

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

July 1, 2021
Virtual Meeting Only
12:00 PM

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I. ROLL CALL

II. APPROVAL OF AGENDA

III. AGENDA TOPICS

A. AME2017 0001: Proposed Revisions to CBJ Code 49.70.310

IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS

V. ADJOURNMENT



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DATE: June 28, 2021

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner, CFM

A handwritten signature in black ink, appearing to be 'Teri Camery', is written over the 'FROM' line.

SUBJECT: AME2017 0001: Proposed Revisions to CBJ Code 49.70.310

INTRODUCTION

The purpose of this memo is to provide an update on revisions since the May 27, 2021 Title 49 Committee meeting, before moving the case to the full Planning Commission and Assembly for review.

SUMMARY OF MOST RECENT REVISIONS

The following is a summary of Commissioner comments at the last meeting, with staff's response below.

- 1) Clarify that hazard trees can be in the outer buffer as well as the inner buffer.
 - This is addressed in the proposed ordinance with the language on page 3, number 4, Uses allowed within the 25 to 50 foot outer buffer, which says, "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..." Therefore anything allowed in the inner buffer is also allowed in the outer buffer.
- 2) On page 1, Measurement of Buffers, clarify measurement of overhanging vegetation. As written, the language could apply to big trees that are in the outer buffer.
 - This language was in response to a situation where an applicant cut limbs that were overhanging the creek with the argument that the limbs were not in the 0-25 foot no-disturbance zone. The language is meant to apply specifically to this situation, not to limbs that may overhang from the outer buffer.
 - Staff therefore proposes replacing the language, "Standards shall apply to any portion of a tree (i.e. limbs or trunk) within the buffer" with, "Limbs that are overhanging the waterbody shall be subject to the standards that apply to the tree that the limbs are attached to."

- 3) In “Uses Not Requiring a Permit,” clarify surveillance equipment. The intent was security cameras, and needs to be further defined to avoid higher impact uses.
 - Changed to “placement of surveillance cameras.”
- 4) Clarify “landscaping standards” v. “riparian management standards.” Make sure language is consistent.
 - Replaced “landscaping standards” with “riparian vegetation standards” to be consistent with the other section.
- 5) Clarify (G) and (H) on page 3 regarding removal of trees and vegetation
 - Letter (G) states, “Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures,” while Letter H states, “Removal of vegetation to mitigate damage to structures require a letter of documentation from a licensed arborist.”
 - Letter (G) is for situations where a tree is already causing damaging; e.g. a tree or branches that are hitting a house at that very time. In this situation a letter from an arborist is not necessary because the damage is visible.
 - Letter (H) is for mitigation, for addressing potential damage before it occurs, e.g. a tree that might fall and hit a house. In this case a letter from a licensed arborist is required.
 - Is there additional language that would help to clarify the difference between these situations?
 - Staff has flagged the requirement for a letter from a licensed arborist as an issue for the CBJ Law Department to address.
- 6) Include private as well as public infrastructure in the list of Tier One Allowed Uses.
 - Done.
- 7) On page 2 letter (I), removal of individual or select trees cannot be allowed for only the airport. The allowance must be available to everyone or no one. Commissioners have concluded that this allowance should apply to all.
 - Staff has kept the original language, but deleted the reference to the airport. The issue of what a public safety official is has been flagged for CBJ Law.
- 8) Top of page 2, numbers 2 and 4 are the same.
 - The redundancy has been corrected.
- 9) Page 6 Roman numeral 7, “Schedule for development activity” may not need separate scheduling, because it’s in Title 19.
 - Staff suggests keeping this language to improve the clarity of the code. The public and staff may not be aware of Title 19 references.
- 10) Page 8. Stream channel alteration. “After approval by the director of engineering and public works.” This language makes it appear that approval is needed for the full design ahead of time, before it goes to the Commission with a Conditional Use Permit where it may be denied.

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- Staff has deleted “after approval by the director of engineering and public works.” Review by CBJ Engineering will be part of the Conditional Use review. It should be noted that the full design for stream relocation will likely be needed for the use review and also for floodplain management review.

DISCUSSION ITEMS

1) Viewshed Enhancement

Staff is unclear regarding the direction of the Committee on this issue, therefore no changes have been made yet in the revised draft.

CDD has routinely received calls from the public regarding clearing trees and vegetation within the 50-foot buffer to improve views. We know that this activity occurs regularly. Listing viewshed enhancement as an allowed use in the 25-50 foot buffer (provided that the use cannot reasonably take place outside of the buffer) allows CDD to regulate the issue with a minimal Tier One review fee, and ensure that the use minimizes impacts. In addition, proposed code language states that Uses Not Listed shall require a Conditional use permit. Presumably, if viewshed enhancement is not listed, a Conditional Use Permit would be required.

2) Nonconforming uses

At the last meeting, Commissioners indicated that the proposed language (copied from the Kenai Peninsula Borough code as a starting point) should be deleted and that nonconforming anadromous waterbody uses should follow the non-conforming section of code, CBJ Chapter 49.30.

Staff has therefore deleted the non-conforming language in the current draft. However the Juneau Coastal Management Program section of code, which has recently been declared void, has a regulation regarding rehabilitation of streams when a new development is proposed (CBJ 49.70.950(e)). When the draft stream ordinance was being developed by the Stream Working Group, Working Group members suggested leaving that section with its existing wording. The Commission may wish to take this opportunity to revise that language and add it to the currently proposed ordinance under a different heading. CBJ 49.70.950(e) states:

- (e) Each development which adjoins a river or stream which has been degraded by previous human activity shall, as part of its development plan, include provisions for rehabilitation of the stream or river, and shall be approved by the State Department of Fish and Game. Such provisions shall be limited to removal of debris, removal of abandoned machinery and vehicles, grading and stabilization of banks and related cleanup activities, and shall include preservation or restoration of riparian vegetation.

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Restoration shall not be required beyond that needed to return the area to natural appearance and function; provided, the following are exceptions to this policy:

- (1) Construction of one single-family or duplex dwelling on a lot of record;
- (2) Construction of single-family or duplex dwellings on lots created by subdivisions of four or fewer lots.

Staff recommends adopting this language with the suggested edits below, for consistency with the rest of the proposed anadromous waterbody ordinance:

(e) Each development which adjoins a river or stream which has been degraded by previous human activity shall, as part of its development plan, include provisions for rehabilitation of the stream or river, ~~and shall be approved by the State Department of Fish and Game.~~ Such provisions shall be limited to removal of debris, removal of abandoned machinery and vehicles, grading and stabilization of banks and related cleanup activities, and shall include preservation or restoration of riparian vegetation consistent with the best management practices and riparian vegetation standards in sections ----. Restoration shall not be required beyond that needed to return the area to natural appearance and function; provided, the following are exceptions to this policy:

- (1) Construction of one single-family or duplex dwelling on a lot of record;
- (2) Construction of single-family or duplex dwellings on lots created by subdivisions of four or fewer lots.

3) Variance language

Commissioners stated that proposed language about the variance requirement should be deleted, because the requirement is implicit. Staff has deleted the language; however, it is important that the code language is clear that if a development cannot comply with the listed best management practices and riparian vegetation standards, that a variance is required. Is that requirement clear, or is additional language needed?

ATTACHMENTS

Attachment A – Revised Draft Ordinance
 Attachment B – CBJ Code 49.70.310

49.70.1300 Anadromous Waterbody Protection

(a) Purpose

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

1. Controlling shoreline alteration and mitigating disturbances;
2. Preserving nearshore habitat and restricting the removal of natural riparian vegetation;
3. Controlling pollution sources;
4. Prohibiting certain uses and structures detrimental to anadromous waters and habitat;
5. Decreasing significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
6. Prohibiting certain uses and structures detrimental to the shore land area;
7. Regulating improved access to and within the habitat protection buffer; and
8. Regulating building setbacks from anadromous waterbodies.

(b) Applicability

This chapter applies to waterbodies listed in the most recent Alaska Department of Fish and Game Anadromous Waters Catalog [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 the Community Development Department.
- (B) ~~Standards shall apply to any portion of a tree (i.e. limbs or trunk) within the buffer. Limbs that are overhanging the waterbody shall be subject to the standards that apply to the tree that the limbs are attached to.~~
- (C) On coastal lots, the transition point from the waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet.
- (D) When a development is both above and below the Ordinary High Water Mark, an Anadromous Waterbody -Permit shall be required unless otherwise exempted.

(d) Anadromous waterbody permit required

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

(1) Uses not requiring a permit

- (A) Placement of water quality or water quantity monitoring equipment by a resource agency.
- (B) Placement of fish weirs by a resource agency.
- (C) Placement of surveillance ~~cameras~~ equipment.

(D) Mining activities conducted entirely below the Ordinary High Water Mark.

(2) Prohibited Uses in the Inner and Outer Buffer

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

(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 Conditional Use Permit issued by the commission.

~~*(4) Variances and conditional use permits*~~

~~Uses that cannot comply with the Best Management Practices and Landscaping Standards listed in section 49.70.13XX may apply for a variance unless otherwise prohibited. Uses not listed may apply for a Conditional Use Permit unless otherwise prohibited.~~

(e) 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 anadromous waterbody buffer.

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

(3) 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 the inner buffer, and meet the Riparian Vegetation Standards and Best Management Practices listed in 49.70.13XX:

- (A) Bank and buffer restoration;
- (B) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska;
- (C) Stormwater management to improve water quality and/or water quantity;
- (D) Construction of a fence;
- (E) Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody;
- (F) Bridges, utilities, and related ~~public and private~~ infrastructure, including culverts that conform with CBJ 49.70 Article IV, Flood Hazard Areas, where applicable;
- (G) Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures;
- (H) Removal of vegetation to mitigate damage to structures require a letter of documentation from a licensed arborist; or
- (I) Removal of individual or select trees or vegetation ~~in the Jordan Creek Corridor south of Egan Drive on Juneau International Airport property~~ that constitute a threat to public safety. ~~due~~. Removal of vegetation shall be allowed only after less-damaging alternatives have been evaluated and proven unsuccessful; or

- (J) Bank stabilization conducted in accordance with the ADF&G Streambank Revegetation and Protection Guide, where applicable. Bank stabilization projects requiring rip-rap require review and approval by the Director of Engineering and Public Works. Additional requirements may apply. Bank stabilization must conform with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable.

(4) 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, 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) Selective removal of branches or trees for viewshed enhancement;
- (B) Trail construction parallel to a waterbody; or
- (C) Grading, vegetation removal, and placement of utilities associated with construction of a structure.

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(f) Tier One and Tier Two Review.

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

- (1) Construction of a fence;
- (2) Bridges, utilities, and related public infrastructure, including culverts;
- (3) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska;
- (4) Stormwater management to improve water quality and/or water quantity;
- (5) Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody;
- (6) Trail construction parallel to a waterbody;

- (7) Selective removal of branches or trees for viewshed enhancement;

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- (8) Bank and buffer restoration that requires only removal or replacement of vegetation; or
- (9) Grading, vegetation removal, and placement of utilities associated with construction of a structure.

- (B) *Tier Two Anadromous Waterbody Permits are required for the following developments:*

- (1) Bank and buffer restoration with activities that exceed removal or replacement of vegetation with hand tools;
- (2) Bank stabilization;
- (3) Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures; or
- (4) Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist.

The following table provides a list of uses with the review level and allowed buffer zone.

Use	Review Level		Buffer Zone	
	Tier 1	Tier 2	Inner	Outer
Bank and buffer restoration with activities that exceed removal or replacement of vegetation with hand tools.		X	X	X
Bank and buffer restoration that require only removal or replacement of vegetation with hand tools.	X		X	X
Construction of a fence.	X		X	X
Bridges, utilities, and related public <u>and private</u> infrastructure, including culverts.	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
Bank stabilization.		X	X	X
Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures. Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist.		X		X
Removal of individual or select trees or vegetation in the Jordan Creek Corridor south of Egan Drive on Juneau International Airport property that constitute a threat to public safety due. Removal of vegetation shall be allowed only after less-damaging alternatives have been evaluated and proven unsuccessful.		X	X	X
Selective removal of branches or trees for viewshed enhancement.	X			X
Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody.	X		X	X
Trail construction parallel to a waterbody	X			X
Grading, vegetation removal, and placement of utilities associated with construction of a structure.	X			X

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(g) *Tier One application requirements.*

(1) *Pre-application conference.* Prior to submitting a Tier One Anadromous Waterbody Permit, a pre-application is not required.

(2) *Tier One Submission.* The developer 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 narrative statement describing the proposed action, potential impacts to habitat values as defined pursuant to 49.70.13XX, and measures to mitigate impacts to habitat values, if applicable; and
- (C) Additional information as determined by the Director.

~~(3) Department approval.~~

~~(A) Purpose. The department shall review 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.~~

~~(D) Community development director procedure.~~

(i) Review of application. The director shall review the application, consult with the applicant, and approve a ~~minor development~~ development 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) 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.

(iii) Vegetation shall be maintained according to submitted plans.

(h) *Tier Two application requirements.*

(1) *Pre-application conference.* Prior to submission of an Anadromous Waterbody application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the permit procedure. The director 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.

(2) *Tier Two Submission.* The developer 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 showing the existing topography, vegetation, drainage features, structures, significant natural and artificial conditions of the land, existing vegetation; and

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(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 49.70.13XX;
- ii. A narrative of how the development meets the purpose of the ordinance;
- iii. Existing Site conditions;
- iv. A narrative 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. Removal of vegetation to address a public safety issue requires a letter of documentation from a CBJ Public Safety Official. Removal of trees to address damage to structures requires a letter of documentation from a licensed arborist; and
- x. Additional information as determined by the Director.

(C) *Director's review procedures.*

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.

(k) *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.

(i)

~~(1)~~ Anadromous waterbody Best Management Practices, ~~that Anadromous Waterbody Best Management Practices shall~~ apply to all uses or types of development within the inner or outer buffer:

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(A) Delineate 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. 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 BMP's must be implemented in accordance with the standards in the Alaska Storm Water Guide
(<http://dec.alaska.gov/water/wndspc/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) Structures allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage; and

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

~~(2)~~(1) 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 Plan 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 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.

(3) *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.

(4) *Stream channel alteration.* A stream shall not be moved, ditched, or piped, ~~unless a~~ except as follows:

~~After approval by the director of engineering and public works, and a~~ Cissuance of a conditional use permit ~~is issued~~ is issued, with consideration of potential impacts including the following:

(A) Practical alternatives to moving, piping, or otherwise altering the channel;

(B) The potential to increase flooding or erosion problems upstream or downstream;

(C) Any potential obstruction of water flow;

(D) The flow lines of the altered section of the channel as related to those in the existing channel at the endpoints of the alteration;

(E) The adequacy of the gradient/meander balance, grade control, and bed stability to maintain the natural stream function of water conveyance and sediment transport;

(F) Conformance with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable; and

(G) Conformance with the Purpose ~~and Intent~~ of this ordinance.

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(j) *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 and Intent of this ordinance.

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” shall mean significant sloughing, washout, or discharge of soil arising from manmade sources or causes.

~~Prior existing uses and structures~~

~~A. Intent. There are uses which were conducted, and structures which were under construction, or exist and were in use before the enactment of this ordinance which would be prohibited or restricted~~

Commented [JM2]: I'm inclined to strike this entire section, as the nonconforming section of code should cover it

Commented [TC3]: This is a new section that has not been reviewed by the Planning Commission T49 Committee. This language comes almost entirely from Kenai Peninsula Borough Code 21.18.090 with only minor modifications. It also needs to be consistent with 40.30, Non-conforming sections, which has been adopted since this revision was last reviewed by the Title 49 Committee and other entities.

under the terms of this ordinance or future amendments. It is the intent of this section to allow these prior existing uses or structures to continue but not be increased, expanded, or intensified. Any prior existing uses or structures must still comply with other applicable laws.

B. The burden of proof is on the applicant to show that a prior existing use or structure existed, when the use or structure was established, and the size, location, and level of use.

C. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter, shall be allowed to continue, provided that a structure under construction must have been substantially completed by (date)

1. Upon Proof of Nonconforming Status in accordance with (new non-conforming code) principal structures may be replaced, repaired or reconstructed within three years after damage or destruction. If a principal structure is not substantially damaged and only a portion of the structure has been damaged or destroyed, only that portion may be repaired or replaced. The height of an original principal structure and area encompassed by the original footprint cannot be increased, unless necessary to comply with the requirements of (non-conforming code). The structure must be similar in size and use to the structure being repaired or replaced. Repair, replacement, or reconstruction may only encompass the same square footage that the structure occupied prior to damage or destruction, and the structure must be more compliant with this chapter which shall be determined by application of mitigation measures set forth in to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:

a. The structure will not increase significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems.

b. Permitting repair, reconstruction, or replacement shall be consistent with the purposes of this chapter as set forth in , the borough comprehensive plan, another applicable chapters of the borough code, and other applicable planning documents adopted by the borough;

c. The reconstruction, replacement, or repair will not physically damage the adjoining property;

d. Removal of materials or debris remaining from the damage or destruction; and

e. Owner's compliance with other borough permits and ordinance requirements.

2. The right to reconstruct in nonconformity with the chapter is forever lost if:

a. the application for reconstruction or repair is not made within 24 months after the date of accidental damage or destruction or within 6 months prior to the owner's intentional damage or destruction or

b. the application is approved but the structure is not substantially reconstructed within 3 years of the date of the approval of the application for reconstruction.

(i) For reasonable and sufficient cause shown for the delay, the Director of planning may authorize an extension not to exceed 12 months to complete reconstruction.

(ii) To obtain an extension of time an applicant shall submit a written request for an extension to the department prior to the expiration of the 36 months reconstruction period. The applicant must show reasonable and sufficient cause for the extension.

3. Nothing in this section prohibits reconstruction at any time in compliance with this chapter.

Commented [BM4]: This paragraph could refer to the new nonconforming language—specifically requiring the applicant to comply with the Proof of Nonconforming Status process and requirements.

Commented [BM5]: The nonconforming section of code uses the 75% cost of replacement language that exists in our current code. The replacement is only allowed for accidental damage. If the damage is intentional then any replacement structures must comply w/current regulations.

Commented [BM6]: You may want to rethink this. We allow for an upfill conditional use which I guess would apply to these structures. Do you think that is what you want?

Commented [TC7]: I am leaving this as is, because we do not want the option of an upfill CU in the stream buffer. We need every incentive for the non-conforming to be reduced, not increased.

Commented [BM8]: This could refer to nonconforming code...it would create consistency in our approach.

4. The provisions applicable to principal prior existing structures set forth in — also apply to the replacement, repair or reconstruction of accessory structures within the habitat protection district. In addition to those provisions the following rules apply to accessory structures:

- a. Accessory structures may be replaced or reconstructed outside of the habitat protection district without an anadromous waterbody permit.
- b. The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the stream buffer in order to be permitted to replace, or reconstruct the accessory structure within the stream buffer.

D. Uses. This chapter may not prohibit or restrict nonconforming uses that were allowed or not prohibited by law when established before the effective date of this chapter, provided that, such uses are conducted in the same location and are not enlarged to include a greater number of participants or to occupy a greater area of land. Nonconforming uses that cease to be used for 365 consecutive days shall be considered abandoned.

Upon Nonconforming Certification, a change to the prior existing use may be allowed if the change results in greater conformity with code. No change shall be granted unless the change reduces the nonconformity, by use of mitigation procedures pursuant to —, to the maximum extent practicable. The Director will determine the mitigation measures to be used consistent with the following conditions:

1. The use will not increase significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
2. Permitting the use shall be consistent with the purpose of this code;
3. The use will not physically damage the adjoining property;
4. Removal of materials or debris resulting from the prior existing use; and
5. Developer's compliance with other borough permits and ordinance requirements.

E. Director determinations regarding prior existing structures and prior existing uses may be appealed to the commission.

F. Nothing in this chapter shall prevent any change of tenancy, ownership or management of any prior existing structure.

Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

(21) Anadromous Waterbody Permit Application

- (A) Tier One \$75
- (B) Tier Two \$200

Commented [BM9]: Do we want these uses to go thru the Proof of Nonconforming Status?

Commented [BM10]: Changes to nonconforming uses are allowed outright to conforming uses. Changes to other nonconforming uses can be allowed through the Nonconforming Situation Review by the Board of Adjustment. You could say something along the lines of changes of prior existing uses can be allowed in conformity with 49.XX and the following conditions...and findings

Commented [JM11R10]: Changing from one noncom. use to another wasn't adopted

49.70.310 Habitat.

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the stellar sea lion habitat;
- (2) Within 330 feet of an eagle nest on public land;
- (3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;
- (4) Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update; and
- (5) Within 50 feet of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update.

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

- (1) Within 25 feet of stream designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update; and
- (2) Within 25 feet of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2008 Update.

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 3, 10-20-2008)