

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

August 3, 2016
Marine View Building, Room 426
3:00 PM

- I. ROLL CALL
- II. APPROVAL OF AGENDA
- III. AGENDA TOPICS
 - A. Title 49 Variance Criteria Memo
 - B. Title 49 Committee Variance Criteria Memo
 - C. Draft Title 49 Eagle Ordinance Memo
- IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS
- V. ADJOURNMENT



Community Development

City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

TO: Title 49 Committee

FROM: Chrissy McNally, Planner II
Community Development Department

DATE: June 8, 2016

RE: Variance criteria

Attachments

Attachment A: CBJ 49.20.250 Grounds for variances (adopted 1995)
Attachment B: 1987 Grounds for variances
Attachment C: pre-1987 Grounds for variances

Background

Before a major code revision in 1987 “any standard requirement or regulation” of Title 49 could be varied. In 1987 Ordinance 87-49 specified the requirements and regulations that are variable. These standards included dimensional and design standards. Use of land or structures and construction standards were specifically identified as standards that could not be varied.

The current variance criteria found in Title 49 were established in 1995 with Ordinance 95-33. Ordinance 95-33 made several substantive changes to the variance section of Title 49. First, criterion 7 from Ordinance 87-49 was incorporated into the Grounds for Variances found in CBJ 49.20.250(b) which included density and lot coverage (see Attachment B). Next, it allowed for Director approval of minor setback infractions known as *de minimus* variances (see Attachment A). Additionally, the ordinance amended CBJ 49.25.430 *Yard setbacks* to allow for certain accessory structures to encroach into required yard setbacks in order to reduce the number of variances applied for and finally it added four sub criteria to criteria 5. These amendments were intended to allow greater flexibility.

Prior to the 1987 rewrite of Title 49, criterion 5 was limited to preventing the owner from using the property for a permissible principal use (see Attachment C). Ordinance 87-49 added difficulty and hardship concepts imposed on the property owner by the standards.

In order to allow for more proposals to meet criterion 5, four sub criteria were developed to identify additional reasons why compliance with the standards may be difficult for a property owner. The sub-criterion also allows for comparison of the proposal against development of neighboring properties.

In order to clarify the variance criteria staff is recommending amendments to CBJ 49.20.200(b). The existing criteria and proposed criteria are outlined below.

Existing Variance Criteria

49.20.250(b) *Variances other than de minimis*. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:

- (1) *The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*
- (2) *Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;*
- (3) *The authorization of the variance will not injure nearby property;*
- (4) *The variance does not authorize uses not allowed in the district involved;*
- (5) *Compliance with the existing standards would:*
 - (A) *Unreasonably prevent the owner from using the property for a permissible principal use;*
 - (B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
 - (C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
 - (D) *Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*
- (6) *A grant of the variance would result in more benefits than detriments to the neighborhood.*

Proposed Variance Criteria

CBJ 49.20.200 Variances other than administrative. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely for financial hardship or inconvenience. The granting of a variance shall not increase an existing nonconformity with the building code, Title 19 or the land use code, Title 49.

A variance may vary dimensional standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:

- (1) Special conditions and circumstances exist that are peculiar to the land or structures involved and are not applicable to other lands and structures in the same district.*
- (2) That compliance with the existing standards would unreasonably prevent the owner from using the property for a permissible principal use.*
- (3) The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property.*
- (4) Authorization of the Variance will not allow uses prohibited in the district*
- (5) Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed.*
- (6) The authorization of the variance will not injure nearby property.*

Presented by: The Manager
Introduced: 09/25/95
Drafted by: J.R.C.

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 95-33

An Ordinance Amending the Land Use Code to Establish Standards, Procedures, and Fees for the Granting of De Minimis Variances, Broadening the Grounds for Other Variances, and Exempting Certain Structures from Yard Setback Requirements.

WHEREAS, the Board of Adjustment is called upon to administer a continuing and significant caseload of requests for variances to address trivial dimensional infractions, and

WHEREAS, such minor infractions are an unavoidable result of hurried development, do-it-yourself projects, mistakes in the field, and other forms of ordinary human error, and

WHEREAS, the procedures for a variance for such infractions are the same deliberate and painstaking procedures required for more significant infractions, and

WHEREAS, the history of CBJ administration of the present and prior land use code with regard to setback variances and other categories of deviation indicates that the Board of Adjustment takes a broad view of the criteria against which variance applications are judged and that the Board applies those criteria in a flexible manner, and

WHEREAS, Criterion (5) of CBJ 49.20.250(b), as hitherto worded, is the strictest and most often cited criterion in staff recommendations against variance applications because use of a property for a primary permitted use which meets the standards, however small or inconsistent with neighborhood norms, automatically disqualifies the owner from receiving a variance, regardless of other reasons or extenuating circumstances, and

WHEREAS, a number of unheated accessory features and structures have been subjected to setback requirements because they meet the definition of the term "building" but which have also been routinely granted variances by the Board and which, due to local conditions, often have to be placed in otherwise mandatory setbacks, and

WHEREAS, the unheated accessories usually take up insignificant amounts of space within the setbacks and thus do not have a detrimental impact on the public need for light, air, open space and vegetative cover, and

WHEREAS, planning and zoning resources would be better conserved by establishing a class of variance to be known as "de minimis" and authorizing administration thereof by the Community Development Department staff, with appropriate safeguards to prevent abuse

of the convenience thereby provided to builders and owners;

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

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the city and borough code.

Section 2. Amendment of Section. CBJ 49.20.210 is amended to read:

49.20.210 SUBMITTAL. Except as provided herein for de minimis variances, an application for a variance shall be submitted to the board of adjustment through the department.

Section 3. Amendment of Section. CBJ 49.20.220 is amended to read:

49.20.220 SCHEDULING AND FEE. (a) If the director determines that the variance applied for is de minimis, the application shall be administered by the department according to Section 49.20.230(a) and Section 49.20.250(a).

(b) If the director determines that the variance applied for is other than de minimis and the application is complete, it shall be scheduled for public hearing. If the application is filed in conjunction with a major development permit, a separate public notice and fee shall not be required. For separate variance applications a fee and public notice according to Section 49.20.230 shall be required.

Section 4. Amendment of Section. CBJ 49.20.230 is amended to read:

49.20.230 PUBLIC NOTICE. (a) Public notice according to CBJ 49.20.250(a)(1)(C) shall be required for consideration or issuance of a de minimis variance.

(b) For variances other than de minimis, public notice according to Section 49.15.230 shall be given prior to a hearing on the application by the board of adjustment, except that the placement of a sign on the subject lot is not required.

Section 5. Amendment of Section. CBJ 49.20.240 is amended to read:

49.20.240 BOARD OF ADJUSTMENT ACTION. The board of adjustment shall hear all variance requests other than those administered by the director as de minimis and shall either approve, conditionally approve, modify or deny the request based on the criteria in Section 49.20.250(b) of this chapter.

Section 6. Amendment of Section. CBJ 49.20.250 is amended to read:

49.20.250 GROUNDS FOR VARIANCES. (a) De Minimis Variances.

(1) Where a minor setback infraction could be corrected only at unreasonable expense or inconvenience the director may, after taking into account the views of the owners of adjoining property, and upon a finding that the infraction was not the result of a deliberate effort to evade the dimensional requirement, grant a de minimis variance in harmony with

the general purpose and intent of this title. A de minimis variance may be granted after it is shown that all the following conditions have been met.

(A) The variance is for one or more projections into yard setbacks, none of which extend beyond twenty-five percent of required setback distance.

(B) The de minimis variance would not aggravate an infraction previously granted a variance.

(C) The applicant submits on forms provided by the Department written statements from the owners of adjoining property, each acknowledging that the owner has been notified of the application. In lieu of statements provided by the applicant, the Department will provide at least five days notice by mail to each such owner.

(D) The applicant submits a certified as-built survey to scale showing all lot line locations, building dimensions, orientations, setbacks, and other distances and features relevant to the requested relief.

(b) Variances Other Than De Minimis. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A variance may be granted after the prescribed hearing and after the board of adjustment has determined:

(1) That the relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

(2) That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;

(3) That the authorization of the variance will not injure nearby property

(4) That the variance does not authorize uses not allowed in the district involved;

(5) That compliance with the existing standards would:

(A) unreasonably prevent the owner from using the property for a permissible principal use,

(B) unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property,

(C) be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive, or

(D) because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, CBJ Title 49, or the building code, CBJ Title 19, or both; and

(6) That a grant of the variance would result in more benefits than detriments to the neighborhood;

Section 7. Amendment of Section. CBJ 49.25.430(4)(B), relating to projections into required yards, is repealed and reenacted to read:

(B) The following structures, if unheated, shall be allowed in required yard setbacks:

(i) stairways, ramps, landings, catwalks, balconies and associated roofs, windbreaks, and covers providing access to and around the primary permitted use on the property may extend no more than 48 inches into the required setback;

(ii) arctic entries not exceeding 65 square feet gross floor area, and no closer than 5 feet to any property line;

(iii) enclosures for outdoor fuel tanks, storage sheds, refuse containers, woodsheds, if less than 4 feet high in front yards and 8 feet high in other yards, and encroaching no more than 40 square feet into a required yard setback;

(iv) devices with removable covers for winter storage of boats, provided that the cover is removed between April 15 and September 30;

(v) other enclosures, devices, structures or accessories deemed by the director to be similar to those listed in this subsection.

Section 8. Amendment of Subsection. CBJ 49.25.510(e)(2)(A), relating to dimensional standards for accessory apartments, is amended to read:

(A) The accessory apartment shall be a one bedroom or efficiency unit not exceeding 600 square feet in gross floor area, or such other area as may be approved through the procedure for variances other than de minimis.

Section 9. Amendment of Section. CBJ 49.45.310 is amended to read:

49.45.310 EXCEPTIONS FROM SIGN STANDARDS. The commission shall hear all applications for exceptions from the sign standards of this chapter using the procedure and criteria established for variances other than de minimis in Article II of CBJ Chapter 49.20, Variances.

Section 10. Amendment of Subsection. CBJ 49.85.100(9) is amended to read:

(9) Board of Adjustment.

(A) De minimis variance, one hundred dollars;

(B) Variance other than a de minimis variance, three hundred dollars;

(C) Appeal of administrative or design review board decision, one hundred dollars.

Section 11. Effective Date. This ordinance shall be effective thirty days after its adoption.

Adopted this 2nd day of October, 1995.



Mayor

Attest:



Clerk

appellant. If the appeal is on the record, the decision of the commission shall be upheld if there is substantial evidence in support thereof.

Chapter 49.20

APPEALS, VARIANCES, AND INTERPRETATIONS

Part II: Variances

49.20.200 VARIANCE. A variance is required to vary dimensions or design standards of this title.

49.20.210 SUBMITTAL. An application for a variance shall be submitted to the board of adjustment through the department.

49.20.220 SCHEDULING AND FEE. The director shall schedule the application for public hearing after determining the application is complete. If the application is filed in conjunction with a major development permit, a separate public notice and fee shall not be required. For separate variance applications a fee and public notice according to 49.20.230 shall be required.

49.20.230 PUBLIC NOTICE. Public notice according to Part I of Chapter 49.05 shall be given prior to a hearing on the application by the board of adjustments, except that the placement of a sign on the subject lot is not required.

49.20.240 BOARD OF ADJUSTMENT ACTION. The board of adjustment shall hear all variance requests and shall either approve, conditionally approve, modify, or deny the request based on the criteria in the following section.

49.20.250 GROUNDS FOR VARIANCES. (a) Where hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures or those establishing construction standards. A variance may be granted after the prescribed hearing and after it is shown that all the following conditions have been met.

(b) In considering all variances the board of adjustment must determine:

(1) whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

(2) that relief can be granted in such a fashion that the intent of the ordinance will be observed and the public safety and welfare preserved;

(3) that the authorization of the variance will not injure nearby property;

(4) that the variance does not authorize uses not allowed in the district involved;

(5) that compliance with the existing standards would unreasonably prevent the owner from using the property for a permissible principal use and would be unnecessarily burdensome because it would impose peculiar and practical difficulties to, or exceptional and undue hardship upon the developer of such property;

(6) that a grant of the variance would result in more benefits than detriments to the neighborhood; and

(7) that the variance would not violate housing density, gross nonresidential floor area, or building and lot coverage standards.

49.20.260 CONDITIONS OF APPROVAL. The board may attach to a variance conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the intent of this ordinance and to protect the public interest.

49.20.170 EXPIRATION AND EXTENSIONS OF APPROVAL. Expiration and extensions of variances shall be governed by the procedures and standards established for development permits in Part II of Chapter 49.15.

Chapter 49.20

APPEALS, VARIANCES, AND INTERPRETATIONS

Part III: Interpretations

49.20.300 AUTHORIZATION TO INTERPRET. The board of adjustment is authorized to interpret the zoning map and the text of this title and to pass upon questions of lot lines or district boundary lines and similar questions presented by the department or a property owner directly concerned.

ZONING REGULATIONS

(c) Variances. Where hardships and practical difficulties resulting from peculiarities of a specific property render it difficult to carry out the provisions of this chapter, the board may grant a variance in harmony with the general purpose and intent of this chapter. Such variance may vary any standard requirement or regulation of this chapter after the prescribed hearing and after it is shown that all of the foregoing conditions exist:

(1) Compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render a conformity with such restrictions unnecessarily burdensome;

(2) That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district;

(3) Whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

(4) That relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured;

(5) That the authorization of such variance will not be materially detrimental to the public welfare or injurious to nearby property;

(6) The variance does not allow the property to be used for uses not otherwise allowed in the district involved. In authorizing a variance, the board may attach thereto conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the spirit and purposes of this ordinance and in the public interest. A variance so authorized shall become void after the expiration of one year if no building permit has been issued in accordance with the plans for which such variance was authorized, except that the board may extend the period of variance authorization

ZONING REGULATIONS

without public hearing upon a finding that there has been no basic change in pertinent conditions surrounding the property at the time of the original approval.

(d) In exercising the foregoing powers, the board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have all of the powers of the officer from whom the appeal is taken. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the provisions of the zoning ordinance or any regulation promulgated thereunder. (Serial No. 72-37 § 3, 1972; GJB § 49.25.802).

49.25.803 STAY OF PROCEEDINGS. An appeal from the decision of any administrative officer under the provision of this chapter to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the administrative official from whose decision the appeal is taken, certifies to the board after notice of appeal is filed, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. (GJB § 49.25.803).

49.25.804 FILING APPLICATIONS. Requests for exceptions, appeals or variances may be filed with the board of adjustment by any aggrieved person or any government officer, department, board or bureau affected.

(a) Appeals and Exceptions. When a request for an exception or appeal has been properly filed, the building official shall transmit to the board all plans, specifications and papers pertaining to the request or appeal. The board shall consider



Community Development

City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

TO: Title 49 Committee

FROM: Chrissy McNally, Planner II
Community Development Department

DATE: July 27, 2016

RE: Variance criteria

Staff met with the Title 49 Committee on July 9 to discuss proposed changes to CBJ 49.20.250 Grounds for variances. In addition to changes in the criteria to be applied by the board of adjustment, the committee wanted a list of what code sections cannot be varied. The committee also wanted staff to propose what changes would be made to make the code more flexible to reduce the need for variances. The grounds for variances and variance criteria below reflect the changes requested by the committee.

Proposed variance grounds and criteria

CBJ 49.20.200 Variances other than administrative. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely to prevent financial hardship or inconvenience. The granting of a variance shall not allow uses prohibited in the district.

A variance may not vary those standards concerning;

- use of land or structures
- housing density
- lot coverage
- PUD standards
- cottage housing standards
- common wall standards
- construction standards as found in CBJ 49.35
- accessory apartment standards
- vegetative cover
- financial responsibility

Title 49 Committee

Variance criteria

June 15, 2016

- mobile home park standards
- Historic District standards and guidelines

A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:

- (1) *Special conditions and circumstances exist that are peculiar to the land or structures or use involved and are not applicable to other lands and structures in the same district.*
- (2) *That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use.*
- (3) *The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property.*
- (4) *Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed.*
- (5) *The authorization of the variance will not injure nearby property.*

Other Title 49 amendments

The purpose of the proposed criteria amendments is to steer from using the variance process as a means to modify code requirements where no extraordinary situation exists. Staff is aware of the community's need for flexibility in some sections of code where requirements are outdated. Staff intends to offer recommendations for increased flexibility for several sections of code in order to rectify the practice of using the Variance as a catch all. The list below highlights what staff recommends should be variable, should not be variable and what sections of code would benefit from amendments. The code sections are based on what has historically been granted a variance to the respective standards.

Variable	Not Variable	Code Amendment
Setbacks	Use	Eagle nest setback
Lot width	Density	Streamside setback
Lot depth	Lot coverage	Lot access
Lot frontage	PUD standards	Parking
Canopy height	Cottage Housing standards	Vegetative Cover
Sign dimensional standards	Bungalow lot/housing standards	Height
Eagle nest setback	Common Wall standards	Canopy
Streamside setback	Accessory apartment standards	Sign placement
	Parking	
	Vegetative Cover	
	Financial responsibility	
	Mobile Home Parks	
	Historic District standards and guidelines	

Title 49 Committee
Variance criteria
June 15, 2016

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In addition to this broad list, staff recommends expanding the exceptions to setbacks found in CBJ 49.25.430(4) *Projections into required yards* to include:

Insulation to improve energy efficiency may encroach 6 inches into any required yard setback.

Other exception examples include:

- parking waiver for legal lot that do not have direct and practical vehicular access from a right-of-way
- development proposals which provide for a net increase in habitat conditions may encroach into the required streamside setback
- reductions in parking stall size and circulation aisles
- parking exceptions for substandard lots

DATE: February 10, 2015

TO: Title 49 Committee

FROM: Beth McKibben, Senior Planner
Community Development Department

SUBJECT: Proposed Revisions to CBJ Code 49.70.310(a)(2 and 3), Eagle Nest setbacks

Introduction

Revision of the CBJ Code eagle nest setbacks, Section 49.70.310(a)(2 and 3), has been on the Assembly and Planning Commission's priority list for several years now. Revision is needed to improve and simplify departmental implementation of the ordinance, to reduce the number of eagle nest setback variances, and to improve compliance with the goals of the ordinance, as outlined in the 2013 Comprehensive Plan.

Background

CBJ Code 49.70.310(a)(2 and 3) states:

- (a) *Development in the following areas is prohibited:*
 - (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;*

The Code definition of development (49.80.120) states:

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.

The 2013 CBJ Comprehensive Plan states the following:

POLICY 7.14. TO PROTECT AREAS SURROUNDING IDENTIFIED EAGLE NESTS FROM CONFLICTING LAND USES.

Standard Operating Procedures

7.14 - SOP1 Mature trees that, typically, are suitable for eagle nests should be retained within 1/8th of a mile of the coast.

7.14 - SOP2 In situations where lands are proposed for private platting next to CBJ-owned lands, and if the private party is willing, the CBJ government will consider exchanging land of equal value for those lands within 330 feet of the eagle nest tree and retain it as an eagle management area.

7.14 - SOP3 Prohibit the cutting of trees near shoreline areas for the purpose of eradicating nesting eagles or of preventing eagles from nesting therein.

The full text and additional implementing actions regarding eagle nests in the Comprehensive Plan have been included as an attachment to this document.

Proposed Revision

CDD staff have reviewed past eagle nest variance conditions and consulted with U.S. Fish and Wildlife Service (USFWS) staff regarding habitat impacts and eagle nesting patterns. The proposed revision seeks to address the following issues:

- Eliminates the requirement to determine whether a nest has actively nesting eagles. USFWS does not have the staff resources to make this determination, and CDD staff do not have the time nor the training. We have a hard enough time determining if a nest is even there.
- Avoids using the code definition of development. The code definition of development has many elements that are irrelevant to impacts to eagle nests. A strict application of the current definition would require variances for home occupations that have no noise or construction impacts whatsoever, as just one example. The new proposed definition of development, which is specific to the eagle nest setback section only, is limited to activities that are most harmful to eagles, according to USFWS.
- Sets a lower standard for urban eagle nests and a higher standard for nests outside of the urban service boundary. The proposed revision establishes a 50-foot no-development setback for all nests within the urban service boundary, and eliminates the 330-foot no development setback during the nesting season (March 1-August 31). The USFWS believes that lowering this nesting season restriction is acceptable because urban eagles

are usually (though not always) more habituated to noise. The 330-foot no-development buffer during the nesting season would continue to apply only in rural areas outside of the Urban Service Boundary where eagles are typically less habituated to noise.

- Sets standards that define acceptable impacts. For developments that cannot comply with the basic no development standard, CDD staff have worked with USFWS to determine activities that are not harmful if the activities are conducted in the middle of the nesting season. This is the period from June 15-July 15, after eaglets have hatched and before eaglets have fledged. CDD's goal is to encourage compliance through attainable standards and make variances the exception.

With these goals in mind, staff proposes the following revision for discussion:

- 1) Development within 50 feet of an eagle nest is prohibited. For purposes of section 1 and 2 only, development includes the following: a) removal of a tree (or trees) over 10 inches in diameter; b) any work that requires a grading permit; c) construction of a structure that is over six feet tall and has a solid roof; d) blasting; and e) developments with similar impacts as determined by the CDD director.
- 2) Development within 330 feet of an eagle nest is prohibited in areas outside of the Urban Service Boundary during the nesting season from March 1 through August 30.
- 3) Developments which cannot meet the requirements of 1) and 2) meet the following standards:
 - a) Placement of concrete and asphalt may occur from June 15-July 15 if placement occurs within an area that has already been cleared.
 - b) Activities that require a grading permit may occur from June 15-July 15 if the activity occurs within an area that has already been cleared.