterbody buffers on adjacent property ~~that is under different ownership.~~
~~Stream channelization/relocation that does affect buffers on adjacent property~~
- (2) Viewshed and light enhancement; and
- (3) Uses not listed, not eligible for a similar use determination, or not otherwise prohibited.

Commented [TC8]: Added for clarification per Committee discussion that the major review only applies if it affects a different landowner, not just a different property.

(C) ~~Tier One~~ Minor application requirements.

~~(1) Pre-application conference. A pre-application meeting is not required for Tier One review.~~

~~(1) Tier One Submission.~~ The applicant/developer shall submit ~~to the department~~ one copy of the completed permit application ~~together~~ with all supporting materials and the permit fee ~~including:~~ -

- (A) A graphic and legal description of the property and property boundaries;
- (B) A site plan or graphic depicting the location of the proposed project on the parcel;
- (C) A narrative statement describing the proposed action, ~~an~~ explanation of why the action must be located within the inner or outer buffer, potential impacts to riparian habitat ~~as defined pursuant to 49.70.13XX,~~ an explanation of conformance with the Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards in 49.70xxx; ~~and~~ measures to mitigate impacts to riparian habitat, if applicable; and
- (D) Additional information as determined by the director.

Commented [TC9]: I moved this from the previous section. It's important for the developer to make the case about why the development must be located within the buffer, as part of the review process to minimize impacts. It is also standard practice within code to require justification for development within any required buffer.

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(2) Approval process.

(i) Review of application. The director shall review the application, consult with the applicant/developer, and approve an anadromous waterbody permit unless:

- (a) The application is incomplete;
- (b) The director determines that the specific nature or scale of the development has the potential for higher impacts to the buffer and should therefore be reviewed as a major application; or
- (c) ~~If~~ the director determines that a series of applications for minor developments, taken together, constitute a major development, the applications shall be subject to the appropriate major development permit procedures and standards.
- (d) ~~An~~ developer may request review as a major application following written notification that the director intends to deny the application.

Commented [TC10]: Same language at 49.15.220(1). Committee added this.

Commented [TC11]: This is the language that Commissioner Dye suggested. However it's important to understand the implications and I believe it creates a contradictory process. If a minor development cannot meet the requirements, a variance is required. With the proposed language, a minor development that cannot meet the requirements and will be denied can be reviewed as a major application, but that goes through the Conditional Use Permit process instead of a variance. My recommendation is to remove this language.

(B) Major application requirements.

(1) Pre-application conference. Prior to submission of an ~~a~~ Anadromous ~~w~~ Waterbody permit application, the applicant/developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the permit procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the applicant/developer or the director shall be regarded as binding or authoritative for purposes of this code.

- 166
- 167 (2) The ~~applicant~~ developer shall submit to the director one copy of the completed permit
- 168 application ~~together~~ with all supporting materials and the permit fee ~~including~~:-
- 169 (A) A graphic and legal description of the property and property boundaries;
- 170 ~~(B) A site plan map~~ of existing conditions including, at a minimum, existing topography,
- 171 drainage features, structures, significant natural and artificial conditions of the land, and existing
- 172 vegetation; and
- 173 ~~(C) A site plan of proposed conditions including, at a minimum, modified topography, drainage~~
- 174 ~~features, structures, and new vegetation; and~~
- 175 ~~(B)(D)~~
- 176 -A narrative statement describing the existing conditions, proposed activities, and site
- 177 restoration plan, including:
- 178 i. Proposed activities and methods, ~~including an explanation of~~ in conformance with
- 179 the Best Management Practices and Riparian Vegetation Standards pursuant to
- 180 49.70.XX;
- 181 ii. ~~A description of how the development meets the purpose of the ordinance;~~
- 182 iii. ~~Existing site conditions;~~
- 183 iv. ~~An~~ explanation of why the development must be located within the inner or outer
- 184 buffer;
- 185 v. Anticipated temporary and/or permanent changes to habitat resulting from
- 186 proposed uses and activities;
- 187 vi. Existing species of vegetation and proposed species to be used for revegetation;
- 188 vii. Schedule for development activity, removal of vegetation, revegetation, and the
- 189 method by which the activity shall be conducted, in conformance with the Best
- 190 Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;
- 191 viii. Maintenance schedule, if applicable; ~~and~~
- 192 ix. ~~Additional requirements as listed in 49.70.XX, if applicable.~~
- 193 x. Additional information as determined by the ~~d~~Director.

194 (k) ~~Review and a~~ Approval procedures.

195 ~~SAME AS CUP~~ Review and approval procedures shall follow the requirements for 49.15.330, conditional

196 use permit.

197 (l) Anadromous Waterbody Best Management Practices-

198 Anadromous Waterbody Best Management Practices shall apply to all uses or types of

199 development within the inner or outer buffer ~~and include the following~~:

200 (A) Delineate and flag work limits prior to commencing any activities to preserve existing

201 vegetation outside of the work area and minimize impacts to the buffer. To protect large trees

202 near, but outside of, the work area, the boundary for the natural area to be preserved should

203 be extended to the tree drip line to protect the root zone from damage. The work limits must

204 remain clearly marked until all work is complete. Within the work limits, the disturbed area

205 shall be limited to that required for construction including access. Complete or partial removal

Commented [TC12]: I respectfully disagree with deleting this line per my previous comment.

of and damage to native vegetation shall be limited to the minimum necessary to achieve the project purpose;

(B) Vegetation removal shall be the minimum necessary to meet the project purpose. When existing vegetation must be removed from the buffer, the buffer shall be revegetated with native plant species that are present or appropriate for that area within one growing season after completion of work within the anadromous waterbody buffer. The buffer shall be revegetated and such revegetation shall be kept or arranged to enhance fish habitat.

(C) Erosion and sediment control Best Management Practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMPs must be implemented in accordance with the standards in the Alaska Storm Water Guide (<http://dec.alaska.gov/water/wnpspc/stormwater/docs/AKSWGGuide.pdf>) (DEC, 2011);

(D) Developments must comply with the 2010 CBJ Manual of Stormwater Best Management Practices.

(m) *Riparian vegetation standards.* Riparian vegetation standards shall apply to all uses or types of development within the inner or outer buffer. All uses and types of development within the inner and outer buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:

(A) The vegetation plan shall consider a diversity of native species appropriate for the site conditions found in the Recommended Plant List in Appendix E of the CBJ's Manual of Stormwater Best Management Practices (2010) and/or the Plant Selection List in the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska (2005). The vegetation plan shall favor natural plant reclamation from neighboring plant communities when possible. The plan shall also consider any standards from the Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), as applicable to the permitted development; and

(B) Uses and activities shall not introduce or redistribute invasive species. Development that includes removal of invasive species must include documentation that removal and disposal methods will not contribute to invasive species spread.

(n) *Mitigation measures.* Mitigation measures may be required by the ~~c~~Commission or department to address impacts and ensure conformance with the ~~p~~Purpose of this ordinance. Mitigation measures may include, ~~but are not limited to:~~

(A) Standard erosion and stormwater runoff control measures;

(B) Restoration and maintenance of native vegetation and water quality protection functions;

(C) Removal of legally nonconforming structures from the buffer;

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Commented [TC13]: The point of this section is to give tools to the Commission and developers for addressing unavoidable impacts to the buffer. This section will also be useful for enforcement (e.g. addressing damage when someone has cut trees that can't truly be replaced). Removing old structures and widening buffers in other areas can be a great benefit and sometimes an easy option for developers, so I think it's important to include those as options. So I have suggested the language of "legally nonconforming structures," acknowledging what you said about CBJ's authority to require removal of non-compliant structures at any time.

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(D) Widening buffers in areas with buffers that are less than 50 feet wide;

(E) Other measures as agreed upon by the director or the commission and developer.

~~(C) Removal of non-conforming structures from the buffer.~~

~~(D) Other measures as agreed upon by the director or the commission and applicant/developer, such as removal of riprap, jetties, debris, or structures that may be detrimental to fish habitat, improvements to water treatment systems, or widening buffers in other areas.~~

(o) *Conformance with permit.*

After approval of the permit, ~~the department staff~~ shall inspect the site prior to commencement of activity to ensure ~~the site is properly marked and that~~ the site matches the plans submitted with the application. ~~The department staff~~ shall inspect the site upon ~~project~~ completion of work within the anadromous waterbody buffer to ensure maintenance of vegetation, conformance with approved plans, and conformance with title.

~~(p)~~ *Emergency permits.*

(1) In an emergency, the director may issue a temporary permit, in writing, to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency providing that:

(A) An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation;

(B) An emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter; and

(C) Work shall be conducted using Best Management Practices to ensure that any adverse effect on the anadromous water body and buffers is minimized.

(2) The written permit shall include the following:

(A) A description of the activity;

(B) A description of the emergency; and

(C) A narrative describing why the activity is necessary to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.

(3) Conditions may be attached to emergency permits to comply with this title. A final report that includes the plans and specifications for the work that was completed must be submitted to the department within 60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous waters or adjacent buffers and ensure conformance with the Purpose of this ordinance. All permitting shall be defined and be started within two weeks of the emergency.

49.80 Definitions

“Emergency” means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

290 "Erosion" means significant sloughing, washout, or discharge of soil arising from manmade sources or
 291 causes.

292 "Stormwater management" means the use of structural or non-structural practices designed to reduce
 293 stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental
 294 changes that affect water quality and habitat.

295 "Surveillance equipment" means equipment capable of capturing or recording data, including images,
 296 videos, photographs or audio for purposes of addressing a threat to public safety

297 ~~"Threat to public safety" means anything which is injurious to the safety or health of a household or~~
 298 ~~neighborhood.~~

299

300 ~~CBJ 49.85.100 is amended to read:~~

301 ~~(21) Anadromous Waterbody Permit Application~~

302 ~~(A) Tier One \$75~~

303 ~~(B) Tier Two \$200 same as minor and major~~

304

305

Commented [TC14]: No code revision is needed, now that we have the previous references to minor and major, unless we want to add an additional fee for a minor Anadromous waterbody permit. 49.85.100 (1) and (3) would apply as currently codified.

49.70.310 Anadromous Waterbody Protection

(a) Purpose

The purpose of this chapter is to protect and preserve the stability of anadromous fish habitat through:

1. Controlling alteration and mitigating disturbances to riparian buffers;
2. Preserving riparian habitat and restricting the removal of natural riparian vegetation;
3. Controlling pollution sources;
4. Prohibiting certain uses and structures detrimental to anadromous waters and riparian habitat;
5. Decreasing erosion, sedimentation, and damage to riparian buffers; and
6. Regulating access to and within the riparian buffer.

(b) Applicability

This chapter applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* [hereafter, *Catalog*].

(c) Establishment of Buffers

All waterbodies listed in the *Catalog* shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody and an outer buffer measuring from 25 feet to 50 feet.

(1) Measurement of Buffers

(A) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by a licensed surveyor, ~~using the Ordinary High Water Mark definition in CBJ 49.80.120.~~

(B) ~~Shoreline properties~~On coastal lots, the transition point from the ~~anadromous~~ waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet, as determined by a licensed surveyor.

Commented [ND1]: Delete, its in the definitions

(d) Anadromous waterbody permit ~~required~~

Any development within the inner (0-25 feet) or outer (25 -50 feet) buffer requires an Anadromous Waterbody Permit ~~issued by the director~~, unless otherwise directed or exempted.

(1) Uses not requiring a permit

(A) Mining activities conducted entirely below the Ordinary High Water Mark. ~~Mining activities must conform with CBJ 49.65.100.~~

(B) Placement of fish weirs by a resource agency.

(C) Placement of water quality or water quantity monitoring equipment by a resource agency.

(2) Prohibited Uses in the Inner and Outer Buffer

(A) Storage of fuel, explosives, or other hazardous materials.

(3) Uses not listed

Commented [ND2]: Already in code

Similar use determinations shall be made by the director. Uses not listed, not eligible for a similar use determination, or not otherwise prohibited may be allowed with a Conditional Use Permit issued by the commission.

~~(e4)~~ *Uses requiring an anadromous waterbody permit*

- ~~(1) An Anadromous Waterbody Permit issued by the director must be obtained prior to beginning development within the inner or outer buffer. Vegetation that crosses a buffer line is governed by the location where the primer element resides~~
- ~~(2) An applicant who requires a permit under this chapter must file an application with the department according to the requirements established in XXX, Contents of Application.~~
- ~~(3) Limbs that overhang the waterbody immediately adjacent to the stream shall be subject to the standards of the inner buffer.~~
- ~~(4) When a development is both above and below the Ordinary High Water Mark, an Anadromous Waterbody Permit shall be required unless otherwise exempted.~~
- ~~(5) Uses that overlap buffers shall be subject to the most restrictive buffer standard.~~
- ~~(6) Anadromous waterbody permits shall undergo a Tier One or Tier Two review process as outlined in sections 49.70.310(h).~~

~~(A#)~~ *Uses allowed within the 0 to 25 foot inner buffer*

The following uses and types of development are allowed within the 0 to 25 foot inner buffer with approval of an Anadromous Waterbody Permit, ~~approved by the director, provided that those uses cannot be reasonably completed outside of the inner buffer,~~ and meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in 49.70.13XX:

- (A) ~~(1)~~ Bank and buffer restoration, including but not limited to removal of debris, removal of abandoned machinery and vehicles, grading ~~and~~ stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation;
- ~~(B) Bank stabilization conducted in accordance with the ADF&G 2005 revised edition of Streambank Revegetation and Protection: A Guide for Alaska. Additional requirements, including a grading permit and/or Floodplain Development Permit may apply. Bank stabilization must conform with CBJ 47.70 Article IV, Flood Hazard Areas.~~
- ~~(C) (2)~~ Bridges, utilities, and related public and private infrastructure, including culverts, ~~that conform with CBJ 49.70 Article IV, Flood Hazard Areas;~~
- ~~(D) (3)~~ Construction of a fence;
- ~~(E) Public Safety measures. Developments to address a threat to public safety, including but not limited to the following, are allowed within the 0-25 foot buffer with the following special requirements:~~
 - 1. ~~(4)~~ Placement of surveillance equipment;
 - 2. ~~(5)~~ Removal of individual or select trees that present an immediate and direct, visually-documented threat of falling onto a structure;
 - 3. Removal of individual or select trees to mitigate potential damage to a structure, ~~with a letter of documentation from a licensed arborist;~~
 - 4. Removal of individual or select trees or vegetation to improve visibility in an area ~~with criminal activity as documented by the Juneau Police Department. Removal of vegetation shall be allowed only after less damaging alternatives have been evaluated and proven unsuccessful;~~

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- ~~(F)~~ (6) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska, with documentation that removal and disposal methods will not contribute to invasive species spread;
- ~~(G)~~ (7) Stormwater management to improve water quality and/or water quantity, which conforms with the 2010 CBJ Manual of Stormwater Best Management Practices;
- ~~(H)~~ (8) Trail construction or trail maintenance for accessing a waterbody or crossing.

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Commented [TC3]: In early reviews of the ordinance, resource agencies indicated that new trail construction within the 0-25 foot buffer should not be allowed due to impacts such as removal of vegetation, shading, and filtration. However existing trails in the 0-25 foot should be allowed to be maintained, and trails that cross the waterbody should be allowed. New trails are allowed in the 25-50 foot buffer but not in the 0-25.

~~(g)~~ (B) *Uses allowed within the 25 to 50 foot outer buffer*

In addition to the uses and types of development allowed in the inner buffer, the following uses and types of development are allowed within the outer buffer with approval of an Anadromous Waterbody Permit, and meet the Riparian Vegetation Standards and Anadromous Waterbody Best Management Practices listed in 49.70.13XX: ~~buffer with approval of an Anadromous Waterbody Permit, approved by the Director, provided that those uses cannot reasonably take place outside of the buffer, and provided that those uses meet the Riparian Vegetation Standards and Best Management Practices listed in 49.70.13XX:~~

- ~~(A)~~ (1) Trail construction and trail maintenance parallel to a waterbody;
- ~~(B)~~ (2) Grading, vegetation removal, and placement of utilities associated with construction of a structure; and
- ~~(C)~~ (3) Viewshed and light enhancement. Selective removal of ~~woody~~ vegetation shall be allowed with the following special requirements:
 - ~~a. Vegetation removal shall be the minimum necessary to meet the applicant's stated purpose and need for the development;~~
 - ~~b. Vegetation removal shall be mitigated with the placement of additional vegetation in other areas of the inner and outer buffer where possible.~~

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~~(h)~~ (C) ~~Tier One and Tier Two Review~~ Minor and major review. Tier One Minor review is intended for common developments with minimal impacts to the buffer. Tier Two Major review is intended for developments with the potential for higher impacts to the buffer and requires agency review.

(A) ~~Tier One Minor~~ Anadromous Waterbody Permits are required for the following types of development:

- (1) Bridges, utilities, and related public and private infrastructure, including culverts;
- (2) Construction of a fence;
- (3) Grading, vegetation removal, and placement of utilities ~~associated with construction of a structure.~~
- (4) Removal of non-native invasive plant species, ~~as listed in an official document specific to the State of Alaska, with documentation that removal and disposal methods will not contribute to species spread;~~
- (5) Stormwater management to improve water quality and/or water quantity;
- (6) Trail construction or trail maintenance for accessing ~~a~~ or crossing or parallel or enhancement to the waterbody;
- ~~(7) Trail construction or trail maintenance parallel to a waterbody;~~
- (8) Viewshed and light enhancement;
- (9) Bank or buffer restoration and stabilization
- (10) Stream channelization/relocation that does not affect buffers on adjacent property

(B) ~~Tier Two~~ Major Anadromous Waterbody Permits are required for the following developments:

- ~~(1) Bank and buffer restoration; Stream channelization/relocation that does affect buffers on adjacent property~~
- ~~(2) Bank stabilization; Uses not listed, not eligible for a similar use determination, or not otherwise prohibited~~
- ~~(3) Public safety measures.~~

The following table provides a list of uses with the review level and allowed buffer zone. Additional specifications are included in 49.70xxx

Use	Review Level		Buffer Zone	
	Tier 1	Tier 2	Inner	Outer
Bank and buffer restoration		X	X	X
Bank stabilization		X	X	X
Bridges, utilities, and related public and private infrastructure, including culverts	X		X	X
Construction of a fence	X		X	X
Grading, vegetation removal, and placement of utilities associated with construction of a structure.	X			X
Public Safety measures		X	X	X
Removal of non-native invasive plant species	X		X	X
Stormwater management to improve water quality and/or water quantity	X		X	X
Trail construction or trail maintenance for a waterbody crossing	X		X	X
Trail construction or trail maintenance parallel to a waterbody	X			X
Viewshed and light enhancement	X			X

Commented [TC4]: This would refer to the previous sections that provide more description of the uses and some specific requirements, such as for bank and buffer restoration, bank stabilization, public safety, viewshed and light enhancement, and invasive species.

(C) ~~Tier One~~ Minor application requirements.

~~(1) Pre-application conference. A pre-application meeting is not required for Tier One review.~~

~~(2) (1) Tier One Submission.~~ The applicant shall submit to the department one copy of the completed permit application together with all supporting materials and the permit fee.

- (A) A graphic and legal description of the property and property boundaries;
- (B) A site plan or graphic depicting the location of the proposed project on the parcel;
- (C) A narrative statement describing the proposed action, potential impacts to riparian habitat as defined pursuant to 49.70.13XX, and measures to mitigate impacts to riparian habitat, if applicable; and

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(D) Additional information as determined by the director.

~~(3)~~(2) *Approval process.*

(i) Review of application. The director shall review the application, consult with the applicant, and approve an anadromous waterbody permit unless:

(a) The application is incomplete;

~~(b) Issuance of the requested permit is beyond the director's authority according to the table of permissible uses; or~~

~~(c) If the director determines that a series of applications for minor developments, taken together, constitute a major development, the applications shall be subject to the appropriate major development permit procedures and standards. The development as proposed will not comply with one or more requirements of this title.~~

~~(ii) Conditions on approval. The director may condition department approval as necessary to ensure compliance with this title.~~

~~(B)~~ *Tier Two Major application requirements.*

(1) *Pre-application conference.* Prior to submission of an Anadromous Waterbody application, the applicant shall meet with the director for the purpose of discussing the site, the proposed development activity, and the permit procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the applicant or the director shall be regarded as binding or authoritative for purposes of this code.

~~(2) Tier Two Submission.~~ The applicant shall submit to the director one copy of the completed permit application together with all supporting materials and the permit fee.

(A) A graphic and legal description of the property and property boundaries;

(B) A map of existing conditions including, at a minimum, existing topography, drainage features, structures, significant natural and artificial conditions of the land, and existing vegetation; and

(C) A narrative statement describing the existing conditions, proposed activities, and site restoration plan, including:

i. Proposed activities and methods, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.XX;

ii. ~~A description of how the development meets the purpose of the ordinance;~~

iii. ~~Existing site conditions;~~

iv. ~~An explanation of why the development must be located within the inner or outer buffer;~~

v. Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;

vi. Existing species of vegetation and proposed species to be used for revegetation;

vii. Schedule for development activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;

- viii. Maintenance schedule, if applicable;
- ix. ~~Additional requirements as listed in 49.70.XX, if applicable.~~
- x. Additional information as determined by the Director.

Commented [TC5]: Would refer to special requirements for public safety measures, and viewshed and light enhancement as noted in the previous section

(k) ~~Director's review~~ Approval procedures.

~~SAME AS CUP Upon receipt of an application and the required filing fee, the department shall review the submission for completeness.~~

~~Upon a determination that the application is complete, the department shall transmit the application to interested agencies. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director. Tier One reviews with minor impacts may have a reduced agency review period at the Director's discretion. Tier Two reviews may be reviewed by an additional scientific board, such as the Wetlands Review Board, for advisory recommendations at the Director's discretion.~~

~~The Department shall issue an Anadromous Waterbody Permit Notice of Decision, with findings and conditions that ensure conformance with the Purpose and Intent of this ordinance. The permit will expire 18 months after the effective date if no Building Permit or Grading Permit has been issued and/or substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date in accordance with CBJ 49.15.250.~~

-(l) Anadromous Waterbody Best Management Practices.

Anadromous Waterbody Best Management Practices shall apply to all uses or types of development within the inner or outer buffer:

(A) Delineate and flag work limits prior to commencing any activities to preserve existing vegetation outside of the work area and minimize impacts to the buffer. To protect large trees near, but outside of, the work area, the boundary for the natural area to be preserved should be extended to the tree drip line to protect the root zone from damage. The work limits must remain clearly marked until all work is complete. Within the work limits, the disturbed area shall be limited to that required for construction including access. Complete or partial removal of and damage to native vegetation shall be limited to the minimum necessary to achieve the project purpose;

(B) When existing vegetation must be removed from the buffer, the buffer shall be revegetated with native plant species that are present or appropriate for that area within one growing season after completion of work. The buffer shall be revegetated and such revegetation shall be kept or arranged to enhance fish habitat. ~~Areas previously degraded by human activity shall be revegetated;~~

(C) Erosion and sediment control Best Management Practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMPs must be implemented in accordance with the standards in the Alaska Storm Water Guide (<http://dec.alaska.gov/water/wnpspc/stormwater/docs/AKSWGGuide.pdf> (DEC, 2011);

~~(D) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state law;~~

~~(E) Uses and activities shall implement measures to minimize pollutant discharges into the waterbody and buffer including but not limited to providing for water management, establishing staging, fueling, and maintenance areas outside of the buffer;~~

~~(F) Development allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage and must conform with CBJ 49.70 Article IV, Flood Hazard Areas;~~

~~(G)~~(D) Developments must comply with the 2010 CBJ Manual of Stormwater Best Management Practices.

(m) *Riparian vegetation standards.* Riparian vegetation standards shall apply to all uses or types of development within the inner or outer buffer. All uses and types of development within the inner and outer buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:

(A) The vegetation plan shall consider a diversity of native species appropriate for the site conditions found in the Recommended Plant² List in Appendix E of the CBJ's Manual of Stormwater Best Management Practices (2010) and/or the Plant Selection List in the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska (2005). The vegetation plan shall favor natural plant reclamation from neighboring plant communities when possible. ~~If the site was considered to be in a natural state prior to the use/activity, the area shall require revegetation with the same species.~~ The plan shall also implement ~~consider~~ any standards from the Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), ~~identified by staff~~ as applicable to the permitted development; and

(B) Uses and activities shall not introduce or redistribute invasive species.

(n) *Mitigation measures.* Mitigation measures may be required by the Commission or department to address impacts and ensure conformance with the Purpose of this ordinance. Mitigation measures include, but are not limited to:

(A) Standard erosion and stormwater runoff control measures;

(B) Restoration and maintenance of native vegetation and water quality protection functions;

~~(C) Removal of non-conforming structures from the buffer.~~

~~(D) Other measures as agreed upon by the director or the commission and applicant, such as removal of riprap, jetties, debris, or structures that may be detrimental to fish habitat, improvements to water treatment systems, or widening buffers in other areas.~~

(o) *Conformance with permit.*

After approval of the permit, staff shall inspect the site prior to commencement of activity to ensure the site is properly marked and the site matches the plans submitted with the application. Staff shall inspect the site upon project completion to ensure maintenance of vegetation, conformance with approved plans, and conformance with title.

~~(p) *Stream channel alteration.* A stream shall not be moved, ditched, or piped, unless a conditional use permit is issued with consideration of potential impacts including the following:~~

- 276 ~~— (A) Practical alternatives to moving, piping, or otherwise altering the channel;~~
- 277 ~~— (B) The potential to increase flooding or erosion problems upstream or downstream;~~
- 278 ~~— (C) Any potential obstruction of water flow;~~
- 279 ~~(D) The flow lines of the altered section of the channel as related to those in the existing channel~~
- 280 ~~at the endpoints of the alteration;~~
- 281 ~~(E) The adequacy of the gradient/meander balance, grade control, and bed stability to maintain~~
- 282 ~~the natural stream function of water conveyance and sediment transport;~~
- 283 ~~— (F) Conformance with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable; and~~
- 284 ~~— (G) Conformance with the Purpose of this ordinance.~~

285

286 (q) *Emergency permits.*

287 (1) In an emergency, the director may issue a temporary permit, in writing, to protect life and

288 property from imminent danger or to restore, repair, or maintain public works, utilities, or services

289 destroyed, damaged, or interrupted by the emergency providing that:

- 290 (A) An emergency permit shall only authorize the minimum amount of work required to mitigate
- 291 the emergency situation;
- 292 (B) An emergency permit is not intended to provide for any work beyond that necessary to
- 293 provide for a safe environment. Any additional work shall follow applicable permitting
- 294 procedures set forth in this chapter; and
- 295 (C) Work shall be conducted using Best Management Practices to ensure that any adverse effect
- 296 on the anadromous water body and buffers is minimized.

297 (2) The written permit shall include the following:

- 298 (A) A description of the activity;
- 299 (B) A description of the emergency; and
- 300 (C) A narrative describing why the activity is necessary to protect life and property from
- 301 imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed,
- 302 damaged, or interrupted by the emergency.

303 (3) Conditions may be attached to emergency permits to comply with this title. A final report that

304 includes the plans and specifications for the work that was completed must be submitted to the

305 department within 60 days of the date of the emergency. The director may require mitigation to repair

306 damage to the anadromous waters or adjacent buffers and ensure conformance with the Purpose of this

307 ordinance. All permitting shall be defined and be started within two weeks of the emergency.

308 *49.80 Definitions*

309 “Emergency” means a sudden unexpected occurrence, either the result of human or natural forces,

310 necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property,

311 essential public services, or the environment.

312 “Erosion” means significant sloughing, washout, or discharge of soil arising from manmade sources or

313 causes.

314 “Stormwater management” means the use of structural or non-structural practices designed to reduce

315 stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental

316 changes that affect water quality and habitat.

“Surveillance equipment” means equipment capable of capturing or recording data, including images, videos, photographs or audio for purposes of addressing a threat to public safety

“Threat to public safety” means anything which is injurious to the safety or health of a household or neighborhood.

CBJ 49.85.100 is amended to read:

(21) Anadromous Waterbody Permit Application

~~(A) Tier One \$75~~

~~(B) Tier Two \$200 same as minor and major~~

49.70.320 Coastal Development and Special Habitats

~~(a) The purpose of this section is to manage and protect the natural resource values of Juneau's coastline and special habitats including Stellar sea lion habitat, wetlands, rivers, streams, and lakes.~~

~~(b) The following policies shall apply:~~

~~(1) Development is prohibited on Benjamin Island within the Stellar sea lion habitat;~~

~~(2) 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, unless there is a significant public need for the project and there is no reasonable alternative to meet the public need.~~

~~(3) Shoreline industrial developments, ports, harbors and marinas shall be sited, designed, constructed and operated such that:~~

~~(A) Facilities for proper handling of sewage, refuse, fuel and waste oil are provided;~~

~~(B) All reasonable steps are taken to prevent water pollution by incorporating best management practices;~~

~~(4) 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.~~

~~(5) Fish and seafood propagation and processing and aquaculture~~

~~(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 whenever reasonable. Upland areas shall be managed to maintain water quality standards necessary for the propagation of anadromous fish species.~~

~~(B) 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.~~

~~(6) Public Safety.~~

~~(a) Coastal development shall not impair lawful navigation, and navigable waters shall be kept free of unnecessarily hazardous or obstructive development.~~

Commented [TC6]: This is existing code language that has been moved to the coastal development for clarity. The anadromous waterbody ordinance will replace the existing 49.70.310 and this single item would be left hanging unless moved to another section.

Commented [TC7]: Retain in Habitat Section despite duplication. Language is specific and has been used in reviews of coastal developments and allows CDD to obtain needed habitat information. Staff could not find a clear definition of “highly productive tideflats and wetlands” as requested by the Committee. This determination will be made through information gathered in the agency review process for Conditional Use Permits.

Commented [TC8]: Retain in Habitat Section despite duplication. Language is specific and has been used in reviews of coastal development. Includes items important to public safety and welfare that aren't specifically called out in the Conditional Use Permit review.

Commented [TC9]: Sections (5) is recommended for retention despite some duplication of state authority because these policies provide more detailed 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. The determination of what adversely impacts important fisheries habitat, migratory routes, and harvest, and shorelines critical for the fisheries resource base will be informed by the agency review process for Conditional Use Permits.

Commented [TC10]: Duplicates USCG authority. Proposed to retain to provide a more specific standard of public safety review for coastal developments.

~~(c) The habitats contained in subsection (d) 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.~~

~~(d) In addition to the standard contained in subsection (c) of this section, the following standards shall apply to the management of the following habitats:~~

~~(1) 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;~~

~~(2) 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;~~

~~(3) Rivers, streams and lakes shall be managed so as to protect natural vegetation, water quality, important fish or wildlife habitat and natural waterflow.~~

~~(e) Uses and activities in the coastal area which will not conform to the standards contained in subsections (b-d) 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 reasonable alternative to meet the public need for the proposed use or activity which would conform to the standards contained in subsections (b-d) of this section; and~~

~~(3) All reasonable steps to maximize conformance with the standards contained in subsections (b-d) of this section have been taken.~~

Commented [TC11]: These items have been retained despite duplication with state authority because of 2013 Comprehensive Plan policies that indicate the importance of these resources to the community, as described in Chapter 7, pp 77-86.

Commented [TC12]: 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 and was considered a public need.

49.70.330 Special waterfront areas.

~~(a) 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:~~

~~(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;~~

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

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

~~(b) General standards:~~

~~(1) 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.

(2) 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:

(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 will not be detrimental to the public health, welfare and safety or to other properties in the vicinity;

(E) 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.

(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.

(3) Fill proposals within the special waterfront areas are not subject to the fill prohibition of subsection 49.70.330(b)(2) 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. 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.

(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 49.70.320(e) 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 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.

(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.

Commented [TC13]: Special Waterfront Areas were determined long ago to be areas of low habitat value. This section is for the situation (which has never happened in my tenure) where new information has come forward that 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 there must be a demonstrated public need. The specific evaluation referred to is not a habitat evaluation—it's the evaluation of the public need criteria.

~~(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 Special Waterfront Area Map. The purpose of this subsection is to assist users of the 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 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.~~

~~Specified Use Provisions. 49.65.1300 Floathomes and Floating Structures~~

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

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

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

486 ~~(A) Mooring devices for watercraft;~~

487 ~~(B) Watercraft transiting the City and Borough that are not intended for residential use in~~
 488 ~~excess of 30 days in any 12 calendar months;~~

489 ~~(C) Seafood processors whose primary purpose is to receive fish and shellfish from~~
 490 ~~harvesting boats and prepare it for further transportation; and~~

491 ~~(D) Watercraft intended to transport cargo to, from or within the City and Borough;~~

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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. We could consider adopting those requirements in an internal policy document.

Commented [ND15]: Did not review this at all