

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

September 17, 2018
Marine View Building, 4th Floor
12:00 PM

- I. ROLL CALL
- II. APPROVAL OF AGENDA
- III. AGENDA TOPICS
 - A. Review of Financial Guarantee Requirements for Stub Streets & Temporary Cul-de-Sacs
 - B. Review of Proposed Revisions to CBJ Code re: Stream and Lakeside Buffers
 - C. Proposed Revisions to Common Walls
- IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS
- V. ADJOURNMENT



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

September 14, 2018

MEMO

To: Title 49 Review Committee

From: Tim Felstead (Planner II), Community Development Department

RE: Reviewing financial guarantee requirements for unconstructed stub streets and temporary cul-de-sacs within a subdivision

This memorandum provides specific questions for the Title 49 Committee to consider for guiding staff on how the existing Land Use Code language should be drafted and if there are additional issues the Committee wish to consider.

1. Link between temporary cul-de-sacs and stub streets

In preparation for the Planning Commission's review to remove the 5-year financial guarantee for construction of stub streets, Staff discovered minutes from a June 9, 2009, Planning Commission meeting. The minutes documented a motion from the Planning Commission for approval of proposed changes to Chapter 35 of the Land Use Code. The motion included a request for Staff to amend proposed changes to the requirements for temporary cul-de-sacs. The minutes had not been available to the Title 49 Committee for recent discussions on this topic.

The amendment requested would have allowed for instances where the cul-de-sac would be located away from the boundary property line of the subdivision. The construction of any portion of platted ROW between the cul-de-sac and the subdivision boundary, not required for access within the subdivision, could be waived but the subdivider would provide a 5 year financial guarantee for its construction. This portion of ROW will be called the 'remainder ROW' from this point. The approach requested by the Planning Commission for the remainder ROW is exactly the same as the current approach used in the Land Use Code for stub streets (and as was proposed for stub streets in 2009). The record is silent about how this Commission's amendment request was followed through by Staff, but no option to provide a financial guarantee was added directly into the temporary cul-de-sac section of code.

The adopted 2015 Land Use Code changes to subdivisions included the approved changes to Chapter 35 reviewed in 2009 by the Planning Commission.

The only way the current Land Use Code language could be interpreted as allowing for the amendment requested by the Planning Commission in 2009 would be if the remainder ROW were considered to be a stub street. However, this would put it in opposition what seem to be clear requirements for a remainder ROW to be constructed.

Staff had concerns that the proposal to remove the requirement for a 5 year financial guarantee would remove any option to achieve the intent of the 2009 Planning Commission amendment request. However, as pointed out by the Planning Commission at it September 11, 2018 meeting, it would be difficult to justify waiving any construction for a remainder ROW because it is associated with a temporary cul-de-sac that is meant to be used in the 'near future'. The reality is that temporary cul-de-sacs are used to provide for future connections, just like stub streets, and the timeline is on when the connection will be utilized is speculative.

Staff recommends removing the word 'near' from the temporary cul-de-sac section to better reflect how they are used.

- **Does the Committee find that there is, and should be, no link between temporary cul-de-sac construction and stub streets?** If so, the amendment can proceed as-is. This would remove the financial guarantee requirement for stub streets. It would be useful to clarify in the code that remainder ROW cannot be considered a stub street for the purposes of waiving construction.
- **Does the Committee support a 5 year bonding requirement similar to the existing one for stub streets for the remainder ROW as was requested in 2009 instead of the current situation where the remainder ROW has to be constructed?** If so, the existing paragraph in stub streets could be modified and inserted to the temporary cul-de-sac section. If not, then no change is needed. It would have to be justified how stub streets and remainder ROW are different from each other.

CBJ Attorney Palmer described how the Planning Commission or Director of CDD can currently waive construction of a street. Mr. Palmer suggested adding more criteria to guide when the construction should be waived might be helpful

- **Does the Committee wish to see standards to guide the Commission or Director as to when construction of all, or part of, of a stub street is required?** If the current discretionary approach is sufficient then no change is needed. If more criteria should be provided then similar criteria to what was discussed in earlier committee meetings could be used. These criteria attempted to reflect how likely it was that the adjoining property would be developed in the 5 year short term (e.g. providing access to lots within the subdivision, topography, ownership, and protections status of the land being connected to).

2. Further work on temporary cul-de-sacs

Commissioner Miller suggested that temporary cul-de-sacs should not even have to be removed. If that is the case, what are currently platted as easements would then have to be platted as ROW and would not count towards the lot area for the lot.

- **Does the Committee wish to examine changes to temporary cul-de-sacs?** It was understood from previous Committee meetings that this was not the case. The Committee previously gave staff direction not to remove the 5 year bonding requirement for removal of temporary cul-de-sacs.

3. Use of platted stub streets – something to address in the future

Staff has also noted during the review of this topic there could be situations where an adjoining lot that is being subsequently subdivided has multiple connecting streets providing access to it. However, the subdivision itself only requires one or two accesses to meet fire standards. In such situations the subsequent subdivider would be reluctant to construct a connection that is not required to meet fire standards. Something clear that requires future streets to be connected to platted connections would be useful. If such ROW connections are not used this may be considered a taking from the original subdivision.

Attachments

- **June 9, 2009 Planning Commission Minutes Excerpt**
- **Title 49 Code Excerpts regarding Stub Streets and Temporary Cul-de-sacs**

FRIENDLY AMENDMENT: *by Mr. Miller, that the group determines whether it is possible to obtain and review the report generated by the ATF on the breach of security, and if so, the group should include their findings in the report to the PC.*

Mr. Satre accepted Mr. Miller's friendly amendment, which was incorporated into the motion as well.

Mr. Barajas offered to attempt to contact ATF to see if he is able to obtain a copy of the report on the breach of security at the lower powder magazine facility.

Chair Gladziszewski stressed that the gist is for the group to investigate what could heighten security at this APU powder magazine site in whatever manner is necessary, and therefore the Commissioners are concerned enough to continue consideration of USE2009-00019.

Mr. Satre noted that by the PC continuing USE2009-00019, the Commissioners are potentially holding this applicant to a different standard, versus the applicant of USE2009-00018 that was approved on the Consent Agenda. Mr. Rue referred to USE2009-00018, explaining that the lower powder magazine facility has a fence. Chair Gladziszewski said the Commissioners have been suggesting that requiring the applicant of USE2009-00019 to install a fence is not going to help heighten security at this site. Mr. Satre clarified that the requirement that a perimeter fence containing razor wire was not a condition of USE2009-00018.

Roll call vote

Ayes: Taug, Grewe, Bennett, Watson, Rue, Waterman, Gladziszewski
Nays: Miller, Satre

Motion passes: 7:2, and USE2009-00019 was continued until further information is provided to the PC.

Mr. Pernula commented that if at all possible he would like to attempt to present the requested information to the PC on July 14, explaining that the next regular PC meeting on June 23, 2009 already has a full agenda.

BREAK: 8:04 - 8:12 p.m.

VIII. UNFINISHED BUSINESS - None

IX. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

TXT2007-00004

A Draft Ordinance amending the Title 49 Land Use Code, Chapter 35-Public Improvements, which deals with the construction requirements for new subdivisions. (Ord. Serial No. 2009-XX)

Location: Boroughwide

Applicant: City & Borough of Juneau

Staff report

Tim Maguire reported that the proposal is a continuation of an update of Title 49, the CBJ Land Use Code, specifically Chapter 35-Public Improvements. He explained that 95% of this chapter

mainly pertains to new subdivision improvements, noting that there are some portions dealing with driveways in public rights-of-way. He said the Title 49 Committee reviewed this chapter numerous times, and their recommendations and revisions were provided to the Law Department for the purpose of developing the Draft Ordinance. He stated that all throughout this process the CBJ Fire, Engineering, Community Development, and Public Works Departments reviewed the proposed code revisions. He explained that most of the language after the revisions were provided was replaced, noting that not very much of the existing code remains. Technically, he explained that the Law Department is going to rescind Chapter 35 and re-adopt it as a new code. He stated that the objective for this update is to: 1) clearly spell out the permitting approval process, 2) clarify and standardize the requirements, and 3) simplify the approval process where possible. He said Chapter 35 mainly deals with standards so it contains minimal permitting processes, but when they discuss the subdivision section they will be reviewing additional permitting aspects at that time.

He stated that he will provide a review of the major revisions listed in the report:

1. Driveways in the Rights-of-Way.

He said the permitting process for this was cumbersome, which required developers to obtain an Allowable Use or a Conditional Use permit, but the criteria for approval did not fit the proposed action. He explained that driveways in the rights-of-way will have a separate permit process and criteria for approval to fit the requested action, including that in-house approval will be provided for proposals that serve 6 lots so these permits will not be presented to the PC. He explained that this code section lays out the process for approving driveways in existing public rights-of-way, but this is not an improvement standard for constructing a new subdivision.

Mr. Miller said he foresees the possibility of a gated community scenario, whereby he referred to a criterion found under the Draft Ordinance subsection 49.15.560(a)(3), and cited, "The applicant will ensure that the driveway will not be blocked from use by the public for access." He explained that there may be a time when a gated community would not contain such a requirement. Mr. Maguire said the Planned Unit Development process might be presented under this type of gated community situation because it would be more or less a private driveway. He explained that if this were the case, this particular section of code would not apply because it would not be constructed in an existing public right-of-way. Mr. Miller confirmed that this would also be the case for a regular subdivision on private property. Mr. Maguire said yes.

2. Waiver of Public Improvements.

He stated that there were a number of waivers for public improvement standards that were added to the code over the years so it became confusing as to which standards applied, including that the code has changed in other areas that already addresses certain situations. He noted that the Title 49 Committee chose to delete the waivers that are not useful, and retain only those that are considered to still have value, including allowing new waivers to be added in the future to deal with new situations. He said certain areas of the code were changed, and now if certain criteria are met the alternative standard for construction applies without having to request a waiver.

3. Temporary Cul-de-sacs.

He said the code did not address the use of temporary cul-de-sacs, i.e., how they are supposed to work, who pays for the reconstruction of the turnarounds and the extension of the road, and what the building setback requirement is from the temporary turnaround. He stated that temporary cul-de-sacs have been utilized in subdivisions in the past with varying success. He said the

changes to address these issues includes a new code section that states that temporary cul-de-sacs will be treated as easements and will revert back to the property owners. He explained that another requirement was added for a bond to be posted for reconstruction of the turnaround and utilities when the roadway is extended. He said the purpose is to attempt to spread out the cost of reconstructing the cul-de-sac, versus waiting until the next subdivision comes in and placing all these costs on the new developer to extend the road.

Mr. Miller said he wishes to commend staff and the Title 49 Committee, noting that he has been through a couple of subdivision processes so he appreciates the revisions, which is more simplified and very clear. However, the only objection he has to any of the revisions is the requirement for a five-year bond to be posted for reconstruction of the turnaround and the installation of utilities when the road is extended. He referred to Attachment 1, explaining anecdotally when a developer on the left side of the road constructs a subdivision with a temporary cul-de-sac to the end of his property line, as it stands right now when the developer completes the subdivision they are done once all of the requirements of the CBJ are met, and then the developer's bond is no longer in effect. However, the method in which the code has been revised is that the first developer will now be required to post a five-year bond, and then later be required to return to the subdivision and change the cul-de-sac so the second developer on the left side of the road can do what they want to do, which ties up a bond that the first developer had to pay for five years, including maintaining the paperwork for CBJ to monitor to assure that such a bond is in effect. Another anecdotal situation is if the developer on the left is also the same developer on the right, but completing the construction in phases, and therefore would do so the same way as he does now with no bond requirement for Phase I of the subdivision on the left side of the road. This is because right after this phase is done the developer begins constructing Phase II of the subdivision on the right side of the road, whereby all of the improvements are completed at the same time, including changing the cul-de-sac to extend the road. He said it does not make sense as to why they added a five-year bond requirement for a temporary cul-de-sac into this code revisions process. Mr. Maguire said this example of a cul-de-sac (Attachment 1) shows the temporary cul-de-sac being constructed to the property line; however, in many cases it is not, and instead, is left un-built by the first developer so it just contains the right-of-way extending to the property line. He stated that when this happens and the second developer begins construction on the other side of the road, he has to incur the cost to construct the remaining un-built section of road and the reconstruction of the cul-de-sac to extend the road; therefore, this cost burden is solely on the second developer, which is usually the case. He noted that they added language which states that the temporary cul-de-sacs are to be constructed as close to the property line as possible, and this was not previously provided in code. He said there is another section of code that addresses stub streets. He explained that many times a street stubs out and does not serve any lots so a turnaround is not required, but the stub street will be connected during future development of the property. However, the language in this section now states that the guarantee must be for a period of five years from the date the plat is recorded, and he agrees that it certainly is not a perfect solution, but this is the method in which some communities deal with these issues so that adjoining developers share these costs.

Mr. Watson said the initial builder incurs all the expenses constructing a subdivision on the left side of the road, along with installing improvements to the property line. He said this creates greater value to the owner of the vacant land on the right side of the road, and therefore the second developer benefits by this, yet there would now be a burden of a five-year bond placed on

the initial developer. He asked how the five-year number was derived at. Mr. Maguire said the five-year number is what they thought would be a reasonable time period for a financial guarantee of a bond to be posted to have these costs shared. He stated that if the second developer constructs a subdivision on the right side of the road within the five-year time period, the cost is shared with the first subdivision developer on the left side of the road. However, if the second developer does not do so within this time period, the financial guarantee will be released.

Ms. Gladziszewski stated that if a developer is required to build a temporary cul-de-sac to the end of their property, she believes the developer should be done with the application.

Mr. Rue cited, Draft Ordinance subsection 49.17.425 Streets, (a)(6)(C) Temporary cul-de-sacs, "Temporary cul-de-sacs will be allowed where a street can logically be extended in the near future..." He noted that this time period is not very specific. He explained that either way the road and temporary cul-de-sac has to be constructed so it is accessible by emergency personnel and their equipment, but the issue is if the temporary cul-de-sac is not built to the property line by the first developer and does not service all the lots. He said the reasoning would probably be so the developer retains more developable property, and therefore in this case the code should require the initial developer to post a bond or else the other developer is going to have to fix it.

Mr. Miller said he believes he understands how the concept came into being, i.e., the last developer ending up having to pay excessive costs, which were not his to bear. He explained that he has not witnessed these situations that have been mentioned happening very much, and instead, he has often seen this take place regarding drainage situations. He stated that when construction has been happening over the course of 20 years, all of a sudden they discover that a stormwater system is no longer capable of handling additional runoff, and therefore the last developer that wants to build a subdivision has to attempt to fix it and bear this cost. He stated that they want the developers to share the cost, but in reality the second developer on the right is gaining benefits from the fact that the developer on the left has already established a subdivision so second developer's land is now more valuable because he does not have to install the primary feed into his property himself. He stressed that as this portion of code has been revised, it will be placing more of a cost burden on the first developer so he would like to see the five-year bond requirement removed, except in situations when the subdivision is not constructed to the property line.

Ms. Waterman stated that a situation could be that the second developer on the right has the opportunity for a second access, and to meet the public good the PC wants to encourage this developer to work with the first developer on the left to get rid of the temporary cul-de-sac in order to provide continuity for developments to work together, and to avoid having multiple cul-de-sacs in the borough. In addition, she said that if the developers know in advance that there is some type of cooperation requirement, this might encourage the second developer on the right side of the road to help eliminate the temporary cul-de-sac.

Mr. Maguire stated that the Casa del Sol Subdivision is where there is a temporary cul-de-sac proposed, and it has another parcel adjacent to it. He said in this case they may wish to later extend the right-of-way to connect to the other parcel to avoid constructing two temporary cul-de-sacs, but the initial temporary cul-de-sac is quite a ways back from the other parcel. Therefore, if they were to state that the second developer of the other parcel does not get any

more benefits than the initial developer does and is required to construct a road through his parcel, including extending it to the existing road, it would place a much greater cost burden on this developer. He explained that the situation that they are commonly left with is that the temporary cul-de-sacs are not constructed to the property line.

Ms. Gladziszewski stated that it is simpler to state that if the developer constructs the subdivision to the property line, and then once the subdivision is complete they are done, and therefore this developer is not required to post a five-year bond. However, if the developer does not construct the subdivision to the property line, they are responsible to post a bond and share the expense to extend the road with the new developer if the new development takes place within a five-year time period.

Mr. Watson stated that once a temporary cul-de-sac is reverted back to extend a street, he asked if the portion on the original developers property reverts back to them. Mr. Maguire said yes, explaining that it would only consist of the portion of their property that is outside of the easement. Mr. Watson stated that if the original property owner sells the property, he asked if this will be duly noted on the plat for future owners. Mr. Maguire said yes, stating that the CBJ would eliminate the easement, including providing paperwork confirming that the remaining property was converted back to the owner.

Mr. Rue referred to the Draft Ordinance subsection 49.17.425 Streets, (a)(6)(C)(vi), and cited the first section, "Temporary cul-de-sacs must be extended as close to the adjoining property boundary as practical." He said the issue the PC is currently discussing is already solved according to this section. However, he stated that he might have missed something, whereby he cited the remaining section, "If it is not practical to construct the turnaround portion of the cul-de-sac at this location, then the right-of-way must be extended beyond the temporary turnaround to the adjoining property line, and this roadway extension constructed to standard (See Figure 4);" He stated that Mr. Maguire's scenario regarding the Casa del Sol Subdivision temporary cul-de-sac issue would be solved per this subsection. Ms. Gladziszewski said this subsection does not address which developer pays for extending the road. Mr. Rue said he interprets this subsection to state that the road has to be constructed when the subdivision is built. Mr. Maguire clarified that in the past there has been a gap in the code, so this new language would require the developer to construct the temporary cul-de-sac to the property line, and then to also include a small extension of the road. Ms. Gladziszewski confirmed that this verbiage states that the developer is allowed to construct a temporary cul-de-sac anywhere they want, but they are required to construct a road to the end of the property line. Mr. Maguire said yes. Mr. Rue commented that the developer would not be required to post a bond because the road would have already been extended once the subdivision is done. Mr. Pernula clarified that this developer would still be required to post a bond for removal of the temporary portion of the cul-de-sac if it is necessary for new construction to extend the road to the adjoining property within a five-year period. Ms. Waterman asked about installing drainage. Mr. Miller explained that the code states that the road has to be constructed to standard, and therefore the developer would be required to install all required utilities, e.g., drainage, sewer, water, electricity, television cable, etc. Ms. Gladziszewski said this is somewhat confusing, explaining that it states that the developer is constructing housing within a subdivision, including a temporary cul-de-sac, but they are also required to randomly extend a road to the end of their property line, which could be to nowhere. She asked if the CBJ currently has this requirement in place. Mr. Maguire said no. Mr. Miller said in this case a bond would be appropriate, rather than requiring a developer to construct a

road to nowhere. Although in other cases it makes sense that the developer would chose to construct the cul-de-sac and extend the road to the property line so they would not have to post a bond. He stressed that this section of the Draft Ordinance needs to be revised. Mr. Maguire offered to incorporate the revisions that the PC has recommended.

4. Water Systems.

He explained that the code was not clear as to what standards needed to be met for water systems in new subdivisions, and it did not clearly stipulate what the requirements were for fire flows, or what fire protection systems are needed in the fire service area. Further, he explained that the code did not address the issue of the State requirement for water appropriation. He said they added language to require coordination with the State for appropriation of water and securing water rights. In addition, language was added to clarify the standards for water systems in subdivisions, including how they are to deal with the issue of non-residential water systems (commercial and industrial). He explained that the code was also revised so that the current standards for fire flows and fire protection must meet the fire code in Service Area 10.

5. Sanitary Systems.

He stated that under sewers, the existing code does not address various types of wastewater treatment systems, which are allowed in subdivision development, and therefore they included code language to address different types of systems that would be allowed as well as the process for approval. He said it was also unclear when CBJ oversight applies in terms of operation, monitoring, or maintenance of private sewage facilities. He explained that when the CBJ Lena Subdivision was completed, an ordinance containing regulations was passed to require CBJ oversight of the individual treatment systems. However, the Title 49 section of code does not make a distinction between the type (residential or commercial), the size (minor or major subdivisions) and all types of private treatment systems (individual or community systems) regarding those that are under CBJ construction permitting and maintenance oversight. Therefore, the Title 49 Committee worked with the Public Works and Engineering Departments to straighten this out. He said the new verbiage provides that the regulations in code are now reconciled, and wording was added to address different types of wastewater systems, including revising maintenance of individual wastewater systems to reflect responsibilities by the Public Works Department versus the property owner.

6. Oversizing Lines.

He explained that this section was very complicated, whereby he noted that the Publics Works Director stated that it was incomprehensible. He said this section has been now updated, which simply states that oversizing will be required if the Engineering Department determines that it is necessary, including that any cost difference which may occur can be dealt with at the time of construction plan approval.

Mr. Rue interjected, asking if Mr. Maguire was going to discuss the Draft Ordinance subsection 49.17.440 regarding drainage. Mr. Maguire said he did not specifically call out this section in the report. Mr. Rue explained that he is concerned that this entire drainage section is too focused on storm drain facilities. He said this runs counter with the PC's recent discussion regarding instituting the complete streets/context sensitive concept, swales, and wetlands, etc. He said these are different methods they are able to institute so drainpipes are not directing runoff into creeks. He said the worst scenario is if any of these drainpipes direct polluted runoff into anadromous streams from parking lots, such as Auke Lake. He said the PC held significant

discussions regarding methods to redesign streets in order to deal with runoff issues, but this approach runs counter to this entire effort. He explained that a developer was required by the PC to install grassy swale, and then the Engineering Department overrode this decision and had them install a storm drain system instead. He stressed that his concern is that this section focuses too much on storm drains, e.g., under subsection (3)(b) Easements, he cited, "All subdivisions must be provided with necessary drainage easements, and drainage facilities..." He said this is requiring a storm pipe and oil/water separator to be provided, as opposed to other non-hard drainage alternatives. Therefore, he requests that the Engineering Department consider integrating drainage with non-facility types of alternatives, which should include the efforts that Michele Elfers is currently working on as well. Mr. Maguire explained that while they were working on this update, it was decided that they would not focus on completing a major update of the standards. He said there were many suggestions, so they intend to look at the entire drainage section and discuss all the different options regarding the standards in the near future. He agrees that this language in the drainage section is outdated and needs to be reviewed. He noted that a few years back the CBJ adopted an Alternative Road Standard, which eliminated storm drains, curbs and gutters, and now requires that grassy swales be installed instead in low-density subdivisions. Mr. Rue said he agrees with the notion to just clean up what is in code now, and then the Engineering Department can recommend further revisions, but he would like the PC to review this within the next year.

7. Walkways.

Mr. Maguire said the joint use for both pedestrian and bicycle use was not addressed in this section. He explained that they asked that "walkways" be changed to "shared-use pathways," including an increase in construction width from 5 feet to 8 feet based on the AASHTO standards. He said there was no requirement for rights-of-way or widths to be provided, so they also requested that the rights-of-way be required at a minimum width of 10 feet. Finally, they addressed the timing of construction of these shared-use pathways to try and prevent past difficulties with installing pathways after houses were already build on adjacent lots.

Chair Gladziszewski thanked Mr. Maguire for his presentation, stating that the Commission is happy to see this move forward. Ms. Bennett added that she serves on the Title 49 Committee and found it to be a nice process while working with staff on these revisions.

Commission action

MOTION: *by Ms. Waterman, that the Planning Commission requests that the revisions be incorporated by staff regarding the Temporary Cul-de-sacs and Stub Streets sections as discussed by the Commission, and then the work on the Title 49, Chapter 35-Public Improvements shall be forwarded to the Assembly.*

Mr. Rue asked if the intention is to remove the five-year bond requirement out of the Temporary Cul-de-sacs section. Ms. Waterman deferred to Mr. Maguire and Mr. Miller for clarification. Mr. Maguire said he understands that the agreement is if the temporary cul-de-sac is not initially constructed to the property line then the road extension would not need to be constructed, but if it is constructed close to the property line the developer would be required to post a bond. He explained that they will need to make revisions for these two different situations. Mr. Watson said when Mr. Maguire states "close to or to," he prefers that a specific dimension be provided instead. Mr. Miller said he likes "close to" and explained that if there is a wetland or a forest abutting the property that is 20' away it could be considered as being "close to" the property line,

and it could also be that such sections of property might never be developed so they are left undisturbed. Mr. Maguire said they could revise this section in such a way as to not utilize his exact words, which could also state that this is an aspect that staff presents to the PC for a final determination.

There being no objection, it was so ordered, and TXT2007-00004 was recommended for approval after the PC's revisions are incorporated by staff, which will then be forwarded to the Assembly.

X. BOARD OF ADJUSTMENT - None

XI. OTHER BUSINESS

VAR2009-00008

A Variance request to exceed the maximum canopy height limit of 10 feet by a maximum of 2 feet for three canopy segments on the Telephone Hill Parking Garage.

Location: 100 Main St.

Applicant: CBJ Engineering

Staff report

Mr. Sexton stated that a point of concern, after reviewing minutes and listening to the discussion of the meeting, is that the actual PC motion did not address staff's recommendation to approve part of the requested Variance to allow for the Parking Garage south vehicular entrance canopy to be constructed at 12-feet, noting that the motion only recommended adoption of findings and analysis from the applicant. He said he believes it was the intent of the PC to provide recommendations of approval for all the tower canopies on the Parking Garage.

Commission action

Chair Gladziszewski asked if staff is requesting a motion so this is made clear. Mr. Sexton said staff just wanted to make this clarification, and if the Commissioners concur with the Notice of Decision language regarding VAR2009-00008 no motion is required. Chair Gladziszewski asked if the Commissioners had any objections to the Notice of Decision regarding VAR2009-00008, to which the PC had none.

XII. DIRECTOR'S REPORT

Upcoming meetings

Mr. Pernula reported the Committee of the Whole (COW) of the Assembly will meet on June 15, 2009 at 7:00 p.m. to review the League of Women Voters survey results of the CDD permitting functions. He explained that the original memorandum previously presented to the Commission was revised to incorporate the PC's suggestions. Therefore, he will provide the survey results, the newly revised memorandum, and the May 26, 2009 COW of the PC minutes to the COW of the Assembly for review, whereby he strongly encouraged the Commissioners to attend this meeting.

He stated that the next regular PC meeting will be held on June 23, 2009, noting that there are several items on the agenda, including the Allowable Use permit and Variances for the Alaska Mental Health Trust Authority Building.

49.35.240 - Improvement standards.

(g) *Cul-de-sacs.*

- (1) *Length.* Streets designed to have one end permanently closed shall be no more than 600 feet and not less than 150 feet in length measured from the center of the intersection to the radius point of the turnaround. The director for minor subdivisions, and the commission for major subdivisions, may authorize a longer or shorter cul-de-sac if it is found that the unique characteristics of the site warrant modification to the length.

- (2) **Temporary cul-de-sacs.** Temporary cul-de-sacs will be allowed where a street can logically be extended in the near future, and if the following are met:

- (A) The temporary portions of the cul-de-sac turnaround must be shown on easements on the plat rather than as dedicated right-of-way.
- (B) All of the cul-de-sac must be constructed to permanent street construction standards except as noted in (G) below.
- (C) The CBJ will record a release of the easements for the temporary portions of the turnaround at the state recorder's office at Juneau at the time the turnaround is removed and the street improvements have been extended.
- (D) Easement lines for the temporary turnaround will be considered front property lines for determining building setbacks.
- (E) All improvements, including utilities, must be designed to accommodate the eventual extension of the street and reversion of the temporary turnaround to adjoining properties.
- (F) Temporary cul-de-sacs must be extended to as close to the adjoining property boundary as practical. If it is not practical to construct the turnaround portion of the cul-de-sac at this location, then the right-of-way must be extended beyond the temporary turnaround to the adjoining property line, and the street extension constructed to standard (See Figure 3).

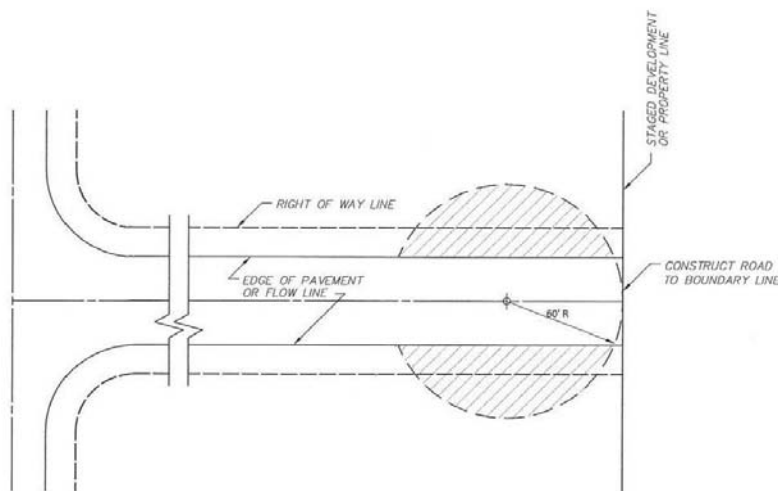


Figure 3

- (G) If the temporary turnaround is constructed on property outside of the subdivision boundary, curb, gutter, and sidewalks are not required for the temporary turnaround.
- (H) Before final acceptance of all improvements by the CBJ, the developer must provide a financial guarantee to cover the cost of removal of the temporary turnaround and reconstruction of the street. The guarantee must be for a period of five years from the date

the plat is recorded. If it is necessary to construct the street to the adjoining property within that five-year period, the developer can complete the reconstruction and extension, or the guarantee may be used by the CBJ for that purpose. If a right-of-way has not been dedicated on the adjoining property for the purpose of connection to the temporary cul-de-sac within this five-year period, the financial guarantee will be released.

- (l) When the developer of adjoining property is required to connect to the temporary cul-de-sac, and the temporary cul-de-sac has not been extended as authorized by this section, then the developer must remove the temporary portions of the turnaround and reconstruct and extend the street to CBJ standards.
- (3) *Hammerhead turnarounds.* Hammerhead turnarounds may be built in lieu of a temporary cul-de-sac, upon approval by the director of engineering and public works.

.....

(i) *Street waivers.* The director, after considering the recommendations of the director of the engineering and public works department and of the fire marshal, may waive the following and no other street improvement requirements:

- (1) *Right-of-way relocation.* If a plat is submitted for the purpose of relocating a right-of-way, the director may waive all or some of the construction requirements under the following conditions:
 - (A) The proposed relocation will improve access to abutting or neighboring property not otherwise adequately served.
 - (B) The subdivider has provided sufficient engineering information to demonstrate to the director of engineering and public works the feasibility of constructing a public street at the location of the relocated right-of-way.
 - (C) The relocated right-of-way and the resulting subdivision layout will conform to all the other standards of this chapter.
 - (D) The improvements required in the new right-of-way will not be less than those in the existing right-of-way.
 - (E) No additional lots are being platted.

(2) *Stub streets.*

- (A) The director for minor subdivisions and the commission for major subdivisions may waive the full construction of a roadway within a right-of-way that is required to provide access to a bordering property, and does not provide required access to any lot within the subdivision. The commission or director may require provision of a roadbed, utility line extensions, or other appropriate improvements (See Figure 4).

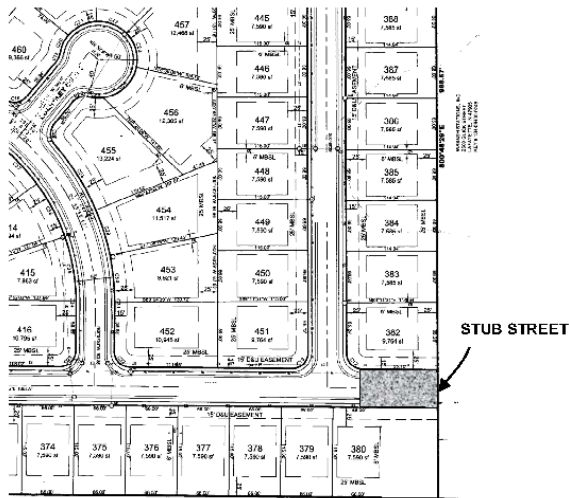


Figure 4

- (B) In addition, before final acceptance of subdivision improvements, the subdivider must provide a financial guarantee to cover the costs of constructing that part of the roadway improvements waived by the commission or director in subsection (A) of this section. The guarantee must be for a period of five years from the date the plat is recorded. If it is necessary to connect the roadway to adjoining property within that five-year period, the subdivider may complete the construction, or the guarantee may be used by the City and Borough for that purpose. If a right-of-way has not been dedicated on the adjoining property that accomplishes the connection to the stub street within this five-year period, the financial guarantee will be released.
- (C) When the subdivider of adjoining property is required to connect to the stub street, and the stub street will not be constructed through subsection (B) of this section, then the subdivider of the adjoining property will be required to construct the stub street to City and Borough standards at the time.



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

DATE: September 10, 2018
TO: Title 49 Committee
FROM: Teri Camery, Senior Planner
SUBJECT: Review of AME2017 0001: Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f) stream and lakeside buffers

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

ATTACHMENTS

Attachment A: Current Stream/Lake Ordinance, CBJ Code 49.70.310 and 49.70.950(f)
Attachment B: Draft Anadromous Waterbody Protection Ordinance with line numbers

INTRODUCTION

The purpose of this memo is to provide an update on the latest version of the stream ordinance, provide background for new committee members, and to solicit the committee's comments on the revision.

INTENT OF THE DRAFT ORDINANCE

The draft ordinance would eliminate the two stream setbacks (hereafter called "buffer") regulations in code at 49.70.310 and 49.70.950(f) and combine them into one. Currently each section has different requirements.

The proposed language would not change the 0-25 foot and 25-50 foot buffers in current code. Instead, the ordinance would allow certain uses and activities in each buffer provided that those uses/activities comply with Best Management Practices and Riparian Landscaping Standards which would be adopted into code. Uses/activities that are specifically prohibited in these buffers are stated. Uses/activities listed that cannot comply with the Best Management Practices and Landscaping Standards may be allowed with an approved Variance, unless otherwise prohibited. Uses not listed in the ordinance, and not 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 variance process would provide relief when a proposal is unable to comply with the requirements.

The proposed ordinance introduces the concept of Tier One and Tier Two uses, each with specific application requirements and fees. The intent is to provide a lower cost, streamlined, Tier One review for the simplest and most typical activities within the buffers that nonetheless require review to ensure conformation with basic standards. Tier One uses include construction of a fence, utility installation, removal of invasive species, and other common uses. Tier Two uses, also allowed through the departmental approval process, have a higher permit fee, more detailed application requirements, and a more detailed review process. Examples of Tier Two uses/activities include bank stabilization and removal of trees for public safety reasons. Denial of both Tier One and Tier Two permits would be eligible for appeal through an Appeal of the Director's Determination, while a use/activity that cannot meet the standards would be eligible for a variance.

Under the current regulations, any use or activity which falls under the Title 49 definition of development is prohibited. Historically these types of developments received a variance to the buffer requirements, usually with conditions that mitigated impacts to the waterbody. This unnecessarily prohibited many uses and activities 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 therein;
- 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 and activities listed in the definition of the development may be allowed with a Tier One or Tier Two Anadromous Waterbody Permit if they can comply with

Title 49 Committee
Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f)
September 10, 2018
Page 3 of 8

the Best Management Practices and Riparian Vegetation Standards which minimize impacts to the anadromous waterbody 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 is important to note that the proposed revision does not allow placement of structures within 50 feet of the waterbody. The current ordinance also does not allow structures within 50 feet of anadromous waterbodies. In development of the draft ordinance, 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 and intent of the buffer. However under the proposed ordinance, structures could be allowed with an approved Conditional Use Permit. Staff notes that the regulated floodplain includes the 50-foot buffer of streams in many cases, which also restricts development within this area.

Definitions The definitions section of the proposed regulations changes the definition of the Ordinary High Water Mark to match the 2013 Juneau Comprehensive Plan Ordinary High Water Mark definition. This change is in accordance with Comprehensive Plan Implementing Action 7.3 – 1A2 which calls for an amendment to the Land Use Code definition. The Comprehensive Plan definition is compatible with the Alaska Department of Fish and Game definition and standard practices, while the current Land Use Code definition is not.

The definitions section also creates a definition of “emergency,” as adapted from the draft Municipality of Anchorage stream ordinance. This definition provides clarity for emergency determinations made by the Director for activity within the buffer, another new feature in the proposed revision. The third definition defines erosion. Staff welcomes Title 49 Committee member suggestions on additional definitions that may be needed for clarity.

Stream Channel Alteration Staff would appreciate specific feedback from the Title 49 Committee on whether the Tier Two departmental review process or the Conditional Use Permit process is most appropriate for stream channel alteration. In the past, stream alterations have been addressed through the variance process. However, stream relocations may have significant impacts, including on habitat, changes to flood risk and public safety, and imposition of new development restrictions on adjacent property, because the buffers change when the stream is moved. The current draft regulations call for additional evaluation of these issues, using language borrowed from the Municipality of Anchorage. This additional review could be conducted by staff, with assistance from CBJ Engineering and Public Works, through a Tier Two departmental review permit. Alternatively, stream relocations could be reviewed by the Planning Commission through the Conditional Use Permit process addressing these same issues. These issues would be in addition to standard Conditional Use Permit criteria regarding neighborhood harmony, property value, public safety, and more. Staff recommends the

Title 49 Committee
 Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f)
 September 10, 2018
 Page 4 of 8

Conditional Use Permit process to ensure full evaluation of impacts to neighborhood property and to provide notice to affected property owners.

Use and Review Charts The proposed regulations include charts that list which uses may be allowed in the inner and outer buffer and with which type of review process, Tier One or Tier Two. Staff has proposed three different options for consideration and would appreciate feedback from the Title 49 Committee regarding which chart is the easiest to understand.

Other key points in the draft ordinance include:

- Clarification on how the buffer is measured in three ways: on tidewater lots, on typical stream banks, and with regards to limbing;
- Attention to many common development needs, including the need to trim or cut trees within the buffer to address public safety or potential property damage;
- Attention to the Juneau International Airport's need for limbing within the stream buffer for public safety reasons.

BACKGROUND

Ordinances/Information reviewed

Following is a partial list of the information reviewed for development of the ordinance:

- 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.

Title 49 Committee
 Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f)
 September 10, 2018
 Page 5 of 8

- 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
- 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.

Title 49 Committee
Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f)
September 10, 2018
Page 6 of 8

Stream Working Group

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 approval for a conceptual approach on the revision at the meetings in September and October, 2016. Additionally, staff provided an informational memo and draft of the ordinance at the Planning Commission Committee of the Whole meeting on June 13, 2017, seeking informal feedback.

Additional Review

Staff has reviewed the ordinance 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 (WRB) members and the Alaska Department of Fish and Game. A recent draft was sent to the Stream Working Group and two WRB members for review in December 2017, for concurrence with the Tier One/Tier Two review approach, uses listed, and additional refinement of the Best Management Practices and Landscape Standard sections. The Working Group and WRB have not reviewed the latest version of the ordinance provided to the Title 49 Committee, which includes significant changes regarding emergency authorization and stream alteration.

Conformance with the 2013 Juneau Comprehensive Plan

The 2013 Juneau Comprehensive Plan lists many policies, development guidelines, and implementing actions relevant to the proposed ordinance. 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 Ordinary High Water Mark (OHWM) of all creeks, stream corridors, and lake shorelines listed in the most recently CBJ-adopted Alaska Department of Fish and Game 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 to 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.

Policy 2.1 To build a sustainable community that endures over generations and is sufficiently far-seeing and flexible to maintain the vital and robust nature of its economic, social, and environmental support systems.

Implementing Action 2.1-1A9. Protect ecosystems surrounding the community and preserve their inherent biodiversity.

The Comprehensive Plan supports the proposed ordinance. The proposed amendment specifically addresses Implementing Action 7.3 – 1A2 by updating the definition of Ordinary High Water. The proposed ordinance does not directly address the intent of Implementing Action 7.3-1A1 regarding a buffer study. Instead, CDD has offered a riparian protection

Title 49 Committee
Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f)
September 10, 2018
Page 8 of 8

ordinance with Best Management Practices and Landscaping Standards that are widely known to benefit water quality and habitat, therefore protecting associated wetlands, coastal areas, and flood zones. The proposed ordinance is also complementary to flood zone regulations. The 50-foot buffer has been implemented in the CBJ Land Use Code since 1987 and has public acceptance as a reasonable balance for stream protection and development.

Next Steps

Following review by the Title 49 Committee, the draft ordinance will be provided to the CBJ Law Department for review. Subsequently, the ordinance may go back to the Wetlands Review Board, Stream Working Group, and/or resource agencies, at the Director's discretion. The ordinance will then go to the Planning Commission for a public hearing and a recommendation to the Assembly. The Assembly will hold a public hearing and ultimately adopt, amend, or not adopt the proposed regulations.

Current Stream/Lake Ordinance

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)

49.70.950(f)

(f) All structures and foundations located adjacent to streams or lakes listed in Table VI-2 of Appendix C of the Juneau Coastal Management Plan, shall have a 50-foot setback from each side of the stream or lake measured from the ordinary high water mark, where feasible and prudent; provided, docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake are not subject to this policy, and provided further, uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses, are exempt from the setback requirement. The setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream.

Definitions 49.80.120.

Development means any of 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.

Anadromous Waterbody Protection

Purpose and Intent

The Purpose and Intent of the Anadromous Waterbody Protection Ordinance 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; and
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 district [buffer]; and
8. Regulating building setbacks from anadromous waterbodies.

Application

The Anadromous Waterbody Protection Ordinance applies to all waterbodies listed in the most recent Alaska Department of Fish and Game Anadromous Waters Catalog [hereafter, Catalog].

Establishment of Buffers

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

Measurement of Buffers

- 1) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by the Community Development Department.
- 2) When a development is both above and below the Ordinary High Water Mark, a Waterbody Permit shall be required unless otherwise exempted.
- 3) Standards shall apply to any portion of a tree (i.e. limbs or trunk) within the buffer.
- 4) 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.

Anadromous Waterbody Permit Required

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

Uses not requiring a permit

1. Placement of water quality or water quantity monitoring equipment by a resource agency
2. Placement of fish weirs by a resource agency
3. Placement of surveillance equipment
4. Mining activities conducted entirely below the Ordinary High Water Mark.

Prohibited Uses in the Inner and Outer Buffer

1. Storage of fuel or other hazardous materials
2. Storage of explosives.

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 an approved Conditional Use Permit issued by the CBJ Planning Commission.

Variances and Conditional Use Permits

Uses/activities that cannot comply with the Best Management Practices and Landscaping Standards listed in section____, or do not meet the Purpose and Intent of Anadromous Waterbody ordinance, may apply for a Variance unless otherwise prohibited. Uses not listed may apply for a Conditional Use Permit unless otherwise prohibited.

Uses Requiring an Anadromous Waterbody Permit

An Anadromous Waterbody Permit issued by the Department shall be obtained before construction or development begins within the inner or outer anadromous waterbody buffer. Each person who requires a permit under this article shall file an application with the department according to the requirements established in ----, Contents of Application.

Uses are categorized in two ways: 1) whether the use is allowed in the inner or outer buffer, described below in section---; and 2) whether the use is reviewed under the Tier One or Tier Two process, as described in Section ---.

Subsection: Uses allowed within the 0-25 foot inner buffer

The following uses and types of development are allowed within the 0-25 foot inner buffer with approval of an Anadromous Waterbody Development Permit, authorized 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 subsection____:

1. Bank and buffer restoration
2. Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska
3. Stormwater management to improve water quality and/or water quantity
4. Construction of a fence
5. Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody
6. Bridges, utilities, and related infrastructure, including culverts. These uses must also conform with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable.
7. Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures, or constitute a threat to public safety due to illegal activities. Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist. Removal of vegetation to address a public safety issue shall require a letter of documentation from a CBJ Public Safety Official.
8. Bank stabilization conducted in accordance with the ADF&G Streambank Revegetation and Protection Guide, where applicable. Bank stabilization projects requiring rip-rap shall require review and approval by the CBJ Director of Engineering. Additional requirements may apply. Bank stabilization must conform with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable.

Subsection: Uses allowed within the 25-50 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 Development Permit, authorized 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 subsection____:

1. Removal of branches from trees for view shed enhancement.
2. Trail construction parallel to a waterbody

Subsection: Tier One and Tier Two Review

Tier One Anadromous Waterbody Permits are required for the following types of development:

1. Construction of a fence

- 96 2. Bridges, utilities, and related public infrastructure, including culverts
- 97 3. Removal of non-native invasive plant species, as listed in an official document
- 98 specific to the State of Alaska
- 99 4. Stormwater management to improve water quality and/or water quantity
- 100 5. Trail construction or trail maintenance for accessing a crossing or enhancement
- 101 to the waterbody
- 102 6. Trail construction parallel to a waterbody
- 103 7. Removal of branches from trees for viewshed enhancement.
- 104 8. Bank and buffer restoration that requires only removal or replacement of
- 105 vegetation

106 Tier Two Anadromous Waterbody Permits are required for the following developments:

- 107 1. Bank and buffer restoration with activities that exceed removal or replacement
- 108 of vegetation with hand tools
- 109 2. Bank stabilization
- 110 3. Removal of individual or select trees or vegetation that are causing or at risk of
- 111 causing damage to structures, or constitute a threat to public safety due to
- 112 illegal activities.

113 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, or constitute a threat to public safety due to illegal activities		X	X	X
Removal of branches for from 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

114

115 Second option to present the Buffer and Tier information:

Use	Permit Type	Buffer Zone
Bank and buffer restoration that requires only removal or replacement of vegetation with hand tools	1	Inner Outer
Bank and buffer restoration with activities that exceed removal or replacement of vegetation with hand tools	2	Inner Outer
Construction of a fence	1	Inner Outer
Bridges, utilities, and related public infrastructure, including culverts	1	Inner Outer
Removal of non-native invasive plant species	1	Inner Outer
Stormwater Management to improve water quality and/or water quantity	1	Inner Outer
Bank stabilization	2	Inner Outer
Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures, or constitute a threat to public safety due to illegal activities	2	Inner Outer
Removal of branches for from trees for viewshed enhancement	1	Outer
Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody	1	Inner Outer
Trail construction or trail maintenance parallel to a waterbody	1	Outer

116

117 Notes:

118 1. Inner Buffer Zone 0-25 feet

- 119 2. Outer Buffer Zone 25-50 feet
 120 3. The number “1” indicates the use requires a Tier 1 Review Process
 121 4. The number “2” indicates the use requires a Tier 2 Review Process

122 Third option to present the Buffer and Tier information:

Use	Permit Type	Allowed within
Bank and buffer restoration that require only removal or replacement of vegetation with hand tools	1	0-50 feet
Bank and buffer restoration with activities that exceed removal or replacement of vegetation with handtools	2	0-50 feet
Bridges, utilities, and related public infrastructure, including culverts	1	0-50 feet
Construction of a fence	1	0-50 feet
Removal of non-native invasive plant species	1	0-50 feet
Stormwater Management to improve water quality and/or water quantity	1	0-50 feet
Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody	1	0-50 feet
Trail construction or trail maintenance parallel to a waterbody	1	25-50 feet
Bank stabilization	2	0-50 feet
Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures, or constitute a threat to public safety due to illegal activities	2	0-50 feet
Removal of branches from trees for viewshed enhancement	1	25-50
Storage of fuel or other hazardous materials	NA	PROHIBITED
Storage of explosives	NA	PROHIBITED

123 Notes:

- 124 1. The number “1” indicates the use requires a Tier 1 Review Process
 125 2. The number “2” indicates the use requires a Tier 2 Review Process

126 Tier One and Tier Two Application Requirements and fee

127 Tier One applications shall include:

- 128 (1) A graphic and legal description of the property and property boundaries;
 129 (2) A narrative statement describing the proposed action, potential impacts to habitat
 130 values as defined under Purpose and Intent, and measures to mitigate impacts to
 131 habitat values, if applicable.
 132 (3) Additional information as the department may request.

133 Tier Two applications

A pre-application conference shall be required prior to submitting an application for a Tier Two Anadromous Waterbody Permit. Tier Two application shall include:

- (1) A graphic and legal description of the property and property boundaries;
- (2) A map showing the existing topography, vegetation, drainage features, structures, significant natural and artificial conditions of the land, existing vegetation; and
- (3) A narrative statement describing the existing conditions, proposed activities, and site restoration plan, including:
 - (A) Proposed activities and methods, in conformance with the Best Management Practices and Riparian Vegetation Standards found in section –
 - (B) An explanation of how the development meets the Purpose and Intent of the ordinance, as established in section ---.
 - (C) Existing Site conditions
 - (D) An explanation of why the development must be located within the inner or outer buffer
 - (E) Anticipated temporary and/or permanent changes to habitat resulting from proposed activities
 - (F) The existing species of vegetation and proposed species to be used for revegetation
 - (G) Timeline 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 found in section ____.
 - (H) Maintenance schedule, if applicable.
 - (I) Removal of vegetation to address a public safety issue shall require a letter of documentation from a CBJ Public Safety Official. Removal of trees to address damage to structures shall require a letter of documentation from a licensed arborist.
 - (J) Additional information as the department may request.

Fee schedule: Tier One, \$75.00. Tier Two, \$200.

Application 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.

Vegetation shall be maintained according to submitted plans.

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.

Inspection

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 the Purpose and Intent of the ordinance.

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

- 1) 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.
- 2) 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.
- (3) 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

205 <http://dec.alaska.gov/water/wnpspc/stormwater/docs/AKSWGGuide.pdf> (DEC,
206 2011).

207 (4) All discharge material shall be free from toxic pollutants in toxic amounts as
208 defined by state law.

209 (5) Uses and activities shall implement measures to minimize pollutant discharges
210 into the waterbody and buffer including but not limited to providing for water
211 management, establishing staging, fueling, and maintenance areas outside of the
212 buffer.

213 (6) Structures allowed within the buffer must be constructed so as not to impede
214 floodwaters or impede fish passage.

215 (7) Developments must comply with the CBJ Manual of Stormwater Best
216 Management Practices.

217 Riparian Vegetation Standards that apply to all uses or types of development
218 within the inner or outer buffer

219 (1) All uses and types of development within the inner and outer buffer shall include
220 a vegetation plan to maintain or restore the buffer to the following standards:

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

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

234 Mitigation Measures

235 Mitigation measures may be required by the Commission or Department to address impacts
236 and ensure conformance with the Purpose and Intent of this ordinance. Mitigation measures
237 include, but are not limited to:

238 Standard erosion and stormwater runoff control measures;

239 Restoration and maintenance of native vegetation and water quality protection
240 functions;

241 Removal of non-conforming structures from the buffer.

242 Stream Channel Alteration

243 A stream shall not be moved, ditched, or piped, except as follows:

244 The applicable state and federal agencies have authorized the alteration and, the Community
245 Development Department has authorized the alteration through the Tier Two review process
246 [or a Conditional Use Permit?] after review by the CBJ Engineering Department and with
247 consideration of potential impacts including the following:

248 Practical alternatives to moving, piping, or otherwise altering the channel;

249 The potential to increase flooding or erosion problems upstream or downstream;

250 Any potential obstruction of water flow.

251 The flow lines of the altered section of the channel as related to those in the existing
252 channel at the endpoints of the alteration.

253 The adequacy of the gradient/meander balance, grade control, and bed stability to
254 maintain the natural stream function of water conveyance and sediment transport.

255 Conformance with the CBJ Flood Ordinance, section ---

256 Conformance with the Purpose and Intent of this ordinance.

257 Emergency Permits

258 In an emergency, the Director of Community Development may issue a temporary permit, in
259 writing, to protect life and property from imminent danger or to restore, repair, or maintain
260 public works, utilities, or services destroyed, damaged, or interrupted by the emergency. The
261 written permit shall include the following:

262 A description of the activity;

263 A description of the emergency;

264 Why the activity is necessary to protect life and property from imminent danger or to
265 restore, repair, or maintain public works, utilities, or services destroyed, damaged, or
266 interrupted by the emergency.

An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation. 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. 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.

Conditions may be attached to emergency permits to comply with the Purpose and Intent of this ordinance. A final report that includes the plans and specifications for the work that was completed must be submitted to the Community Development Department within 60 days of the date of the emergency. The Department may require mitigation to repair damage to the anadromous waters or adjacent buffers and ensure conformance with the Purpose and Intent of this ordinance.

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.

“Ordinary High Water” means (1) in the non-tidal portion of a river, lake or stream; the portion of the bed(s) and banks up to which the presence and action of the non-tidal water is so common and usual, and so long continued in all ordinary years, as to leave a natural line or “mark” impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics; (2) in a braided river, lake or stream; the area delimited by the natural line or “mark,” as defined in part 1 above, impressed on the bank or shore of the outside margin of the most distant channels; or (3) In a tidally influenced portion of a river, lake or stream, setbacks shall be taken from mean high water elevation or from the ordinary high water mark, whichever offers greater protection to the water body.



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

September 14, 2018

MEMO

To: Nathaniel Dye, Chair Title 49 Committee

From: Jill Maclean, AICP, Director of Community Development

RE: Proposed Revisions to Common Walls – Residential and Mixed-Use

Update

At the end of last Title 49 committee meeting held on August 27, 2018, the committee briefly discussed and agreed to eliminate the use of common walls (residential) from MU2, LC and GC. This topic came up at the end of the meeting, and I am recommending that the committee take up this discussion in more detail, as the impacts may be greater than anticipated, including creating non-conforming situations, which should be avoided if possible.

One potential solution is to concurrently review and recommend for approval two separate ordinances for residential and mixed-use/commercial zoning districts. Accordingly, I have attached updated draft language for “common wall residential development” and “common wall mixed-use development” (attached). For ease of reading, the track changes and the redundant sections (i.e. redundancy of having language in the table of dimensional standards and in 49.65) have been deleted from these drafts.

I have also amended the table of permissible uses and table of dimensional standards to reflect this option (attached).

The purposes of the original revision still pertain to this discussion and include:

- Make consistent the sections of Code relevant to common walls;
- Clarify/revise the common wall section (49.65.700);
- Clarify/make consistent the Table of Permissible Uses (49.25.300 with 49.65.750);
- Clarify/revise the Table of Dimensional Standards (49.25.400);
- Revise the Definition of dwelling, common wall (49.80);
- Make consistent the Special Density of Code with any revisions proposed (49.25.510).

As a reminder, the T49 committee agreed that common wall units should not be allowed in the MU zoning district due to the higher density that is desired in the MU district.

Recommendations:

Staff recommends that the Code is amended to clarify, make consistent, and update the common wall sections of Title 49.

Attachments:

Common Wall Residential Development draft ordinance

Common Wall Mixed-Use Development draft ordinance

Draft Table of Permissible Uses Revisions

Table of Dimensional Standards and Definitions V2

V1

ARTICLE VII. - COMMON WALL RESIDENTIAL DEVELOPMENT

49.65.700 - Purpose.

The purpose of this article is to allow, in certain zoning districts, the development of common wall structures where each dwelling and underlying property is held under separate ownership.

The use of each common wall lot shall be limited to a single-family dwelling and accessory uses.

Comment [JM1]: If this wording is changed, make sure it's consistent w/49.65.725 below.

49.65.705 - Procedure.

The development of a common wall subdivision involves a two-step approval process: the approval of a development permit and the approval of a common wall subdivision permit.

49.65.710 - Development permits.

(a) The development permits required for construction of common wall development are either department review, or planning commission review under the conditional use permit process. The particular permit is determined by which zoning district within which the project is located, and the proposed number of units, in accordance with the CBJ table of permissible uses.

(1) *Department review.*

(A) *Application submittals.* The following submittals are required with an application for department approval:

- (i) Building plans that meet the requirements of this chapter and Title 19.
- (ii) A sketch plat in accordance with CBJ 49.15.410. The sketch plat must include information necessary to demonstrate that the proposed common wall development will be able to comply with all the dimensional standards of this article after the parcel and structure have been divided.
- (iii) A draft set of common wall agreements and homeowner agreements which set forth the rights and obligations of the owners for all common elements of the development.

(B) *Application review.* The application shall be reviewed by the director in accordance with CBJ 49.15.310.

(2) *Planning commission review.*

(A) *Application submittals.* The following submittals shall be required with the conditional use permit application:

- (i) Building plans that include a detailed site plan and elevations of the proposed structures. Plans suitable for a building permit application are not required at this time.
- (ii) A draft set of common wall agreements and homeowner's agreements which set forth the rights and obligations of the owners for all common elements of the development.
- (iii) A sketch plat in accordance with CBJ 49.15.410. The sketch plat must include that information necessary to demonstrate that the proposed common wall development will comply with all the dimensional standards of this article after the parcel and structure have been divided.

(B) *Application review.* The commission will review and approve the application in accordance with CBJ 49.15.330.

Comment [JM2]: Recommend changing the procedure now to simplify the subdivision process for major and minor subdivisions

V1

49.65.720 - Common wall subdivision.

- (a) The applicant shall submit an application to subdivide the common wall development into individual dwellings and lots in accordance with 49.15.401, 49.15.402, CBJ 49.65 article VII, and the following additional requirements:
 - (1) *Preliminary plat.* The following additional items will be submitted with the preliminary plat:
 - (A) An as-built survey that includes all structures and the location of the common walls in relation to the proposed common property lines.
 - (B) Framing inspections that document substantial construction of all units in accordance with the preliminary plans approved by the director or the commission through the department approval, or the conditional use process, respectively.
 - (C) Final common wall agreements and/or homeowners' agreements suitable for recording.
 - (b) *Final plat.* After review and approval of the final plat, in accordance with CBJ 49.15.412, the plat and the common wall agreement documents may be recorded by the department at the state recorder's office at Juneau at the applicant's expense, after issuance of final occupancy permits.

49.65.725 - Uses.

The use of each common wall lot shall be limited to a single-family dwelling and accessory uses.

49.65.730 - Separate utilities.

All common wall dwellings must be served by individual public water and sewer services unless otherwise authorized by CBJ Title 75.

49.65.735 - Parking and access.

- (a) Common wall development shall meet the parking requirements for single-family dwellings in accordance with CBJ 49.40.
- (b) For common wall structures of three or more dwellings, access to public rights-of-way shall be restricted to common driveways unless the director determines that it would be impractical to do so.
- (c) The commission can consider alternative parking and access proposals, such as common parking areas, under the conditional use permitting process.
- (d) All common parking and access arrangements shall include appropriate easements and homeowners' agreements.

49.65.745 - Zoning districts.

Common wall development is allowed in the D-3 within the Urban Service Area, D-5, D-10 SF, D-10, D-15 and D-18, residential districts, except that no common wall development of three or more adjoining units is allowed in the D-3, D-5 or the D-10 SF residential district.

49.65.755 - Architectural features.

Architectural features other than roof eaves, authorized to project into required yard setbacks under chapter 49.25, article IV, may not project into required side yard setbacks required under this article. No architectural features may project into the neighboring lots.

Comment [JM3]: Refer to Law for appropriate wording.

Comment [JMM4]: **Recommend revising the definition for Lot Width in 49.80 Definitions. If not revised, then add a specific Lot Width definition for common walls.

Comment [JMM5]: **Recommend adding a note in 49.25.430 Yard Setbacks to cross-reference this section to ensure it is upheld.

Comment [JMM6R5]:

Comment [JMM7]: **Recommend adding a note to the Table of Dimensional Standards requiring "common wall length".

Comment [JM8]: Reference 49.25.510 (Bonnie Brae special density clause).

Comment [JM9]: Recommend allowing common walls in the D3 zoning district if within the USA due to the requirement of water and sewer

Comment [JM10]: Is this intended to mean the shared lot line between the common walls? Otherwise, encroaching onto another property is not permitted per the Code and this language is redundant and unnecessary.

V1 09-13-18

COMMON WALL MIXED-USE DEVELOPMENT

49.65.XXX - Purpose.

The purpose of this article is to allow, in certain zoning districts, the development of mixed-use common wall units where each mixed-use structure and underlying property is held under separate ownership.

Mixed-use common wall units located in LC, GC, or MU2 shall contain non-residential uses within the common wall unit and accessory uses, but may not have additional principal uses located on the lot.

Comment [JMM1]: Recommend moving common walls to 49.15

Comment [JMM2]: New numbering throughout

49.65.705 - Procedure.

The development of a common wall subdivision involves a two-step approval process: the approval of a development permit and the approval of a common wall subdivision permit.

49.65.710 - Development permits.

(a) The development permits required for construction of common wall development are either department review, or planning commission review under the conditional use permit process. The particular permit is determined by which zoning district within which the project is located, and the proposed number of units, in accordance with the CBJ table of permissible uses.

(1) Department review.

(A) *Application submittals.* The following submittals are required with an application for department approval:

- (i) Building plans that meet the requirements of this chapter and Title 19.
- (ii) A sketch plat in accordance with CBJ 49.15.410. The sketch plat must include information necessary to demonstrate that the proposed common wall development will be able to comply with all the dimensional standards of this article after the parcel and structure have been divided.
- (iii) A draft set of common wall agreements and homeowner agreements which set forth the rights and obligations of the owners for all common elements of the development.

(B) *Application review.* The application shall be reviewed by the director in accordance with CBJ 49.15.310.

(2) Planning commission review.

(A) *Application submittals.* The following submittals shall be required with the conditional use permit application:

- (i) Building plans that include a detailed site plan and elevations of the proposed structures. Plans suitable for a building permit application are not required at this time.
- (ii) A draft set of common wall agreements and homeowner's agreements which set forth the rights and obligations of the owners for all common elements of the development.
- (iii) A sketch plat in accordance with CBJ 49.15.410. The sketch plat must include that information necessary to demonstrate that the proposed common wall development will comply with all the dimensional standards of this article after the parcel and structure have been divided.

(B) *Application review.* The commission will review and approve the application in accordance with CBJ 49.15.330.

Comment [JM3]: Recommend changing the procedure now to simplify the subdivision process for major and minor subdivisions

V1 09-13-18

49.65.720 - Common wall subdivision.

- (a) The applicant shall submit an application to subdivide the common wall development into individual dwellings and lots in accordance with 49.15.401, 49.15.402, CBJ 49.65 article VII, and the following additional requirements:
 - (1) *Preliminary plat.* The following additional items will be submitted with the preliminary plat:
 - (A) An as-built survey that includes all structures and the location of the common walls in relation to the proposed common property lines.
 - (B) Framing inspections that document substantial construction of all units in accordance with the preliminary plans approved by the director or the commission through the department approval, or the conditional use process, respectively.
 - (C) Final common wall agreements and/or homeowners' agreements suitable for recording.
 - (b) *Final plat.* After review and approval of the final plat, in accordance with CBJ 49.15.412, the plat and the common wall agreement documents may be recorded by the department at the state recorder's office at Juneau at the applicant's expense, after issuance of final occupancy permits.

49.65.725 - Uses.

The use of each common wall lot shall be limited to shall contain non-residential uses within the common wall unit and accessory uses, but may not have additional principal uses located on the lot.

49.65.730 - Separate utilities.

All common wall dwellings must be served by individual public water and sewer services unless otherwise authorized by CBJ Title 75.

49.65.735 - Parking and access.

- (a) Common wall development shall meet the parking requirements for mixed-use units in accordance with CBJ 49.40.
- (b) For common wall structures of three or more units, access to public rights-of-way shall be restricted to common driveways unless the director determines that it would be impractical to do so.
- (c) The commission can consider alternative parking and access proposals, such as common parking areas, under the conditional use permitting process.
- (d) All common parking and access arrangements shall include appropriate easements and homeowners' agreements.

Comment [JMM4]: Require a new parking standard?

Comment [JM5]: Refer to Law for appropriate wording.

49.65.745 - Zoning districts.

Mixed-use common wall development is allowed in the MU2 mixed use district, and the LC and GC zoning districts.

Comment [JMM6]: **Recommend revising the definition for Lot Width in 49.80 Definitions. If not revised, then add a specific Lot Width definition for common walls.

**Recommend adding a note to the Table of Dimensional Standards requiring "common wall length".

49.65.755 - Architectural features.

Comment [JM7]: **Recommend adding a note in 49.25.430 Yard Setbacks to cross-reference this section to ensure it is upheld.

V1 09-13-18

Architectural features other than roof eaves, authorized to project into required yard setbacks under chapter 49.25, article IV, may not project into required side yard setbacks required under this article. No architectural features may project into the neighboring lots.

Comment [JM8]: Is this intended to mean the shared lot line between the common walls? Otherwise, encroaching onto another property is not permitted per the Code and this language is redundant and unnecessary.

	Use Description		RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	LC	GC	MU	MU2
1.000														
1.100	SINGLE-FAMILY DWELLINGS													
	1.110	Single-family detached, one dwelling per lot	1	1	1	1	1	1	1	1	1	1	1	1
	1.120	Single-family detached, two dwellings per lot	1	1	1									
	1.130	Single-family detached, accessory apartments ^x	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3
	1.140	Single-family detached, two dwelling per lot, accessory apartment ^x	1, 3	1, 3	1, 3									
	1.150	Common wall residential development, two dwelling units (pairs) ^{AD}			1, 3 ^{AE}	1, 3	1, 3	1, 3	1, 3	1, 3				
	1.160	Common wall residential development, three or more dwelling units (triplex, four-plex,...) ^{AD}				1, 3	1, 3	1, 3	1, 3	1, 3				
	1.170	Common wall residential development, two dwelling units (pairs), accessory apartments ^{AD}			1, 3 ^{AE, X}	1, 3 ^x	1, 3 ^x	1, 3 ^x	1, 3 ^x	1, 3 ^x				
	1.180	Common wall d residential development, three or more dwelling units, accessory apartments ^{AD}				1, 3 ^x	1, 3 ^x	1, 3 ^x	1, 3 ^x	1, 3 ^x				
1.900		Common wall mixed-use development												
	1.910	Common wall mixed-use development, two dwelling units (pairs)									1, 3	1, 3		1, 3

Comment [JM1]: New Note AD referencing 49.65.700

Comment [JM2]: New Note AE referencing special density section 49.25.510(h) (replaces line item 1.930 below)

Comment [JMM3]: New section 1.900 common wall mixed-use to differentiate from common wall residential

		Use Description	RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	LC	GC	MU	MU2
	1.911	Common wall mixed-use development, three or more dwelling units (triplex, four-plex,...)									1, 3	1, 3		1, 3
	1.920	Common wall mixed-use development, two dwelling units (pairs), accessory apartments									1, 3 ^x	1, 3 ^x		1, 3 ^x
	1.921	Common wall mixed-use development, three or more dwelling units, accessory apartments									1, 3 ^x	1, 3 ^x		1, 3 ^x

Comment [JMM4]: Insert superscript and associated note referring user to 49.65.700 or new section if moved

Key:

1. Department approval requires the department of community development approval only.
- 1, 3. Department approval required if minor development, conditional use permit required if major development.
2. Allowable use permit requires planning commission approval.
3. Conditional use permit requires planning commission approval.
- 2, 3. Allowable use permit required if minor development, conditional use permit required if major development.

Notes:

A. A single-family residence is allowed as an owner or caretaker residence that is accessory to an existing permitted use in the industrial zone.

(Notes removed for this purpose only)

X. Special requirements apply to accessory apartment applications. See CBJ § 49.25.510(k).

(Notes removed for this purpose only)

AD. Special requirements apply to commonwall developments. See CBJ 49.65.700.

AE. Special requirements may apply to building a two unit common wall structure. See CBJ 49.25.510(h).

49.25.400 - Minimum dimensional standards.

TABLE 49.25.400
TABLE OF DIMENSIONAL STANDARDS

Zoning Regulations		RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	MU	MU2	LC	GC	WC	WI	I
Minimum Lot Size ¹																
	Permissible Uses	36,000	36,000	12,000	7,000	3,600 ¹⁰	6,000	5,000	5,000	4,000	4,000	2,000	2,000	2,000	2,000	2,000
	Bungalow ⁹		18,000	6,000	3,500	2,500	3,000	3,000	2,500							
	Duplex	54,000	54,000	18,000	10,500											
	Common Wall Residential / Mixed-Use Dwelling			5,000 ^{7a}	6,000	3,600 ¹⁰	4,500 ^{7b}	3,000 ^{7b}	2,500 ^{7b}		2,500 ^{7b}	2,000	2,000			
	Single-family detached, two dwellings per lot	72,000	72,000	24,000												
Minimum lot width		150'	150'	100'	70'	40'	50'	50'	50'	50'	50'	20'	20'	20'	20'	20'
	Bungalow ⁹		75'	50'	35'	25'	25'	25'	25'							
	Common wall dwelling				60'	40'	40'	30'	20'		20'	20'	20'			
Minimum lot depth		150'	150'	100'	85'	85' ¹⁰	85'	80'	80'	80'	80'	80'	60'	60'	60'	60'
Maximum lot coverage																

Comment [JMM1]: Recommend adding “residential / mixed-use”

Zoning Regulations		RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	MU	MU2	LC	GC	WC	WI	I
	Permissible uses	10%	10%	35%	50%	50%	50%	50%	50%	None	80%	None	None	None	None	None
	Conditional uses	20%	20%	35%	50%	50%	50%	50%	50%	None	80%	None	None	None	None	None
	Maximum height permissible uses	45'	35'	35'	35'	35'	35'	35'	35'	None	45' ⁴	45'	55'	35' ⁴	45' ⁴	None
	Accessory	45'	25'	25'	25'	25'	25'	25'	25'	None	35'	35'	45'	35' ⁴	45' ⁴	None
	Bungalow ⁹		25'	25'	25'	25'	25'	25'	25'							
	Minimum front yard setback ³	25'	25'	25'	20'	20' ¹⁰	20'	20'	20'	0'	5' ^{5,8}	25'	10'	10'	10'	10'
	Minimum street side yard setback	17'	17'	17'	13'	10'	13'	13'	13'	0'	5'	17'	10'	10'	10'	10'
	Minimum rear yard setback ³	25' ²	25'	25'	20'	10'	20'	15'	10'	0'	5'	10'	10'	10'	10'	10'
	Minimum side yard setback ³	15' ²	15'	10'	5'	3'	5'	5'	5'	0'	5'	10'	10'	10'	10'	0'
	Common wall dwelling, residential / mixed-use				10' ^{6a}	3' ^{6b}	5' ^{7 6c}	5' ^{7 6c}	5' ^{7 6c}		5' ^{7 6c}	10' ^{6d}	10' ^{6a}			

Comment [JM2]: Recommend adding a superscript Note referencing 49.65.755 - Architectural features

Recommend adding “residential / mixed-use”

Notes:

- 1. Minimum lot size is existing lot or area shown on chart in square feet.
- 2. Sixty feet between nonresidential and designated or actual residential site; 80 feet between industrial, extractive and other uses.
- 3. Where one district abuts another the greater of the two setbacks is required for both uses on the common property line.
- 4. (Height Bonus) Reserved.
- 5. (Pedestrian Amenities Bonus) Reserved.
- 6. Zero-foot setback for the portion of the dwelling **or accessory uses** with a common wall, five-foot setback or five-foot wide easement for the portion of the dwelling at the common lot line without a common wall, **and a** ~~and ten-foot setback for the remaining side yards of the lot.~~

(a) ten-foot setback for the remaining side yards of the lot.

(b) three-foot setback for the remaining side yards of the lot.

(c) five-foot setback for the remaining side yards of the lot.

- ~~7. **(a) Reference 49.65.750(1).** Zero-foot setback for the portion of the dwelling with a common wall, five-foot setback or five-foot wide easement for the portion of the dwelling at the common lot line without a common wall, and five-foot setback for the remaining side yards of the lot.~~
- 8. On corner lots, buildings shall be set back 15 feet from a street intersection. The area in which buildings shall be prohibited shall be determined by extending the edge of the traveled ways to a point of intersection, then measuring back 15 feet, then connecting the points.
- 9. Special restrictions apply to construction on bungalow lots. See special use provisions 49.65.600.
- 10. For lots adjacent to an alley, the following reductions to the dimensional standards apply:
 - (a) Minimal lot area includes 50% of adjacent alley (see graphic).

49.80 Definition: Dwelling, *residential common wall*, means a ~~single-family dwelling~~ **common wall unit** attached by a common wall to **at least** one other ~~single-family dwelling~~ **common wall unit** on a separate lot.

Dwelling, mixed-use common wall, means a...

Comment [JM3]: Recommend updating language, as a common wall may be attached to more than one other common wall...i.e. multiple contiguous units (a row of townhouses). The language “common wall unit” matches the proposed language in the purpose statement in Common wall revisions to Article VII.

Should “dwelling, common wall” be updated to “dwelling, residential common wall” and add a new definition for “dwelling, mixed-use common wall”