

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

May 27, 2021
Virtual Meeting Only
12:00 PM

This virtual meeting will be by video and telephonic participation only. To join the webinar, paste this URL into your browser: <https://juneau.zoom.us/j/97945738197>. 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: 979 4573 8197.

I. **ROLL CALL**

II. **APPROVAL OF AGENDA**

III. **APPROVAL OF MINUTES**

- A. February 18, 2021 Draft Minutes, Title 49 Committee
- B. April 1, 2021 Draft Minutes, Title 49 Committee

IV. **AGENDA TOPICS**

- A. Stream Buffer Code Revisions

V. **COMMITTEE MEMBER COMMENTS AND QUESTIONS**

VI. **ADJOURNMENT**

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, February 18, 2021
Community Development Department
Virtual & Telephonic Meeting, 12:00 pm

Members Present: Nathaniel Dye, Travis Arndt, Mandy Cole, Erik Pedersen

Members Absent: Joshua Winchell

Commissioners Present: Paul Voelckers

Staff Present:

Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (Senior Planner)

I. Call to Order

The meeting was called to order at 12:00 P.M.

II. Approval of Agenda

MOTION: *by Ms. Cole to approve the agenda.*

The motion passed with no objections.

III. Approval of Minutes

A. January 28, 2021 Draft Minutes, Title 49 Committee

MOTION: *by Mr. Arndt to approve the January 28, 2021 minutes.*

The motion passed with no objections.

IV. Agenda Topics

A. Parking

The committee discussed the following organizational changes:

49.40.200 will contain the following

Off-street parking (previously 49.40.200)

Developer responsibility (previously 49.40.210(d))

Owner/occupant responsibility (previously 49.40.210(c))

Determination (previously 49.40.210(d))

Expansion or change in use (previously 49.40.210(1))

Replacement and reconstruction of certain nonconforming structures (49.40.210(d)(2))

Mixed occupancy (previously 49.40.200(2))

Uses not specified (previously 49.40.200(2))
Location (previously 49.40.200(4))

49.40.210 will contain the following

General (previously 49.40.210(a)(1))
Accessible parking spaces (previously 49.40.210(b)(1))
New facility loading spaces (previously 49.40.210(c)(3))

49.40.215 will contain the following

Developer may apply for multiple modifications (previously 49.40.210(d))
Expansion (previously 49.40.210(d)(1))
Accessible parking spaces off-site (previously 49.40.210(b)(2))
Loading spaces off-site (previously 49.40.210(c)(1))
Joint use (previously 49.40.210(d)(3))

49.40.220 will contain the following

Developer may apply for multiple reductions (previously 49.40.210(d), 49.40.210(5), 49.40.210(6))
Parking waivers (previously 49.40.210(d)(4))
Town center parking district (previously 49.40.210(d)(5))
Fee in lieu of off-street parking spaces (previously 49.40.210(d)(6))

49.40.225 will contain the following

Standard spaces (previously 49.40.210(a)(2))
Accessible spaces (previously 49.40.210(b)(3)-(6))
New facility loading spaces (previously 49.40.210(c)(2))

V. Committee Member Comments and Questions

The next meeting was set for April 1, 2021 at 12:00 P.M.

VI. Adjournment

The meeting adjourned at 1:30 P.M.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, April 1, 2021
Community Development Department
Virtual & Telephonic Meeting, 12:00 pm

Members Present: Nathaniel Dye, Travis Arndt, Mandy Cole, Joshua Winchell, Erik Pedersen

Members Absent: None

Commissioners Present: None

Staff Present: Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (CDD Senior Planner)

I. Call to Order

The meeting was called to order at 12:01 P.M.

II. Approval of Agenda

MOTION: *by Ms. Cole to approve the agenda.*

The motion passed with no objections.

III. Approval of Minutes

A. January 28, 2021 Draft Minutes, Title 49 Committee

MOTION: *by Mr. Arndt to approve the January 28, 2021 minutes, with minor corrections.*

The motion passed with no objections.

IV. Agenda Topics

A. Parking

Ms. Gallion gave a brief overview of the materials for the meeting, noting that it would be best for the Committee to start with the Parking and Loading reorganization document.

Mr. Dye suggested going through the document page by page, and asked for comments starting with page 1.

Mr. Arndt stated that he agreed with the changes on page 1, but asked if the material applied to all of the parking spots. He asked if the off-street parking information could be removed, so that everything would be all-inclusive.

Ms. Gallion replied that this information had been directly moved from another piece of text. However, she didn't see any issues with applying it to everything.

Mr. Dye suggested referencing the entirety of the chapter, to make things more clear. He asked if anyone else had comments on page 1.

Referencing line 28 of page 1, Ms. Cole noted that Joint Use is discussed in waivers. She feels they are different; however, they don't necessarily read differently, and it is hard to tell the difference with the suggested language.

Mr. Dye thought it might be good to reference the parking calculations table in this section to make it discernible.

Ms. Gallion stated this could be done.

Referencing the Expansion or Change in Use section, Mr. Pedersen asked if this material came from existing code or if it was new.

Ms. Gallion replied that the last line was in a different section, but it seemed to fit well in this section, so it was moved.

Mr. Pedersen felt that the whole section could use some work, but specifically, he would like to see the "increase" and "intensity" language changed.

Ms. Gallion stated that this language was added to clarify that the new requirement will only be applied to space added to an already existing unit.

Mr. Pedersen understood this, and didn't want the intent of the section to change, but still felt that more work was needed.

Mr. Winchell asked Mr. Pedersen to elaborate more on what he felt should be changed.

Mr. Pedersen replied that he felt the term "intensity" didn't give a clear representation of what is intended.

Mr. Dye stated that "intensity" here means if you have a change in use that requires an increase in need for more parking, then it goes with that.

Mr. Winchell spoke in favor of using that language, and asked Staff if that was possible.

Staff stated they could change "intensity" to "change of use".

Mr. Dye moved forward to line 37 of page 2. He noted that it didn't mention triplexes, and asked if they should be included.

Ms. Gallion stated that triplexes were incorporated as multi-family and that information was farther down in the document.

Mr. Dye asked how a triplex can offset the parking, but a duplex cannot.

Ms. Gallion stated that a line had to be drawn somewhere, and this is where it was drawn in existing code.

Ms. Cole spoke in favor of keeping everything consistent.

Mr. Arndt agreed, noting that since this came from existing code, most people are familiar with it and understand.

Mr. Dye agreed, but wanted to make sure that the true intent was being shown.

Ms. Gallion stated that the intent is that parking is within 100 feet on the same lot, or a different lot.

Mr. Pedersen noted that there could be something with the multi-family developments. A lot of time, they are made up with multiple lots.

Mr. Dye thought it would be good to clarify this information. He asked if anyone else had comments for page 2, there were no further comments for page 2.

Mr. Arndt moved forward to line 54 of page 5, at the top of the table. He thought the heading didn't quite fit the table, and thought calling the loading spaces "facility" loading spaces were be more inclusive and fit better.

Mr. Dye agreed. He recalled discussing moving the new parking districts to a different section, noting that the percentage would be automatic, and then the reduction would be given.

Mr. Arndt understood Mr. Dye's suggestion, but felt that it is better to have the information for reductions under a heading of "reduction" rather than elsewhere.

Mr. Dye agreed. He asked if anyone had comments for page 6. Referencing line 59 of page 6, he asked if it wasn't a reduction per say, as one would not be required to expand over a certain percentage.

Ms. Cole felt that expansions should fall under modifications, not reductions.

Mr. Dye agreed and asked for Staff's thoughts.

Ms. Gallion replied that she could see it falling under either category.

Mr. Pedersen suggested moving the information to fall under the change in use section, or back up into the paragraph lines 19-24.

Mr. Winchell felt that reductions, especially for parking, would need clear definitions and stand-alone procedures. He thought it best that it have its own section to provide clarification, because the CBJ may be hit more often than not with waivers on reductions.

Mr. Arndt spoke in favor of moving the expansion section.

Ms. Maclean noted that there are two different sections discussing expansions, and this section used to, or currently is, called "Exceptions". She felt it would be helpful to change the name to "Modifications" or something similar.

Mr. Dye agreed, noting that the intent is to help clarify that language and clarify the trigger point. Staff agreed and Ms. Gallion stated she would work on the section title, and combine everything to one spot at the beginning.

Mr. Arndt asked for clarification on lines 68-71, asking if it came from code, or if it was new.

Ms. Maclean stated that this section needed some edits and clarification.

Mr. Dye agreed and suggested that lines 62-71 be moved to the Joint Use section, and should be listed twice: once for public and once for private. Mr. Arndt and Staff agreed.

Ms. Maclean noted that line 64 should be changed to say "determined by Director", rather than the whole department. Mr. Arndt stated the same change should be made in line 70, as well.

Mr. Dye asked if anyone had further comments on page 6 or 7. The Committee and Staff discussed some small language changes including using the term "bicycle" instead of "bike".

Mr. Arndt asked if the comments on off-site improvements had been incorporated into this new version.

Mr. Gallion stated that they had been incorporated, but were not made as obvious. She asked if the Committee would like to see this again at Title 49 with the newly incorporated edits, or if they would like to send it to the Planning Commission for a Regular meeting or a Committee of the Whole meeting.

After some deliberation, the Committee and Staff decided this would be sent to the Planning Commission for a Regular meeting, allowing for public input, and then it would be sent to the Law Department for finalization.

Mr. Dye asked if Staff had a date in mind for the next Title 49 meeting.

Staff replied that they did not have a date set, yet, and would work with the Committee to schedule the next meeting.

V. Committee Member Comments and Questions

VI. Adjournment

The meeting adjourned at 12:55 P.M.



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

DATE: May 20, 2021

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner, CFM

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

SUBJECT: AME2017 0001: Proposed Revisions to CBJ Code 49.70.310

INTRODUCTION

The purpose of this memo is to provide an overview of the proposed stream buffer revisions for general discussion, and provide background for new committee members.

INTENT OF THE DRAFT REVISION

The draft revision would replace the current stream setback language in 49.70.310. The setback was previously in two code sections, however the second section, 49.70.950(f), was recently determined to be void due to its reference to the defunct Alaska Coastal Management Program. The proposed revision addresses long-standing issues and different requirements in each of these code sections and combines them into one.

The draft revision would not change the 0-25 foot and 25-50 foot buffers in current code. Instead, the revision would allow certain uses and activities in both buffers provided that those uses/activities comply with Best Management Practices and Riparian Landscaping Standards which would be adopted into code. Uses listed that do not comply with the Best Management practices and Landscaping Standards could be allowed with an approved Variance, unless otherwise prohibited. Uses not listed in the ordinance, and not otherwise prohibited, could be allowed with an approved Conditional Use Permit.

The proposed revisions are intended to provide flexibility for a substantial list of common benign uses, conducted within certain parameters, rather than turning to the variance process when flexibility is needed. The proposed revisions also allow a faster and less expensive departmental review process for most minor uses, provided that those uses can meet vegetation standards and best management practices.

The proposed language introduces the concept of Tier One and Tier Two uses, each with different application requirements and different fees. The intention is provide a lower cost, streamlined Tier One review for the simplest, most typical uses within the setback that nonetheless require review to ensure conformation with basic standards. This Tier also includes stream restoration measures. Tier Two uses, though still allowed through the departmental approval process, have a higher permit fee, more detailed application requirements, and a more detailed review process. Denial of a permit would be eligible for appeal through an Appeal of the Director's Determination, while a use/activity that cannot meet the review standards would be eligible for a variance.

Under the current regulations, any use which falls under the Title 49 definition of development is prohibited without a Variance. This unnecessarily prohibits many uses that have little or no impact on streams. Specifically, the definition of development (49.80.120) includes the following:

- 1) Construction, reconstruction or enlargement of a structure involving more than 120 square feet;
- 2) A subdivision;
- 3) Conduct of a home occupation;
- 4) Change in use of a lot, including any structure thereon;
- 5) Installation or emplacement of a mobile or modular home;
- 6) Removal of substantial vegetative cover;
- 7) Excavation, dredge, or fill activity;
- 8) Installation of a sign
- 9) For the purposes of Chapter 49.65, article I, the work performed in relation to a deposit, subsequent to exploration but prior to extraction of commercial quantities of a mineral commodity, aimed at, but not limited to, preparing the site for mining, defining an ore deposit, conducting pilot plant operations, and construction of roads or ancillary facilities;
- 10) Any site work in preparation or anticipation of the above.

Under the proposed revision, buffer protection is no longer tied to the definition of development. Many of the uses listed in the definition of the development may be allowed with a Tier One or Tier Two Anadromous Waterbody Permit, rather than with an approved Variance, if those uses adhere to Best Management Practices and Riparian Vegetation Standards to minimize impacts and preserve habitat. Specifically, vegetation may be removed in the buffer for a variety of purposes including bank stabilization and restoration, viewshed enhancement, public safety, and trail construction and maintenance. Fences may be installed. Stormwater and drainage improvements may be developed.

It's important to note that the proposed revision does not allow placement of structures within 50 feet of the waterbody. Current regulation also does not allow structures within 50 feet of

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 Proposed Revisions to CBJ Code 49.70.310
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anadromous waterbodies. In development of the draft language, the Stream Working Group and Wetlands Review Board concluded that structures within the buffer adversely impact habitat and are an unacceptable violation to the purpose of the buffer. However under the proposed ordinance, structures could be allowed with an approved Conditional Use Permit.

Here are a few other key points in the draft regulation:

- It clarifies how the buffer is measured in three ways: on tidewater lots, on typical stream banks, and with regards to limbing;
- Addresses many common development needs, including the need to trim or cut trees within the buffer to address public safety or potential property damage;
- Allows limited vegetation removal to improve viewsheds.

BACKGROUND

Information reviewed

Following is a partial list of the information reviewed for preparation of the draft language:

- Natural Channel Design, Inc., Road Culvert Replacement Technical Specifications, prepared for the Alaska Department of Transportation (AKDOT/PF) March 2012.
- Streambank Revegetation and Protection, A Guide for Alaska. Alaska Department of Fish and Game, Alaska Department of Natural Resources, March 1998.
- California Riparian Habitat Restoration Handbook, Second Edition, River Partners July 2009.
- Streambank Revegetation, Field Guide for Streambank Revegetation, Alaska Department of Fish and Game, June 1986.
- The Value of Riparian Vegetation. King Country Surface Water Management. (No date)
- Alaska Plant Materials Center. Alaska Department of Natural Resources, Division of Agriculture. (website)
- Vegetative Buffers in the Coastal Zone. Coastal Resources Center. University of Rhode Island. July 1994.
- Aquatic Buffer Model Ordinance. Environmental Protection Agency. (website)
- Model Riparian Buffer Ordinance. Lancaster County, Pennsylvania. (website)
- Buffer Model Ordinance. Stormwatercenter.net
- Kitsap County Critical Areas Ordinance Fact Sheet. Port Orchard, Washington.
- Anchorage, Alaska Code of Ordinances, Section 21.07.020 Natural Resources Protection, part B, Stream, Waterbody, and Resource Protection
- Kenai Peninsula Borough Code of Ordinances, Chapter 21, Anadromous Waters Habitat Protection

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- City of Issaquah, Washington Municipal Code Chapter 18.10 Environmental Protection; Critical Areas Regulation
- City of Kenmore Washington, Chapter 18.55.170, Streams – Performance Standards.
- Municipality of Skagway, Draft Riparian Buffer Zone ordinance
- Natural Resource Conservation and Biodiversity Protection, Sustainable Community Development Code Beta Version 1.5 College of Architecture and Planning, University of Colorado-Denver. (No date)
- Land Use Planning For Salmon, Steelhead, and Trout. A land use planner's guide to salmonid habitat protection and recovery. Washington Department of Fish and Wildlife, Aquatic Habitat Guidelines Program, October 2009.
- Streamside Development Permit Area, handout, City of Campbell River, BC, Land Use Services Department (no date)
- Streamside Submittal Requirements, City of Colorado Springs, www.springsgov.com
- Streamside Development Permit Area, Municipality of Saanich, BC.
- Riparian Corridor Combining Zone, Sonoma County, California.
- New Jersey Forestry and Wetlands Best Management Practices Manual.
- Field Identification of Ordinary High Water Mark, Galveston District, April 2012
- Wetland and Stream Buffers: A Review of the Science and Regulatory Approaches to Protection. City of Boulder Planning and Development Services. April 2007.
- Local Government Riparian Buffers in the San Francisco Bay Area. San Francisco Bay Regional Water Quality Control Board. July 2004.
- Stream Notes 3 – Riparian Buffers. Handout. North Carolina Wildlife Resource Commission et al.
- A New Home Builder's Guide to Responsible Development Near Rivers, Streams, and Wetlands. Montana Department of Administration. No date.
- Stream Setback Ordinance Fact Sheet. Kansas City, Missouri City Planning & Development Department.
- Forestland Buffers for the Connecticut River Watershed. Connecticut River Joint Commission, 1998.
- Riparian Setbacks. Technical Information for Decision Makers. Chagrin River Watershed Partners, Inc. January 2006.
- Mapping Impervious Cover to Correlate Land Use Activities with Salmon Health & Habitat on the Lower Kenai Peninsula. Cook Inlet Keeper for the U.S. Fish and Wildlife Service. December 2006.
- CBJ Stream setback variances, from approximately the mid-1990s through the present.

Stream Working Group

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In January 2017 staff formed an ad-hoc, informal Stream Buffer Working Group comprised of resource agency representatives to provide technical scientific support. Specifically, the Stream Buffer Working Group included representatives of the U.S. Fish and Wildlife Service (John Hudson and Neil Stichert), Alaska Department of Fish and Game (Jackie Timothy), Alaska Department of Environmental Conservation (Gretchen Pikul), the Juneau Watershed Partnership (through the Wetland Review Board's Amy Sumner), and a landscape architect (Chris Mertl). The Working Group met twice and provided detailed comments through email correspondence. The U.S. Fish and Wildlife Service and Alaska Department of Fish and Game have continued to comment on more recent drafts.

Wetlands Review Board Meetings

The Wetlands Review Board reviewed the draft ordinance and provided advisory comments at the April 26 and June 15, 2017 regular meetings.

Planning Commission

The Planning Commission Title 49 Committee gave conceptual approval to staff's approach on the revision at the meetings in September and October 2016. Staff provided an informational memo and draft of the proposed revision at Planning Commission Committee of the Whole Meeting on June 13, 2017, for informal feedback. The Planning Commission Title 49 Committee reviewed the last draft of the revision in October 2018 and provided additional direction.

Additional Review

Staff has reviewed the proposed revision with CBJ Engineering and Public Works, the Juneau International Airport, and the Southeast Alaska Watershed Coalition. Staff continues to work with the two most involved Wetlands Review Board members, the Alaska Department of Fish and Game, and sent the most recent draft back to the Stream Working Group and two WRB members for review in December 2017.

Conformance with the 2013 Juneau Comprehensive Plan

The 2013 Juneau Comprehensive Plan Chapter 7, pages 79-80, lists policies, development guidelines, and implementing actions relevant to the proposed regulation. These policies include the following:

Policy 7.3. To protect riparian habitat, including stream corridors and lake shorelines, from adverse effects of development and to provide a higher level of protection for non-urban shorelines in public ownership.

Development Guideline 7.3 DG1. Rivers, streams, and lakes should be managed so as to protect natural vegetation, water quality, fish or wildlife habitat, and natural waterflow.

Development Guideline 7.3 DG3. On privately-owned lands, require a minimum setback of 50 feet from the OHWM of all creeks, stream corridors and lake shorelines listed in the most recently CBJ-adopted ADF&G inventory of anadromous fish streams. This 50-foot setback is to be considered a basic or minimum setback from the waterbody and its riparian habitat until a biological functional analysis of the waterbody and adjacent habitat is conducted that identifies a specific greater or lesser setback distance appropriate to the development and functional value of the particular waterbody and associated riparian habitat, and an ordinance amending that setback is adopted.

Development Guideline 7.3 DG4. Community Development Department staff will determine the OHWM on properties subject to development permits. OHWM determinations will be based on habitat and biological considerations according to the adopted OHWM definition in Title 49, the Land Use Code.

Implementing Action 7.3 – 1A1. Fund an effort develop for adoption into the Land Use Code a riparian protection ordinance that tailors riparian standards to the particular stream-type, functional value, and location and which would be consistent with, and complementary to, related Title 49 regulations protecting wetlands, flood zones, and coastal areas.

Implementing Action 7.3 – 1A2. Amend the Land Use Code to update the definition of OHWM as soon as possible.

The Comprehensive Plan supports the proposed revision. The definition of Ordinary High Water was updated as part of the recent code revision on flood management. The proposed change does not address Implementing Action 7.3-1A1 because funding for a study has not been identified, and also because of general public acceptance of a 50-foot buffer as a reasonable balance for stream protection.

Outstanding Issues

The current draft has outstanding questions regarding removal of vegetation for public safety reasons. The non-conforming uses section of the revision also needs to be updated for compatibility with CBJ Chapter 49.30, non-conforming situations, which has been enacted since the last draft. Other refinements may be needed regarding internal review processes and compatibility with recently updated flood management regulations.

Attachments:

Title 49 Committee

Proposed Revisions to CBJ Code 49.70.310

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Draft Ordinance

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

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.
- (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 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 infrastructure, including culverts that conform with CBJ 47.70 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.

(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;
- (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 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

(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.
- (C) *Community development director procedure.*

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

- (1) anadromous waterbody Best Management Practices that apply to all uses or types of development within the inner or outer buffer:

(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/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) 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) *Riparian vegetation standards.* Riparian vegetation standards that 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 and Intent 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, except as follows: After approval by the director of engineering and public works, and issuance of a conditional use permit, 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.

(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 [need to look at this and how it would refer back to our list] to ensure that any adverse effect on the anadromous water body and buffers is minimized.

Commented [JM1]: Teri's comment – just flagging it so it's not missed

(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 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.

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.

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.

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.

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:

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.

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:

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

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.

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..

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

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.

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

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

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)