

Agenda

Planning Commission - Regular Meeting City and Borough of Juneau

July 13, 2021
Virtual Meeting Only
7:00 PM

This virtual meeting will be held by video and telephonic participation only. To join the webinar, paste this URL into your browser: <https://juneau.zoom.us/j/92097499673>. To participate telephonically, call: 1-346-248-7799 or 1-669-900-6833 or 1-253-215-8782 or 1-312-626-6799 or 1-929-436-2866 or 1-301-715-8592 and enter Webinar ID: 920 9749 9673.

I. ROLL CALL

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

VI. ITEMS FOR RECONSIDERATION

- A. VAR2021 0002: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek - Notice of reconsideration given at the June 22, 2021 Planning Commission meeting - MOVED TO RECONSIDER AND CONTINUED TO SEPTEMBER 28, 2021

VII. CONSENT AGENDA

VIII. UNFINISHED BUSINESS

- A. July 13, 2021 Special Planning Commission Meeting ordinance continued, if needed

IX. REGULAR AGENDA

- A. AME2018 0004: Proposed revisions to the Alternative Development Overlay District, which affects setbacks, minimum lot area, and other issues related to development. The Overlay covers both downtown Juneau and downtown Douglas, but revisions only concern Juneau at this time. - POSTPONED TO JULY 27, 2021 REGULAR PLANNING COMMISSION MEETING

X. BOARD OF ADJUSTMENT

- A. VAR2021 0004: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek - APPROVED WITH AMENDMENTS
- B. VAR2021 0005: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Amalga Meadows - APPROVED
- C. VAR2021 0003: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Switzer Creek - APPROVED
- D. VAR2021 0007: Pedestrian trail reconstruction and revegetation within 50 feet of an

anadromous stream in Duck Creek - FAILED TO APPROVE

XI. OTHER BUSINESS

- A. APL2021 0003: An appeal related to VAR2021 0004 - FAILED TO ACCEPT

XII. STAFF REPORTS

XIII. COMMITTEE REPORTS

XIV. LIAISON REPORT

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

XVII. EXECUTIVE SESSION

XVIII. SUPPLEMENTAL MATERIALS

- A. Additional Materials for July 13, 2021 Planning Commission

XIX. ADJOURNMENT

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

VAR2021 0002: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek - Notice of reconsideration given at the June 22, 2021 Planning Commission meeting - MOVED TO RECONSIDER AND CONTINUED TO SEPTEMBER 28, 2021

AGENDA ITEM:

Case No.: VAR2021 0002

Applicant: Northern Lights Development

Location: 1940 & 1941 Anka Street

Proposal: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek

ATTACHMENTS:

	Description	Upload Date	Type
▢	Staff Report for VAR2021 0002 from June 22, 2021 Planning Commission	6/23/2021	Staff Report



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD

155 S. Seward Street • Juneau, AK 99801

DATE: June 14, 2021
TO: Michael LeVine, Chair, Board of Adjustment
BY: Laurel Christian, Planner II *Laurel Christian*
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests a Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek

STAFF RECOMMENDATION: Approval with conditions.

KEY CONSIDERATIONS FOR REVIEW:

- Lemon Creek is an anadromous waterbody; development buffers apply.
- Enforcement of ordinances creates undue hardship resulting from special conditions of the property.
- Hardship is not self-created.

GENERAL INFORMATION

Property Owner	Jeffrey & Karen Wright
Applicant	Northern Lights Development
Property Address	1940 & 1941 Anka Street
Legal Description	RSH III Lot 10 & 11
Parcel Number	5B1201330100 & 5B1201330110
Zoning	Industrial
Lot Size	4,544 square feet & 4,418 square feet
Water/Sewer	Public
Access	Anka Street
Existing Land Use	Vacant
Associated Applications	NA

ALTERNATIVE ACTIONS:

1. **Deny:** deny the permit and adopt new findings for items 1-2 below that support the denial.
2. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - o 49.20.240
 - o 49.20.250(b)
 - o 49.70.310
 - o 49.80

The Commission shall hear and decide the case per 49.20.240. The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES	
North	Lemon Creek
South	Anka Street
East (I)	Restaurant with Caretaker Unit
West (I)	Vacant

SITE FEATURES	
Anadromous	YES
Flood Zone	YES
Hazard	NONE
Hillside	YES
Wetlands	NONE
Parking District	NONE
Historic District	NONE
Overlay Districts	NONE

BACKGROUND INFORMATION

Project Description – The applicant requests a Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek.

In order to grant a variance, the Board of Adjustment must determine that [CBJ 49.20.250(b)]:

- (A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;*
- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;*
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and*
- (D) The grant of the variance is narrowly tailored to relieve the hardship.*

The need for the variance must be based on a naturally-occurring peculiarity of the lot. A variance provides a “safety valve” for a land owner who would suffer undue hardship from literal application of zoning rules.

Background – The table below summarizes relevant history for the lots.

Item	Summary
Platting History	The lots were platted in 2002 through the R.S.H Subdivision II (Plat 2002-12). The plat establishes a 10-foot utility easement along the front lot line.
Variance History	The lots received variances to the required stream buffer in 2003 (VAR2003 08 and 09). No building permits were issued; the variances expired in 2004.

Project Site – The lots are located in an Industrial zoning district and are situated along Lemon Creek. Each lot is approximately 42 feet in width and 109 feet in depth, exceeding the minimum dimensions required for the zoning district. The lots are flat along the frontage of Anka Street and having approximately 45 percent slope at the rear, on the bankside of Lemon Creek.

(a) Development in the following areas is prohibited:

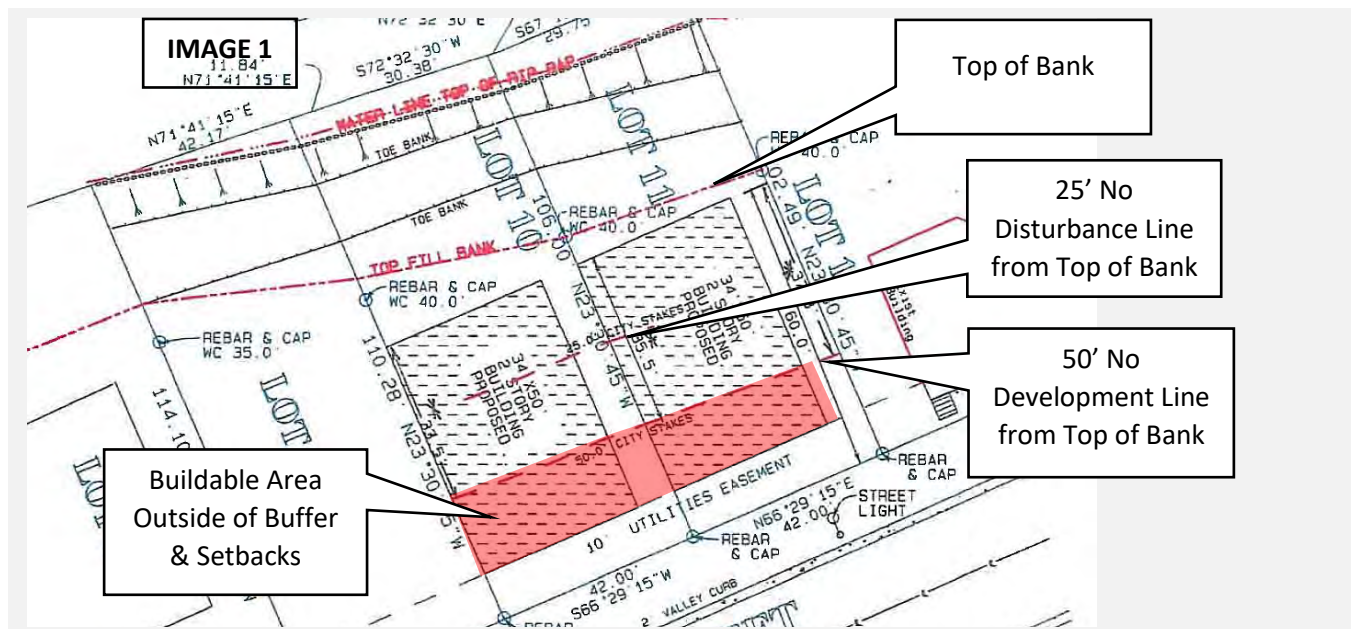
- (2) Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and*

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

- (1) Within 25 feet of stream corridors designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and*

- (2) Within 25 feet of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.

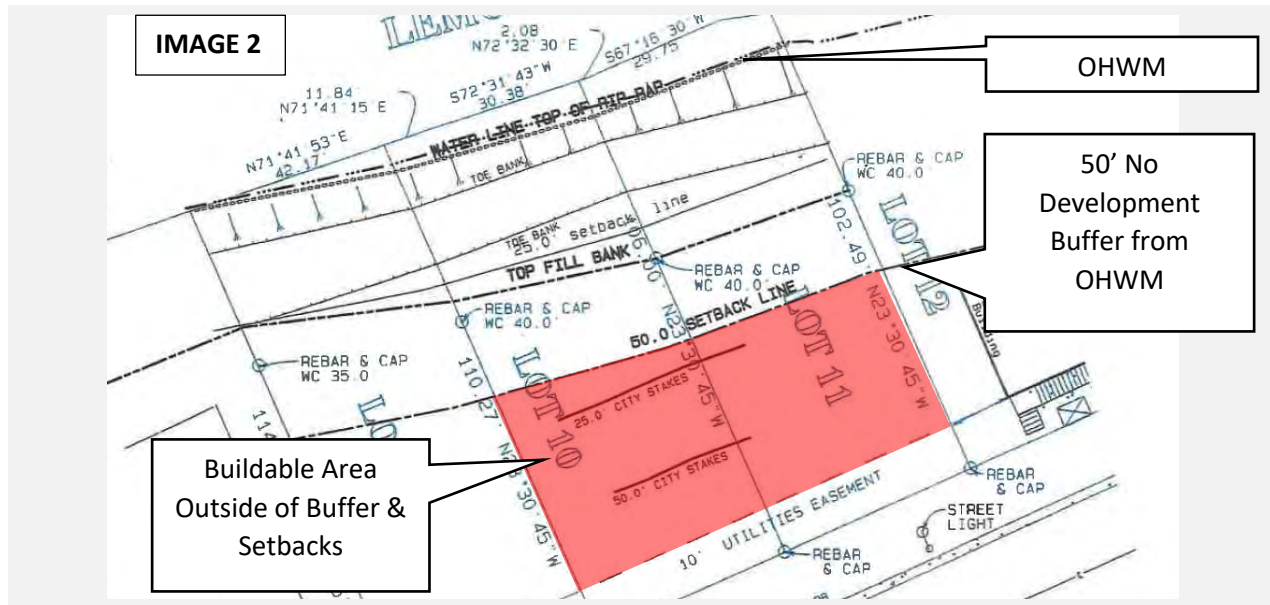
Title 49 requires the development buffer be measured from the bank [49.70.310(a)(2)]. Staff performed a site visit and staked the 50-foot, no-development buffer from the bank of Lemon Creek; the no-development buffer takes up the majority of the lots. Taking into consideration the required development buffer from Lemon Creek and the minimum front yard setbacks for the zoning district, there is approximately 600 square feet of buildable area remaining on each lot (Image 1).



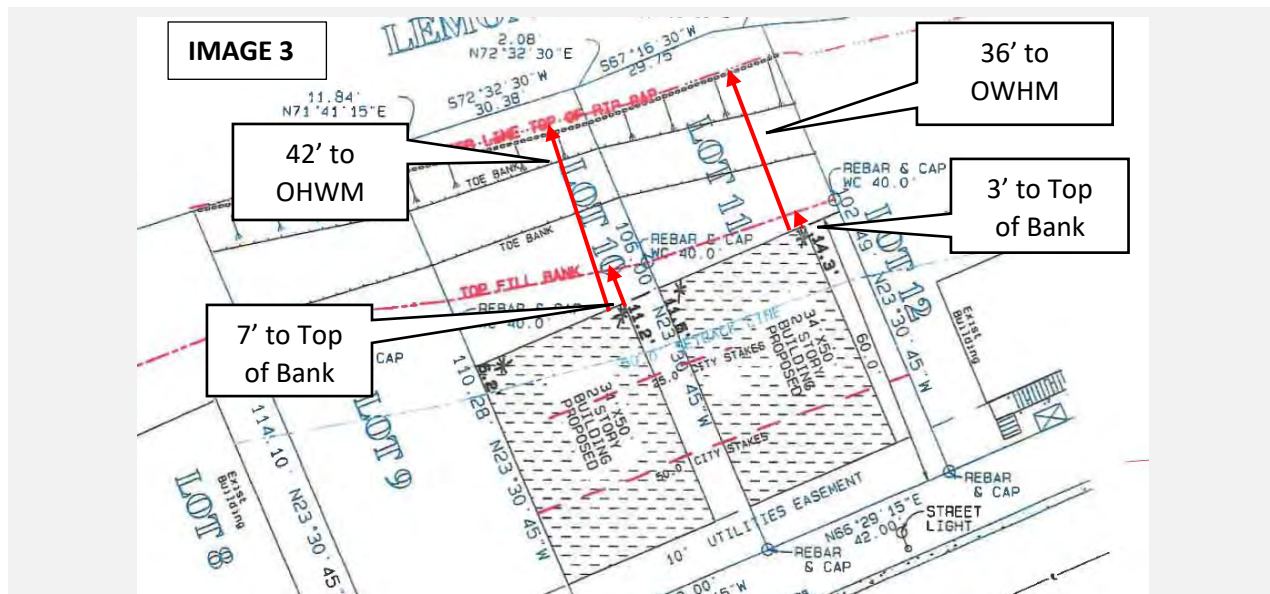
June 14, 2021
VAR2021 0002
Page 4 of 8

In the past, the development buffer from anadromous waterbodies was staked from the Ordinary High Water Mark (OHWM), as recommended by the Comprehensive Plan [2013 Comprehensive Plan pg. 79]. Using the OHWM generally requires less of a buffer. Before the Commission this evening, is also a text amendment proposing measuring the development buffer from the OHWM, rather than the bank.

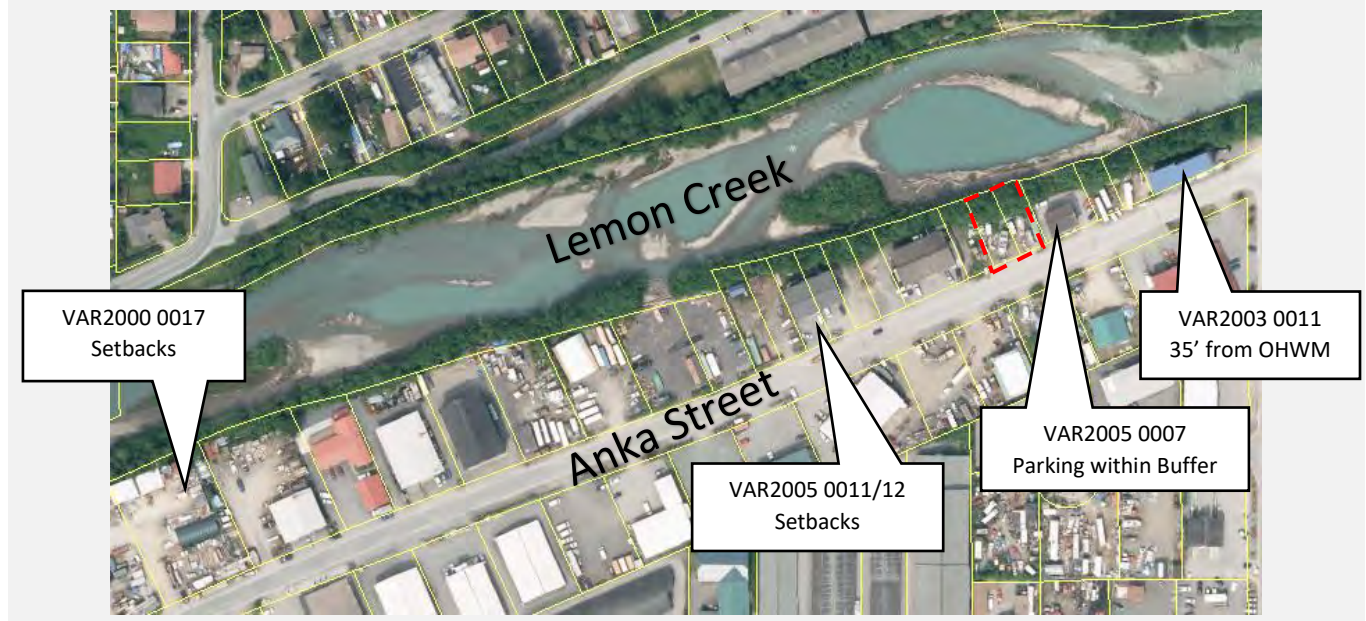
While the OHWM cannot be used as current code requires using bank, there would be approximately 1,500 square feet of buildable area on each lot outside of the required buffer and setbacks for the zoning district (Image 2). This demonstrates that the neighboring lots were afforded relief in the past from code, which the applicant cannot take advantage of under existing code.



The applicant proposes two new buildings, each with a 1,700 square foot building footprint. In order to construct these buildings, the applicant requests relief from the required development buffer. As shown on the project site plan, granting the variance would allow two new structures to be within 3 feet (Lot 11) and 7 feet (Lot 10) from the top of the bank of Lemon Creek (Image 3).



As compared to the neighboring properties, the new structures would be within approximately 36 feet (lot 11) and 42 feet (Lot 10) of the OHWM of Lemon Creek (Image 3), and structures on neighboring properties are within 35 feet of the OHWM. Current code requires the setback be measured from the bank [49.70.310(a)(2)]. Even if the development buffer is measured from the OHWM, a variance is still needed for the proposed development.



VARIANCE STANDARDS

Pursuant to CBJ 49.20.200, a non-administrative variance may be granted to provide an applicant relief from the requirements of this Title 49 section of the Land Use Code. A variance is prohibited from varying any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35 (Public and Private Improvements), or requirements in chapter 49.65 (Specified Use Provisions).

Per CBJ 49.20.250(b), a non-administrative variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Board of Adjustment has determined that:

A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.

Analysis: The applicant must establish that adhering to the code creates a hardship that is distinct from similarly situated properties.

“Hardship” means that the land cannot be used as intended. Financial hardship is not considered.

The lot was platted in 2002 and remains vacant. The lot is within an Industrial zoning district. If the development buffer from the bank of Lemon Creek is required, approximately 600 square feet of buildable area on each lot exists. The proposed buildings with a 1,700 square foot footprint are similar to other buildings constructed along Anka Street. Reasonable use of the property would be denied based on a special condition of the property, Lemon Creek, and associated setbacks.

There are four (4) similarly situated lots on Anka Street that have received variances to setbacks or the required development buffer from Lemon Creek, all noting a lack of buildable area due to the required

development buffers. The hardship that results from the required development buffer is a lack of buildable area. The proposed buildings will be smaller than most other buildings on Anka Street. Similarly situated properties on Anka Street, within the Industrial zoning district, are allowed to maximize the entire lot area. The Industrial zoning district requires a 10-foot front and rear setback, and zero side yard setbacks.

The applicant submitted a preliminary sketch that shows two (2) parking spaces within each building and one (1) parallel parking space in the front of the building (Attachment A). This sketch demonstrates that buildable area is limited; and back-out parking is not allowed in the Industrial zoning district. The applicant will be required to demonstrate, as part of a building permit application, that parking and circulation standards can be met without the building encroaching further into the stream buffer.

The combination of the minimum front yard setback, parking and circulation requirements, and the required development buffer from Lemon Creek renders the lots unusable compared to other similarly situated properties on Anka Street in the Industrial zoning district and similarly situated lots that were afforded relief from code through the variance process.

Finding: Yes. This criterion has been met.

B. The unusual or special conditions of the property are not caused by the person seeking the variance.

Analysis: Lemon Creek is a naturally occurring feature of the land, the special condition of the property is not caused by the applicant. Further, the lots along the bank of Lemon Creek have an approximately 45 percent slope at the rear of the properties.

Finding: Yes. This criterion has been met.

C. The grant of the variance is not detrimental to public health, safety, or welfare.

Analysis: If the variance is approved, the applicant is required to submit a building permit application for the proposed structures. Building permits safeguard the public health, safety, and welfare. The granting of the variance will not be detrimental to the public health, safety, or welfare.

Finding: Yes. This criterion has been met.

D. The grant of the variance is narrowly tailored to relieve the hardship.

Analysis: As shown on the above project site plan, granting the variance would allow two new structures to be within 3 feet (Lot 11) and 7 feet (Lot 10) from the bank of Lemon Creek (Image 3). Proposed structures are smaller than found on neighboring properties. Additionally, the buildings are built up to the front setback line, maximizing the available buildable area within the required setbacks for the Industrial zoning district. The requested variance is for buildings that are similarly situated to neighboring properties that have received variances to setbacks or the stream buffer requirement.

Parking must be provided on site. As discussed above, the applicant submitted a preliminary sketch showing 3 parking spaces; however, back-out parking is not allowed in Industrial zoning districts. Parking cannot be within the no-development buffer of Lemon Creek. Parking constraints demonstrate that the request is narrowly tailored, as the buildings may need to be reduced in size in order to meet parking and circulation standards. The applicant will be required to demonstrate that parking and circulation requirements can be

met, prior to the issuance of a building permit.

Under current code, the development buffer from anadromous waterbodies is measured from the bank. Past practice of the department has been to measure the development buffer from the OHWM. Staff anticipates code revisions that would allow the measurement to be taken from the OHWM in the future. Even if the OHWM is used to measure the stream development buffer, a variance is still needed to construct the proposed buildings. At their closest point, the buildings are 36 feet to the OHWM, so a variance is still needed. Regardless of which line staff uses to measure the development buffer from (bank or OHWM), a variance is needed and is warranted due to the peculiarities of the land.

Finding: Yes. This criterion has been met.

Pursuant to CBJ 49.20.260, the Board may attach conditions to non-administrative variances regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the intent of this title and to protect the public interest.

The Alaska Department of Fish and Game (ADF&G) reviewed the proposal and found it to be reasonable. ADF&G has requested that vegetation below the top of bank be maintained. This will help reduce erosion of the bank and provides both a visual and a sound buffer to the creek, and to properties located across the creek. The project site plan shows no new structures below the top of the bank. Staff is recommending a condition that limits any removal of vegetation in this area, including limbing of the trees that grow along the bank

Condition: There shall be no disturbance or removal of vegetation below the top of the bank of Lemon Creek, including limbing of the trees that grow along the bank.

AGENCY REVIEW

CDD conducted an agency review comment period between May 17 and May 31, 2021. Agency review comments can be found in Attachment C.

Agency	Summary
Alaska Department of Fish and Game	ADF&G requests that no vegetation along the slope of the bank be cut. ADF&G finds the proposal is reasonable and similar to adjacent land owners.

PUBLIC COMMENTS

In accordance with 49.20.230(b), public notice was mailed to property owners within 500 feet of the lot, a public notice sign was posted on site two weeks prior to the hearing, and ads were placed in the Juneau Empire. Public comments received by May 31, 2021 can be found in Attachment D and are summarized below. Comments received after May 31 can be found in the additional materials packet.

Name	Summary
Susan Trivette	Ms. Trivette opposes the proposed variance. Ms. Trivette has concerns about the existing noise in the area.
Sandra Coon	Ms. Coon writes to express support for the variance.
Karen Wright	Ms. Wright supports the proposed variance as one of the current property owners.
Jeff Wright	Mr. Wright supports the proposed variance as one of the current property owners.

FINDINGS

1. *Is the application for the requested variance complete?*

Analysis: No additional analysis required.

Finding: Yes. The application for the required variance is complete.

2. *Does the variance as requested meet the criteria of Section 49.20.250(b)(1), Non-Administrative Variances?*

Analysis: As discussed above, all of the approval criteria have been met.

Finding: Yes. The requested variance meets the criteria of Section 49.20.250(b)(1), Non-Administrative Variances.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** the requested non-administrative variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek, as shown on the project site plan submitted with the application.

The approval is subject to the following conditions:

1. There shall be no disturbance or removal of vegetation below the top of the bank of Lemon Creek, including limbing of the trees that grow along the bank.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	Abutters Notice and Public Notice Sign Photo
Attachment C	Agency Comments
Attachment D	Public Comments



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION	
	Physical Address 581201330110 1941 Anka Street / 1940 Anka Street	
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) Lots 10 & 11 RSH Subdivision III	
	Parcel Number(s) 581201330110 / 581201330100	
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which <u>NA</u>	
	LANDOWNER/ LESSEE	
	Property Owner Jeffrey / Karen Wright	Contact Person Troy A May
	Mailing Address PO Box 32724 June AK 99803	Phone Number(s) 907-723-7778
	E-mail Address	
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X <u>[Signature]</u> Landowner/Lessee Signature <u>5-6-21</u> Date X _____ Landowner/Lessee Signature _____ Date		
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT If the same as OWNER, write "SAME"		
Applicant Northwest Light & Dev.		
Contact Person Troy A May		
Mailing Address 150 Anka St. June AK 99803		
Phone Number(s) 907-723-7778		
E-mail Address		
X <u>[Signature]</u> Applicant's Signature <u>5-6-21</u> Date of Application		

DEPARTMENT USE ONLY BELOW THIS LINE

Attachment A - Application Packet

This form and all documents associated with it are public record once submitted.

Intake Initials <u>LEC</u>
Date Received



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

**NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.
Not to be used for Administrative Variances**

To be completed by Applicant

PROJECT SUMMARY

New buildings w/ caretakers units in each building.
Address: 1940 and 1941 Anka St.

VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to)

CBJ 49.70.310, req. 50 ft. dev. Setback from rear bank of Lemon Creek. We are seeking the variance because a feature of the lot doesn't - cont on back...

Previous Variance Applications?

☒ YES ☐ NO

Date of Filing: 2018 2003

Previous Case Number(s):

VAR2003 0009

Building Permit related to this variance? ☐ YES ☒ NO

Was the Variance Granted?

☒ YES ☐ NO

UTILITIES AVAILABLE:

WATER ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

ALL REQUIRED MATERIALS ATTACHED

Complete application per CBJ 49.65.210

Narrative including:

Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure

Why a variance would be needed for this property regardless of the owner

What hardship would result if the variance is not granted

Site Plan

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ 400.00			
Adjustment	\$ 150		public notice sign/deposit	
Total Fee	\$ 550.00			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Attachment A - Application Packet

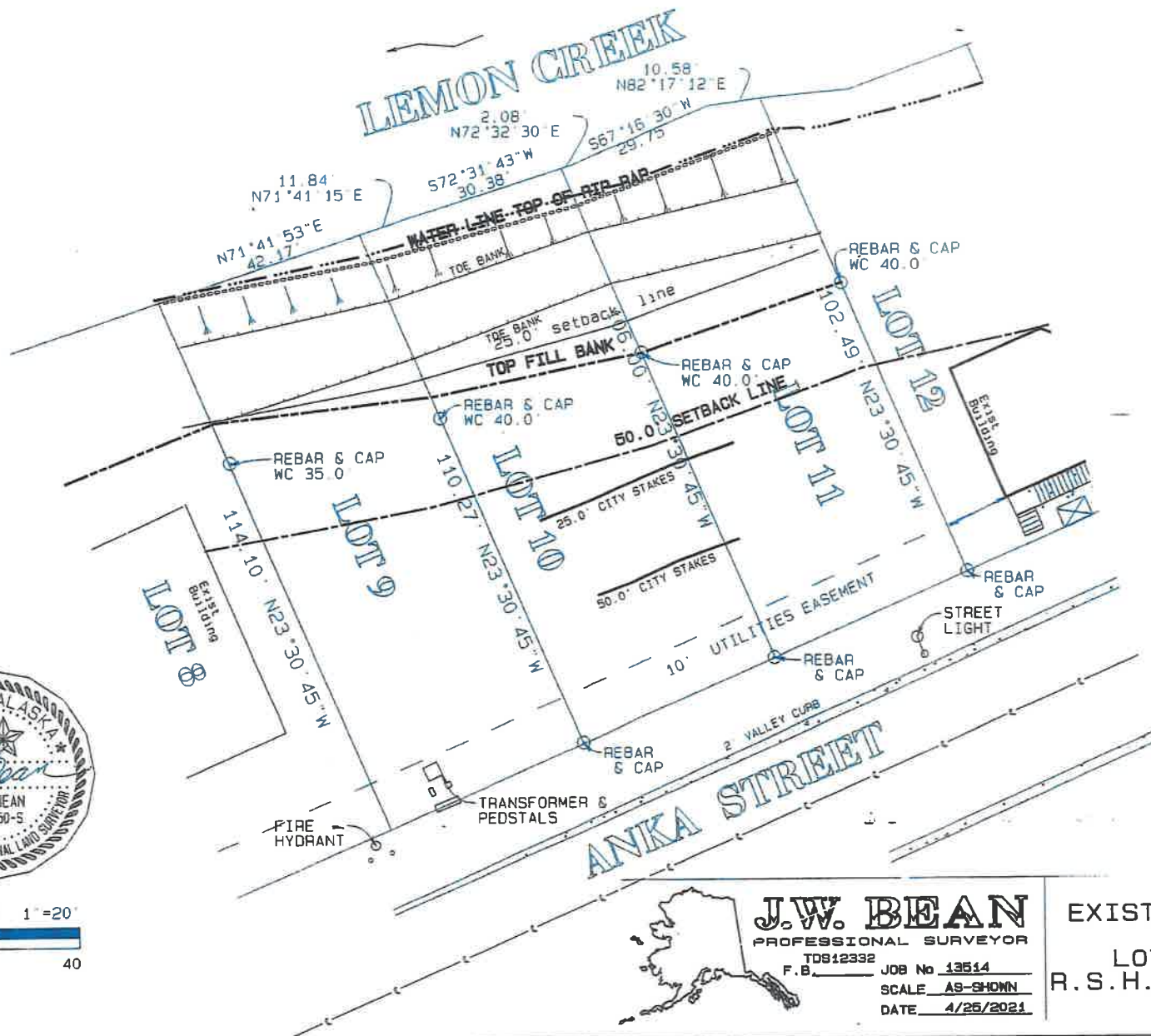
Case Number	Date Received
VAR 21-02.	LEC 5/6/21

allow us to use it in a way similar to our neighbors, Packet Page 14 of 474
creating undue hardships. Currently, next to the stream set back
and the front set back leave only 20 ft of developable
depth.



SCALE 1"=20'

0 20 40

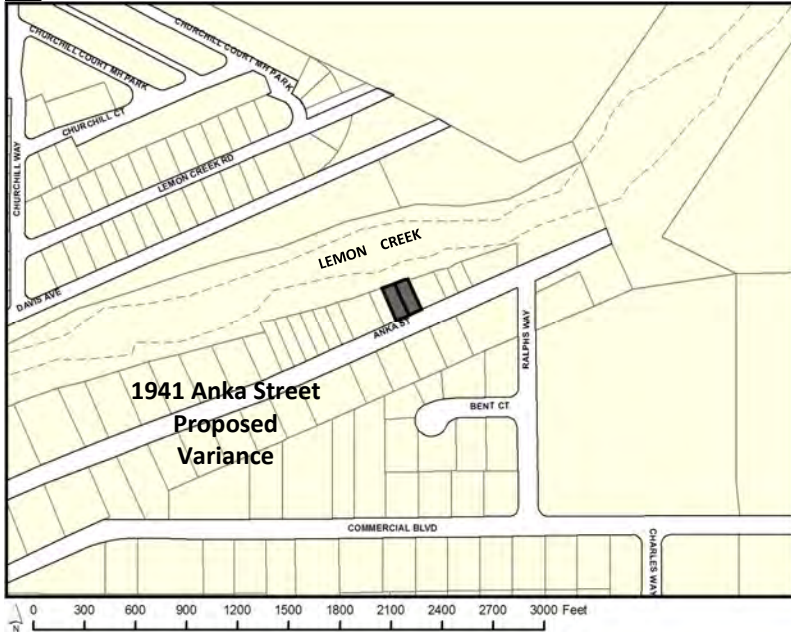


J.W. BEAN
PROFESSIONAL SURVEYOR
TDS12332
F.B.
JOB No. 13514
SCALE AS SHOWN
DATE 4/25/2021

EXISTING CONDITION
ON
LOTS 9, 10 & 11
R.S.H. SUBDIVISION III

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice



155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for **Variance to allow new construction within the 50-foot, no-development buffer and the 25-foot, no-disturbance buffer from Lemon Creek at 1941 Anka Street in an Industrial Zone.**

TIMELINE

Staff Report expected to be posted **Monday, June 14, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through May 31

Comments received during this period will be sent to the Planner, **Laurel Christian**, to be included as an attachment in the staff report.

June 1 — noon, June 21

Comments received during this period will be sent to Commissioners to read in preparation for the hearing.

HEARING DATE & TIME: 7:00 pm, June 22, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/99589799175>. The Webinar ID is: 995 8979 9185. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

June 23

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed May 19, 2021

Case No.: VAR2021 0002
Parcel No.: 5B1201330100 & 5B1201330110
CBJ Parcel Viewer: <http://epv.juneau.org>

Laurel Christian

From: Northern Lights Development, Inc. <northernlights@gci.net>
Sent: Tuesday, June 8, 2021 8:11 AM
To: Laurel Christian
Subject: FW: send this to laura
Attachments: IMG_4706.jpg; Untitled attachment 00028.txt

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Laurel,

Here is a photo of the sign on the property. It was put up last night.

Charlene Nelson
Bookkeeper
Northern Lights Development, Inc.
907-780-6300
northernlights@gci.net

-----Original Message-----

From: Troy Mayer <troymayer@gmail.com>
Sent: Monday, June 07, 2021 5:16 PM
To: northernlights@gci.net
Subject: send this to laura



Laurel Christian

From: Albrecht, Gregory T (DFG) <greg.albrecht@alaska.gov>
Sent: Friday, May 21, 2021 11:35 AM
To: Laurel Christian
Cc: Kanouse, Kate M (DFG)
Subject: RE: VAR2021 0002 Agency Review

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hi Laurel,
 I visited the site today and observed trees (mostly alders) growing on the slope up to the top of the bank. So long as the vegetation on the bank is not cut, this development proposal seems reasonable and similar to adjacent land owners.
 Thank you for the opportunity to review.

Greg Albrecht
 ADF&G Habitat Biologist
 802 3rd Street
 Douglas, AK 99824
 465-6384

From: [Sue Trivette](#)
To: [PC_Comments](#)
Subject: Variance on new construction on Parcel 5B1201330100 & 5B1201330110
Date: Wednesday, May 26, 2021 1:25:51 PM
Importance: High

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To Whom I May Concern:

I am an owner living in the Riveredge Condos; I have been here since May, 2012. My property sits on the across the creek from these proposed buildings. I would like to give my opinion the proposed variance to the above Parcel on Case No. VAR2021 0002 to allow new construction within the 50' no-development buffer & the 25', no-disturbance buffer from Lemon Creek at 1941 Anka Street.

My concerns are that this company, Northern Lights Development, is requesting building closer than 50' in a no-development from Lemon Creek & the 25' no-disturbance in an industrial zone. There's valid reason these regulations were set up to control development this close to a body of water; they should not receive a variance for this development. As it is, there's already some very, very noisy commercial businesses that are on that side of the creek; they are disturbing the otherwise relative peace & quiet near this beautiful creek area. I can hear this banging going on 5 days a week at any time of the year when I'm on my frequent walks on Davis Avenue.

I don't know exactly what type of development is being proposed on this site; as the permit application is quite vague. Regardless, I would object to this variance being granted.

Thanks for your time,

Susan P Trivette
1901 Davis Ave #B9
907 317 3734

From: lhcsjc@alaska.net
To: [PC_Comments](#)
Subject: VAR2021-0002 for 1940 & 1941 Anka Street
Date: Thursday, May 27, 2021 8:10:46 PM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Case No.: VAR2021 0001

Applicant: Northern Lights Development

Location: 1940 Anka Street

A Variance to allow new construction within the 50-foot, no-development buffer and the 25-foot, no-disturbance buffer from Lemon Creek

I am writing in response to the request for comments on the above Variance application for VAR 2021-0002.

I support the variance to allow construction that is being requested for Lemon Creek at 1940 & 1941 Anka Street, parcel numbers 5B1201330100 & 5B1201330110. I am a resident of Lemon Creek/Pinewood Park 2BLMLTI, and a former member of the Lemon Creek Steering Committee and I appreciate the opportunity to comment.

Sandra Coon
5990 Sunset Street
Juneau, AK 99801
907-780-4910

From: [Karen Wright](#)
To: [PC_Comments](#)
Subject: Public Comment on Request for Variance
Date: Friday, May 28, 2021 7:45:37 PM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello,

Case No.: VAR2021 0001

Applicant: Northern Lights Development

Location: 1940 Anka Street

A Variance to allow new construction within the 50-foot, no-development buffer and the 25-foot, no-disturbance buffer from Lemon Creek

I am writing in response to the request for comments on the above Variance application for VAR 2021-0002.

I support the variance to allow construction that is being requested for Lemon Creek at 1940 & 1941 Anka Street, parcel numbers 5B1201330100 & 5B1201330110.

I am a licensed real estate professional in the State of Alaska, and my husband and I are the owner of the lots that Northern Lights Development has requested the variance on.

We have a sale pending dependent on the results of the requested variance to Northern Lights Development.

If it is granted the sale will go through.

If it is not granted the sale of the property will fall apart.

We are currently under contract to sell the property for less than the listed sales price.

Since the property was listed the assessed values have increased dramatically, even though I could not sell the property for the assessed value.

Additionally, since the property was listed the city regulations have changed dramatically and not in our favor in regard to the set backs and no-development buffer and no-disturbance buffer from Lemon Creek. Based on the new regulations that the city has adopted, after we had a sales agreement, it has seriously jeopardized the possibility to sell the property unless the variance has been granted.

I am asking that the variance be granted as requested. Please understand that if the variance isn't granted it will greatly diminish my ability to sell the property.

It will also seriously diminish the value of the property, as it will not allow the property to be developed.

Case No.: VAR2021 0001

Applicant: Northern Lights Development

Location: 1940 Anka Street

A Variance to allow new construction within the 50-foot, no-development buffer and the 25-foot, no-disturbance buffer from Lemon Creek

I am writing in response to the request for comments on the above Variance application for VAR 2021-0002.

I support the variance to allow construction that is being requested for Lemon Creek at 1940 & 1941 Anka Street, parcel numbers 5B1201330100 & 5B1201330110.

I appreciate the opportunity to comment.

Thank you for your consideration,
Karen Wright, REALTOR®
Southeast Alaska Real Estate
Direct: 907-321-5866
Office: 907-789-5533
Voted Juneau's Best Real Estate Professional

Please let me know if you would prefer not to receive e-mails from me. Thank you

From: [Juneau Limousine Services, LLC](#)
To: [PC_Comments](#)
Subject: comments on Case No.: VAR2021 0001
Date: Sunday, May 30, 2021 9:16:12 AM

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Case No.: VAR2021 0001

Applicant: Northern Lights Development

Location: 1940 Anka Street

A Variance to allow new construction within the 50-foot, no-development buffer and the 25-foot, no-disturbance buffer from Lemon Creek

I am writing in response to the request for comments on the above Variance application for VAR 2021-0002.

Hello,

I am writing in with my vote to approve the Variance application. My wife and I own the two parcels in question and I believe that this variance will allow the same type of development that is currently in the area. If you go out to the lots you will notice that the other buildings in the area have utilized a great portion of their upper build-able area on their lots. Both of these lots for the variance have a large enough area above on the lots to build on and still have plenty of space below the upper river bank and the river as buffer zone and still conform with the other construction in the area.

Please approve the variances being asked for.

Thank you!
Jeff Wright
juneaulimo@aol.com
juneaulimo.com
907-463-5466

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

July 13, 2021 Special Planning Commission Meeting ordinance continued, if needed

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

AME2018 0004: Proposed revisions to the Alternative Development Overlay District, which affects setbacks, minimum lot area, and other issues related to development. The Overlay covers both downtown Juneau and downtown Douglas, but revisions only concern Juneau at this time. - POSTPONED TO JULY 27, 2021 REGULAR PLANNING COMMISSION MEETING

AGENDA ITEM:

Case No.: AME2018 0004

Applicant: City & Borough of Juneau

Location: Downtown Juneau

Proposal: Proposed revisions to the Alternative Development Overlay District, which affects setbacks, minimum lot area, and other issues related to development. The Overlay covers both downtown Juneau and downtown Douglas, but revisions only concern Juneau at this time.

ATTACHMENTS:

Description	Upload Date	Type
☐ Information Regarding AME2018 0004	6/22/2021	Miscellaneous
☐ Public Notice for AME2018 0004	6/11/2021	Public Notice Announcement



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

June 22, 2021

MEMO

From: Irene Gallion, Senior Planner

To: Downtown Neighbors and Interested Members of the Public

Case Number: AME2018 0004: Alternative Development Overlay District

RE: Preparation for the July 13th meeting

Perhaps you will recall that about a year ago we were on our way to developing new Alternative Development Overlay District (ADOD) standards for downtown when we got derailed by a pandemic.

The Planning Commission will be revisiting the proposal at their meeting on July 13, 2021. As we get a little closer, meeting materials will be posted here: <https://juneau.org/assembly/assembly-minutes-and-agendas>

To get folks back into the mindset, I've attached:

- The last memo that went to the Commission on May 27, 2020. Note there are no attachments, if you are interested in those let me know and I'll send them your way (they bring the packet up to 138 pages).
- Minutes from the last Committee of the Whole that reviewed the proposal.

If you would like to be included on a project e mail list, you can e mail me at Irene.Gallion@juneau.org



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

May 27, 2020

MEMORANDUM

From: Irene Gallion, Senior Planner

To: Planning Commission

Case Number: AME2018 0004

RE: Proposed Revisions to the Downtown Juneau Alternative Development Overlay District (ADOD)

REQUESTED ACTION:

This memo summarizes the history and proposed standards of an updated Downtown Juneau ADOD for review by the Planning Commission Committee of the Whole on June 9, 2020. During this meeting, for each modified standard, staff will review:

- How the standards were developed
- Implementation for the modified standard
- Public comments
- Facilitated discussion

This memo summarizes the Purpose and Need for the ordinance and summarizes proposed standards. **Staff requests that the Planning Commissioners review this memo in preparation for the Committee of the Whole work session. Please review (ATTACHMENTS):**

- ATTACHMENT A: City and Borough of Juneau v. Thibodeau, Supreme Court Opinion, May 11, 1979
- ATTACHMENT B: Olmo, LLC v. CBJ Board of Adjustment, Decision on Appeal, February 14, 2017
- ATTACHMENT C: Existing ADOD boundaries
- ATTACHMENT D: Proposed ADOD boundaries
- ATTACHMENT E: Public comments on dimensional standards
- ATTACHMENT F: Title 49 Committee minutes
- ATTACHMENT G: Draft Ordinance
- ATTACHMENT H: Public comments on elements of the ordinance other than dimensions
- ATTACHMENT I: Variances to Land Use and Platting Regulations, Lee Sharp, 1997

PURPOSE AND NEED

The need for the Downtown Juneau ADOD reflects:

- CBJ v Thibodeau (1979), establishing that variances must be related to features of the land (ATTACHMENT A).
- The “Olmo appeal” (2018), establishing hardship as a “threshold issue” for variances (ATTACHMENT B).

Pre-code downtown neighborhoods are unable to meet variance requirements due to the high thresholds of “hardship.” The need for code to regulate reasonable development advanced the Alternative Development Overlay District (ADOD). The initial ordinance (2017) was developed in haste, has burdensome costs for developers, and outlines methodologies that give well-intentioned interpreters different answers.

Proposed standards and this ordinance will:

- Reduce costs to the homeowner
- Facilitate consistent interpretations of dimensional standards
- Reduce complexity of using the ADOD

To clarify:

- Recently-approved non-conforming code allows residents to rebuild their existing non-conforming structure after destruction within the building’s pre-existing footprint. (Building code elements would have to be modernized.)
- Proposed ADOD facilitates improvements beyond the original structure for residences and commercial buildings within the boundary.

Background

The existing Downtown Juneau ADOD (2017):

- Acknowledged that existing zoning downtown does not match the built environment.
- Established a process for reducing dimensional standards to allow for the construction, reconstruction, expansion, or rehabilitation of residential buildings. This code:
 - Addresses lot coverage, vegetative cover, and setback requirements.
 - Applies to residential buildings.
- Established Planning Commission review for all ADOD permits.

The existing ADOD has a sunset date of August 2020. The existing ADOD was intended to be temporary, allowing time to establish new zoning regulations for downtown areas.

The existing ADOD code has exhibited some short-comings:

- **Complexity and consistency:** The procedure involves averaging setbacks of properties within a 150-foot radius. What percentage of the property that must be in that radius to be included is unclear. Some properties require use of GIS imagery to establish setbacks, while some properties have much more accurate as-built surveys. Well-intentioned interpreters can come up with different answers to the same question.

- **Expense:** The base price for an ADOD evaluation is \$400 per lot line.
- **Time:** The current ADOD requires a Planning Commission hearing, which compels a staff report and public noticing.

The proposed ADOD:

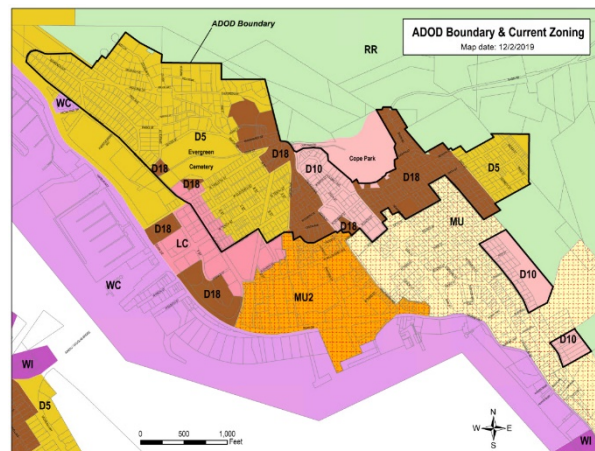
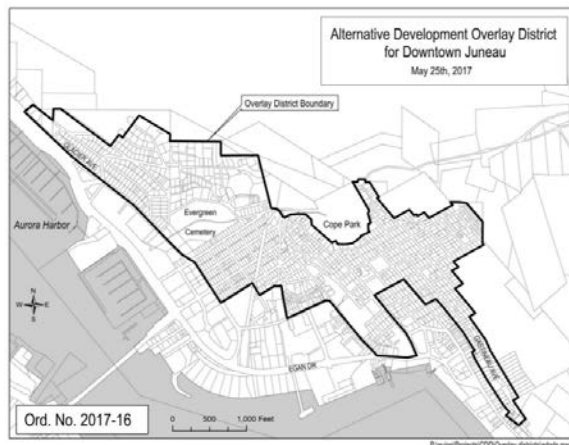
- Establishes dimensional standards, limiting interpretation required.
- Would execute through the Building Permit process, reducing workload for staff and the Planning Commission, and reducing cost and time for the developer.
- Costs of the proposed ADOD have not been established, and will likely be consistent with other permit fees.

PROPOSED STANDARDS

The proposed standards below are “opt in” modifications to underlying zoning in an overlay boundary. The tables below summarize existing standards and the proposed Downtown Juneau ADOD dimensional standards.

Note that density and use restrictions prevail under proposed ADOD standards – changes are limited to dimensional standards.

Staff and the Title 49 Committee have recommended changes to the proposed boundary of the Downtown Juneau ADOD (see also ATTACHMENTS C and D):



The largest change is the exclusion of the Mixed Use (MU) zoned area in the boundary. MU has more liberal dimensional standards than the Downtown Juneau ADOD is proposing.

Public comments on proposed dimensional standards are included in ATTACHMENT H.

Minimum Lot Area

The table below compares proposed Downtown Juneau ADOD minimum lot size to existing minimum lot size in the various zoning districts. Lot sizes are shown in square feet.

Note that under current regulation CDD would allow development of an undersized lot that met setback requirements. New standards would be used to:

- Evaluate proposals for subdivision of a lot in the ADOD boundary.
- Approve an accessory apartment without Planning Commission approval, if other parking and dimensional requirements could be met.

	Proposed	Current			
Structure	ADOD	D5	D10	D18	LC
Single Family Home	3,000	7,000	6,000	5,000	2,000*
Common Wall Dwelling	3,000	7,000	5,000	2,500	
Duplex	4,500	10,500	8,712	4,840	

* Light Commercial has a minimum lot size of 2,000 square feet for permissible uses, which includes residential and commercial development.

Lot Width, Depth and Coverage

	Proposed	Current			
FEATURE	ADOD	D5	D10	D18	LC
Lot width	25'	70'	50'	50'	20'
<i>Bungalow</i>	25'	35'	25'	25'	
<i>Common wall dwelling</i>	25'	60'	40'	20'	
Lot depth	25'	85'	85'	80'	80'
Vegetative cover	15%	20%	30%	30%	15%
Lot coverage	50%	50%	50%	50%	No Max

Lot coverage is 60% under the existing ADOD. The reduced coverage balances less-restrictive setbacks.

Structure Height

	Proposed	Current	
Height	ADOD	D5, 10, 18	LC
Permissible uses	35'	35'	45'
Accessory uses	25'	25'	35'
Bungalow		25'	

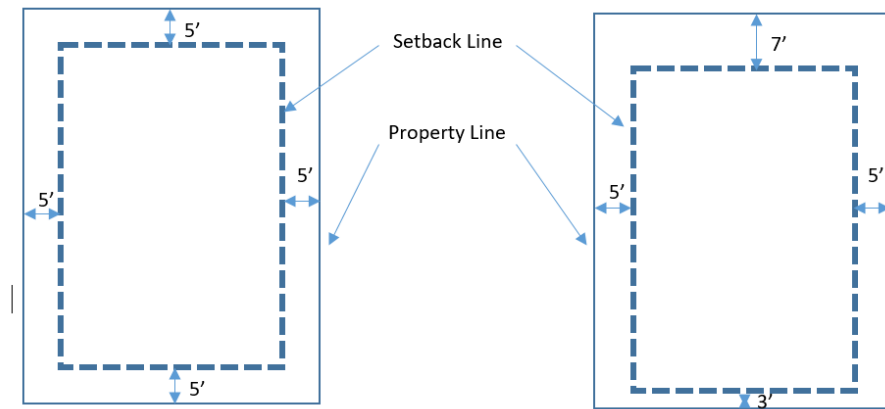
Structure Setbacks

Current setbacks:

YARD	D5	D10	D18	LC*
Front	20'	20'	20'	25'
Street Side	13'	13'	13'	17'
Side	5'	5'	5'	10'
Common Wall Dwelling Side	10'	3'	5'	
Rear	20'	20'	10'	10'

Proposed setbacks for all properties in the ADOD:

Staff proposes a 20-foot setback sum with a 3-foot minimum per side. This means that the setbacks of all sides of a lot must equal 20 feet, but no side may be less than 3 feet. This essentially creates a “setback box” that can be moved around the lot to accommodate existing structures. Examples:



Proposed setbacks for lots less than minimum lot area:

For lots less than the minimum lot area, the required setback sum can be reduced proportionally, but in no case can the setback sum be less than 12 feet and no side can be less than 3 feet.

Proposed Exemptions to Setbacks:

CBJ 49.25.430 establishes exemptions and reductions to required yard setbacks borough-wide. If the exemption listed in 49.25.430 is less restrictive than the proposed ADOD setbacks, it is shown in the proposed ordinance for clarity. If the exemption is more restrictive than the proposed ADOD setbacks, the ADOD setbacks apply.

Architectural features and roof eaves may project into a required yard setback but no closer than two feet from the side and rear lot lines.

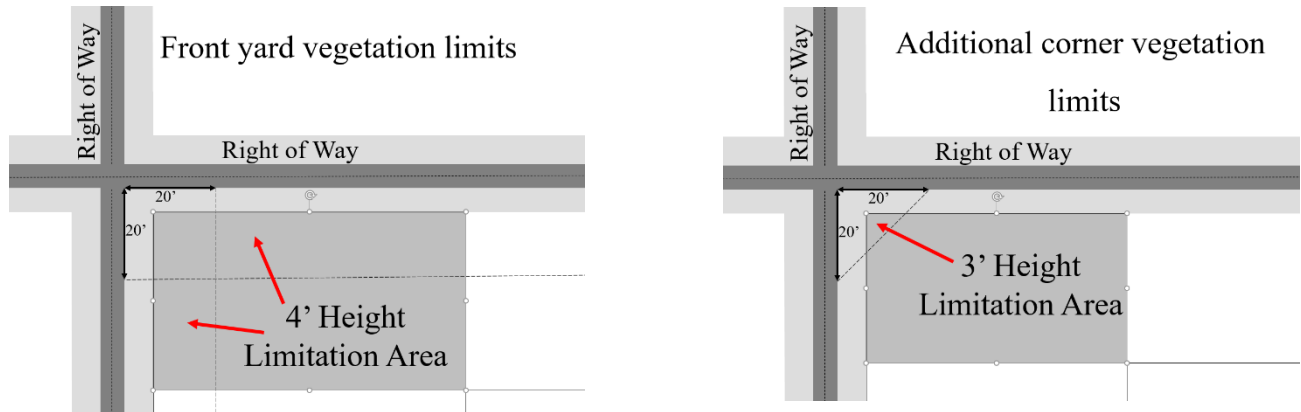
Unenclosed balconies, connecting deck stairways, walkways, ramps and landings with or without roofs may extend to the front lot line or street side lot lines. Structure may not exceed five feet internal width, not counting support structure.

A parking deck (which cannot be more than one foot above the level of the adjoining roadway, and can only be used for parking) is exempt from setback requirements. A non-sight-obscuring safety rail up to 42 inches is allowed.

Fences and vegetation. For this section, a “travelled way” is defined as the edge of the roadway shoulder or curb closest to the property.

(A) Maximum height of a sight-obscuring fence or vegetation is four feet, within 20 feet of the edge of the traveled way. Trees are allowed if they do not obscure view from four feet to eight feet above ground.

(B) On corner lots, the maximum height of a sight-obscuring fence or vegetation is three feet, within 20 feet of a street intersection. The area in which sight-obscuring fences and vegetation is restricted shall be determined by extending the edge of the traveled ways to a point of intersection, then measuring back 20 feet, and then connecting the three points. Trees are allowed if they do not obscure view from three to eight feet above the ground.



ADDITIONAL SUPPORT MATERIALS

- Title 49 Committee meeting minutes (ATTACHMENT F)
- DRAFT proposed ordinance (ATTACHMENT G)
- Public comments on elements of the ordinance other than dimensional standards (ATTACHMENT H)

ADDITIONAL BACKGROUND

“Variances to Land Use and Platting Regulations,” by Lee Sharp (1997, ATTACHMENT I) is attached to provide context on variance case law.

In 2015 Olmo, LLC appealed a Planning Commission decision to deny a variance to the Assembly. The Assembly’s decision to uphold the variance hinged on the Appellant’s ability to demonstrate hardship. While the variance code had multiple criteria for considering a variance, those criteria could not be considered before hardship was established. Hardship was a “threshold issue.”

Under old code, “hardship” was a difficult standard to meet. In new code (established in 2018), the Planning Commission eased the standard from “extraordinary situation or unique physical feature” to “unusual or special” features of the property.

Nonetheless, pre-code downtown neighborhoods in Juneau and Douglas struggle to meet variance criteria. According to case law:

Hardship:

- **Denies reasonable use of the property.** Downtown home owners in established homes use the property reasonably.

- **Can only be related to costs in the most extreme conditions.** A homeowner needing to pay more for an improvement is not, in itself, a hardship.
- **Cannot be self-imposed.** A structure is considered “self-imposed” regardless of who built it and when. Nine-hundred-sixteen downtown structures have residences constructed before regulation was established (1956).

Peculiarities of the land:

- **Arise when the physical conditions of the land distinguish it from other land in the area.** A distinguishing condition might be a steep slope or meandering waterway that did not impact neighbors. Downtown neighborhoods have similar physical conditions, distinguishing few lots.

Under old variance code, 50% of variances were to setbacks community-wide. When you consider the variances in just Downtown Juneau that percentage rises to 80%.

Agenda
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
June 9, 2020

I. ROLL CALL

Michael LeVine, Chairman, called the Committee of the Whole Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:04 p.m.

Commissioners present: Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Assistant Clerk; Ken Alper; Dan Hickok; Joshua Winchell; Erik Pedersen

Commissioners absent: Weston Eiler

Staff present: Jill Maclean, CDD Director; Irene Gallion, Senior Planner; Alexandra Pierce, Planning Manager; Emily Wright, CBJ Law Department; Laurel Christian, Planner

Assembly members: None

II. REGULAR AGENDA

AME2018 0004: Juneau Downtown Zoning – Alternative Development Overlay District
Applicant: City and Borough of Juneau
Location: Downtown Juneau

Due to A possible perceived conflict, Mr. LeVine turned the gavel to Mr. Dye to chair this portion of the meeting.

Irene Gallion, CDD, presented **AME2018 0004**.

Mr. LeVine noted that this has been a long-time work in process and wanted to note the amount of work that has gone into getting the AME to this point.

During the explanation of minimum lot size and percentage of conformity, Ms. Maclean explained if a property is nonconforming, it is more challenging for the property owner to obtain a mortgage loan. By making more properties conforming they think this should help homeowners.

Mr. Voelckers asked does the ADOD zoning supplant other zoning districts? Will this truly make the property conforming or will it just make their nonconformity allowed? Ms. Maclean said depending on how the ADOD is decided it could make them conforming. Later in the meeting, Ms. Wright clarified that this would make them 'more conforming' but they would not be conforming.

Mr. Voelckers had questions regarding subdividing in hazard areas. While they cannot subdivide, would they be allowed to add a kitchen or bedroom? Ms. Maclean answered yes and that is what is allowed today.

Mr. Voelckers asked what is the standard lot size in the Flats? Staff answered it is about 3,600 square feet. Mr. Voelckers asked why the Title 49 committee settled on a 3,000 square foot lot size when there was so much negative public testimony saying that was too small size. Mr. Dye explained the factors the committee considered and how they reached that decision saying that while there were concerns, there were mitigating factors as well.

Mr. Arndt explained that once the properties in hazard areas were removed from eligibility, only a handful of properties were left with subdivision potential. Mr. Winchell added the residential properties impacted by ability to subdivide was small and the intent is more to allow owners to use their land. Ms. Pierce explained that their goal was conformity and not so much subdividability. Mr. LeVine reminded the commission that the ADOD is an option for property owners to opt in to be compliant and it is not a requirement.

During discussion of setbacks, Mr. LeVine asked if a dwelling was built to the lot line with zero setback, and they wanted to add to it, could they build on the zero setback or would they have to observe the three-foot requirement. Staff answered, the property was already nonconforming and would not be allowed to add to the nonconformity. They would need to observe the three-foot setback for the addition.

Mr. Voelckers said he appreciates the flexibility the ADOD allows but has concerns with the setbacks as small as three feet and asked how staff came to find three feet acceptable and had concerns regarding the reduced setback requirements for the smaller sized lots. He also found the 50% limitation on lot coverage to be too stringent. He expressed surprise at the proposed reduction in setbacks to the very small lots and suggested the same percentage reduction be applied to the coverage requirement.

Mr. Arndt commented that the focus of the Title 49 Committee was on existing dwellings and not on new construction and explained that the majority of the lots affected by this are already built. Committee members discussed conforming versus more conforming nonconformity and the possibility of grandfathering the existing properties as conforming altogether.

Mr. Arndt reminded the Committee of the August 1 2020 sunset date saying they either need to extend the current ADOD or complete this to bring to the Assembly. Mr. Winchell asked what happens if the deadline is missed and how many properties would be affected. Ms. Maclean said the vast majority are nonconforming. If they cannot meet the sunset deadline, they could ask for an extension or if it is missed altogether, it could just become the standard zoning and there would be no sunset date. Mr. Dye explained the reason for continuing the ADOD is that would allow for additions and other options for the properties that would not be available if the sunset expires.

Mr. LeVine said he likes the postage stamp (setback box) approach but had trouble with the three-foot setbacks. He wondered if they could ask Ms. Wright to investigate other options in code that would allow the properties to become conforming rather than *more conforming* nonconformity without any possibility of unintended consequences that would eliminate the need for the phrase more conforming.

Mr. Winchell and Mr. Voelckers spoke in agreement with Mr. LeVine. Mr. Voelckers also had an issue with the percentages of required vegetative cover.

It was decided to keep this at the Committee of the Whole for further discussion.

Mr. Dye turned the gavel back to Mr. LeVine for the remainder of the meeting.

III. **OTHER BUSINESS** - None

IV. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

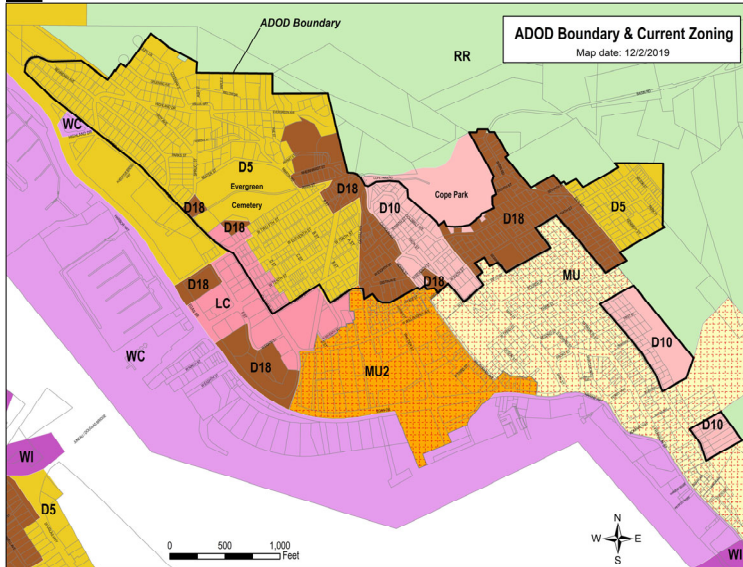
V. **ADJOURNMENT** – 6:49 pm

Invitation to Comment
Your Community, Your Voice

CITY AND BOROUGH OF
JUNEAU
ALASKA'S CAPITAL CITY
COMMUNITY DEVELOPMENT
155 S. Seward Street Juneau, AK

Packet Page 39 of 474

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JUNEAU, ALASKA



To:

An application has been submitted for consideration and public hearing by the Planning Commission for **proposed revisions to the Alternative Development Overlay District, which affects setbacks, minimum lot area, and other issues related to development. The Overlay covers both downtown Juneau and downtown Douglas, but revisions only concern Juneau at this time.**

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through June 21

Comments received during this period will be sent to the Planner, **Irene Gallion**, to be included as an attachment in the staff report.

June 22 — noon, July 12

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME: 7:00 pm, July 13, 2020

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 10, 2021

Case No.: AME2018 0004
Location: Downtown Juneau
CBJ Parcel Viewer: <http://epv.juneau.org>

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

VAR2021 0004: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek - APPROVED WITH AMENDMENTS

AGENDA ITEM:

Case No.: VAR2021 0004

Applicant: TDLH, LLC

Location: 3101 Mendenhall Loop Road (reassigned to 3221 Mendenhall Loop Road per CBJ GIS

Analyst) & 9090 Cinema Drive

Proposal: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek

ATTACHMENTS:

Description	Upload Date	Type
☐ Staff Report for VAR2021 0004	7/6/2021	Staff Report
☐ Presentation for VAR2021 0004	7/13/2021	Presentation
☐ Notice of Decision fr VAR2021 0004	7/27/2021	Notice of Decision



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

DATE: July 6, 2021
TO: Michael LeVine, Chair, Board of Adjustment
BY: Laurel Christian, Planner II *Laurel Christian*
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek.

STAFF RECOMMENDATION: Partial approval with conditions

KEY CONSIDERATIONS FOR REVIEW:

- Duck Creek is a naturally occurring feature of the land and is recognized as an impaired water body.
- Proposed stream channelization will create resiliency to area development for habitat.
- Culvert for future stream crossing that will provide access to 18 undeveloped acres with no other frontage on a public right-of-way.
- Work is prohibited without a Variance; there are no other permitting paths forward.
- ❖ *No evidence has been submitted that suggests the stream bank stabilization project warrants granting a Variance. Staff does not recommend approval of this element of the project.*

GENERAL INFORMATION	
Property Owner	Juneau Condos, LLC & TDLH, LLC
Applicant	Travis Arndt for Juneau Condos, LLC & TDLH, LLC
Property Address	9090 Cinema Drive & 3101 Mendenhall Loop Road (reassigned to 3221 Mendenhall Loop Road per CBJ GIS Analyst)
Legal Description	Gross Lot 2 & USS 1053 Tract A2
Parcel Number	5B2101320030 & 5B2101030001
Zoning	D15
Lot Size	4.9 acres & 20.4 acres
Water/Sewer	Public
Access	Cinema Drive and Mendenhall Loop Road
Existing Land Use	Wrestling Facility (under construction) 72 Units of Condominiums (Under Construction)
Associated Applications	Multiple, see below

ALTERNATIVE ACTIONS:

1. **Approve:** approve all elements of the project and adopt new findings for items 1-2 below that support the approval.
2. **Deny:** deny the permit and adopt new findings for items 1-2 below that support the denial.
3. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - o 49.20.240
 - o 49.20.250(b)
 - o 49.70.310
 - o 49.80

The Commission shall hear and decide the case per 49.20.240. The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES	
North (D15)	Cinema Drive
South (D15)	Mobile Home Park
East (D15)	Mendenhall Loop Road and Mobile Home Park
West (D5 & D15)	Residential

SITE FEATURES	
Anadromous	YES – Duck Creek
Flood Zone	YES – AE and Floodway
Hazard	None
Hillside	None
Wetlands	No Known
Parking District	None
Historic District	None
Overlay Districts	None

BACKGROUND INFORMATION

Project Description – The applicant requests a Non-Administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank stabilization, stream channelization, and installation of a culvert within the 50-foot, no-development, and 25-foot, no-disturbance buffers from Duck Creek (Attachment A).

This work includes:

- **Element 1, Culvert for future stream crossing.** A new culvert will accommodate Duck Creek and provide a location for future access to the property from Mendenhall Loop Road.
- **Element 2, Stream channelization.** Where the applicant owns both sides of the creek, the applicant proposes to channelize the stream by narrowing the stream to 6-10 feet and creating meanders.
- **Element 3, Stream bank stabilization.** Where the applicant only owns one side of the stream, the applicant proposes to stabilize the bank using root wads. As shown on the typical section included in Attachment A, the work is proposed 5 feet from the Ordinary High Water Mark (OHWM) or property line, whichever is further from the stream.

The image on the following page demonstrates the proposed areas of work.

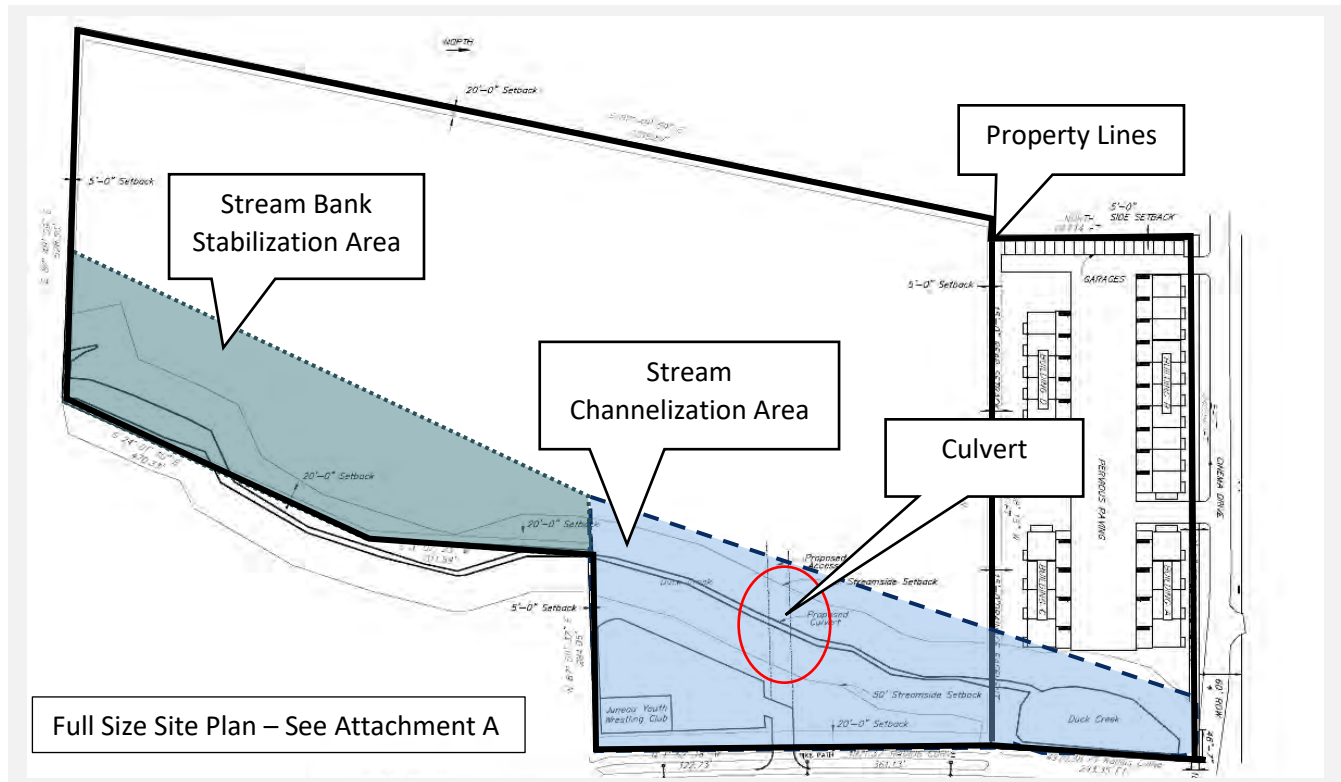
Stream bank stabilization is proposed to address the impacts of a substandard culvert upstream of the applicant's property. The applicant has no control over this culvert. The constrained size results in regular flooding and erosion of the applicant's property, and impacts stream flow and water quality.

Without improvements to Duck Creek habitat, further development of the lot may negatively impact water quality of this impaired water body. This mitigation work anticipates future development of the lot in accordance with D15 zoning density and standards.

July 6, 2021
VAR2021 0004
Page 3 of 10

If this Variance is granted, the applicant will be required to appropriately engineer the project and obtain required permits from the Alaska Department of Fish and Game (ADF&G), Department of Environmental Conservation (DEC), Army Corps of Engineers (ACOE), FEMA, and any other applicable agencies. It is the applicant's responsibility to obtain all necessary permits prior to commencement of work.

Proposed Areas of Work – The following image demonstrates the separate areas of work.



Background – Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management. Upon further review in March 2021, this code was determined null and void when the Alaska Coastal Management program ended in July 2011, and should have been repealed. With the exemption no longer permissible, stream rehabilitation work within 50 feet of an anadromous stream must pursue a Variance.

On June 22, 2021, the Planning Commission favorably recommended a code amendment to move an exception from abrogated code to CBJ 49.70 Article III, "Sensitive Areas." The code change is anticipated by fall 2021.

The table below summarizes relevant history for the lot and proposed development.

Item	Summary
USE2019 0009	A Conditional Use Permit was issued in 2019 for a 72-unit condominium development on the Cinema Drive property. Building permits were issued for the condominium development in 2019; buildings are currently under construction.
USE2019 0013	A Conditional Use Permit was issued in 2019 for an indoor sports facility, to be used as a wrestling gym, on the Mendenhall Loop Road property. A building permit was issued in 2020 for this project; the facility is currently under construction.
BLD2021 0039	In January 2021, the applicant applied for a grading permit for the bank stabilization of Duck Creek; this permit was issued in February 2021. Per past practice, staff noted that the project was exempt from 49.70.950(5) for the 50-foot setback from Duck Creek, because of an exception allowed by the Coastal Management Program. This permit was issued in error, as

Item	Summary
	the Coastal Management section should have been repealed. A stop work order was issued on March 10, 2021.
APL2021 0002	On March 30, 2021, the applicant filed a timely appeal of the Director's Stop Work Order. This appeal was forwarded to the Assembly and accepted; a Joint Motion to Stay the appeal, filed by CDD and the applicant, was accepted, providing the applicant time to seek permits from CDD and the Planning Commission.

ANALYSIS

Development buffers from anadromous waterbodies are required by CBJ Title 49.70.310:

(a) Development in the following areas is prohibited:

(2) Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and

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

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

(Emphasis added)

The applicant requests relief from these requirements in order to perform the proposed work.

Existing Conditions – Duck Creek is one of five impaired waterbodies within the borough, identified by DEC. In accordance with the Clean Water Act, DEC establishes a Total Maximum Daily Load (TMDL) for each impaired waterbody. Within the TMDL for Duck Creek, debris from watershed littering, water-quality because of low dissolved oxygen, debris, metals, fecal coliform bacteria and turbidity are identified as impairments to the waterbody (EPA TMDL, 2000). Within these reports, it is identified that the impairments to the waterbody are also impairments to anadromous species who use the streams to spawn (EPA TDML, 2000). The applicant will be required to obtain any necessary permits through DEC.

ADF&G has visited the site with the applicant and submitted a site report to the Department. Within the report, it identified the stream as *a shallow and wide channel with slow moving water, fine substrate, and organic debris, largely as a result of it being too wide* (Attachment C). The report identifies general concepts for improving fish habitat. The stream channelization element of the applicant's proposal is in line with these concepts and is expected to improve fish habitat. Additionally, ADF&G submitted comments to the Department stating that *at present, there appears to be no need to stabilize this bank with a root wad technique designed for larger rivers and an absence of infrastructure requiring protection. Removing some or all of the riparian timber that was cut and encouraging regrowth of the riparian trees through planting, and restricting disturbance within 50 ft, would provide the greatest value to the stream.*

If approved, staff recommends the following condition:

Condition: Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the Department a revegetation plan for disturbed areas. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.



Project Site – The project site consists of two (2) lots – one located on Mendenhall Loop Road and one located on Cinema Drive. The lots are in a D15 zoning district and each exceeds the minimum lot dimensions required. The lots are relatively flat with few areas of slopes in excess of 18 percent. Portions of the site are within the AE flood hazard area and portions of Duck Creek are mapped as floodway (Attachment D). Work within these areas will require a Floodplain Development Permit, issued by the Floodplain Manager [49.70.400(e)].

Duck Creek, an anadromous waterbody according to the 2013 Comprehensive Plan, flows through the site.

Proposed Improvements – Within the project narrative, the applicant proposes three elements to the project. These are described in the following sections.

Element 1, Culvert for future stream crossing:

- A culvert is necessary to construct a future stream crossing. The stream crossing is necessary to provide access to approximately 18 acres of undeveloped land on the western side of Duck Creek. There is no current access provided to this area.
 - **Staff recommends approval of this element of the project.**

Element 2, Stream channelization:

- Existing channel ranges from 15-30 feet. ADF&G trip report indicates that an irregular width of 6-10 feet is preferred for fish habitat. ADF&G finds that narrowing the channel will be beneficial for fish and fish habitat (Attachment C).
- Adhering to the development buffers required by 49.70.310 would create undue hardship in that the applicant cannot perform work necessary for stream rehabilitation for habitat. Without rehabilitation, this section of Duck Creek is susceptible to further impacts from development. Rehabilitation of impaired waterbodies is an identified priority by the CBJ 2013 Comprehensive Plan (Policy 7.7).
 - **Staff recommends approval of this element of the project.**

Element 3, Stream bank stabilization:

- The applicant proposes placement of root wads and fill within the 25-foot, no-disturbance and 50-foot, no-development buffer as shown on the typical section included in Attachment A. Reasons listed in the project narrative for this work are improvements for fish habitat and bank stabilization due to protect against “existing and continued damage by an existing undersized culvert and collapsed log stringer bridge” (Attachment A).
- As discussed above, ADF&G at this time does not see a need for this work to occur. They find the most beneficial work for habitat would be to encourage regrowth of the riparian area that was previously cut and to limit further disturbance within 50 feet of the stream (Attachment C).
- At the time of writing this report, the applicant provided no evidence that the proposed stabilization will effectively mitigate against flooding and erosion caused by the existing undersized culvert or collapsed bridge that is located partially on the adjacent property to the east.
 - **Staff does not recommend approval of this element of the project because we find no evidence that a hardship is created by enforcing the required development buffer.**

VARIANCE STANDARDS

Pursuant to CBJ 49.20.200, a Non-Administrative Variance may be granted to provide an applicant relief from the requirements of this Title 49, the Land Use Code. A Variance is prohibited from varying any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35 (Public and Private Improvements), or requirements in chapter 49.65 (Specified Use Provisions).

Per CBJ 49.20.250(b), a Non-Administrative Variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Board of Adjustment has determined that:

A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.

Analysis: The applicant must establish that adhering to the code creates hardship that is distinct from similarly situated properties. Hardship must be due to peculiarities of the land, in this case Duck Creek.

“Hardship” means that the land cannot be used as intended. Pecuniary difficulties cannot be considered hardship.

Element 1, Culvert for future stream crossing: The area of the lot that will be accessed by a future stream crossing, built over the culvert, is intended for development, which will not be allowed without direct access to a right-of-way, which it does not currently have. The area of the lot on the western side of Duck

Creek has no alternative access point to a public right-of-way; a stream crossing is necessary, a culvert will accommodate this in the future.

Element 2, Stream channelization: The land directly adjacent to Duck Creek is intended to provide habitat that will help protect Duck Creek from development impacts. Duck Creek is “impaired,” with reduced resiliency to development. Proposal improves habitat conditions and makes them more resilient to development.

Element 3, Stream bank stabilization: As discussed above, ADF&G at this time does not see a need for this work to occur. They find the most beneficial work for habitat would be to encourage regrowth of the riparian area that was previously cut and to limit further disturbance within 50 feet of the stream (Attachment C).

At time of writing this report, the applicant provided no evidence that the proposed stabilization will effectively mitigate against flooding and erosion caused by the existing undersized culvert or collapsed bridge that is located on partially adjacent property.

Adhering to the stream buffers precludes the applicant from improving fish habitat. There have been multiple restoration projects along Duck Creek (Juneau Watershed Partnership, 2006). In line with past practice, other restoration projects were permitted under exceptions within the Coastal Management section of the Land Use Code, which was recently deemed null and void. Because of this, the applicant is not afforded relief from the required buffer without the granting of a Variance, that other similarly situated properties have been granted.

Findings: Yes. This criterion has been met for Element 1, Culvert and Element 2, Stream Channelization elements of the project.

No. This criterion has NOT been met for Element 3, Stream Bank Stabilization elements of the project.

B. The unusual or special conditions of the property are not caused by the person seeking the Variance.

Analysis: Duck Creek is a naturally occurring feature of the land, and the special condition of the property is not caused by the applicant.

Isostatic rebound contributes to low flow. Low flow is the greatest hindrance in successful recovery (Juneau Watershed Partnership, 2006, page 10).

Five percent of lots in Juneau are within 50 feet of an anadromous stream, making the condition unusual.

Finding: Yes. This criterion has been met for Elements 1, 2, and 3.

C. The grant of the Variance is not detrimental to public health, safety, or welfare.

Analysis: Granting the Variance improves habitat and provides opportunity to make the stream more resilient to development. Improvements to water quality and wetland development should benefit the ecosystem as a whole and improve the quality of living in the watershed (Juneau Watershed Partnership, 2006, page 19). The EPA recommends that beautification of areas adjacent to waterways and detention ponds should be integral to development plans as it increases property value while enhancing the quality of life (Juneau Watershed Partnership, 2006, page 17).

As discussed above, if the Variance is granted, the applicant is required to obtain necessary permits from the ADF&G, DEC, ACOE, FEMA, and other applicable agencies. A grading permit will be reviewed by CBJ.

Additionally, a Floodplain Development Permit will be reviewed by the Floodplain Manager. A no-rise certificate is required for placement of fill within the floodway (for stream channelization work). As part of this review, there must be no increase in base flood elevation, or the applicant is required to comply with CBJ and FEMA requirements to perform a conditional letter of map revision to revise the floodway [49.70.400(i)].

Granting of the Variance allows the applicant to design the work in accordance with CBJ, State, and Federal regulations and is not detrimental to public health, safety, or welfare.

Finding: Yes. This criterion has been met for Elements 1, 2, and 3.

D. The grant of the Variance is narrowly tailored to relieve the hardship.

Analysis: Element 1, Culvert for future stream crossing. One culvert is proposed in this project and would facilitate construction of a stream crossing to provide access to future development. This element of the proposal is narrowly tailored.

In the areas where the applicant owns both sides of the stream, **Element 2, stream channelization** will create a new stream environment. If the Variance is granted, the applicant will design and construct the project. As discussed above, the project cannot proceed without granting the Variance, and is narrowly tailored to allow the work necessary for stream channelization to improve fish habitat and an impaired waterbody.

In the areas where the applicant does not own both sides of the stream, the applicant will accommodate the stream bank by stabilizing it. Staff finds there is no hardship created by **Element 3, stream bank stabilization** that the request can be narrowly tailored to. Staff does not recommend approval of this portion of the project.

The proposed Variance is narrowly tailored to relieve the hardship for Elements 1 and 2, as the applicant is not proposing structures or other types of development within the buffer. The Variance allows the applicant to perform stream rehabilitation and does not permit other types of development within the buffer. As discussed above, it is recommended that the applicant be required to revegetate any disturbed areas of the required buffer.

Findings: Yes. This criterion has been met for Elements 1 and 2.

No. This criterion has NOT been met for Element 3.

Pursuant to CBJ 49.20.260, the Board may attach to a Non-Administrative 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 title and to protect the public interest. As discussed above, staff recommends one condition that will facilitate continued stabilization of slopes, improve fish habitat, and provide shade to the stream.

Condition: Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the Department a revegetation plan for disturbed areas. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.

AGENCY REVIEW

CDD conducted an agency review comment period between June 16 and June 24, 2021. Agency review comments can be found in Attachment C.

Agency	Summary
Alaska Department of Fish and Game (ADF&G)	On June 29, 2021, the ADF&G submitted revised comments to the Department, which clarify that the stream bank stabilization element of the project does not appear to be warranted at this time. Initial comments misinterpreted the application and were based on the thought that work for this element of the project was happening outside of the required development buffers. Revised comments are discussed throughout this report.

PUBLIC COMMENTS

Staff mailed public notice to property owners within 500 feet of the lots (Attachment B). Additionally, a public notice sign was posted on site two weeks prior to the public hearing (Attachment B). One public comment was received after the staff report had been drafted; it will be included in the additional materials packet.

FINDINGS

1. *Is the application for the requested variance complete?*

Analysis: No additional analysis required.

Finding: Yes. The application for the required variance is complete.

2. *Does the Variance as requested meet the criteria of Section 49.20.250(b)(1), Non-Administrative Variances?*

Analysis: As discussed above, staff does not recommend approval of the stream bank restoration project as the applicant has not established that a hardship is created for this portion of the project. Staff finds that other portions of the project meet the criteria listed above, namely the stream channelization and installation of a culvert for stream crossing.

Finding: Yes. Elements 1 and 2 of the requested Variance meet the criteria of Section 49.20.250(b)(1).
No. Element 3 does not meet the criteria of Section 49.20.250(b)(1).

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** Elements 1 and 2 of the requested Non-Administrative Variance with one condition. The Non-Administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) would allow:

- Element 1: The installation of a culvert for a stream crossing.
- Element 2: Stream channelization where the applicant owns both sides of the creek to improve habitat conditions.

This approval is subject to the following condition:

1. Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the

Department a revegetation plan for disturbed areas. The plan must be approved by ADF&G. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **DENY** Element 3 of the requested Non-Administrative Variance:

- Element 3: Stream bank stabilization where the applicant only owns one side of the creek.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	Public Notice
Attachment C	Agency Comments
Attachment D	Flood Maps



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant

PROPERTY LOCATION		
Physical Address 3221 Mendenhall Loop Road <i>3101 Mendenhall Loop Rd (check w/ Quinn)</i>		
Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) USS No. 1053 Tract A-2		
Parcel Number(s) 5B2101030001		
☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
LANDOWNER/ LESSEE		
Property Owner TDLH, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
Mailing Address 10840 Lilac Drive		
E-mail Address constellation_dev@hotmail.com		
LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:		
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.		
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X	<i>[Signature]</i> Landowner/Lessee Signature	<i>5/24/21</i> Date
X	_____ Landowner/Lessee Signature	_____ Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT If the same as OWNER, write "SAME"		
Applicant SAME	Contact Person	Phone Number(s)
Mailing Address		
E-mail Address		
X	<i>[Signature]</i> Applicant's Signature	<i>5/24/21</i> Date of Application

DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

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Intake Initials <i>LEC</i>
Case Number <i>VAR 21-04</i>
Date Received <i>6/15/21</i>

Updated 2017 - Page 1 of 1



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address 9090 Cinema Drive		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) Gross Lot 2		
	Parcel Number(s) 5B2101320030		
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
	LANDOWNER/ LESSEE		
	Property Owner Juneau Condos, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
	Mailing Address 10840 Lilac Drive		
	E-mail Address constellation_dev@hotmail.com		
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X _____ Landowner/Lessee Signature		5/24/21 Date	
X _____ Landowner/Lessee Signature		_____ Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME"			
Applicant Same		Contact Person	
Mailing Address		Phone Number(s)	
E-mail Address			
X _____ Applicant's Signature		5/24/21 Date of Application	

DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Intake Initials LEC
Case Number VAR21-04
Date Received 6/15/21



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

**NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.
Not to be used for Administrative Variances**

To be completed by Applicant	PROJECT SUMMARY			
	Stream and Stream bank Restoration			
	VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to)			
	49.70.310 Habitat			
	Previous Variance Applications? YES ☐ NO ☒ Date of Filing: _____ Previous Case Number(s): _____ Building Permit related to this variance? YES ☐ NO ☐ Was the Variance Granted? YES ☐ NO ☐			
UTILITIES AVAILABLE: WATER ☒ Public ☐ On Site SEWER: ☒ Public ☐ On Site				
ALL REQUIRED MATERIALS ATTACHED Complete application per CBJ 49.65.210 Narrative including: Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure Why a variance would be needed for this property regardless of the owner What hardship would result if the variance is not granted Site Plan				

DEPARTMENT USE ONLY BELOW THIS LINE

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ 400			
Adjustment	\$ 150			
Total Fee	\$ 550			

→ Public Notice Sign Fee/Deposit \$150

Fee waived per Director

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number VAR 21-04	Date Received LEC 6/15/21
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Parcel #: 5B2101030001

Legal Description: USS No. 1053 Tract A-2

Size: 20.49 acres

Zoning: D15

Existing Structure: Wrestling Gym under construction

Density: 0

Access: Commercial Driveway connecting to Mendenhall Loop Road

Utilities: All public utilities available

Parcel #: 5B2101320030

Legal Description: Gross Lot 2

Size: 4.922 acres

Zoning: D15

Existing Structure: Condominiums

Density: 72

Access: Driveway connecting to Cinema Drive

Utilities: All public utilities available

Duck Creek, an impaired anadromous water body, flows through both properties. Duck Creek cuts off access to approximately 18 acres of the larger parcel. The State of Alaska Department of Fish and Game (F&G) has noted the stream has numerous problems largely a result of being too wide, see F&G Trip Report. We desire to work with F&G and other agencies to improve the habitat conditions through stream and stream bank restoration.

Stream and bank restoration work vary depending on location within the property.

- The portions of the stream in which we own both sides of the creek, we anticipate constructing an irregular width stream about 6-10 ft wide with 0.5-1.5 ft banks, while providing overflow capacity to accommodate the design floods. We anticipate including boulders, root wads and logs within the channel and banks. Access to the rear portion of the lot will cross Duck Creek where we own both sides. The stream design and access will accommodate the concepts outlined in the F&G Trip Report. The improvements are intended to improve the fish habitat of the stream and provide access to the rear portion of the lot. The design of these improvements will require significant expenditure, time, and agency coordination. Thus, the detailed design will be completed after the issuance of the variance.
- The portions of the stream in which we only own one side of the creek, we anticipate bank stabilization primarily through the use of root wads, as noted in F&G's Streambank Revegetation and Protection: A Guide for Alaska, which is also referenced in proposed CBJ streamside code revisions. A conceptual typical section can be seen on the drawing titled "Streambank Restoration Grading Details." In an effort to minimize the impacts within this zone, we are currently planning to work outside of the regulated Floodway. The installed root wads will provide a number of functions, namely to provide juvenile fish habitat, anchor the slopes of the stream bank and provide protection against the existing and continued damage by an existing undersized culvert and collapsed log

stringer bridge. Both of which impair the flow of the creek, as can be seen on the FEMA FIRM, causing a flood rise of 2.7 ft. For comparison sake, there is only a 0.2 ft flood rise for the approximately 1300 ft of Duck Creek located downstream of the culvert and log stringer bridge. Unfortunately, these restrictions to the stream flow are located outside areas we control. With the bank restoration in place, as the stream is continued to be forced westward by the restrictions, it will come up against the root wads. The root wads will retain their location and allow for juvenile fish habitat amongst the cavities, as noted in F&G's Streambank Revegetation and Protection: A Guide for Alaska. While we are interested in continuing the whole stream restoration within these reaches as well, we are planning for a one-sided restoration as a minimum.

Hardship: Enforcement of CBJ 49.70.310 requiring a 50 ft streamside buffer and 25 ft no disturbance zone.

Regardless of the owner;

- The enforcement of CBJ 49.70.310 would stop the access from a public right of way (ROW) to approximately 18 acres of land zoned D15. Having no ROW access would render one of the largest tracts of flat, developable, multifamily land in the Mendenhall Valley undevelopable.
- Further, the enforcement of CBJ 49.70.310 would also stop the coordinated habitat rehabilitation of Duck Creek. Work must be completed within the buffers in order to rehabilitate the stream and its banks. Without such work, the habitat conditions within this reach of Duck Creek will remain impaired and a blight, while other sections of Duck Creek, upstream and down, have been rehabilitated.

Variance narrowly tailored to relieve hardship:

The variance will provide relief from CBJ 49.70.310. The remaining sections of Title 49 would be in effect. Other permits and regulations, such as grading permits and flood zone permits, would still be required. The variance would not result in changes to the table of permissible uses or dimensional standards.

MEMORANDUM**State of Alaska**

Department of Fish and Game
Habitat Section

TO: Kate Kanouse
Southeast Regional Supervisor

DATE: DRAFT

FILE: 58.3802 N, 134.5780 W

SUBJECT: 2021 Duck Creek
Restoration Trip Report

FROM: Greg Albrecht 
Habitat Biologist

PHONE NO: (907) 465-6384

On May 5, 2021, I visited Duck Creek near Cinema Drive with Travis Arndt, who owns property on both sides of Duck Creek and is interested in improving stream habitat conditions in concert with developing uplands for residential housing and installing a culvert in the creek for access. The area contains a 200 ft long gravel dredge pond and a 500 ft long reach of stream that is characterized by a shallow 15–30 ft wide channel with slow moving water, fine substrate, and organic debris, largely as a result of it being too wide (Figures 1–3).

I suggested the following general concepts for improving fish habitat and constructing the crossing, both of which should be designed by a qualified engineer and will require a Title 16 Fish Habitat Permit:

- 1) Use heavy equipment to construct low profile (0.5–1.5 ft) banks that constrict the channel below ordinary high water to an irregular width of 6–10 ft and retain natural floodplain width.
- 2) Include boulders, root wads, and logs in the bank and channel to create pools and constrictions that will provide rearing habitat and maintain spawning gravel.
- 3) Avoid damaging or cutting remaining riparian trees and consider topping cottonwoods that pose a safety hazard, rather than removing them.
- 4) Seed the banks with a native grass for short term stability and transplant willows and other shrubs to provide additional bank stability until conifers establish.
- 5) Install a culvert that is as wide as the maximum new channel width (~10 ft), measured from the ordinary high water line, to allow for the free migration of fish and stream material. The culvert should match the stream gradient, be embedded 20–40% depending on culvert type, and backfilled with stream substrate.



Figure 1.—Looking upstream towards the dredge pond where the channel is 15-20 ft wide.



Figure 2.—Looking downstream at a reach 20–30 ft wide.



Figure 3.—Looking downstream at a 20–25 ft wide reach of stream.

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
 ADF&G Habitat Staff, Douglas
 Dan Teske, ADF&G SF, Douglas
 David Harris, ADF&G CF, Douglas
 Roy Churchwell, ADF&G WC, Douglas
 Teri Camery, CBJ, Juneau
 Jill Maclean, CBJ, Juneau
 Travis Arndt, Constellation Development, Juneau
 Ben Soiseth, USACE, Soldotna
 Doug Cooper, USFWS, Anchorage
 Habitat Conservation Division, NMFS, Juneau



1945 Alex Holden Way #101	Juneau, AK 99801	907-780-4004	solutions@proHNS.com
219 Main Street #13	Haines, AK 99827	907-419-6070	www.proHNS.com

June 11, 2021

TDLH LLC
 Travis Arndt
 10840 Lilac Dr
 Juneau, AK 99801
 constellation_dev@hotmail.com

RE: Subdivision of USS 1053 TR A2 – Preliminary Drainage Report

To Whom It May Concern,

The following Preliminary Drainage Plan has been prepared for the subdivision of USS 1053 TR A2 in Juneau, AK. The project generally consist of 1.12 acres of clearing and construction of a new 5,000 sf building of one lot on the east of Duck Creek, as well as 16.97 acres of clearing of a second lot on the west side of Duck Creek. The total pre-developed parcel size is 20.49 acres. A pre-developed and post-developed map have been included with this report.

Site Runoff Calculation Method:

The project site consist of two separate drainage basins. One on the west side of Duck Creek and one on the east side of Duck Creek. Each basin was modeled using the SCS TR-55 model method, as described in Appendix D of the *City and Borough of Juneau Manual of Stormwater Best Management Practices*.

Site Drainage Patterns:

Pre-Developed Conditions: During a site visit performed on 6/10/2021 it was observed that the site is generally flat with local mounds and depressions. The majority of the western portion of the site appears to drain in a generally southwestern direction, though there was no evidence of channelization or concentrated flow. There were no defined drainage channels or discharge points on the western property line, thus it is presumed that the rainfall is absorbed by the dense vegetation and infiltrated into the ground. The *Soils of the Juneau Area (Schoephorster & Furbush 1974)* classify the onsite soils as well-drained "Fine Sandy Loam". Onsite exposed soils appeared to be visually consistent with this classification, which supports the notion that rainfall is absorbed by the onsite soils. In the event that the amount of precipitation exceeds the soils infiltrative capacity, it appears that ponding would occur in the southwestern corner of the property until the ponded water overflows into a ditch in the southeastern corner of the property and flows into Duck Creek. A portion of the site, on both the east and west sides of Duck Creek, is sloped towards the creek. Any water not infiltrated into the soil in these areas would sheet flow over vegetated surfaces into Duck Creek.



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 219 Main Street #13 | Haines, AK 99827 | 907-419-6070 | www.proHNS.com

Post-Developed Conditions: The new lot on the western side of the creek will be cleared and grubbed. The site will be graded to have a very mild slope in the southeastern direction and then vegetated with grass and/or native ground cover. Any stormwater that does not infiltrate into the ground will sheet flow into Duck Creek over vegetated surfaces. No buildings or impervious surfaces are proposed on the western side of the creek at this time. The entire western portion of the site will be vegetated, with the 50 feet immediately adjacent to the creek consisting of undisturbed trees, shrubs, and underbrush. The new lot on the eastern side of the Creek will be developed with a 5,000 sf (0.11 acre) building and 24,586 sf (0.56 acre) parking lot. Runoff will sheet flow across the parking lot and then sheet flow across a minimum of 50 feet of vegetated buffer consisting of undisturbed trees, shrubs, and underbrush.

Anticipated Site Runoff:

Using the SCS Method, the amount of stormwater runoff during the 25-year storm event per catchment area was determined. See Tables 1.1 and 1.2 below for results. It can be seen that the increase in stormwater runoff from the entire site will be 2.29 cfs.

Table 1.1	Area (acres)	Peak Runoff (cfs)
Basin A: Pre-developed (area west of Duck Creek)	16.97	0.59
Basin B: Pre-developed (area east of Duck Creek)	1.12	0.04
Basin A: Post-developed (area west of Duck Creek)	16.97	2.41
Basin B: post-developed (area east of Duck Creek)	1.12	0.51

Table 1.2	
Bains A Increase (cfs)	1.82
Bains B Increase (cfs)	0.47
Total Increase (cfs)	2.29

Conveyance/Discharge Structure Capacities:

For this project Duck Creek is considered the receiving water body. Conveyance will consist primarily of sheet flow, with a short section of wide ditching in the southeast corner of the site, thus there are no capacity concerns for the routing of stormwater before it reaches the receiving water body.



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Summary:

The project site has very minimal slope and high infiltration capacity, which results in a relatively minor increase in stormwater runoff. The use of retained vegetation and a 50 foot undisturbed buffer along Duck Creek further reduce potential runoff from the site.

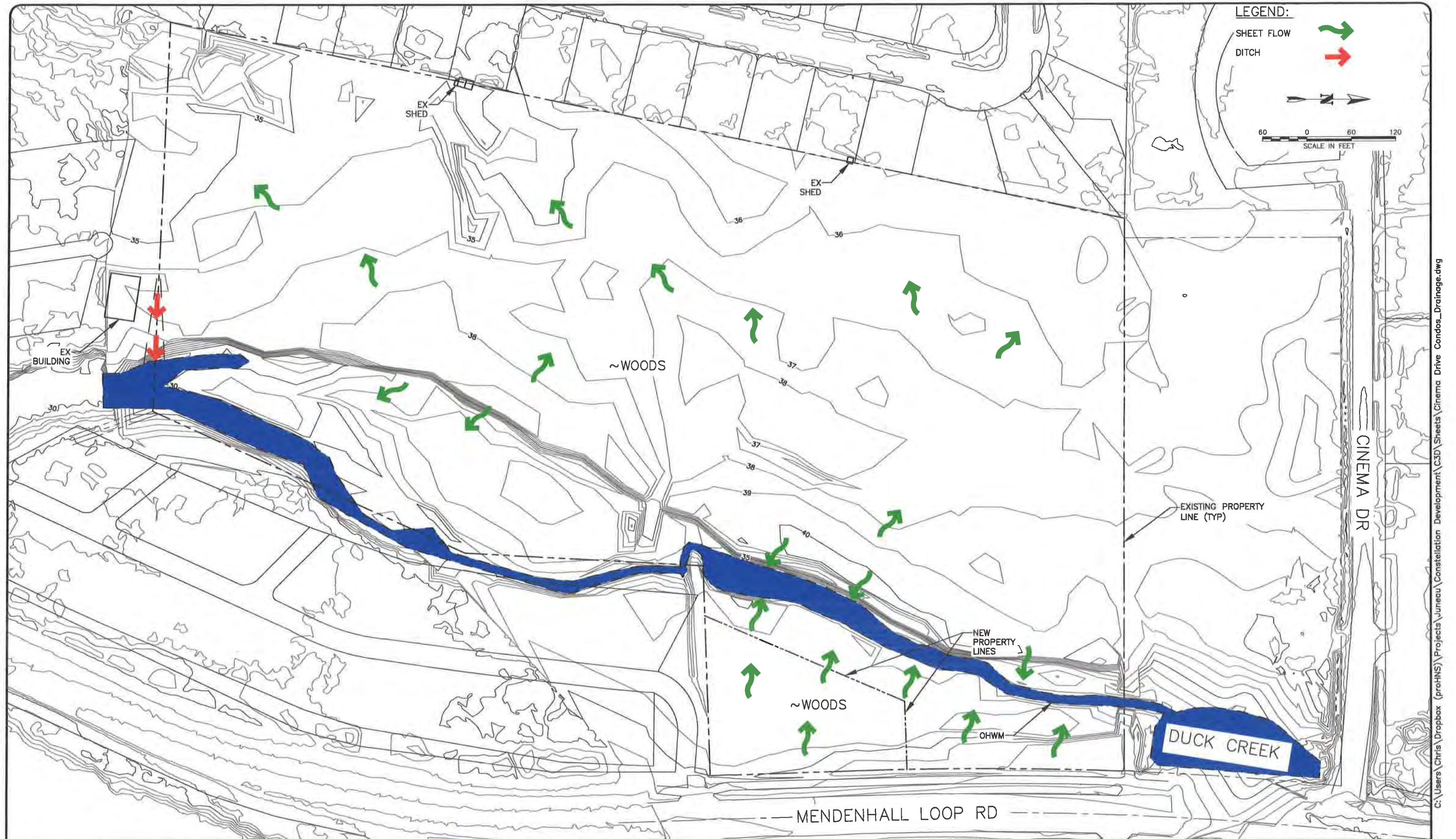
Our preliminary analysis shows that there are no capacity concerns from the increase in stormwater resulting from this project before it reaches the receiving water body.

Respectfully,

A handwritten signature in blue ink that reads "Lucas Chambers". The signature is written in a cursive, flowing style.

Lucas Chambers, P.E.
Principal Engineer – proHNS LLC Juneau

Attachments:
Pre-Developed and Post-Developed Drainage Maps (2 sheets)



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June 11, 2021

RECORD OF REVISIONS				DRAWN BY: C. BYDLON DESIGNED BY: C. BYDLON CHECKED BY: L. CHAMBERS	CBJ REVIEW	SUBDIVISION OF USS 1053 TR A2	PRE-DEVELOPED DRAINAGE MAP	SHEET NUMBER	
No.	DATE	DESCRIPTION	BY					1	OF
					APPROVED: _____				
					DATE: _____			2	





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SCALE IN FEET

RECORD OF REVISIONS			
No.	DATE	DESCRIPTION	BY



DRAWN BY: C. BYDLON
DESIGNED BY: C. BYDLON
CHECKED BY: L. CHAMBERS
1945 ALEX HOLDEN WAY #101
JUNEAU, AK 99801
(907) 780-4004
solutions@proHNS.com
www.proHNS.com

CBJ REVIEW
APPROVED: _____
DATE: _____

SUBDIVISION OF
USS 1053 TR A2

POST-DEVELOPED
DRAINAGE MAP

SHEET NUMBER	
2	OF
2	



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219 Main Street #13	Haines, AK 99827	907-419-6070	www.proHNS.com

June 11, 2021

Juneau Condos LLC
 Travis Arndt
 10840 Lilac Dr
 Juneau, AK 99801
 constellation_dev@hotmail.com

RE: Cinema Drive Condos – Preliminary Drainage Report

To Whom It May Concern,

The following Preliminary Drainage Plan has been prepared for the Cinema Drive Condos at 9090 Cinema Drive in Juneau, AK. The project generally consist of 4.07 acres of clearing and construction of a new 1.36 acres of new buildings and 1.35 acres of parking on the west side of Duck Creek. The total parcel size is 4.92 acres. A pre-developed and post-developed map have been included with this report.

Site Runoff Calculation Method:

The project site consist of a single drainage basin. This basin was modeled using the SCS TR-55 model method, as described in Appendix D of the *City and Borough of Juneau Manual of Stormwater Best Management Practices*.

Site Drainage Patterns:

Pre-Developed Conditions: During a site visit performed on 6/10/2021 it was observed that development of the site is already underway and several buildings and parking areas have been constructed. Based on survey data, aerial images, and google street view, the existing conditions were able to be accurately assumed. The predeveloped site consisted of generally flat topography with local mounds and depressions. The only channelization observed was a roadside ditch along the northern property line, which was dry at the time of the site visit. It is believed that stormwater was absorbed by the onsite vegetation and infiltrated into the soil before leaving the site. The *Soils of the Juneau Area* (Schoephorster & Furbush 1974) classify the onsite soils as well-drained "Fine Sandy Loam". Exposed onsite soils were visually examined in the vertical face of a foundation excavation and appeared to be consistent with this classification, which supports the notion that stormwater is predominantly absorbed by the onsite soils. A small section on the easter part of the site has steeper slopes that appear to sheet flow over vegetated surfaces into a ponded area of Duck Creek.



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Post-Developed Conditions: The post-developed site will feature a new drainage pattern running west to east. The parking area will be constructed of permeable pavement, which allows the stormwater to pass through the pavement and be infiltrated in the permeable onsite soils, or detained in the 2 feet of shot rock under the parking lot. Any stormwater that is not infiltrated in to the ground will flow through the shot rock layer at a slower rate than allowing it to flow across the surface of the parking area, and will eventually discharge across a 50 foot vegetative buffer and into Duck Creek. A small portion of the site will flow into ditches or stormdrains along the northern and southern property lines, which will flow east and discharge into Duck Creek. These small areas will be primarily vegetated areas of lawn.

Anticipated Site Runoff:

Using the SCS Method, the amount of stormwater runoff during the 25-year storm event was determined. See Tables 1.1 and 1.2 below for results. It can be seen that the increase in stormwater runoff from the entire site will be 2.05 cfs.

Table 1.1	Area (acres)	Peak Runoff (cfs)
Pre-developed	4.07	0.14
Post-developed	4.07	2.19

Table 1.2	
Total Increase (cfs)	2.05

Conveyance/Discharge Structure Capacities:

For this project Duck Creek is considered the receiving water body. Conveyance will consist primarily of the shot rock under the parking area. A portion of this stormwater is expected to infiltrate into the onsite soils beneath the 2 feet of shot rock and a portion is expected to flow through the shot rock and discharge into Duck Creek. In the event that the amount of precipitation exceeds the infiltrative capacity of the soils beneath the shot rock and the storage capacity of the shot rock itself, the overflow would flow across the surface of the parking lot and over a minimum 50 foot undisturbed vegetated buffer consisting of undisturbed trees, shrubs, and underbrush before flowing into Duck Creek.



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Summary:

The project combines permeable pavement, 2 feet of shot rock, and a vegetative buffer to minimize the amount stormwater increase resulting from the development. This results in a very reasonable increase in stormwater for the scope of the project.

Our preliminary analysis shows that there are no capacity concerns from the increase in stormwater resulting from this project before it reaches the receiving water body.

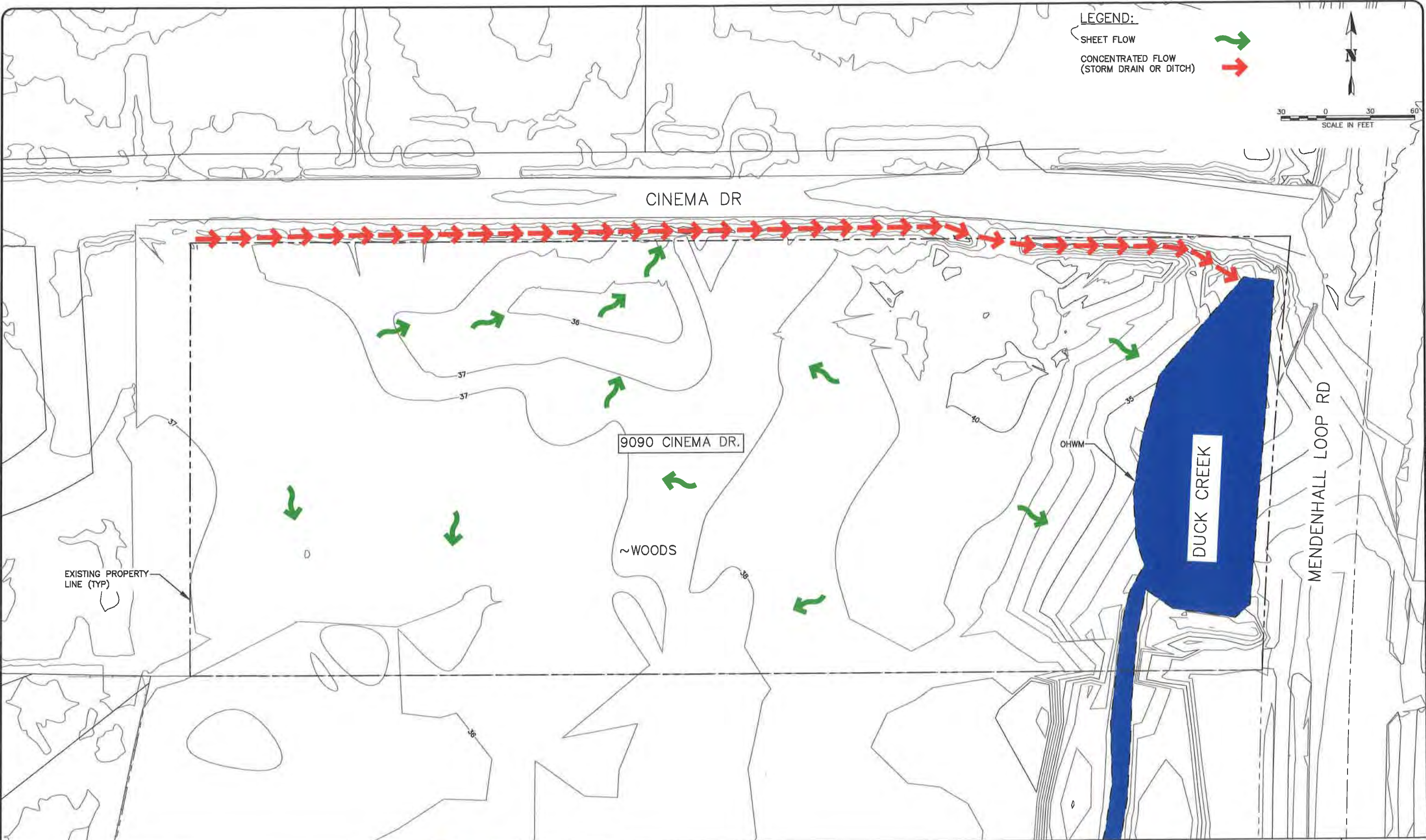
Respectfully,

A handwritten signature in blue ink that reads "Lucas Chambers". The signature is written in a cursive, flowing style.

Lucas Chambers, P.E.
Principal Engineer – proHNS LLC Juneau

Attachments:

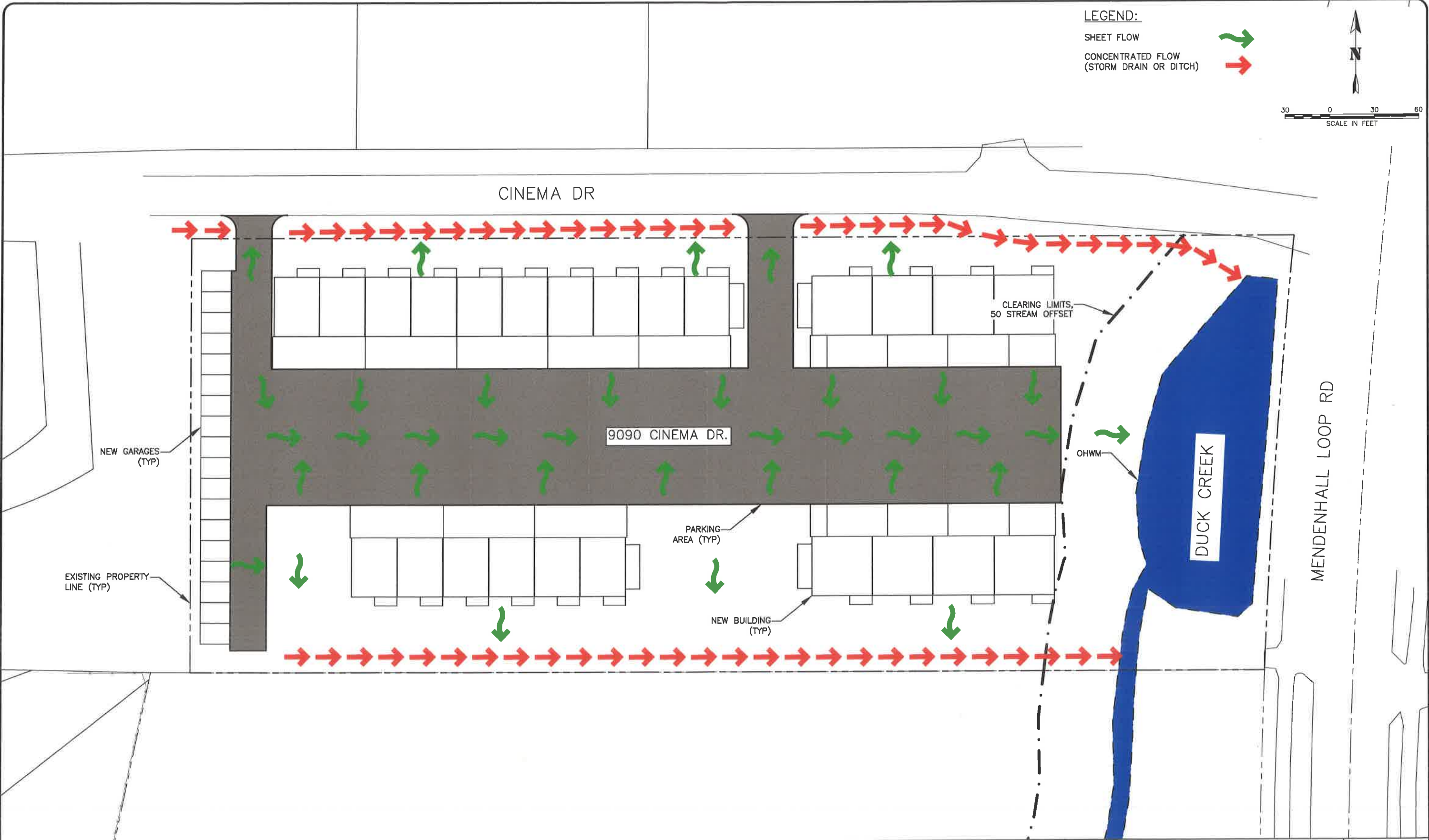
Pre-Developed and Post-Developed Drainage Maps (2 sheets)



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June 11, 2021

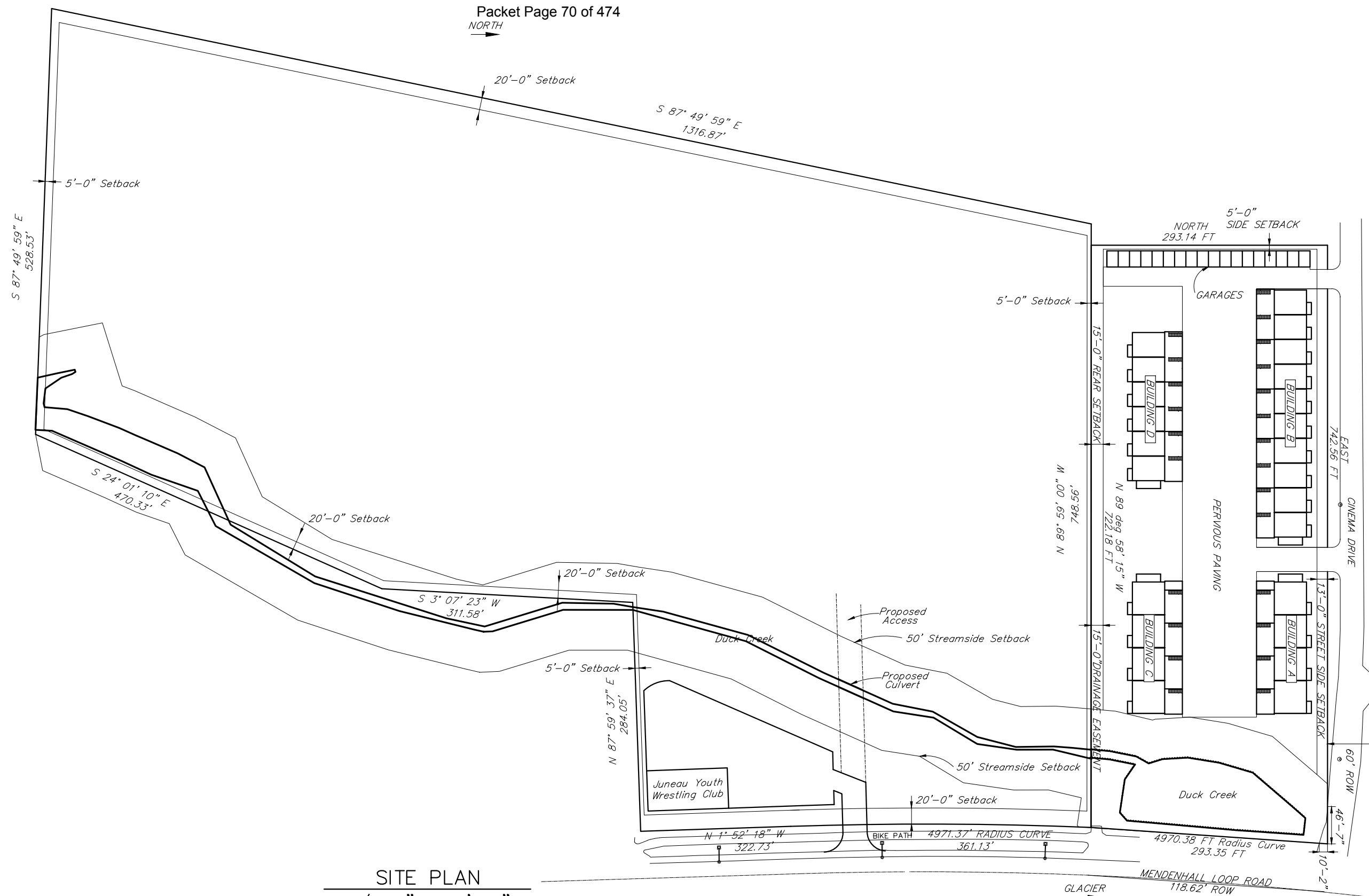
<table><tr><th colspan="4">RECORD OF REVISIONS</th></tr><tr><th>No.</th><th>DATE</th><th>DESCRIPTION</th><th>BY</th></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></table>				RECORD OF REVISIONS				No.	DATE	DESCRIPTION	BY					 1945 ALEX HOLDEN WAY #101 JUNEAU, AK 99801 (907) 780-4004 solutions@proHNS.com www.proHNS.com	<table><tr><td>DRAWN BY:</td><td>C. BYDLON</td></tr><tr><td>DESIGNED BY:</td><td>C. BYDLON</td></tr><tr><td>CHECKED BY:</td><td>L. CHAMBERS</td></tr></table> CBJ REVIEW APPROVED: _____ DATE: _____	DRAWN BY:	C. BYDLON	DESIGNED BY:	C. BYDLON	CHECKED BY:	L. CHAMBERS	CINEMA DRIVE CONDOS 9090 CINEMA DRIVE	PRE-DEVELOPED DRAINAGE MAP	<table><tr><td colspan="2">SHEET NUMBER</td></tr><tr><td>1</td><td>OF</td></tr><tr><td>2</td><td></td></tr></table>	SHEET NUMBER		1	OF	2	
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RECORD OF REVISIONS				 CERTIFICATE OF AUTHORIZATION #100662	proHNS LLC 1945 ALEX HOLDEN WAY #101 JUNEAU, AK 99801 (907) 780-4004 solutions@proHNS.com www.proHNS.com	DRAWN BY: C. BYDLON DESIGNED BY: C. BYDLON CHECKED BY: L. CHAMBERS	CBJ REVIEW APPROVED: _____ DATE: _____	CINEMA DRIVE CONDOS 9090 CINEMA DRIVE	POST-DEVELOPED DRAINAGE MAP	SHEET NUMBER
No.	DATE	DESCRIPTION	BY							2
										OF
										2

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NORTH



SITE PLAN
1/128" = 1'-0"

CONSTELLATION DEVELOPMENT

Attachment A - Application Packet

10840 Lilac Drive
Juneau, AK 99801
907-321-3118

3220 Mendenhall Loop Rd &

9090 Cinema Drive

SITE PLAN



CONSTELLATION DEVELOPMENT

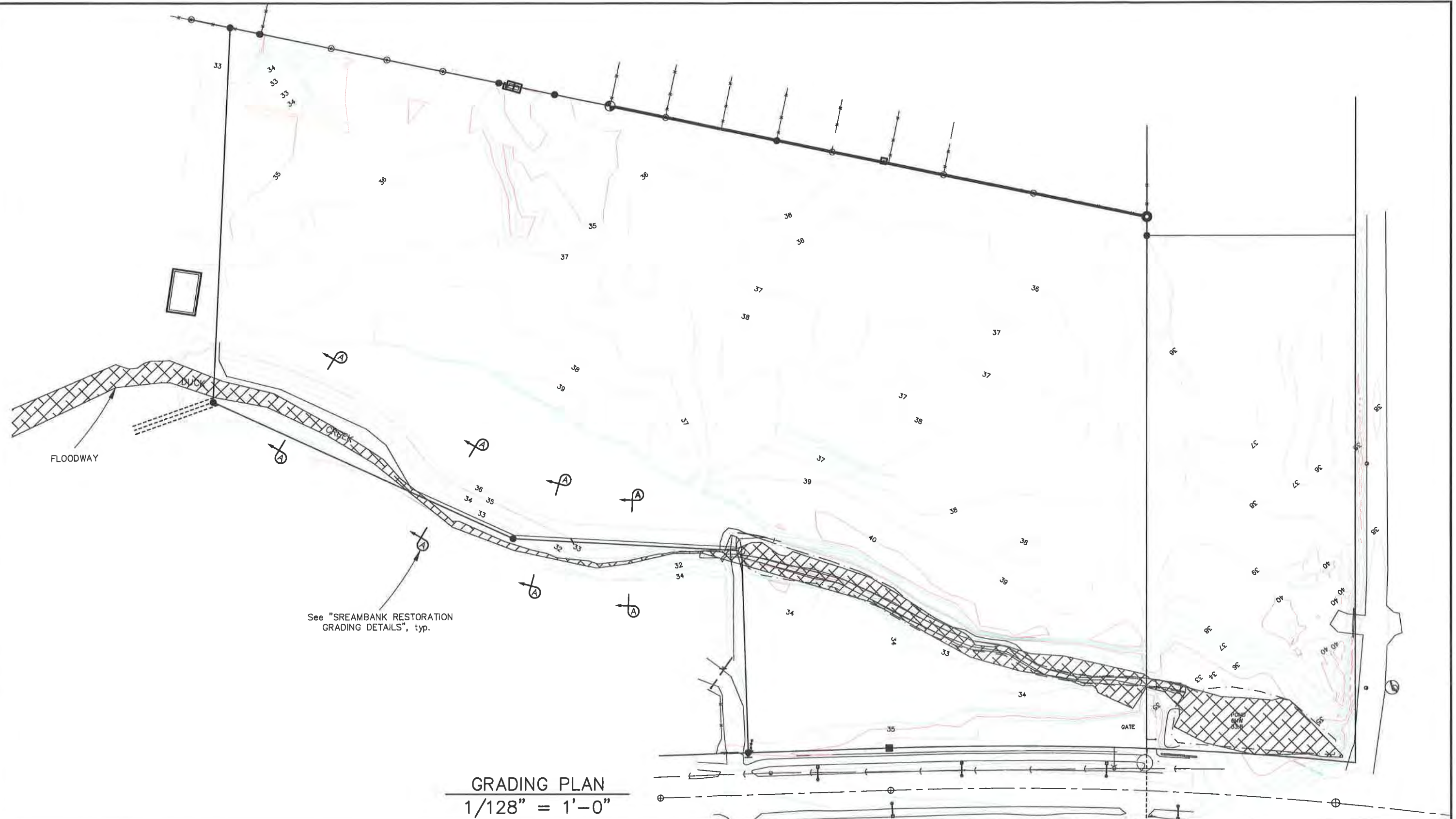
Attachment A - Application Packet

Tract A-2

USS No. 1053.

EXISTING GRADING

10840 Lige Drive
Juneau, AK 99801
907-321-3118



CONSTELLATION DEVELOPMENT

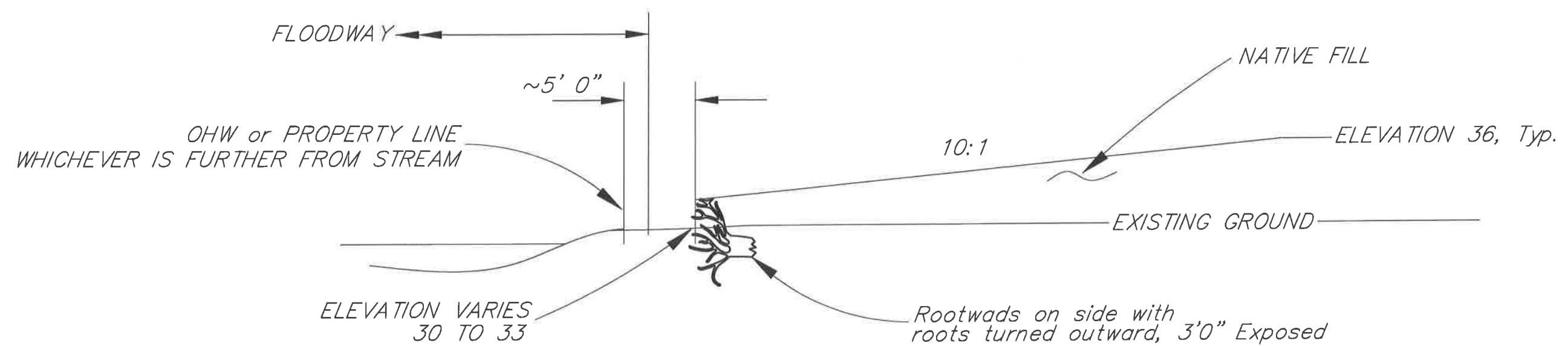
Attachment A - Application Packet

10840 Lilac Drive
Juneau, AK 99801
907-321-3118

Tract A-2

USS No. 1053.

STREAMBANK RESTORATION
GRADING SITE PLAN



Section A-A
1/8" = 1'-0"

CONSTELLATION DEVELOPMENT

Attachment A - Application Packet

10840 Ligo Drive
Juneau, AK 99801
907-321-3118

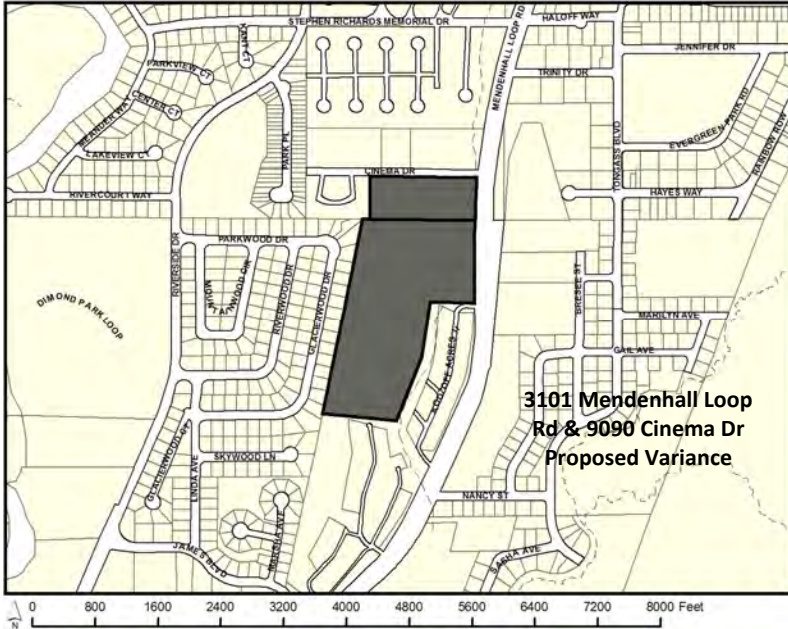
Tract A-2

USS No. 1053.

STREAMBANK RESTORATION
GRADING DETAILS

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice



155 S. Seward Street Juneau, Alaska 99801

TO:

3101 Mendenhall Loop
Rd & 9090 Cinema Dr
Proposed Variance

An application has been submitted for consideration and public hearing by the Planning Commission for a **Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek at 3101 Mendenhall Loop Road & 9090 Cinema Drive in a D15 Zone.**

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Laurel Christian, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0004
Parcel No.: 5B2101030001 & 5B2101320030
CBJ Parcel Viewer: <http://epv.juneau.org>

Laurel Christian

From: Travis Arndt <constellation_dev@hotmail.com>
Sent: Monday, June 28, 2021 5:04 PM
To: Laurel Christian
Subject: Sign

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS



Sign's up

Sent from my iPhone



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Alaska Department of Fish and Game
STAFF PERSON/TITLE: Habitat Biologist
DATE: 6/29/2021
APPLICANT: Travis Arndt for TDLH LLC and Juneau Condos LLC
TYPE OF APPLICATION: Variance to

PROJECT DESCRIPTION:

Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek.

LEGAL DESCRIPTION: GROSS LT 2 & USS 1053 TR A2
PARCEL NUMBER(S): 5B2101320030 & 5B2101030001
PHYSICAL ADDRESS: 90910 Cinema Drive & 3101 Mendenhall Loop Road

SPECIFIC QUESTIONS FROM PLANNER:

AGENCY COMMENTS:

Narrowing the channel will be beneficial for fish and fish habitat at the proposed location, as described in the attached ADF&G Trip Report. ADF&G recommends not removing trees other than what is necessary to access the creek at a single location. Mr. Arndt indicated he would need to install a culvert for access to loop road, which would be the logical point for entering the channel to perform the reconstruction. All in-stream work, including the stream narrowing and culvert (if proposed) will require a fish habitat permit from ADF&G Habitat Section.

It is difficult to tell how far from the ordinary high water (OHW) mark the root wad revetment will be constructed. The typical drawing indicates the root wads could be about 5 ft from the creek. At present, there appears to be no need to stabilize this bank with a root wad technique designed for larger rivers and an absence of infrastructure requiring protection. Removing some or all of the riparian timber that was cut and encouraging regrowth of the riparian trees through planting, and restricting disturbance within 50 ft, would provide the greatest value to the stream.

AGENCY COMMENTS (CONTINUED):

The 50 ft no development setback provides benefits to anadromous streams including a location for surface water to be filtered and reabsorbed into the water table; space for the stream to migrate naturally; maintenance of riparian trees to provide shade, food, and periodic recruitment into the creek; and a corridor for wildlife movement and refuge. Constructing the revetment within 5 ft of the OHW mark would require a fish habitat permit, constructing it 50 ft from the OHW mark would not.

MEMORANDUM

State of Alaska

Department of Fish and Game
Habitat Section

TO: Kate Kanouse
Southeast Regional Supervisor

DATE: DRAFT

FILE: 58.3802 N, 134.5780 W

SUBJECT: 2021 Duck Creek
Restoration Trip Report

FROM: Greg Albrecht 
Habitat Biologist

PHONE NO: (907) 465-6384

On May 5, 2021, I visited Duck Creek near Cinema Drive with Travis Arndt, who owns property on both sides of Duck Creek and is interested in improving stream habitat conditions in concert with developing uplands for residential housing and installing a culvert in the creek for access. The area contains a 200 ft long gravel dredge pond and a 500 ft long reach of stream that is characterized by a shallow 15–30 ft wide channel with slow moving water, fine substrate, and organic debris, largely as a result of it being too wide (Figures 1–3).

I suggested the following general concepts for improving fish habitat and constructing the crossing, both of which should be designed by a qualified engineer and will require a Title 16 Fish Habitat Permit:

- 1) Use heavy equipment to construct low profile (0.5–1.5 ft) banks that constrict the channel below ordinary high water to an irregular width of 6–10 ft and retain natural floodplain width.
- 2) Include boulders, root wads, and logs in the bank and channel to create pools and constrictions that will provide rearing habitat and maintain spawning gravel.
- 3) Avoid damaging or cutting remaining riparian trees and consider topping cottonwoods that pose a safety hazard, rather than removing them.
- 4) Seed the banks with a native grass for short term stability and transplant willows and other shrubs to provide additional bank stability until conifers establish.
- 5) Install a culvert that is as wide as the maximum new channel width (~10 ft), measured from the ordinary high water line, to allow for the free migration of fish and stream material. The culvert should match the stream gradient, be embedded 20–40% depending on culvert type, and backfilled with stream substrate.



Figure 1.—Looking upstream towards the dredge pond where the channel is 15-20 ft wide.



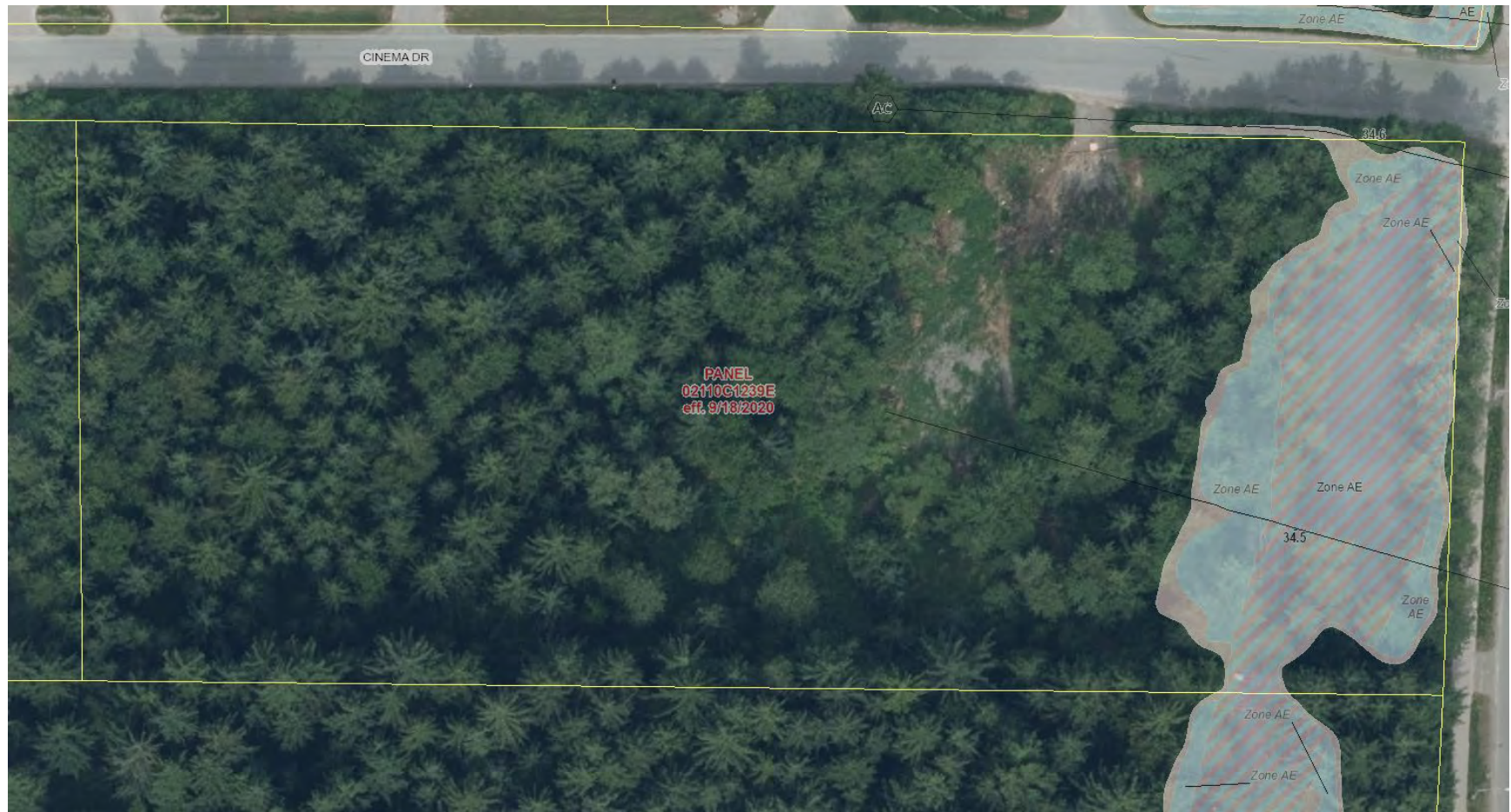
Figure 2.—Looking downstream at a reach 20–30 ft wide.



Figure 3.—Looking downstream at a 20–25 ft wide reach of stream.

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
ADF&G Habitat Staff, Douglas
Dan Teske, ADF&G SF, Douglas
David Harris, ADF&G CF, Douglas
Roy Churchwell, ADF&G WC, Douglas
Teri Camery, CBJ, Juneau
Jill Maclean, CBJ, Juneau
Travis Arndt, Constellation Development, Juneau
Ben Soiseth, USACE, Soldotna
Doug Cooper, USFWS, Anchorage
Habitat Conservation Division, NMFS, Juneau



VAR20210004
Flood Maps



Attachment D - Flood Maps



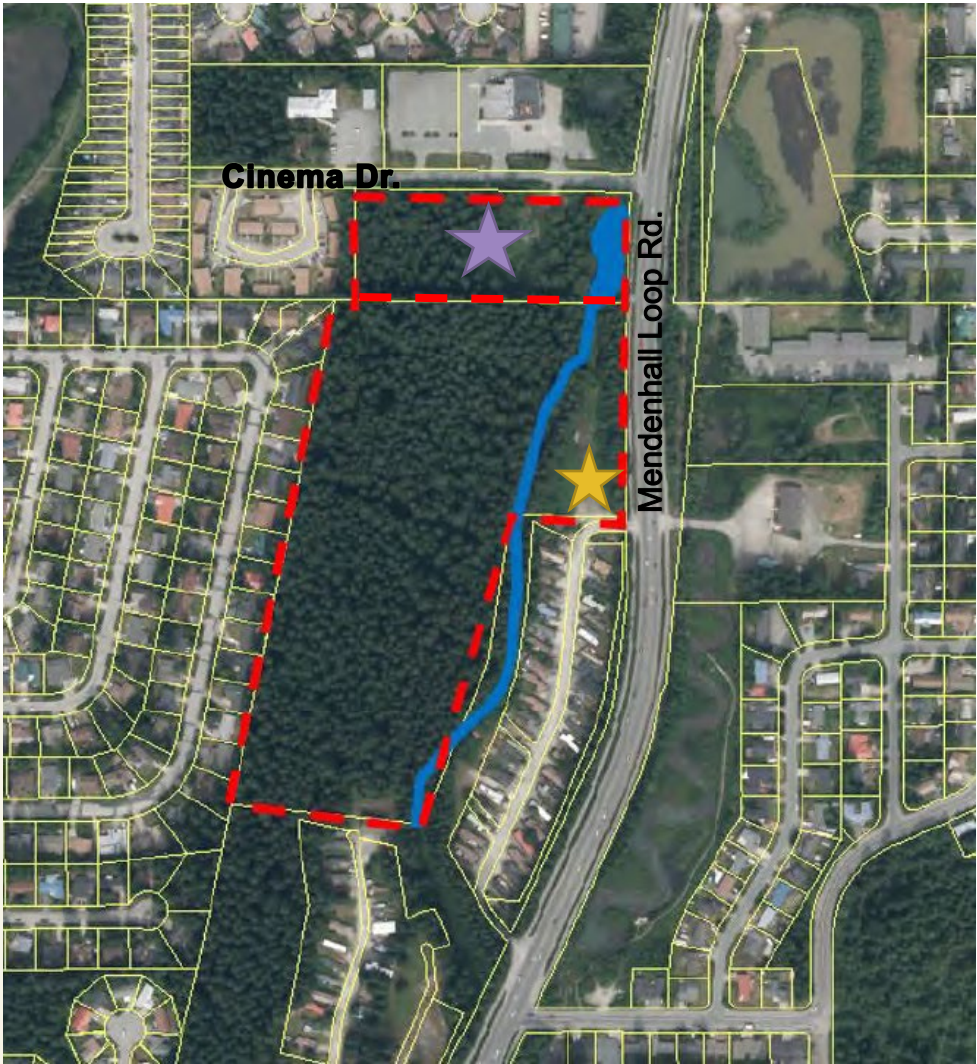
VAR20210004

Non-administrative Variance to allow work within the 50- foot, no-development and 25-foot, no-disturbance buffer from Duck Creek.

Staff recommends partial approval with conditions

Board of Adjustment Hearing July 13, 2021

Background Information



GENERAL INFORMATION	
Applicant	Travis Arndt
Property Address	9090 Cinema Drive & 3101 Mendenhall Loop Road (reassigned to 3221 Mendenhall Loop Road per CBJ GIS Analyst)
Zoning	D15
Lot Size	4.9 acres & 20.4 acres
Water/Sewer	Public
Access	Cinema Drive and Mendenhall Loop Road
Existing Land Use	★ Wrestling Facility (under construction) ★ 72 Units of Condominiums (Under Construction)

Existing Conditions

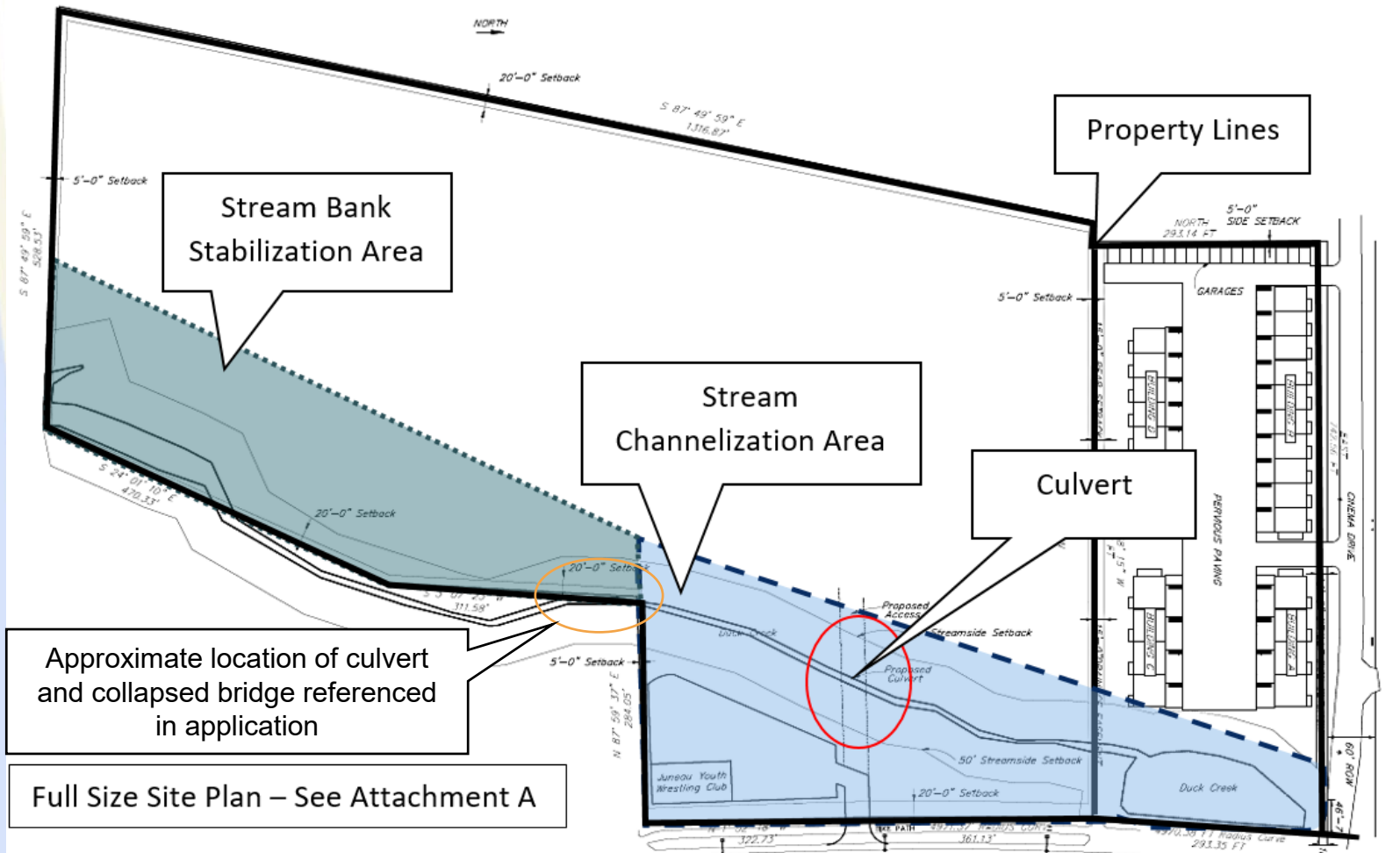


Collapsed log bridge
referenced in
application



Culvert
referenced in
application

Project Description



- *Element 1, Culvert for future stream crossing.*
- *Element 2, Stream channelization.*
- *Element 3, Stream bank stabilization.*

Agency Comments

- Alaska Department of Fish and Game (ADFG):
 - Include suggestions for improvements to habitat conditions
 - Request for revegetation
 - Does not see a need for bank stabilization element of the project.
- Southeast Alaska Watershed Coalition
 - Does not see a need for the channelization or bank stabilization



Photo Source: Southeast Alaska Watershed Coalition Comments

Public Comments

- Public comments are included in the additional materials packet.
- Concerns:
 - Smoke from burning
 - Procedure and public notice
 - Complete application?
 - Phasing
 - Drainage and Flooding
 - Appropriate use?



Variance Standards

- Undue hardship caused by unusual conditions of the property
- Unusual conditions not caused by person seeking the variance
- No detriment to public health, safety and welfare
- Narrowly tailored

Undue Hardship

- ***Element 1, Culvert for future stream crossing*** (YES)
 - No access directly to a public ROW to this area of the lot.
- ***Element 2, Stream channelization*** (YES)
 - Land is intended to provide habitat for riparian species.
 - Proposal improves habitat conditions
 - Work cannot be completed without the variance
- ***Element 3, Stream bank stabilization*** (NO)
 - ADFG does not see a need for this work to improve habitat conditions

Unusual Conditions of the Property not caused by Person Seeking the Variance

- Duck Creek is a naturally occurring feature of the land
- 5% of lots in the borough are within 50 feet of an anadromous waterbody
(CBJ GIS Analyst)



Public Health, Safety, and Welfare

- Granting the Variance improves habitat and provides opportunity to make the stream more resilient to development.
- Applicant is required to obtain all necessary permits.



Photo Source: ADFG Trip Report

Narrowly Tailored

- ***Element 1, Culvert for future stream crossing*** (YES)
 - One culvert is proposed to facilitate direct access
- ***Element 2, Stream channelization*** (YES)
 - Variance allows stream channelization for habitat rehabilitation
- ***Element 3, Stream bank stabilization*** (NO)
 - No evidence shows banks stabilization is needed.

Variance Standards 49.20.250(b)

- Undue hardship caused by unusual conditions of the property
(MET for Element 1 and 2) (NOT MET for element 3)
- Unusual conditions not caused by person seeking the variance
(MET for Elements 1, 2, and 3)
- No detriment to public health, safety and welfare
(MET for Elements 1, 2, and 3)
- Narrowly tailored
(MET for Element 1 and 2) (NOT MET for element 3)

Recommendation

APPROVAL OF:

- Element 1: The installation of a culvert for a stream crossing.
- Element 2: Stream channelization where the applicant owns both sides of the creek to improve habitat conditions.

This approval is subject to the following condition:

1. Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the Department a revegetation plan for disturbed areas. The plan must be approved by ADF&G. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.

DENIAL OF:

- Element 3: Stream bank stabilization where the applicant only owns one side of the creek.

Questions?



Planning Commission

(907) 586-0715

PC_Comments@juneau.org

www.juneau.org/plancomm

155 S. Seward Street • Juneau, AK 99801

BOARD OF ADJUSTMENT

NOTICE OF DECISION

Date: July 16, 2021

File No.: VAR2021 0004

Juneau Condos, LLC & TDLH, LLC

Attn: Travis Arndt

10840 Lilac Drive

Juneau, AK 99801

Proposal: Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50- foot, no-development and 25-foot, no-disturbance buffer from Duck Creek.

Property Address: 9090 Cinema Drive & 3101 Mendenhall Loop Road (reassigned to 3221 Mendenhall Loop Road per CBJ GIS Analyst)

Legal Description: Gross Lot 2 & USS 1053 Tract A2

Parcel Code No.: 5B2101320030 & 5B2101030001

Hearing Date: July 13, 2021

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated July 6, 2021, and **APPROVED ELEMENT 1**, the installation of a culvert for a future stream crossing, of the Variance application to be conducted as described in the project description and project drawings submitted with the application and with the following conditions:

1. Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the Department a revegetation plan for disturbed areas. The plan must be approved by the Alaska Department of Fish & Game. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.

The Board of Adjustment, at its regular public meeting, modified the findings listed in the attached memorandum dated July 6, 2021, and **DENIED ELEMENT 2**, stream channelization, of the Variance application.

2. Does the Variance as requested meet the criteria of Section 49.20.250(b)(1), Non Administrative Variances?

*Finding: **Yes.** Elements 1 of the requested Variance meet the criteria of Section 49.20.250(b)
No. Elements 2 and 3 do not meet the criteria of Section 49.20.250(b)(1).*

Juneau Condos, LLC & TDLH, LLC
 File No: VAR2021 0004
 July 16, 2021
 Page 2 of 2

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated July 6, 2021, and **DENIED ELEMENT 3**, stream bank stabilization, of the Variance application.

Attachment: July 6, 2021, memorandum from Laurel Christian, Community Development, to the CBJ Board of Adjustment regarding VAR2021 0004.

This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

Effective Date: The permit is effective upon approval by the Board, July 13, 2021.

Expiration Date: The permit will expire 18 months after the effective date, or January 13, 2023, if no Building Permit has been issued and 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.


 Nathaniel Dye for Michael LeVine, Chair
 Planning Commission

Date

7/19/2021


 Filed With City Clerk

Date

7/19/2021

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

VAR2021 0005: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in
Amalga Meadows - APPROVED

AGENDA ITEM:

Case No.: VAR2021 0005
Applicant: City & Borough of Juneau
Location: Amalga Meadows
Proposal: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Amalga Meadows

ATTACHMENTS:

	Description	Upload Date	Type
▢	Memo Regarding VAR2021 0003, VAR2021 0005, & VAR2021 0007	6/30/2021	Miscellaneous
▢	Staff Report for VAR2021 0005	6/30/2021	Staff Report
▢	Presentation for VAR2021 0003, VAR2021 0005, & VAR2021 0007	7/13/2021	Presentation
▢	Notice of Decision for VAR2021 0005	7/27/2021	Notice of Decision



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

June 29, 2021

MEMO

From: Irene Gallion, Senior Planner

Through: Jill Maclean, AICP, Director, Community Development Department

To: Michael Levine, Chair, Board of Adjustment

Parcel No.: Multiple

Legal Description: Multiple

Case Number: VAR2021 0003, VAR2021 0005, VAR2021 0007

RE: Clarifying similarities between these cases

These three cases are similar, resulting in redundancy between staff reports. The three Variances are requested to continue trail improvements:

- VAR2021 0003 is the Switzer Marriott Trail (Lemon Creek)
- VAR2021 0005 is the Amalga Meadows Trail (Out the Road)
- VAR2021 0007 is the Duck Creek Trail (Mendenhall Valley)

To alleviate some confusion that redundancies may cause, and to accommodate efficient Commissioner review, this memo clarifies:

- Each has its own distinct project description.
- **ANALYSIS** is parallel across the cases, but each has been tailored to the specifics of the development. In other words, the order of the analysis is the same, but certain elements may have been added or deleted as appropriate.
- **VARIANCE STANDARDS** analyses are similar between Switzer, Marriott, and Amalga Meadows. Duck Creek is different from the other trails in that it is an urban pedestrian trail, so the **VARIANCE STANDARDS** analysis is slightly different.

Commissioners might also observe some references across projects. This may be due to how the projects evolved:

- The original application was for all three projects under one case number, VAR2021 0003. The hope was to have that case on the June 22 Regular Planning Commission meeting.
- Along with the trails listed above, this initial application included the Christopher Trail in Cope Park.
- The application time frame was too tight and we could not get abutters out with respectable public comment opportunity.
- Additionally, the Director advised it was better to break the trails into separate cases. In case of appeal, the other trails would not be held up.
- During staff analysis, we determined that the Christopher Trail did not need the Variance. Only the mouth of gold Creek is anadromous. The project is approximately 3,800 feet upstream. That Variance request was withdrawn.
- This left the three projects you see in front of you.



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD

155 S. Seward Street • Juneau, AK 99801

DATE: June 30, 2021
TO: Michael LeVine, Chair, Board of Adjustment
BY: Irene Gallion, Senior Planner 
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests a Non-Administrative Variance to stream setback requirements for Amalga Meadows: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

STAFF RECOMMENDATION: Approval

KEY CONSIDERATIONS FOR REVIEW:

- The slough across Amalga Meadows is a naturally occurring feature of the land.
- Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management.
- Work is now prohibited without a Variance; there are no other permitting paths forward.

GENERAL INFORMATION	
Property Owner	City & Borough of Juneau
Applicant	City & Borough of Juneau
Property Address	Amalga Park
Legal Description	USS 1163
Parcel Number	3B4201000010
Zoning	RR
Lot Size	113.6500 acres
Water/Sewer	N/A
Access	Amalga Harbor Road
Existing Land Use	Park/recreation
Associated Applications	None

ALTERNATIVE ACTIONS:

1. **Deny:** deny the permit and adopt new findings for items 1-2 below that support the denial.
2. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - 49.20.240
 - 49.20.250(b)
 - 49.70.310
 - 49.80

The Commission shall hear and decide the case per 49.20.240. The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES	
North (RR)	Park
South (RR)	Residential
East (RR)	Park
West (RR)	Park

SITE FEATURES	
Anadromous	Yes
Flood Zone	Yes, A
Hazard	No
Hillside	No
Wetlands	Yes
Parking District	No
Historic District	No
Overlay Districts	No

BACKGROUND INFORMATION

Project Description – Proposed improvements to the Amalga Meadows Park include removal and relocation of an elevated boardwalk. The new boardwalk will provide access from the parking area to the existing trail. The trail bed will be of gravel, and elevated sections will be timbers with helical piles for support. The new slough crossing will be narrower (**Attachment A**). There is one stream crossing.

In the image below, the relocated trail is shown with a heavy red line.



The old boardwalk will be removed and the abandoned trail will be revegetated.

Part of the relocated trail is in a Zone A flood zone and will require a Floodplain Development Permit. The Flood Plain Manager and Engineering Project Manager have worked together on project development, including the permit.

The trail is part of the Eagle Valley Center Lodge complex, providing accommodations for a variety of occasions: <https://juneau.org/parks-recreation/eagle-valley-center> Amalga Meadows facilities are open year round and accommodate activities such as hiking, skiing, and bird watching.

Background – Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management. Upon further review in March 2021, this code was determined null and void when the Alaska Coastal Management program ended in July 2011, and should have been repealed. With the exemption no longer permissible, trail rehabilitation work within 50 feet of an anadromous stream must pursue a Variance. This includes trails, road crossings, bridge abutment maintenance, and utility crossings.

On June 22, 2021, the Planning Commission favorably recommended a code amendment to move an exception from abrogated code to CBJ 49.70 Article III, “Sensitive Areas.” The code change is anticipated by fall 2021.

ANALYSIS

In the meantime, CBJ’s Parks and Recreation Department would like to continue the summer work they’ve contracted. CBJ code includes a 50-foot, “no-development” buffer, and a 25-foot, “no-disturbance” buffer. Development is [CBJ 49.80]:

- *Structures over 120 square feet*
- Subdivision
- Change in lot use
- Mobile home placement
- *Removal of substantial vegetative cover*
- *Excavation, dredge or fill*
- Installation of a sign
- Mining support
- Any site work in anticipation of the above

A “structure” includes anything constructed or erected on or under the ground. The new boardwalk is considered a structure.

The purpose of parks and trails is to facilitate access to Juneau's vast natural areas for residents of all ages and abilities. Trails help Juneau to attract visitors and to maintain a vibrant business community. Natural Area Parks serve the entire community by providing open space, access to water, and opportunities for passive and dispersed recreation activities [2019-2029 Parks and Recreation Master Plan].

Trails facilitate access to natural streams in a sustainable way, a special use of park land. Designed trails reduce erosion, maintain habitat quality, and facilitate crossing streams without disturbance. Trails can lead to “hardened” natural areas that withstand more intense activities, like popular fishing or picnicking.

Denying trail access to streams thwarts the intent of park land, and is contrary to decades of trail development. Trails focus community interest into areas that can be monitored and maintained. Access is balanced with design elements to mitigate impacts to habitat.

Plans that support trail development include:

- Juneau’s 2013 **Comprehensive Plan**, Chapter 9, “Parks, Recreation, Trails and Natural Area Resources.” This chapter recognizes the companion plans:
 - **Juneau Parks and Recreation Master Plan** (2019-2029)
 - **Juneau Trails Plan** and **Juneau Trails Management Plan** (1993, 1995)

This area does not have a sub-area plan.

The **Comprehensive Plan** recognizes the need for access to waterfront (9.1-IA7). Sensitive areas require protection when providing this access (9.1-IA23). The plan also documents an un-fragmented, interconnected trail system that provides access to fish and wildlife from the ice fields to the sea, proposing that they follow anadromous fish streams (page 126). The trail system would facilitate habitat mitigation along key anadromous corridors (9.2-IA3). Existing trail maintenance is prioritized (9.2-IA4).

The **Parks and Recreation Master Plan** calls the Amalga Meadows Park a “Developed Natural Area.” These parks provide open space, access to water, and passive and dispersed recreation. Amenities and other evidence of people blends into the environment (page 35). Trail support provided from this plan is outlined above.

The two-part **Juneau Trails Plan** and **Juneau Trails Maintenance Plan** is currently being updated. The 26-year old plan does not discuss this trail upgrade.

At the meeting on June 22, 2021, the Planning Commission recommended approval of amendments to code that would include activities exempted from setbacks. The trail work proposed would fall under those exemptions. Proposed code may be modified during the public process, and will not be completed timely to accomplish summer 2021 work.

VARIANCE STANDARDS

Pursuant to CBJ 49.20.200, a Non-Administrative Variance may be granted to provide an applicant relief from the requirements of this Title 49, the Land Use Code. A Variance is prohibited from varying any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35 (Public and Private Improvements), or requirements in chapter 49.65 (Specified Use Provisions).

Per CBJ 49.20.250(b), a Non-Administrative Variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Board of Adjustment has determined that:

A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.

Analysis: The applicant must establish that adhering to the code creates hardship that is:

- Distinct from similarly situated properties.
- Due to peculiarities of the land.

Park land is distinct from similarly situated properties in that a purpose is to provide access to water. With other lands, protection of water is a priority, as evidenced by stream setback rules.

Under old code, “hardship” was a difficult standard to meet. In new code (established in 2018), the Planning Commission refined the standard from “extraordinary situation or unique physical feature” to “unusual or special” features of the property.

“Hardship” means that the land cannot be used as intended, that reasonable use of the land has been denied. The Parks and Recreation Master Plan establishes “reasonable use” of trails includes access to water. Granting the Variance would improve and refine access to the stream so that reasonable use of the land can occur.

Finding: Yes. This criterion has been met.

B. The unusual or special conditions of the property are not caused by the person seeking the Variance.

Analysis: Special or unusual conditions of park land in Juneau are:

- Location within 50 feet of an anadromous stream. Five percent of Juneau Parcels (707 parcels out of approximately 13,220 total) are within 50 feet of an anadromous stream.
- Park land is intended for water access, as opposed to other locations where streams are protected.

Juneau’s parks and open spaces provide access to nature, which, by definition, are collective phenomena of the physical world that are not human creations and, therefore, are not caused by the person seeking the Variance.

Finding: Yes. This criterion has been met.

C. The grant of the Variance is not detrimental to public health, safety, or welfare.

Analysis: Juneau’s trails provide opportunities for physical activities, building new skills, and social interaction. Trails improve community health.

Trails provide for a range of emergency service capabilities, such as providing access for search and rescue operations. Trails improve community safety.

Juneau’s fortunes improve with access to natural areas and recreational opportunities. Publicly-available resources allow for compact development to be healthier and more attractive. Trails improve community welfare [2019-2029 Parks and Recreation Master Plan].

Finding: Yes. This criterion has been met.

D. The grant of the Variance is narrowly tailored to relieve the hardship.

Analysis: This trail project minimally disturbs the setback area, meeting the purpose of park land, but mitigating the impacts. Intense trail use is moved from within the 25-foot, no-disturbance buffer to outside of it.

Finding: Yes. This criterion has been met.

Pursuant to CBJ 49.20.260, the Board may attach to a Non-Administrative 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 title and to protect the public interest.

Condition: None recommended.

AGENCY REVIEW

CDD conducted an agency review comment period between June 9, 2021 and June 21, 2021. Agency review comments can be found in **Attachment B**.

Agency	Summary
Alaska Department of Fish & Game	Requested more details for possible fish habitat permits. A fish habitat permit will be required for the bridge replacement that is part of this project.

PUBLIC COMMENTS

In accordance with 49.20.230(b), public notice was mailed to property owners within 500 feet of the lot (**Attachment C**), a public notice sign was posted on site two weeks prior to the hearing (**Attachment D**), and ads were placed in the Juneau Empire. No public comments were received at the time of writing this staff report.

FINDINGS

1. Is the application for the requested Variance complete?

Analysis: No additional analysis required.

Finding: Yes. The application for the required Variance is complete.

2. Does the Variance as requested meet the criteria of Section 49.20.250(b)(1), Non-Administrative Variances?

Analysis: As discussed above, the criteria for a Non-Administrative Variance have been met.

Finding: Yes. The requested Variance meets the criteria of Section 49.20.250(b)(1), Non-Administrative Variances.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	Agency Comments
Attachment C	Abutters Notice
Attachment D	Public Notice Sign

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description The project replaces an elevated walkway over a slough that is rotting. The structure will be wood supported by helical piles. It will be relocated upstream to minimize the length of the crossing. The project is located adjacent to the Eagle Valley Center at the Amalga Meadows Park. The walkway accesses the trail system from the parking lot at the lodge.		
	PROPERTY LOCATION		
	Street Address Amalga Meadows Park	City/Zip 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Amalga Park USS 1163		
	Assessor's Parcel Number(s) Amalga 3B4201000010		
	LANDOWNER/ LESSEE		
	Property Owner's Name City and Borough of Juneau	Contact Person: Michele Elfers	Work Phone: 364-2390
	Mailing Address 155 S. Seward Street	Home Phone:	Fax Number:
	E-mail Address Michele.Elfers@juneau.org	Other Contact Phone Number(s):	
	PROJECT / APPLICANT	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:			
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.			
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X			6-14-21
		Landowner/Lessee Signature	Date
X			
		Landowner/Lessee Signature	Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name same		Contact Person:	
Mailing Address		Home Phone:	
E-mail Address		Fax Number:	
		Other Contact Phone Number(s):	
X			
	Applicant's Signature	Date of Application	

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS	☒	Permit Type	***SIGN	Date Received	Application Number(s)	
		Building/Grading Permit				
		City/State Project Review and City Land Action				
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)				
		Mining Case (Small, Large, Rural, Extraction, Exploration)				
		Sign Approval (If more than one, fill in all applicable permit #'s)				
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)				
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)				
		Variance Case (De Minimis and all other Variance case types)			VAR 21-05	
		Wetlands Permits				
		Zone Change Application				
		Other (Describe)				
	***Public Notice Sign Form filled out and in the file.					
	Comments:					Permit Intake Initials 

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

To be completed by Applicant	PROJECT SUMMARY	
	Reconstruct an elevated walkway over a slough by the Eagle Valley Center in Amalga Meadows Park. The walkway will be relocated upstream to a narrower section of the slough and constructed with helical piers and timber.	
	VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to) CBJ 49.70.310, Habitat	
	Previous Variance Applications? YES ☒ NO Date of Filing: _____ Previous Case Number(s): _____ Was the Variance Granted? YES NO	
	UTILITIES AVAILABLE: NA WATER Public On Site SEWER: Public On Site	
ALL REQUIRED MATERIALS ATTACHED Complete application per CBJ 49.65.210 Narrative including: Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure Why a variance would be needed for this property regardless of the owner What hardship would result if the variance is not granted Site Plan		

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ _____			
Adjustment	\$ _____			
Total Fee	\$ _____			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number VAR21-05	Date Received 6/8/21
--------------------------------	--------------------------------

Attachment A - Application Packet

Variance Application Instructions

Variances are outlined in CBJ 49.20 article II

Application: An application for a Variance will not be accepted by the Community Development Department (CDD) until it is determined to be complete. The items needed for a complete application are:

1. **Forms:** Completed Variance Application and Development Permit Application forms.
2. **Fees:** The fee for a Variance Application is \$400.00. If the application is in conjunction with a major development permit, the Variance fee will be reduced by 20 percent. Any development, work or use done without a permit issued will be subject to double fees. All fees are subject to change.
3. **Project Description:** A detailed letter or narrative describing the hardship that is the result of an unusual situation or physical feature affecting a specific parcel of land or structure. **Also include how the proposed project meets the variance criteria listed on the attached sheet.**
4. **Plans:** A site plan showing the following information:
 - A. The location of existing and proposed structures (i.e. buildings, fences, signs, parking areas, etc.); and
 - B. The location of existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.).

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Please consult with the Community Development Department to discuss whether additional information may be required for your application. The "Planner-On-Call" can be reached by contacting the Community Development Department at (907) 586-0715 or via email at Permits@juneau.org.

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: As part of the review process the Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the Variance Application request the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department will coordinate the review of this application by other agencies, as necessary. Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed project.

Hearing: All Variance Applications must be reviewed by the Board of Adjustment. Once an application has been deemed complete and has been reviewed by all applicable parties the Community Development Department will schedule the requested permit for the next appropriate meeting.

Public Notice Responsibilities: As part of the Variance process, all requests must be given proper public notice as outlined in 49.20.230 which consists of the following:

Community Development Department will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail abutters notices to all property owners within 500-feet of the project site. A "Public Notice Sign" is required to be posted on the site by the Applicant and the Community Development Department will create the sign to be posted.

Variance Approval Criteria

A variance may be granted after the prescribed hearing and after the Board of Adjustment has determined that the following criteria are met. Include in your project narrative a detailed description about how your proposal meets each of the criteria listed below:

CBJ 49.20.250(b) Non-administrative variances. *(1)A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:*

- (A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;*
- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;*
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and*
- (D) The grant of the variance is narrowly tailored to relieve the hardship.*

PLEASE NOTE: As provided by CBJ Land Use code section on Variances (CBJ 49.20.200), a variance may be granted to provide an applicant relief from the requirements of Title 49, the Land Use Code. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



June 21, 2021

Permit Center, Community Development Department
155 S. Seward Street
Juneau, AK 99801

RE: Trail Mix Work Plan Variance Request

Dear Permit Center Staff:

The Parks and Recreation Department is applying for a variance for trail work in the vicinity of streams to be performed by Trail Mix under their annual work plan at various CBJ park locations. With the changed interpretation of the stream setback code, work that was previously allowed is no longer allowed. Some of these projects have been worked on in recent years and this work is a continuation. If the projects are not allowed to proceed, CBJ will not be able to maintain existing trails. In some cases, the current condition of the trail is a safety hazard or will become a safety hazard in the near future. If CBJ and Trail mix cannot perform maintenance on these trails, some of the trails would have to be closed. In the past, when CBJ has closed trails, some people still use the trails, as is the case with Christopher Trail currently. The trail is currently very unsafe for use. The trails provide important linkages, for example the Amalga Meadows trail and elevated boardwalk is the primary access to the Amalga public use cabin and the kayak rentals at Kayak Beach.

There is no signage planned at this time for these projects. The following is a description of each project:

Switzer Marriott/Richard Marriott Education Trail

This trail is located in the Switzer Natural Area Park. Trail Mix has been performing trail work for the past two years to replace old boardwalk with gravel trail. This season, work is planned to relocate sections of trail that are located on the streambank and causing erosion. The work area is between Lund Street and Mountain Ave and approximately 700' of trail in this area will be relocated when it is close to or on the streambank. It will be relocated 25' – 50' from the streambank. After the relocation work is complete, the old trail will be decommissioned and blocked with natural woody debris and plants to allow for the area to revegetate. The new trail will be through upland areas constructed with gravel.
See attached map.

Duck Creek Trail

This project is mitigation work funded by the Alaska Department of Transportation for impacts to wetlands from the Stephen Richards Roundabout project. A connector trail from Mendenhall Loop Road to Duck Creek loop will be replaced; asphalt will be removed and

replaced with gravel and native vegetation will be planted in the riparian areas along the trail. The trail replacement work will extend from the creek 50' through the setback zone and then connect to Mendenhall Loop Road. The trail materials will be native soils for planting native vegetation on the sides of the trail and gravel for the trail base. The bridge over the creek is in good condition and will not be replaced or modified. Additionally, a small wetland area will be created in the forest to improve habitat. This wetland area is outside of the 50' setback zone and not part of this request.

See attached map.

Amalga Meadows Park:

Trail improvement work has been ongoing throughout the park for a few years including the new Horsetram Trail, the Amalga Cabin trail, and the SAIL ropes course challenge trail. This year the elevated boardwalk over the slough is being replaced as it is rotten and failing. The boardwalk location will be relocated to a narrower section of the slough to allow a shorter crossing and shorter trail. The old boardwalk will be removed and disposed of offsite and the trail will be revegetated with native grasses. The new trail will extend from the parking area to the existing trail on the other side of the slough. The trailbed will be gravel and the elevated boardwalk will be timbers with helical piles for support. The work will extend through the setback zone on either side of the slough.

This trail is the only access from the parking area and road to the Amalga trail system and public use cabin.

See attached map.

Christopher Trail, Cope Park:

This popular trail connects Cope Park to the Flume Trail and has been closed for a few years due to severe erosion along the streambank of Gold Creek. PDC Engineers has designed a trail and retention system along the steep portion of the trail and streambank. The new trail will be just uphill of the old trail and will be a gravel trail supported with timbers and soil anchors embedded into the hillside. Approximately 190' of trail will be decommissioned and 220' of new trail will be created for the reroute to connect to the pedestrian bridge over Gold Creek. See attached map.

On all of these projects, old trail material such as woody or gravel will be removed and the trails will be blocked off with native plant and woody material if being relocated. Vegetation will only be removed as needed for new trail locations and the trails will be routed to avoid large trees and minimize vegetative removal. The Development permit is attached for this work. Please let me know if you have any questions.

Michele Elfers
Deputy Director
Parks and Recreation Department



Old trail and
boardwalk to be
removed approx.
200'

This aerial photograph shows a park area with a mix of green grass and dense evergreen trees. A winding stream or path cuts through the landscape. A red line, representing a trail and boardwalk to be removed, starts from the left edge and runs diagonally towards the center. Another red line, representing a new trail and boardwalk, starts from a parking lot area and runs diagonally towards the bottom left. A yellow line runs vertically through the center of the image. A building with a red roof is visible near the top center. The text 'Old trail and boardwalk to be removed approx. 200'' is placed near the top red line. The text 'New trail and boardwalk, approx. 250' total length to connect parking lot to existing trail' is placed near the bottom red line. The text 'EVC Lodge' is placed near the building. The text 'Amalga Meadows Park' is placed at the bottom right. The text 'Attachment A - Application Packet' is at the very bottom.

EVC Lodge

New trail and boardwalk, approx.
250' total length to connect
parking lot to existing trail

Amalga Meadows Park



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: ADF&G Habitat Section

STAFF PERSON/TITLE: Kelsey Dean Habitat Biologist

DATE: 6/17/2021

APPLICANT:

TYPE OF APPLICATION: VAR2021 0003: Variance to stream setback requirements

PROJECT DESCRIPTION:

Multiple trail stream crossings.

LEGAL DESCRIPTION: Multiple, see application.

PARCEL NUMBER(S): Multiple, see application.

PHYSICAL ADDRESS: Switzer Marriott Education Trail, Duck Creek Trail, Amalga Meadows, Christopher Trail Cope Park

SPECIFIC QUESTIONS FROM PLANNER:

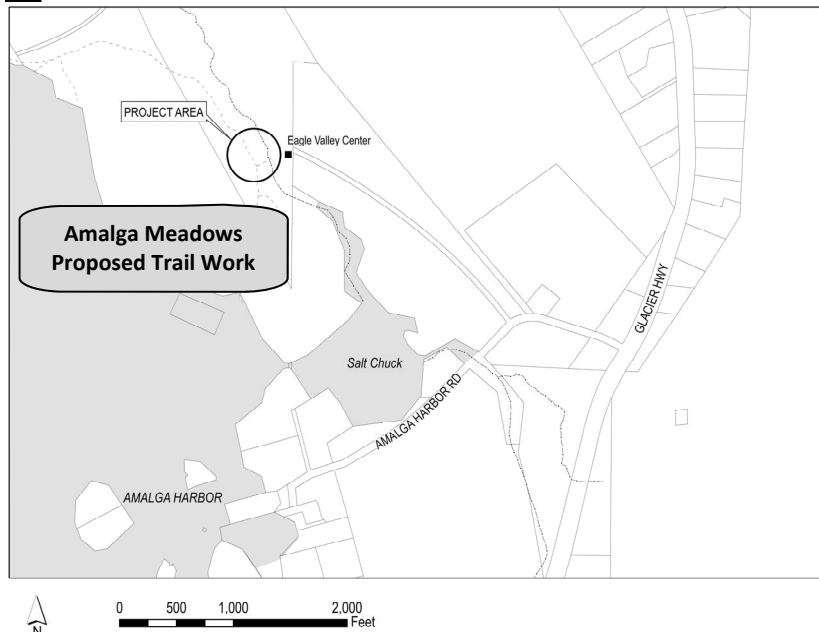
AGENCY COMMENTS:

We coordinated with Michele Elfers, CBJ parks and Rec, and Ryan O'Shaughnessy, Trail Mix Inc., and obtained additional information about the proposed trail work. A fish habitat permit is required for the bridge replacement on the Amalga Meadows trails; the remaining proposed work does not require a permit.

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission

Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for **pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Amalga Meadows.**

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Irene Gallion, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0005
Parcel No.: 3B4201000010
CBJ Parcel Viewer: <http://epv.juneau.org>



Attachment D - Public Notice Sign

Irene Gallion

From: Michele Elfers
Sent: Thursday, June 24, 2021 8:04 AM
To: Irene Gallion
Subject: FW: Variance signs
Attachments: IMG_7027.jpg; ATT00001.txt; IMG_7026.jpg; ATT00002.txt; IMG_7025.jpg; ATT00003.txt; IMG_7024.jpg; ATT00004.txt

Signs posted yesterday.
Have a great day!
Michele

-----Original Message-----

From: Michele Elfers <michele@alaskaflyfishinggoods.com>
Sent: Thursday, June 24, 2021 7:59 AM
To: Michele Elfers <Michele.Elfers@juneau.org>
Subject: Variance signs

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

VAR2021 0003: Switzer
VAR2021 0005: Amalga
VAR2021 0007: Duck Creek

Pedestrian trail work within 50 feet of an anadromous water body.

VAR21-03: Packet Page 107

VAR21-05: Packet Page 87

VAR21-07: Packet Page 135



What we will cover

- Similarities and differences
- Variance criteria

What makes these cases different from others heard tonight?

- Public pedestrian access
- Public land
- Include streamside revegetation
- Switzer: trails moved outside of 25 foot no-disturb buffer
- Trails within 50 foot no-development provide access to or across water
- Trail relocation and revegetation common mitigation and rehab activities



VAR21-03: Packet Page 108

Switzer

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Moving a trail away from stream, outside of 25' no-disturb buffer

Amalga

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Move bridge and trail, bridge crossing will be shorter



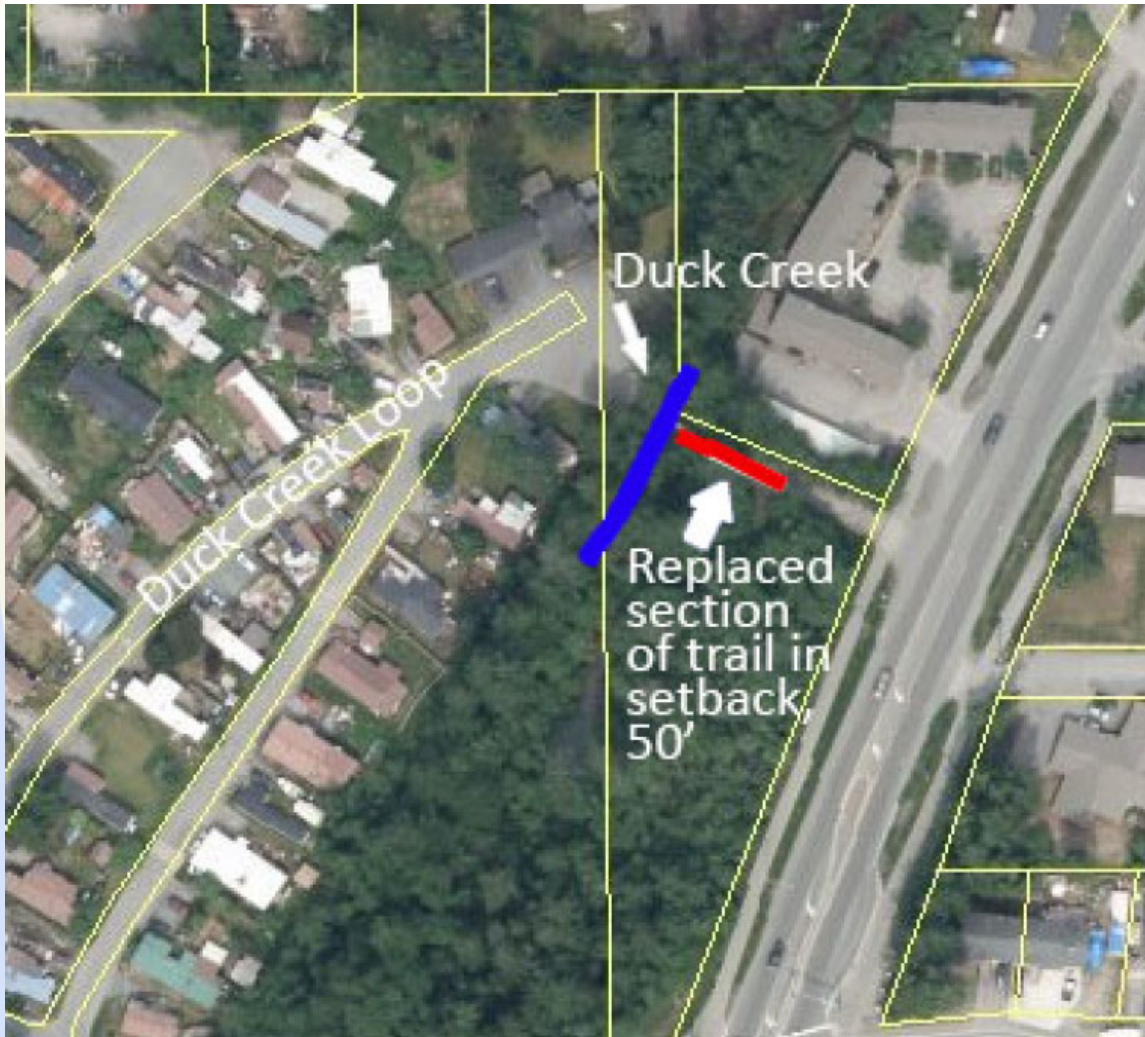
Duck

Similarities:

- Pedestrian access
- Bank and worksite revegetation

Difference:

- Rehab of urban trail system – urban connectivity



Variance criteria

- Is there a hardship?
- Is there an unusual or special condition?
- Is it caused by the party seeking the variance?
- Are there negative impacts to health, safety and well-being?
- Is it narrowly-tailored?

HARDSHIP – inability to use the land like your neighbors: Switzer and Amalga

What are neighboring uses?

- P&R Master Plan = access to natural areas and water
- Anadromous streamside = revegetation



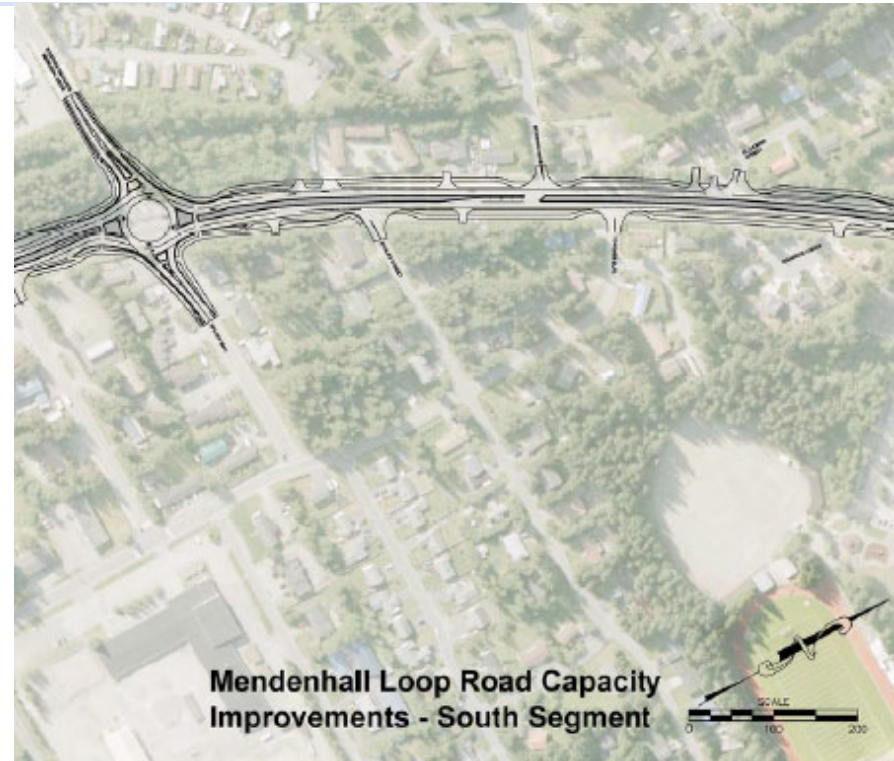
VAR21-03: Packet Page 110

VAR21-05: Packet Page 90

HARDSHIP – inability to use the land like your neighbors

What are neighboring uses?

- Administrative agreement = urban trail system
- Anadromous streamside = revegetation



Unusual or Special Condition

- 5% of Juneau parcels w/in 50 feet of stream
- Park land provides access to land and water
- Urban walkway part of system connectivity

LAND USE REQUIRES
RESPONSIBLE
PROXIMITY



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Are the problems caused by CBJ P&R?

- Streams and salmon exist as natural phenomena
- Without some help, natural phenomena have difficulty returning to a healthy state
 - Trail relocation
 - Revegetation
 - Bridge relocation

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138



Health, Safety and Well-Being

- Anadromous stream well-being improved
- Recreational opportunities improved
- Walkability = improved health
- Alternate urban routing



VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Narrowly tailored

- Switzer – work moves trails away from stream, outside 25' buffer
- Amalga – work moves bridge crossing to area of lesser impacts
- Duck Creek – work rehabilitates existing, makes it better
- All projects revegetate

VAR21-03: Packet Page 111

VAR21-05: Packet Page 91

VAR21-07: Packet Page 139

Variance criteria

- Is there a hardship? **YES**
- Is there an unusual or special condition? **YES**
- Is it caused by the party seeking the variance? **NO**
- Are there negative impacts to health, safety and well-being? **NO**
- Is it narrowly-tailored? **YES**

Recommend APPROVAL

VAR2021 0003: Switzer

VAR2021 0005: Amalga

VAR2021 0007: Duck Creek



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 112

VAR21-05: Packet Page 92

VAR21-07: Packet Page 140



Planning Commission

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

BOARD OF ADJUSTMENT NOTICE OF DECISION

Date: July 16, 2021
File No.: VAR2021 0005

City & Borough of Juneau
Attn: Michele Elfers
155 S. Seward Street
Juneau, AK 99801

Proposal:	Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Amalga Meadows.
Property Address:	Amalga Meadows Park
Legal Description:	USS 1163
Parcel Code No.:	3B4201000010
Hearing Date:	July 13, 2021

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 30, 2021, and **approved** the Variance to be conducted as described in the project description and project drawings submitted with the application.

Attachment: June 30, 2021, memorandum from Irene Gallion, Community Development, to the CBJ Board of Adjustment regarding VAR2021 0005.

This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

City & Borough of Juneau

File No: VAR2021 0005

July 16, 2021

Page 2 of 2

Effective Date: The permit is effective upon approval by the Board, July 13, 2021.

Expiration Date: The permit will expire 18 months after the effective date, or January 13, 2023 if no Building Permit has been issued and 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.


Nathaniel Dye for Michael Levine, Chair
Planning Commission

7/19/2021
Date


Filed With City Clerk

7/19/2021
Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

VAR2021 0003: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in
Switzer Creek - APPROVED

AGENDA ITEM:

Case No.: VAR2021 0003

Applicant: City & Borough of Juneau

Location: Switzer Creek

Proposal: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Switzer
Creek

ATTACHMENTS:

	Description	Upload Date	Type
▣	Memo Regarding VAR2021 0003, VAR2021 0005, & VAR2021 0007	6/29/2021	Miscellaneous
▣	Staff Report for VAR2021 0003	6/29/2021	Staff Report
▣	Presentation for VAR2021 0003, VAR2021 0005, & VAR2021 0007	7/13/2021	Presentation
▣	Notice of Decision for VAR2021 0003	7/27/2021	Notice of Decision



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

June 29, 2021

MEMO

From: Irene Gallion, Senior Planner

Through: Jill Maclean, AICP, Director, Community Development Department

To: Michael Levine, Chair, Board of Adjustment

Parcel No.: Multiple

Legal Description: Multiple

Case Number: VAR2021 0003, VAR2021 0005, VAR2021 0007

RE: Clarifying similarities between these cases

These three cases are similar, resulting in redundancy between staff reports. The three Variances are requested to continue trail improvements:

- VAR2021 0003 is the Switzer Marriott Trail (Lemon Creek)
- VAR2021 0005 is the Amalga Meadows Trail (Out the Road)
- VAR2021 0007 is the Duck Creek Trail (Mendenhall Valley)

To alleviate some confusion that redundancies may cause, and to accommodate efficient Commissioner review, this memo clarifies:

- Each has its own distinct project description.
- **ANALYSIS** is parallel across the cases, but each has been tailored to the specifics of the development. In other words, the order of the analysis is the same, but certain elements may have been added or deleted as appropriate.
- **VARIANCE STANDARDS** analyses are similar between Switzer, Marriott, and Amalga Meadows. Duck Creek is different from the other trails in that it is an urban pedestrian trail, so the **VARIANCE STANDARDS** analysis is slightly different.

Commissioners might also observe some references across projects. This may be due to how the projects evolved:

- The original application was for all three projects under one case number, VAR2021 0003. The hope was to have that case on the June 22 Regular Planning Commission meeting.
- Along with the trails listed above, this initial application included the Christopher Trail in Cope Park.
- The application time frame was too tight and we could not get abutters out with respectable public comment opportunity.
- Additionally, the Director advised it was better to break the trails into separate cases. In case of appeal, the other trails would not be held up.
- During staff analysis, we determined that the Christopher Trail did not need the Variance. Only the mouth of gold Creek is anadromous. The project is approximately 3,800 feet upstream. That Variance request was withdrawn.
- This left the three projects you see in front of you.



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD

155 S. Seward Street • Juneau, AK 99801

DATE: June 29, 2021
TO: Michael LeVine, Chair, Board of Adjustment
BY: Irene Gallion, Senior Planner 
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests a Non-administrative Variance to stream setback requirements for Switzer Creek: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

STAFF RECOMMENDATION: Approval

KEY CONSIDERATIONS FOR REVIEW:

- Switzer Creek is a naturally occurring feature of the land.
- Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management.
- Work is now prohibited without a Variance; there are no other permitting paths forward.

GENERAL INFORMATION	
Property Owner	City & Borough of Juneau
Applicant	City & Borough of Juneau
Property Address	Switzer Marriot Trail, Switzer
Legal Description	USS 5504 Lot 3 FR
Parcel Number	5B1301130020
Zoning	D15
Lot Size	17 acres
Water/Sewer	N/A
Access	Sunset St. or Jackie St.
Existing Land Use	Park/recreation
Associated Applications	None

ALTERNATIVE ACTIONS:

1. **Deny:** deny the permit and adopt new findings for items 1-2 below that support the denial.
2. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

Assembly action is not required for this permit.

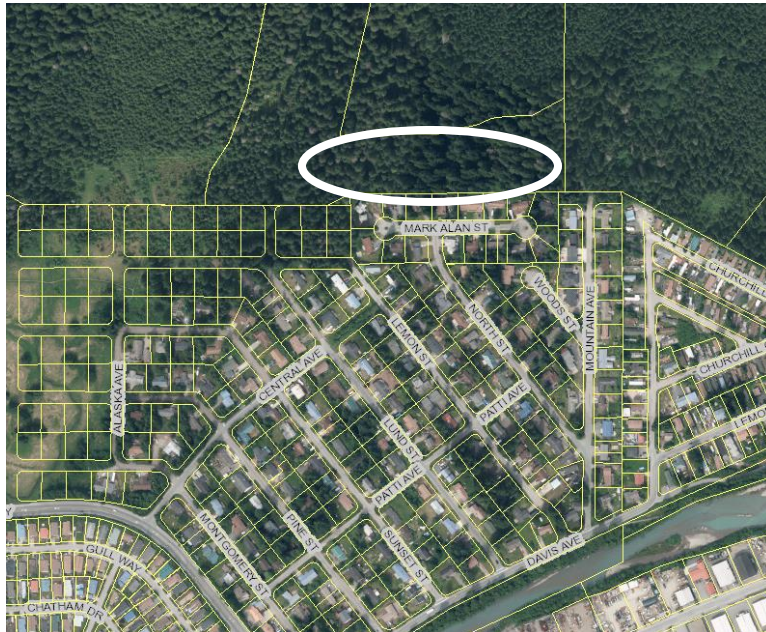
STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - 49.20.240
 - 49.20.250(b)
 - 49.70.310
 - 49.80

The Commission shall hear and decide the case per 49.20.240. The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

SITE FEATURES AND ZONING

Switzer Marriott Forest Trail



SURROUNDING ZONING AND LAND USES	
North (D15/RR)	Park
South (D5)	Residential
East (D15)	Park
West (D15/D5)	Park

SITE FEATURES	
Anadromous	Yes
Flood Zone	X
Hazard	No
Hillside	No
Wetlands	Yes
Parking District	No
Historic District	No
Overlay Districts	No

BACKGROUND INFORMATION

Project Description – Proposed improvements to the Switzer Marriott/Richard Marriott Education Trail (Switzer Marriott Trail) continues a two-year project removing boardwalk trails and replacing them with gravel. Sections of trail on or close to the stream bank will be relocated 25-50 feet from the stream bank. Old trail will be blocked with natural woody debris and plants to facilitate revegetation (**Attachment A**).

The image below shows the approximate course of Switzer Creek in red. Anadromous creek lines vary from previous stream mapping (in blue), illustrating the variability of the waterway. The existing trail is shown in salmon pink.



Background – Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management. Upon further review in March 2021, this code was determined null and void when the Alaska Coastal Management program ended in July 2011, and should have been repealed. With the exemption no longer permissible, trail rehabilitation work within 50 feet of an anadromous stream must pursue a Variance. This includes trails, road crossings, bridge abutment maintenance, and utility crossings.

On June 22, 2021, the Planning Commission favorably recommended a code amendment to move an exception from abrogated code to CBJ 49.70 Article III, “Sensitive Areas.” The code change is anticipated by fall 2021.

ANALYSIS

In the meantime, CBJ’s Parks and Recreation Department aims to continue the summer work that has been contracted.

CBJ code includes a 50-foot, “no-development” buffer, and a 25-foot “no-disturbance” buffer. Development is [CBJ 49.80]:

- Structures over 120 square feet
- Subdivision
- Change in lot use
- Mobile home placement
- *Removal of substantial vegetative cover*
- *Excavation, dredge or fill*
- Installation of a sign
- Mining support
- Any site work in anticipation of the above.

A “structure” includes anything constructed or erected on or under the ground.

The purpose of parks and trails is to facilitate access to Juneau's vast natural areas for residents of all ages and abilities. Trails help Juneau to attract visitors and to maintain a vibrant business community. Natural Area Parks serve the entire community by providing open space, access to water, and opportunities for passive and dispersed recreation activities [2019-2029 Parks and Recreation Master Plan].

Trails facilitate access to natural streams in a sustainable way, a special use of park land. Designed trails reduce erosion, maintain habitat quality, and facilitate crossing streams without disturbance. Trails can lead to “hardened” natural areas that withstand more intense activities, like popular fishing or picnicking.

Denying trail access to streams thwarts the intent of park land, and is contrary to decades of trail development. Trails focus community interest into areas that can be monitored and maintained. Access is balanced with design elements to mitigate impacts to habitat.

Plans that support trail development include:

- Juneau’s 2013 **Comprehensive Plan**, Chapter 9, “Parks, Recreation, Trails and Natural Area Resources.” This chapter recognizes the companion plans:
 - **Juneau Parks and Recreation Master Plan** (2019-2029)
 - **Juneau Trails Plan** and **Juneau Trails Management Plan** (1993, 1995)
- In addition, the **Lemon Creek Area Plan** (2018) is incorporated by reference.

The **Comprehensive Plan** recognizes the need for access to waterfront (9.1-IA7). Sensitive areas require protection when providing this access (9.1-IA23). The plan also documents an un-fragmented, interconnected trail system that provides access to fish and wildlife from the ice fields to the sea, proposing that they follow anadromous fish streams (page 126). The trail system would facilitate habitat mitigation along key anadromous corridors (9.2-IA3). Existing trail maintenance is prioritized (9.2-IA4).

The **Parks and Recreation Master Plan** inventory of trails includes the Switzer Marriott Trail, which includes pedestrian access to Dzantik’l Heeni Middle School. Trail support provided from this plan is outlined above.

The two-part **Juneau Trails Plan** and **Juneau Trails Maintenance Plan** is currently being updated. While this plan acknowledges the Switzer Marriot Trail as “fair to good,” this assessment was done 26 years ago (**Attachment B**). At that time, the trail was not prioritized for maintenance. The plan acknowledges that trails should avoid areas of critical or sensitive habitat (page 26). Switzer is a “maintenance level 2” park, which includes the objective of resource protection (page 36).

The **Lemon Creek Area Plan** recognizes the need to preserve, protect, and enhance the Switzer Creek Watershed (multiple references). Strategies include interpretive materials and trail connections (page 4). The Marriott Pond, connected to this trail system, was created to enhance fish habitat and reduce erosion from the trail (page 55). Parks and Recreation has placed a priority on park improvement in the Lemon Creek area (page 50).

At the meeting on June 22, 2021, the Planning Commission recommended approval of amendments to code that would include activities exempted from setbacks. The trail work proposed would fall under those exemptions. Proposed code may be modified during the public process, and will not be completed timely to accomplish summer 2021 work.

VARIANCE STANDARDS

Pursuant to CBJ 49.20.200, a Non-administrative Variance may be granted to provide an applicant relief from the requirements of this Title 49, the Land Use Code. A Variance is prohibited from varying any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot size, requirements in chapter 49.35 (Public and Private Improvements), or requirements in chapter 49.65 (Specified Use Provisions).

Per CBJ 49.20.250(b), a Non-Administrative Variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Board of Adjustment has determined that:

A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.

Analysis: The applicant must establish that adhering to the code creates hardship that is:

- Distinct from similarly situated properties.
- Due to peculiarities of the land.

Park land is distinct from similarly situated properties in that a purpose is to provide access to water. With other lands, protection of water is a priority, as evidenced by stream setback rules.

Under old code, “hardship” was a difficult standard to meet. In new code (established in 2018), the Planning Commission refined the standard from “extraordinary situation or unique physical feature” to “unusual or special” features of the property.

“Hardship” means that the land cannot be used as intended, that reasonable use of the land has been denied. The Parks and Recreation Master Plan establishes “reasonable use” of trails includes access to water. Granting the Variance would improve and refine access to the stream so that reasonable use of the land can occur.

Finding: Yes. This criterion has been met.

B. The unusual or special conditions of the property are not caused by the person seeking the Variance.

Analysis: Special or unusual conditions of park land in Juneau are:

- Location within 50 feet of an anadromous stream. Five percent of Juneau Parcels (707 parcels out of approximately 13,220 total) are within 50 feet of an anadromous stream.
- Park land is intended for water access, as opposed to other locations where streams are protected.

Juneau’s parks and open spaces provide access to nature, which, by definition, are collective phenomena of the physical world that are not human creations and, therefore, are not caused by the person seeking the Variance.

Finding: Yes. This criterion has been met.

C. The grant of the Variance is not detrimental to public health, safety, or welfare.

Analysis: Juneau’s trails provide opportunities for physical activities, building new skills, social interaction. Trails improve community health.

Trails provide for a range of emergency service capabilities, such as providing access for search and rescue operations. Trails improve community safety.

Juneau’s fortunes improve with access to natural areas and recreational opportunities. Publicly available resources allow for compact development to be healthier and more attractive. Trails improve community welfare [2019-2029 Parks and Recreation Master Plan].

Finding: Yes. This criterion has been met.

D. The grant of the Variance is narrowly tailored to relieve the hardship.

Analysis: This trail project minimally disturbs the setback area, meeting the purpose of park land, but mitigating the impacts. Intense trail use is moved from within the 25-foot, no-disturbance buffer to outside of it.

Finding: Yes. This criterion has been met.

Pursuant to CBJ 49.20.260, the Board may attach to a Non-administrative 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 title and to protect the public interest.

Condition: None recommended.

AGENCY REVIEW

CDD conducted an agency review comment period between June 9, 2021 and June 21, 2021. Agency review comments are in **Attachment C**.

Agency	Summary
Alaska Department of Fish & Game	Requested more details for possible fish habitat permits. None required for this project.

PUBLIC COMMENTS

In accordance with 49.20.230(b), public notice was mailed to property owners within 500 feet of the lot (**Attachment D**), a public notice sign was posted on site two weeks prior to the hearing (**Attachment E**), and ads were placed in the Juneau Empire. Public comments received at time of writing this staff report are in **Attachment F** and are summarized below. No written comments were received at the time of writing this report. Staff took two phone calls requesting additional materials, and two that had comments regarding the project.

Name	Summary
Stew Roland	Motorized vehicle access - requests barriers and signage
Kirk Reiselbach	Protection of bears and other wildlife who use the area – unleashed dogs are a particular problem. Frustrated by the Lemon Creek Area Plan planning process.

The Deputy Director of Parks and Recreation intended to reach out to both parties.

FINDINGS

1. Is the application for the requested Variance complete?

Analysis: No additional analysis required.

Finding: Yes. The application for the required Variance is complete.

2. Does the Variance as requested meet the criteria of Section 49.20.250(b)(1), Non-Administrative Variances?

Analysis: As discussed above, the criteria for a Non-Administrative Variance have been met.

Finding: Yes. The requested Variance meets the criteria of Section 49.20.250(b)(1), Non-Administrative Variances.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

STAFF REPORT ATTACHMENTS

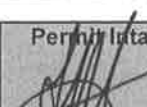
Item	Description
Attachment A	Application Packet
Attachment B	Trail Management Plan (1995) excerpt
Attachment C	Agency Comments
Attachment D	Abutters Notice
Attachment E	Public Notice Sign
Attachment F	Public Comments

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description The project relocates and reconstructs a portion of the trail between Lund Street and Mountain Ave. The trail is currently adjacent to the streambank and causing erosion. The trail will be moved 20'-50' or more away from the creek to improve habitat along the creek. Gravel will be placed along the trail for surfacing. The streambank areas will be revegetated.		
	PROPERTY LOCATION		
	Street Address Switzer Creek between Lund and Mountain St	City/Zip 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Switzer USS 5504 LT 3 FR		
	Assessor's Parcel Number(s) Switzer 5B1301130020		
	LANDOWNER/ LESSEE		
	Property Owner's Name City and Borough of Juneau	Contact Person: Michele Elfers	Work Phone: 364-2390
	Mailing Address 155 S. Seward Street	Home Phone:	Fax Number:
	E-mail Address Michele.Elfers@juneau.org	Other Contact Phone Number(s):	
	PROJECT / APPLICANT	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:			
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.			
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X			Date 6-14-21
		Landowner/Lessee Signature	Date
X			
		Landowner/Lessee Signature	Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name same		Contact Person:	
Mailing Address		Home Phone:	
E-mail Address		Work Phone:	
		Fax Number:	
		Other Contact Phone Number(s):	
X			
	Applicant's Signature	Date of Application	

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS	☒	Permit Type	***SIGN	Date Received	Application Number(s)	
		Building/Grading Permit				
		City/State Project Review and City Land Action				
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)				
		Mining Case (Small, Large, Rural, Extraction, Exploration)				
		Sign Approval (If more than one, fill in all applicable permit #'s)				
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)				
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)				
		Variance Case (De Minimis and all other Variance case types)			VAR 21-03	
		Wetlands Permits				
		Zone Change Application				
		Other (Describe)				
	***Public Notice Sign Form filled out and in the file.					
	Comments:					Permit Intake Initials
						

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

To be completed by Applicant	PROJECT SUMMARY			
	Reconstruct a section of trail along Switzer Creek between Mountain Ave and Lund Street that is eroding. The trail will be moved 20'-50' or more feet away from the creek. It will have a gravel surface.			
	VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to) CBJ 49.70.310, Habitat			
	Previous Variance Applications? YES ☒ NO Date of Filing: _____ Previous Case Number(s): _____ Was the Variance Granted? YES NO			
	UTILITIES AVAILABLE: NA WATER Public On Site SEWER: Public On Site			
ALL REQUIRED MATERIALS ATTACHED Complete application per CBJ 49.65.210 Narrative including: Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure Why a variance would be needed for this property regardless of the owner What hardship would result if the variance is not granted Site Plan				

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ _____			
Adjustment	\$ _____			
Total Fee	\$ _____			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number	Date Received
VAR21-03	6/8/21

Attachment A - Application Packet

Variance Application Instructions

Variances are outlined in CBJ 49.20 article II

Application: An application for a Variance will not be accepted by the Community Development Department (CDD) until it is determined to be complete. The items needed for a complete application are:

1. **Forms:** Completed Variance Application and Development Permit Application forms.
2. **Fees:** The fee for a Variance Application is \$400.00. If the application is in conjunction with a major development permit, the Variance fee will be reduced by 20 percent. Any development, work or use done without a permit issued will be subject to double fees. All fees are subject to change.
3. **Project Description:** A detailed letter or narrative describing the hardship that is the result of an unusual situation or physical feature affecting a specific parcel of land or structure. **Also include how the proposed project meets the variance criteria listed on the attached sheet.**
4. **Plans:** A site plan showing the following information:
 - A. The location of existing and proposed structures (i.e. buildings, fences, signs, parking areas, etc.); and
 - B. The location of existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.).

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Please consult with the Community Development Department to discuss whether additional information may be required for your application. The "Planner-On-Call" can be reached by contacting the Community Development Department at (907) 586-0715 or via email at Permits@juneau.org.

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: As part of the review process the Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the Variance Application request the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department will coordinate the review of this application by other agencies, as necessary. Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed project.

Hearing: All Variance Applications must be reviewed by the Board of Adjustment. Once an application has been deemed complete and has been reviewed by all applicable parties the Community Development Department will schedule the requested permit for the next appropriate meeting.

Public Notice Responsibilities: As part of the Variance process, all requests must be given proper public notice as outlined in 49.20.230 which consists of the following:

Community Development Department will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail abutters notices to all property owners within 500-feet of the project site. A "Public Notice Sign" is required to be posted on the site by the Applicant and the Community Development Department will create the sign to be posted.

Variance Approval Criteria

A variance may be granted after the prescribed hearing and after the Board of Adjustment has determined that the following criteria are met. Include in your project narrative a detailed description about how your proposal meets each of the criteria listed below:

CBJ 49.20.250(b) Non-administrative variances. *(1)A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:*

- (A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;*
- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;*
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and*
- (D) The grant of the variance is narrowly tailored to relieve the hardship.*

PLEASE NOTE: As provided by CBJ Land Use code section on Variances (CBJ 49.20.200), a variance may be granted to provide an applicant relief from the requirements of Title 49, the Land Use Code. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



June 21, 2021

Permit Center, Community Development Department
 155 S. Seward Street
 Juneau, AK 99801

RE: Trail Mix Work Plan Variance Request

Dear Permit Center Staff:

The Parks and Recreation Department is applying for a variance for trail work in the vicinity of streams to be performed by Trail Mix under their annual work plan at various CBJ park locations. With the changed interpretation of the stream setback code, work that was previously allowed is no longer allowed. Some of these projects have been worked on in recent years and this work is a continuation. If the projects are not allowed to proceed, CBJ will not be able to maintain existing trails. In some cases, the current condition of the trail is a safety hazard or will become a safety hazard in the near future. If CBJ and Trail mix cannot perform maintenance on these trails, some of the trails would have to be closed. In the past, when CBJ has closed trails, some people still use the trails, as is the case with Christopher Trail currently. The trail is currently very unsafe for use. The trails provide important linkages, for example the Amalga Meadows trail and elevated boardwalk is the primary access to the Amalga public use cabin and the kayak rentals at Kayak Beach.

There is no signage planned at this time for these projects. The following is a description of each project:

Switzer Marriott/Richard Marriott Education Trail

This trail is located in the Switzer Natural Area Park. Trail Mix has been performing trail work for the past two years to replace old boardwalk with gravel trail. This season, work is planned to relocate sections of trail that are located on the streambank and causing erosion. The work area is between Lund Street and Mountain Ave and approximately 700' of trail in this area will be relocated when it is close to or on the streambank. It will be relocated 25' – 50' from the streambank. After the relocation work is complete, the old trail will be decommissioned and blocked with natural woody debris and plants to allow for the area to revegetate. The new trail will be through upland areas constructed with gravel.
 See attached map.

Duck Creek Trail

This project is mitigation work funded by the Alaska Department of Transportation for impacts to wetlands from the Stephen Richards Roundabout project. A connector trail from Mendenhall Loop Road to Duck Creek loop will be replaced; asphalt will be removed and

replaced with gravel and native vegetation will be planted in the riparian areas along the trail. The trail replacement work will extend from the creek 50' through the setback zone and then connect to Mendenhall Loop Road. The trail materials will be native soils for planting native vegetation on the sides of the trail and gravel for the trail base. The bridge over the creek is in good condition and will not be replaced or modified. Additionally, a small wetland area will be created in the forest to improve habitat. This wetland area is outside of the 50' setback zone and not part of this request.

See attached map.

Amalga Meadows Park:

Trail improvement work has been ongoing throughout the park for a few years including the new Horsetram Trail, the Amalga Cabin trail, and the SAIL ropes course challenge trail. This year the elevated boardwalk over the slough is being replaced as it is rotten and failing. The boardwalk location will be relocated to a narrower section of the slough to allow a shorter crossing and shorter trail. The old boardwalk will be removed and disposed of offsite and the trail will be revegetated with native grasses. The new trail will extend from the parking area to the existing trail on the other side of the slough. The trailbed will be gravel and the elevated boardwalk will be timbers with helical piles for support. The work will extend through the setback zone on either side of the slough.

This trail is the only access from the parking area and road to the Amalga trail system and public use cabin.

See attached map.

Christopher Trail, Cope Park:

This popular trail connects Cope Park to the Flume Trail and has been closed for a few years due to severe erosion along the streambank of Gold Creek. PDC Engineers has designed a trail and retention system along the steep portion of the trail and streambank. The new trail will be just uphill of the old trail and will be a gravel trail supported with timbers and soil anchors embedded into the hillside. Approximately 190' of trail will be decommissioned and 220' of new trail will be created for the reroute to connect to the pedestrian bridge over Gold Creek. See attached map.

On all of these projects, old trail material such as woody or gravel will be removed and the trails will be blocked off with native plant and woody material if being relocated. Vegetation will only be removed as needed for new trail locations and the trails will be routed to avoid large trees and minimize vegetative removal. The Development permit is attached for this work. Please let me know if you have any questions.

Michele Elfers
Deputy Director
Parks and Recreation Department

Switzer Trail (red line)- trail work approx. 700' intermittent, relocated trail 25'-50 from creek

End

Start

Creek (blue line)

MARK ALAN ST

MOUNTAIN AVE

LUND ST

LEM ST

NORTH ST

WOODS ST

Attachment A - Application Packet

SWITZER CREEK LOOP TRAIL/ RICHARD MARRIOTT MEMORIAL TRAIL (continued)

TRAIL CONDITION

Overall Trail Condition: Fair to Good

Soil Conditions: Maybeso, Kina, Muck, Forest Muck; COLSD Level 25-200

Access Issues: The old road portion off of the Mountain Ave. trailhead may be within state property boundaries. See USGS map B-2, which shows old road location.

Trail Summary: The Richard A. Marriott Memorial Trail is in good shape. From Lund St. to Alaska & Sunset Ave. the tread is almost entirely plank. From the old road off of Mountain Ave. to Lund St., the Richard A. Marriott Memorial Trail has some sections of plank, but is mostly maybeso in good condition. The Richard A. Marriott Memorial Trail is level and skirts the outer fringes of the neighbor. In one section houses are visible with many smaller (private) trails connecting the homes to the main trail. The planked section is highly constructed and will require a great deal of maintenance as it starts to deteriorate over the years.

To make a loop out of the Switzer Loop Trail, you must make use of the Richard A. Marriott Memorial Trail section. Starting at Alaska & Sunset Ave., the trail heads immediately into a bog meadow. It is level, and planked until it reaches the intersection with the Marriott trail. Continuing on the main portion of Switzer takes you uphill on an old road leftover from clear cutting operations. This tread is in good shape w/ some roots and a rock base. When the road ends, the trail becomes narrower with more roots and mud holes. It winds through the woods, up and down, until coming to Switzer Creek, which is bridged. This little area around the creek crossing receives a heavy amount of use (as evidenced by fire rings, garbage, and cut trees). The trail continues uphill through dense woods and comes out on another old road. This old road turns left and heads downhill to an intersection with the main road. Turning left takes you up into a very wet bog meadow. This portion of the road is muddy, but still in fair shape. Turning right takes you down to Mountain Ave. or to the turnoff to the Richard Marriott. This portion of the road is in good shape, being mostly gravel and 3' to 4' wide. Just before reaching Mountain Ave. there are two trails on the right that both lead to a Switzer Creek. The second entry is probably the best and should be marked with a Richard Marriott trailhead sign.

Trail Log:

Stations	Log Item	Condition
0	begin at the Alaska & Sunset Ave. trailhead, edge of road at fire hydrant	
0 - 774	Kina bog meadow	
0 - 13	hard packed dirt	OK
13 - 65	plank	OK
25	trailhead sign "Switzer Creek Loop", needs brushing	Poor
65 - 86	hard packed dirt	OK
86 - 827	plank, 1st one broken, 2nd one double stacked as bridge over creek	Poor
774	intersection: right turn to Richard A. Marriott Memorial Trail, straight to continue on Loop	
	sign: trailhead sign "Richard A. Marriott Memorial Trail", sign loose in boggy ground	Poor
800 - 809	double stacked plank over wet area	OK

SWITZER CREEK LOOP TRAIL/ RICHARD MARRIOTT MEMORIAL TRAIL (continued)

Stations	Log Item	Condition
774 - 1348	deep forest, little brush, 2nd growth, old road	
827 - 1348	roots, hard packed dirt w/rock base, uphill, <i>old</i> puncheon remains, 4'-6' wide	
1348 - 1631	road ends, 2' wide tread, some brush and vegetation, steep downhill, wet maybeso	
1440 - 1420	mud	Poor
1554	sign: green arrow sign on tree, stay right	OK
1631 - 2082	brush, 2' wide, wet maybeso, roots	
1746 - 1801	turn right, downhill	OK
1779	step down 2'	OK
1900 - 1991	steep downhill	OK
1991 - 2012	potential mud hole	OK
2082	Switzer Creek bank	
2088 - 2103	bridge: log w/ flat top	Poor
2118 - 2350	fire pit, turn left, tree down 20" dia., steep uphill, muddy, roots, need sign	Poor
2082 - 2652	vegetation and brush, wet maybeso	OK
2442 - 2652	steep uphill, roots, 1' wide	OK
2652 - 3459	dense woods, 2' wide, roots	OK
2930 - 2988	brush and vegetation	OK
3077 - 3106	brush and vegetation	OK
3172 - 3201	brush and vegetation	OK
3264 - 3288	brush and vegetation	OK
3403 - 3459	brush and vegetation	OK
3459	open area, old road starts, trash: old cans, glass, fire pits	Poor
3480	turn left onto old road, right dead ends within 15', need sign	Poor
3480 - 3785	old road, gravel, 5'-8' wide, dense woods, small trees, slight downhill	
3641	2- 2" alders hanging over trail	Poor
3785	intersection: left to dead in bog meadow (see spur trail), right to Mountain Ave. and Richard A. Marriott Memorial Trail, fire pit and garbage, needs sign	Poor
3785 - 5100	same conditions except 4'-6' wide, small trees	
4165 - 4192	old road bridge, logs over creek	OK
4743	intersection: right to Richard A. Marriott Memorial Trail	
5029	intersection: right to Richard A. Marriott Memorial Trail, needs sign	Poor
5100	Mountain Ave., boulders to block access to trail from road, signs: separate posts for "no motorized vehicles" and standard trailhead sign "Switzer Loop Trail"	OK

Station 4743 (1st entry to Richard A. Marriott Memorial Trail, official entry from Switzer Loop)

0	begin at Station 4743 on Switzer Loop Trail	
0 - 100	brush and vegetation, hard pack dirt, 2' wide	OK
100 - 402	ferns, 2' wide, old growth, roots	OK
402	Switzer Creek (station 90 on other entry trail)	
402 - 422	bridge: double plank on log support, 1/2 washed out, needs rock cribbing in center of creek to hold planks above water, need 2 long planks to repair	Poor
402 - 1998	old growth forest, vegetation and brush, roots, firm soil, parallels creek	
570 - 583	plank	Ok
710 - 722	plank	OK

SWITZER CREEK LOOP TRAIL/ RICHARD MARRIOTT MEMORIAL TRAIL (continued)

Stations	Log Item	Condition
762 - 772	plank	OK
800 - 813	plank	OK
820 - 844	plank	OK
844 - 861	mud hole	Poor
899 - 922	plank	O
927 - 935	plank	OK
990 - 1000	plank	OK
1057	plank, tree down over plank, cut branches	Poor
1057 - 1697	houses on left visible along trail route	
1078 - 1089	log rounds	Poor
1150 - 1179	plank	Ok
1206 - 1210	plank	OK
1298 - 1311	plank, tilted	Poor
1342 - 1369	log rounds, logs	Poor
1367	tree down 40" dia., clearance under 3.5', Ok to leave	OK
1466 - 1500	plank	OK
1526 - 1547	plank	Ok
1537 - 1560	wet area	OK
1571 - 1581	plank	OK
1583 - 1605	plank	OK
1605 - 1610	mud hole	Poor
1790 - 1800	plank	OK
1829 - 1840	plank on log over stream	OK
1861 - 1874	plank	OK
1888 - 1901	plank	OK
1998	intersection: left to Lund St. (see spur trail), right main trail continues to Alaska & Sunset Ave.	
1998 - 2506	large trees, almost no brush	
2062 - 2089	plank	OK
2089 - 2109	bridge: 2 logs w/ cross planking over stream	OK
2110 - 2409	plank	OK
2409 - 2425	plank w/ cleats	OK
2445 - 2483	plank w/ cleats	OK
2496 - 2506	plank w/ cleats	OK
2506 - 2863	Kina bog meadow, plank	OK
2727	broken cookie under plank	Poor
2863	intersection: (also station 774) left to Alaska & Sunset Ave., right to Switzer Loop Trail sign: standard trailhead "Richard A. Marriott Memorial Trail"	

Spur Trails

Station 5029 (2nd entry to Richard A. Marriott Memorial Trail, but not official entry from Switzer Loop)

0	begin at Station 5029 on Switzer Loop Trail	
0 - 56	brush, hard packed dirt	OK
90	Switzer Creek (station 402 on other entry trail)	

SWITZER CREEK LOOP TRAIL/ RICHARD MARRIOTT MEMORIAL TRAIL (continued)

Stations	Log Item	Condition
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Station 3785

0	begin at fire pit in middle of road	
0 - 177	old road, gravel, 4'-6' wide, small trees	OK
177	2 pallets	Poor
177 - 1190	3'-4' wide, some encoaching branches	Poor
514 - 525	mud hole	Poor
551 - 564	water hole	Poor
675 - 1190	roots, wet	OK
995 - 1190	3' wide	OK
1148 - 1190	mud hole	Poor
1190	staney bog meadow, <i>very</i> wet	

Station 1998 (to Lund Street from Richard A. Marriott Memorial Trail)

0	begin at station 1998 on Richard A. Marriott Memorial Trail	
0 - 485	large trees, brush	
24 - 98	plank	OK
98 - 109	3 plank wide ramp w/ cleats to bridge	OK
109 - 143	bridge: 2 logs w/cross planking, no handrail, 5' drop to water, large pool area of creek, lots of floating junk in water (mostly kids boats), rope swing	Poor
143 - 146	elevated plank to join regular plank trail	OK
146 - 183	turn right, double plank	OK
183 - 201	elevated double plank w/ 2 sides P.T. handrail	Ok
201 - 272	double plank	OK
272 - 296	elevated triple plank	OK
281 - 293	start 2 rows of 2 plank wide steps (seating area) up to bulletin board and sign, P.T. handrail at top of steps under bulletin board sign: above bulletin board, routed name only "R. M. M. Trail"	OK
296 - 306	ramp up, double plank w/cleats	OK
306 - 317	turn right, plank w/ cleats and P.T. handrail on left	OK
317 - 485	double plank	OK
325	step down	OK
362 - 365	step up	OK
372	step down	OK
387 - 389	stairs (2 steps), P.T. handrail on right	OK
389	turn left	
389 - 485	double plank	OK
389 - 398	P.T. handrail on right	OK
438 - 452	P.T. handrail on right	OK
441 - 452	P.T. handrail on left	OK
469 - 485	P.T. handrail on right	OK
485	Lund Street	OK
	sign: standard trailhead "Richard A. Marriott Memorial Trail"	

SWITZER CREEK LOOP TRAIL/ RICHARD MARRIOTT MEMORIAL TRAIL (continued)

TRAIL MAINTENANCE

Management Objectives:

- difficulty level to maintain - Easy for R. M. and Medium for Switzer Loop
- level of resource protection - Medium
- level of safety - Medium
- maintenance factors - Switzer Creek Habitat, bogs, steep terrain

Trail Maintenance:

- maintenance level - Level 2 for Switzer Loop and Level 3 for Richard M. Marriott
- construction and maintenance standards - Easy for R. M. and Medium for Switzer Loop
- maintenance schedule - Every 2 years
- condition survey - Every 2 years
- inspection schedule - Every 2 years
- estimated annual use - under 200
- estimated impacts - If use level stays the same no usual impacts are expected.
- type of users - local neighborhood, other locals, school groups, P & Rec. hike program

TRAIL DEVELOPMENT

Future Use: Portions of the trail are protected by a Open Space and Park designation. In order to protect the entire trail, the remaining land should receive this designation.

Interpretation of the natural environment is possible at this location.

Camping should be prohibited within 100' of Switzer Creek.

Interagency and public involvement: This trail is not listed in the 1993 Juneau Trails Plan. It is listed in the 1994 Juneau Wetlands Interpretive Plan. The Interpretive plan recommends a "Standard Trailhead Sign/Panel" for this trail (1.5' x 2' @ \$1000 to \$1,300). The trail will also be included in a publication titled "Explorer's Guide."

VOLUNTEER SUPPORT

Financial: Planks

Labor: Brushing

COMMENTS:



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: ADF&G Habitat Section

STAFF PERSON/TITLE: Kelsey Dean Habitat Biologist

DATE: 6/17/2021

APPLICANT:

TYPE OF APPLICATION: VAR2021 0003: Variance to stream setback requirements

PROJECT DESCRIPTION:
Multiple trail stream crossings.

LEGAL DESCRIPTION: Multiple, see application.

PARCEL NUMBER(S): Multiple, see application.

PHYSICAL ADDRESS: Switzer Marriott Education Trail, Duck Creek Trail, Amalga Meadows, Christopher Trail Cope Park

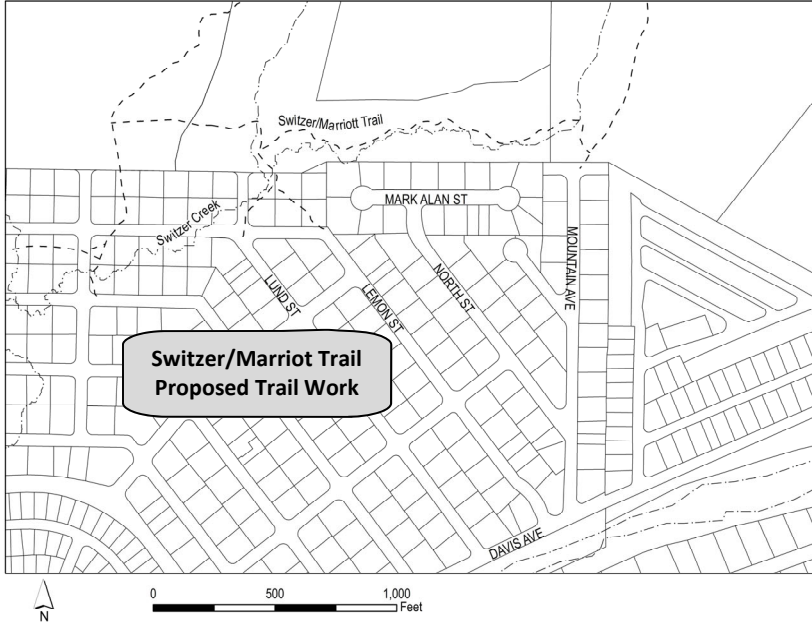
SPECIFIC QUESTIONS FROM PLANNER:

AGENCY COMMENTS:

We coordinated with Michele Elfers, CBJ parks and Rec, and Ryan O'Shaughnessy, Trail Mix Inc., and obtained additional information about the proposed trail work. A fish habitat permit is required for the bridge replacement on the Amalga Meadows trails; the remaining proposed work does not require a permit.

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for **pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Switzer Creek.**

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Irene Gallion, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0003
Parcel No.: 5B1301130020
CBJ Parcel Viewer: <http://epv.juneau.org>



Attachment E - Public Notice Sign

Irene Gallion

From: Michele Elfers
Sent: Thursday, June 24, 2021 8:04 AM
To: Irene Gallion
Subject: FW: Variance signs
Attachments: IMG_7027.jpg; ATT00001.txt; IMG_7026.jpg; ATT00002.txt; IMG_7025.jpg; ATT00003.txt; IMG_7024.jpg; ATT00004.txt

Signs posted yesterday.
Have a great day!
Michele

-----Original Message-----

From: Michele Elfers <michele@alaskaflyfishinggoods.com>
Sent: Thursday, June 24, 2021 7:59 AM
To: Michele Elfers <Michele.Elfers@juneau.org>
Subject: Variance signs

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

From: [Irene Gallion](#)
To: [Michele Elfers](#)
Cc: [Irene Gallion](#)
Subject: VAR21-03: Switzer Comment
Date: Tuesday, June 22, 2021 10:53:13 AM
Attachments: [image003.jpg](#)

Hi Michele,

I talked to Stew Rowland who lives at the end of Mountain Avenue.

There are two recent modifications that have made motorized access to this trail easier. They are seeing dirt bikes and motorized bikes.

1. The City moved some large boulders at the end of the road, creating more room for motorized vehicle access.
2. The new sign (which is really nice) replaced a “no motorized vehicles” sign. While the new one has a little logo indicating no motorized vehicles, it is tiny.

If you have any questions for him, his number is 723-8061, and his e mail is sroowland@alaskan.com.

He and his wife very much enjoy the trail. I’ll be sending him the application materials for review, and he will share them with his neighbors.

Irene Gallion | Senior Planner

[Community Development Department](#) | City & Borough of Juneau, AK
 Location: 230 S. Franklin Street | 4th Floor Marine View Building
 Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

From: [Irene Gallion](#)
To: [Irene Gallion](#)
Cc: [Michele Elfers](#); [Jill Maclean](#)
Subject: VAR21-03: Switzer - public comment
Date: Friday, June 25, 2021 3:34:54 PM
Attachments: [image002.jpg](#)

Kirk Reiselbach has concerns over the Switzer trail proposal. 523-5990

This area attracts lots of bears in the summer, since the stream has salmon. In the winter the creek does not freeze and attracts wildlife.

The area along the creek needs to be protected. I mentioned that the trail was proposed to move farther from the creek. He said the problem was dogs off leash.

He is frustrated with the Lemon Creek Area Planning process. He feels it was just for show.

Originally the trail was supposed to cross the meadow to Alaska Avenue to provide a "bike route."

Summary: The area is heavily used by bears and other wildlife that should be protected. Signs should be posted to warn of bears, and dogs should be kept on leashes.

Irene Gallion | Senior Planner

[Community Development Department](#) | City & Borough of Juneau, AK
 Location: 230 S. Franklin Street | 4th Floor Marine View Building
 Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

VAR2021 0003: Switzer
VAR2021 0005: Amalga
VAR2021 0007: Duck Creek

Pedestrian trail work within 50 feet of an anadromous water body.

VAR21-03: Packet Page 107

VAR21-05: Packet Page 87

VAR21-07: Packet Page 135



What we will cover

- Similarities and differences
- Variance criteria

What makes these cases different from others heard tonight?

- Public pedestrian access
- Public land
- Include streamside revegetation
- Switzer: trails moved outside of 25 foot no-disturb buffer
- Trails within 50 foot no-development provide access to or across water
- Trail relocation and revegetation common mitigation and rehab activities



VAR21-03: Packet Page 108

Switzer

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Moving a trail away from stream, outside of 25' no-disturb buffer

Amalga

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Move bridge and trail, bridge crossing will be shorter



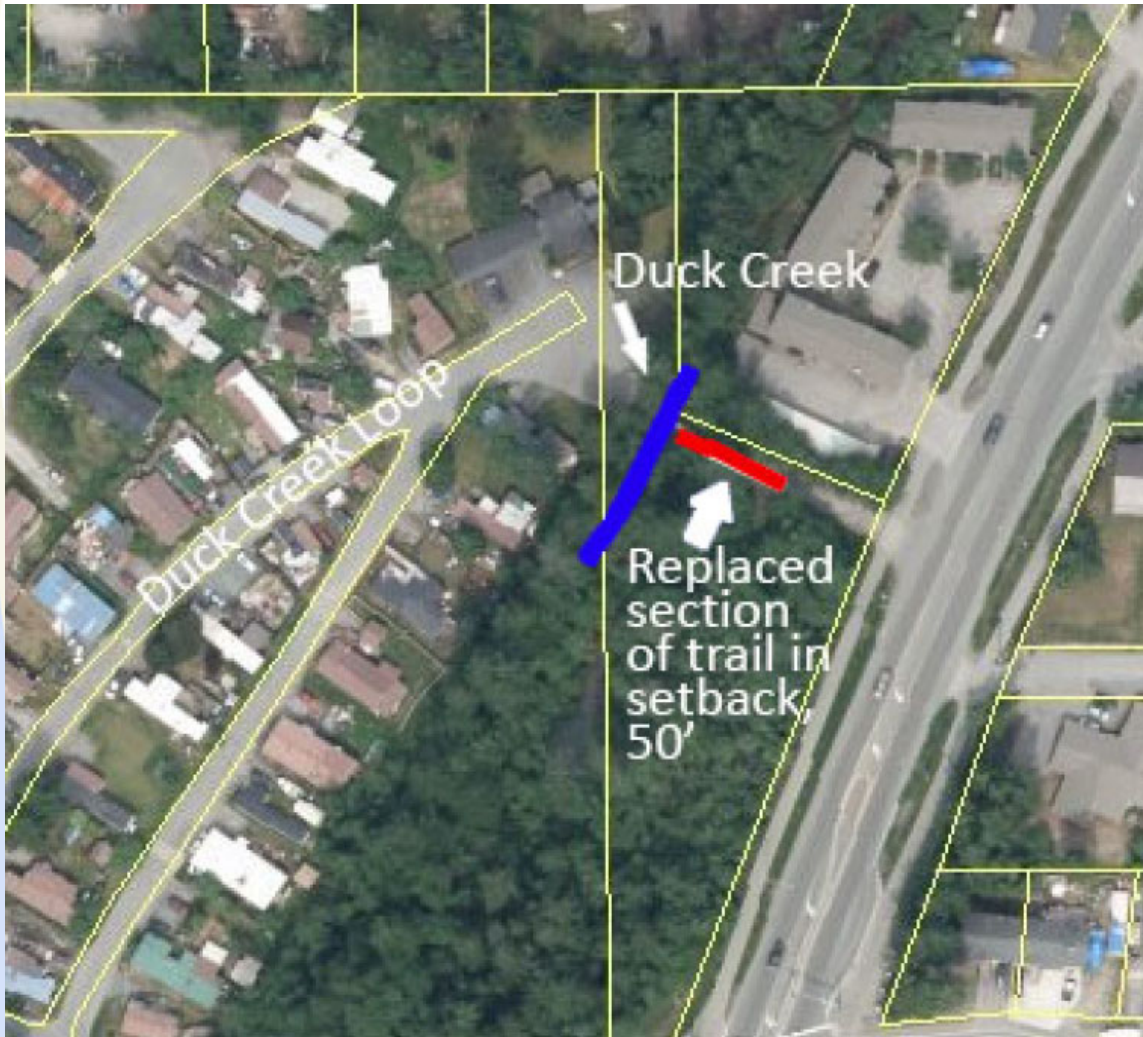
Duck

Similarities:

- Pedestrian access
- Bank and worksite revegetation

Difference:

- Rehab of urban trail system – urban connectivity



Variance criteria

- Is there a hardship?
- Is there an unusual or special condition?
- Is it caused by the party seeking the variance?
- Are there negative impacts to health, safety and well-being?
- Is it narrowly-tailored?

HARDSHIP – inability to use the land like your neighbors: Switzer and Amalga

What are neighboring uses?

- P&R Master Plan = access to natural areas and water
- Anadromous streamside = revegetation



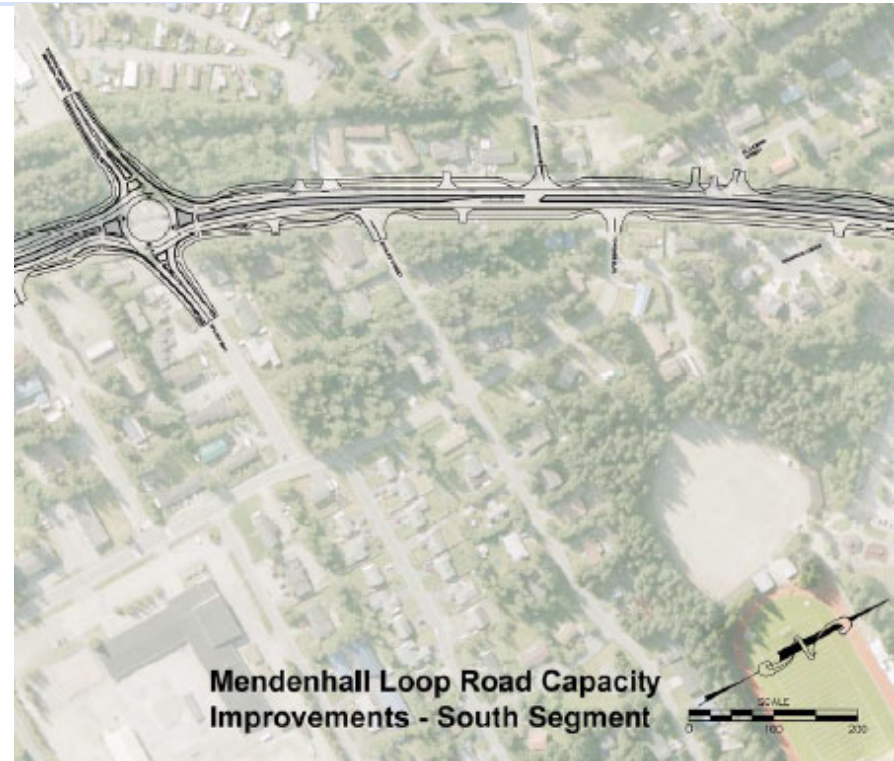
VAR21-03: Packet Page 110

VAR21-05: Packet Page 90

HARDSHIP – inability to use the land like your neighbors

What are neighboring uses?

- Administrative agreement = urban trail system
- Anadromous streamside = revegetation



Unusual or Special Condition

- 5% of Juneau parcels w/in 50 feet of stream
- Park land provides access to land and water
- Urban walkway part of system connectivity

LAND USE REQUIRES
RESPONSIBLE
PROXIMITY



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Are the problems caused by CBJ P&R?

- Streams and salmon exist as natural phenomena
- Without some help, natural phenomena have difficulty returning to a healthy state
 - Trail relocation
 - Revegetation
 - Bridge relocation

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138



Health, Safety and Well-Being

- Anadromous stream well-being improved
- Recreational opportunities improved
- Walkability = improved health
- Alternate urban routing



VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Narrowly tailored

- Switzer – work moves trails away from stream, outside 25' buffer
- Amalga – work moves bridge crossing to area of lesser impacts
- Duck Creek – work rehabilitates existing, makes it better
- All projects revegetate

VAR21-03: Packet Page 111

VAR21-05: Packet Page 91

VAR21-07: Packet Page 139

Variance criteria

- Is there a hardship? **YES**
- Is there an unusual or special condition? **YES**
- Is it caused by the party seeking the variance? **NO**
- Are there negative impacts to health, safety and well-being? **NO**
- Is it narrowly-tailored? **YES**

Recommend APPROVAL

VAR2021 0003: Switzer

VAR2021 0005: Amalga

VAR2021 0007: Duck Creek



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 112

VAR21-05: Packet Page 92

VAR21-07: Packet Page 140



Planning Commission

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

BOARD OF ADJUSTMENT NOTICE OF DECISION

Date: July 16, 2021
File No.: VAR2021 0003

City & Borough of Juneau
Attn: Michele Elfers
155 S. Seward Street
Juneau, AK 99801

Proposal: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Switzer Creek.

Property Address: Switzer Marriot Trail, Switzer

Legal Description: USS 5504 Lot 3 FR

Parcel Code No.: 5B1301130020

Hearing Date: July 13, 2021

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 29, 2021, and **approved** the Variance to be conducted as described in the project description and project drawings submitted with the application.

The proposal was modified (underlined) to clarify:

Pedestrian trail relocation to between 25 and 50 feet from an anadromous stream, and revegetation within 50 feet of an anadromous stream in Switzer Creek.

Attachment: June 29, 2021 memorandum from Irene Gallion, Community Development, to the CBJ Board of Adjustment regarding VAR2021 0003.

This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain the required building permits.

City & Borough of Juneau

File No: VAR2021 0003

July 16, 2021

Page 2 of 2

This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

Effective Date: The permit is effective upon approval by the Board, July 13, 2021.

Expiration Date: The permit will expire 18 months after the effective date, or January 13, 2023, if 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.


Nathaniel Dye for Michael Levine, Chair
Planning Commission

7/18/2021
Date


Filed With City Clerk

7/19/2021
Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

VAR2021 0007: Pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream in
Duck Creek - FAILED TO APPROVE

AGENDA ITEM:

Case No.: VAR2021 0007

Applicant: City & Borough of Juneau

Location: Duck Creek

Proposal: Pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream in Duck Creek

ATTACHMENTS:

	Description	Upload Date	Type
▣	Memo Regarding VAR2021 0003, VAR2021 0005, & VAR2021 0007	7/1/2021	Miscellaneous
▣	Staff Report for VAR2021 0007	7/1/2021	Staff Report
▣	Presentation for VAR2021 0003, VAR2021 0005, & VAR2021 0007	7/13/2021	Presentation
▣	Notice of Decision for VAR2021 0007	7/27/2021	Notice of Decision



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

June 29, 2021

MEMO

From: Irene Gallion, Senior Planner

Through: Jill Maclean, AICP, Director, Community Development Department

To: Michael Levine, Chair, Board of Adjustment

Parcel No.: Multiple

Legal Description: Multiple

Case Number: VAR2021 0003, VAR2021 0005, VAR2021 0007

RE: Clarifying similarities between these cases

These three cases are similar, resulting in redundancy between staff reports. The three Variances are requested to continue trail improvements:

- VAR2021 0003 is the Switzer Marriott Trail (Lemon Creek)
- VAR2021 0005 is the Amalga Meadows Trail (Out the Road)
- VAR2021 0007 is the Duck Creek Trail (Mendenhall Valley)

To alleviate some confusion that redundancies may cause, and to accommodate efficient Commissioner review, this memo clarifies:

- Each has its own distinct project description.
- **ANALYSIS** is parallel across the cases, but each has been tailored to the specifics of the development. In other words, the order of the analysis is the same, but certain elements may have been added or deleted as appropriate.
- **VARIANCE STANDARDS** analyses are similar between Switzer, Marriott, and Amalga Meadows. Duck Creek is different from the other trails in that it is an urban pedestrian trail, so the **VARIANCE STANDARDS** analysis is slightly different.

Commissioners might also observe some references across projects. This may be due to how the projects evolved:

- The original application was for all three projects under one case number, VAR2021 0003. The hope was to have that case on the June 22 Regular Planning Commission meeting.
- Along with the trails listed above, this initial application included the Christopher Trail in Cope Park.
- The application time frame was too tight and we could not get abutters out with respectable public comment opportunity.
- Additionally, the Director advised it was better to break the trails into separate cases. In case of appeal, the other trails would not be held up.
- During staff analysis, we determined that the Christopher Trail did not need the Variance. Only the mouth of gold Creek is anadromous. The project is approximately 3,800 feet upstream. That Variance request was withdrawn.
- This left the three projects you see in front of you.



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD

155 S. Seward Street • Juneau, AK 99801

DATE: July 1, 2021
TO: Michael LeVine, Chair, Board of Adjustment
BY: Irene Gallion, Senior Planner 
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests a Non-administrative Variance to stream setback requirements for Duck Creek: Pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream.

STAFF RECOMMENDATION: Approval

KEY CONSIDERATIONS FOR REVIEW:

- Duck Creek is a naturally occurring feature of the land.
- Duck Creek is an impaired anadromous water body.
- Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management.
- Work is now prohibited without a Variance; there are no other permitting paths forward.

GENERAL INFORMATION	
Property Owner	City & Borough of Juneau
Applicant	City & Borough of Juneau
Property Address	Duck Creek Loop/Mendenhall Loop Road
Legal Description	Field Acres Block A FR
Parcel Number	5B2101300130
Zoning	D15
Lot Size	1.2870 acres
Water/Sewer	N/A
Access	Duck Creek Loop/Mendenhall Loop Road
Existing Land Use	Park
Associated Applications	None

ALTERNATIVE ACTIONS:

1. **Deny:** deny the permit and adopt new findings for items 1-2 below that support the denial.
2. **Continue:** to a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

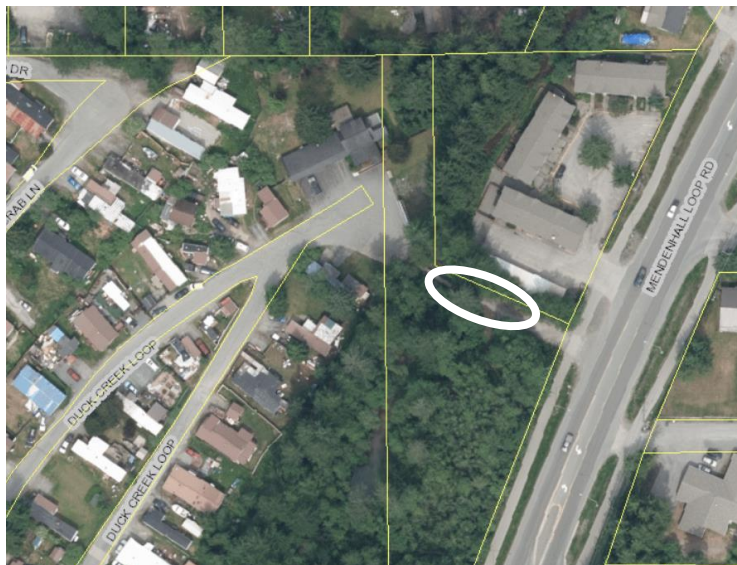
Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - 49.20.240
 - 49.20.250(b)
 - 49.70.310
 - 49.80

The Commission shall hear and decide the case per 49.20.240. The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES

North (D5)	Residential
South (D15)	Vacant lot abuts Stephen Richards Memorial Drive
East (D5)	Mendenhall Loop Road
West (D15)	Glacierview Mobile Home Park

SITE FEATURES

Anadromous	Yes
Flood Zone	Yes, AE
Hazard	No
Hillside	No
Wetlands	Yes
Parking District	No
Historic District	No
Overlay Districts	No

BACKGROUND INFORMATION

Project Description – This project is funded through the Alaska Department of Transportation and Public Facilities (ADOT&PF) as part of the Mendenhall Loop Road Improvements project. The connecting trail from Mendenhall Loop Road to Duck Creek Loop will be replaced. Asphalt will be removed and replaced with gravel, and undeveloped areas will be revegetated. The bridge is in good condition and will not be replaced. Development of a small wetlands is part of the project, but not part of this Variance request, as it is outside of the 50-foot Duck Creek buffer (**Attachment A**).

This project is intended to mitigate ADOT&PF's project impacts to *pedestrian connectivity*, not on the *stream habitat*. It is a very important nuance to ADOT&PF, as environmental mitigation is linked to federally-required environmental documentation and requirements, with significant design standards and repercussions.

ADOT&PF refers to this trail work as an "administrative settlement" (**Attachment B**). It is CBJ's Parks and Recreation Department that recognized the need to mitigate trail impacts on the impaired water body and included those elements to the project.

CBJ's Floodplain Manager has determined that this work is outside of the flood zone.

Background – Under past practice, this work fell under an exemption in CBJ 49.70 Article IX: Coastal Management. Upon further review in March 2021, this code was determined null and void when the Alaska Coastal Management program ended in July 2011, and should have been repealed. With the exemption no longer permissible, trail rehabilitation work within 50 feet of an anadromous stream must pursue a Variance. This includes trails, road crossings, bridge abutment maintenance, and utility crossings.

On June 22, 2021, the Planning Commission favorably recommended a code amendment to move an exception from abrogated code to CBJ 49.70 Article III, "Sensitive Areas." The code change is anticipated by fall 2021.

ANALYSIS

In the meantime, CBJ's Parks and Recreation Department aims to continue the summer work that has been contracted.

CBJ code includes a 50-foot, "no-development" buffer, and a 25-foot, "no-disturbance" buffer. Development is [CBJ 49.80]:

- Structures over 120 square feet
- Subdivision
- Change in lot use
- Mobile home placement
- *Removal of substantial vegetative cover*
- *Excavation, dredge or fill*
- Installation of a sign
- Mining support
- Any site work in anticipation of the above.

A "structure" includes anything constructed or erected on or under the ground.

Whereas the purpose of parks and trails in other parts of the borough are to provide access to nature, the purpose of this trail is urban pedestrian connectivity. Trail improvements are proposed to mitigate the impacts of urban development on Duck Creek.

Duck Creek is listed by the Alaska Department of Environmental Conservation as an "impaired water body." In addition to glacial uplift, human impacts such as nonpoint pollution, groundwater recharge changes, filling of wetlands and vegetation removal has impacted Duck Creek's ability to recover. Wetlands construction has seen success on Nancy Street, and is part of this project, though outside of the scope of this Variance request (**Duck Creek Restoration Assessment Report**, Juneau Watershed Partnership, 2007).

The **Comprehensive Plan** (2013) requires adequate pedestrian and bike facilities, and that existing neighborhoods are connected by a network of non-motorized corridors (9.2-IA8). When the ADOT&PF developed the Mendenhall Loop Road Improvements project, agreements with CBJ included an administrative settlement for upgrades to the path and development of a wetlands feature (**Attachment B**).

At the meeting on June 22, 2021 the Planning Commission recommended approval of amendments to code that would include activities exempted from setbacks. The trail work proposed would fall under those exemptions. Proposed code may be modified during the public process, and will not be completed timely to accomplish summer 2021 work.

VARIANCE STANDARDS

Pursuant to CBJ 49.20.200, a Non-Administrative Variance may be granted to provide an applicant relief from the requirements of this Title 49, the Land Use Code. A Variance is prohibited from varying any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35 (Public and Private Improvements), or requirements in chapter 49.65 (Specified Use Provisions).

Per CBJ 49.20.250(b), a Non-Administrative Variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Board of Adjustment has determined that:

A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.

Analysis: The applicant must establish that adhering to the code creates hardship that is:

- Distinct from similarly situated properties.
- Due to peculiarities of the land.

The Duck Creek watershed is distinct from other streams in that it is impaired. Because it is impaired, this Duck Creek trail work is required to mitigate urban impacts on the stream. Mitigating trail impacts requires resurfacing and revegetation within 50 feet of Duck Creek.

This is distinct from similarly situated properties in that a purpose is to provide urban pedestrian facilities, which require responsible crossing of streams.

Under old code, “hardship” was a difficult standard to meet. In new code (established in 2018), the Planning Commission refined the standard from “extraordinary situation or unique physical feature” to “unusual or special” features of the property.

“Hardship” means that the land cannot be used as intended, that reasonable use of the land has been denied. This trail provides urban connectivity. Granting the Variance would improve and refine access and reduce stream impacts.

Finding: Yes. This criterion has been met.

B. The unusual or special conditions of the property are not caused by the person seeking the Variance.

Analysis: Special or unusual conditions of this trail in Juneau are:

- Location within 50 feet of an anadromous stream. Five percent of Juneau Parcels (707 parcels out of approximately 13,220 total) are within 50 feet of an anadromous stream.
- Duck Creek is an impaired water body.

Any human activity is considered a condition caused by the person seeking the Variance. Duck Creek is a natural feature which, though impacted by human activity, was not created by human activity.

Finding: Yes. This criterion has been met.

C. The grant of the Variance is not detrimental to public health, safety, or welfare.

Analysis: Juneau’s fortunes improve with better physical fitness and pedestrian access. Urban pedestrian connectivity allows for compact development to be healthier and more attractive.

This project mitigates impacts on pedestrian connectivity caused by the Mendenhall Loop Road Improvements project. This trail improves community safety.

Finding: Yes. This criterion has been met.

D. The grant of the Variance is narrowly tailored to relieve the hardship.

Analysis: This trail project minimally disturbs the setback area, meeting the purpose of an urban trail, but mitigating the impacts.

Finding: Yes. This criterion has been met.

Pursuant to CBJ 49.20.260, the Board may attach to a Non-Administrative 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 title and to protect the public interest.

Condition: None recommended.

AGENCY REVIEW

CDD conducted an agency review comment period between June 9, 2021 and June 21, 2021. Agency review comments can be found in **Attachment C**.

Agency	Summary
Alaska Department of Fish & Game	Requested more details for possible fish habitat permits. None required for this project.

PUBLIC COMMENTS

In accordance with 49.20.230(b), public notice was mailed to property owners within 500 feet of the lot (**Attachment D**), a public notice sign was posted on site two weeks prior to the hearing (**Attachment E**), and ads were placed in the Juneau Empire. Public comments received at time of writing this staff report can be found in **Attachment F** and are summarized below.

Name	Summary
Joe Olsen	Concerns regarding signage, equipment in the area, alignment, and trash. The Deputy Director of Parks and Recreation walked the site with him and was able to allay his concerns.

FINDINGS

1. Is the application for the requested Variance complete?

Analysis: No additional analysis required.

Finding: Yes. The application for the required Variance is complete.

2. Does the Variance as requested meet the criteria of Section 49.20.250(b)(1), Non-Administrative Variances?

Analysis: As discussed above, the criteria for a Non-Administrative Variance have been met.

Finding: Yes. The requested Variance meets the criteria of Section 49.20.250(b)(1), Non-administrative Variances.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	ADOT&PF/CBJ Memorandum of Agreement, Administrative Settlement
Attachment C	Agency Comments
Attachment D	Abutters Notice
Attachment E	Public Notice Sign
Attachment F	Public Comments

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description The project reconstructs a trail that connects the sidewalk on Mendenhall Loop Road to a bridge that crosses Duck Creek. The bridge is outside of the project area. Trail work includes removal of asphalt, replacement with gravel and revegetation of the trail corridor with native riparian plantings.		
	PROPERTY LOCATION		
	Street Address Duck Creek north of Stephen Richards Drive	City/Zip 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Duck Creek Field Acres BL A FR		
	Assessor's Parcel Number(s) Duck Creek 5B2101300130,		
	LANDOWNER/ LESSEE		
	Property Owner's Name City and Borough of Juneau	Contact Person: Michele Elfers	Work Phone: 364-2390
	Mailing Address 155 S. Seward Street	Home Phone:	Fax Number:
	E-mail Address Michele.Elfers@juneau.org	Other Contact Phone Number(s):	
	PROJECT / APPLICANT	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:			
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.			
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X			6-14-21
Landowner/Lessee Signature		Date	
X			
Landowner/Lessee Signature		Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name same		Contact Person:	
Mailing Address		Home Phone:	
E-mail Address		Fax Number:	
		Other Contact Phone Number(s):	
X			
Applicant's Signature		Date of Application	

STAFF APPROVALS	-----OFFICE USE ONLY BELOW THIS LINE-----			
	☒	Permit Type	***SIGN	Date Received
		Building/Grading Permit		
		City/State Project Review and City Land Action		
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)		
		Mining Case (Small, Large, Rural, Extraction, Exploration)		
		Sign Approval (If more than one, fill in all applicable permit #'s)		
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)		
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)		
		Variance Case (De Minimis and all other Variance case types)		
		Wetlands Permits		
		Zone Change Application		
		Other (Describe)		
	***Public Notice Sign Form filled out and in the file.			
	Comments:			Permit Intake Initials
				

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

PROJECT SUMMARY

Reconstruct a section of trail connecting Mendenhall Loop Road with a bridge over Duck Creek just north of Stephen Richards Drive. Old asphalt will be removed, a gravel surface installed at a narrower width and riparian native species will be planted along the trail to increase habitat.

VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to)

CBJ 49.70.310, Habitat

Previous Variance Applications?

YES

X NO

Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted?

YES

NO

UTILITIES AVAILABLE: NA WATER

Public

On Site

SEWER:

Public

On Site

ALL REQUIRED MATERIALS ATTACHED

Complete application per CBJ 49.65.210

Narrative including:

Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure

Why a variance would be needed for this property regardless of the owner

What hardship would result if the variance is not granted

Site Plan

DEPARTMENT USE ONLY BELOW THIS LINE

VARIANCE FEES

Fees

Check No.

Receipt

Date

Application Fees

\$ _____

Adjustment

\$ _____

Total Fee

\$ _____

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number

Date Received

VAR21-07

6/8/21

Attachment A - Application Packet

Variance Application Instructions

Variances are outlined in CBJ 49.20 article II

Application: An application for a Variance will not be accepted by the Community Development Department (CDD) until it is determined to be complete. The items needed for a complete application are:

1. **Forms:** Completed Variance Application and Development Permit Application forms.
2. **Fees:** The fee for a Variance Application is \$400.00. If the application is in conjunction with a major development permit, the Variance fee will be reduced by 20 percent. Any development, work or use done without a permit issued will be subject to double fees. All fees are subject to change.
3. **Project Description:** A detailed letter or narrative describing the hardship that is the result of an unusual situation or physical feature affecting a specific parcel of land or structure. **Also include how the proposed project meets the variance criteria listed on the attached sheet.**
4. **Plans:** A site plan showing the following information:
 - A. The location of existing and proposed structures (i.e. buildings, fences, signs, parking areas, etc.); and
 - B. The location of existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.).

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Please consult with the Community Development Department to discuss whether additional information may be required for your application. The "Planner-On-Call" can be reached by contacting the Community Development Department at (907) 586-0715 or via email at Permits@juneau.org.

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: As part of the review process the Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the Variance Application request the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department will coordinate the review of this application by other agencies, as necessary. Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed project.

Hearing: All Variance Applications must be reviewed by the Board of Adjustment. Once an application has been deemed complete and has been reviewed by all applicable parties the Community Development Department will schedule the requested permit for the next appropriate meeting.

Public Notice Responsibilities: As part of the Variance process, all requests must be given proper public notice as outlined in 49.20.230 which consists of the following:

Community Development Department will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail abutters notices to all property owners within 500-feet of the project site. A "Public Notice Sign" is required to be posted on the site by the Applicant and the Community Development Department will create the sign to be posted.

Variance Approval Criteria

A variance may be granted after the prescribed hearing and after the Board of Adjustment has determined that the following criteria are met. Include in your project narrative a detailed description about how your proposal meets each of the criteria listed below:

CBJ 49.20.250(b) Non-administrative variances. *(1)A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:*

- (A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;*
- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;*
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and*
- (D) The grant of the variance is narrowly tailored to relieve the hardship.*

PLEASE NOTE: As provided by CBJ Land Use code section on Variances (CBJ 49.20.200), a variance may be granted to provide an applicant relief from the requirements of Title 49, the Land Use Code. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



June 21, 2021

Permit Center, Community Development Department
155 S. Seward Street
Juneau, AK 99801

RE: Trail Mix Work Plan Variance Request

Dear Permit Center Staff:

The Parks and Recreation Department is applying for a variance for trail work in the vicinity of streams to be performed by Trail Mix under their annual work plan at various CBJ park locations. With the changed interpretation of the stream setback code, work that was previously allowed is no longer allowed. Some of these projects have been worked on in recent years and this work is a continuation. If the projects are not allowed to proceed, CBJ will not be able to maintain existing trails. In some cases, the current condition of the trail is a safety hazard or will become a safety hazard in the near future. If CBJ and Trail mix cannot perform maintenance on these trails, some of the trails would have to be closed. In the past, when CBJ has closed trails, some people still use the trails, as is the case with Christopher Trail currently. The trail is currently very unsafe for use. The trails provide important linkages, for example the Amalga Meadows trail and elevated boardwalk is the primary access to the Amalga public use cabin and the kayak rentals at Kayak Beach.

There is no signage planned at this time for these projects. The following is a description of each project:

Switzer Marriott/Richard Marriott Education Trail

This trail is located in the Switzer Natural Area Park. Trail Mix has been performing trail work for the past two years to replace old boardwalk with gravel trail. This season, work is planned to relocate sections of trail that are located on the streambank and causing erosion. The work area is between Lund Street and Mountain Ave and approximately 700' of trail in this area will be relocated when it is close to or on the streambank. It will be relocated 25' – 50' from the streambank. After the relocation work is complete, the old trail will be decommissioned and blocked with natural woody debris and plants to allow for the area to revegetate. The new trail will be through upland areas constructed with gravel. See attached map.

Duck Creek Trail

This project is mitigation work funded by the Alaska Department of Transportation for impacts to wetlands from the Stephen Richards Roundabout project. A connector trail from Mendenhall Loop Road to Duck Creek loop will be replaced; asphalt will be removed and

replaced with gravel and native vegetation will be planted in the riparian areas along the trail. The trail replacement work will extend from the creek 50' through the setback zone and then connect to Mendenhall Loop Road. The trail materials will be native soils for planting native vegetation on the sides of the trail and gravel for the trail base. The bridge over the creek is in good condition and will not be replaced or modified. Additionally, a small wetland area will be created in the forest to improve habitat. This wetland area is outside of the 50' setback zone and not part of this request.

See attached map.

Amalga Meadows Park:

Trail improvement work has been ongoing throughout the park for a few years including the new Horsetram Trail, the Amalga Cabin trail, and the SAIL ropes course challenge trail. This year the elevated boardwalk over the slough is being replaced as it is rotten and failing. The boardwalk location will be relocated to a narrower section of the slough to allow a shorter crossing and shorter trail. The old boardwalk will be removed and disposed of offsite and the trail will be revegetated with native grasses. The new trail will extend from the parking area to the existing trail on the other side of the slough. The trailbed will be gravel and the elevated boardwalk will be timbers with helical piles for support. The work will extend through the setback zone on either side of the slough.

This trail is the only access from the parking area and road to the Amalga trail system and public use cabin.

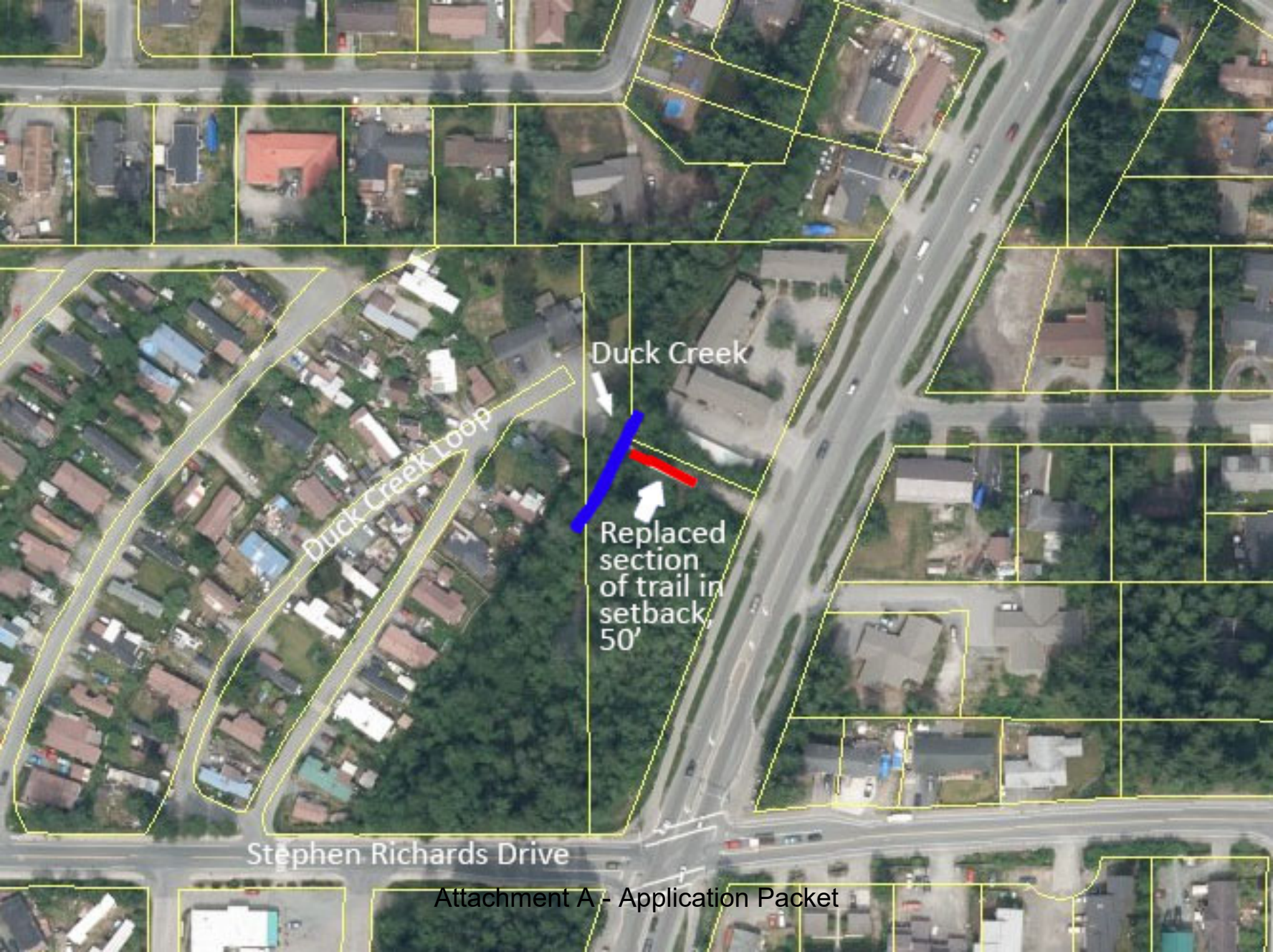
See attached map.

Christopher Trail, Cope Park:

This popular trail connects Cope Park to the Flume Trail and has been closed for a few years due to severe erosion along the streambank of Gold Creek. PDC Engineers has designed a trail and retention system along the steep portion of the trail and streambank. The new trail will be just uphill of the old trail and will be a gravel trail supported with timbers and soil anchors embedded into the hillside. Approximately 190' of trail will be decommissioned and 220' of new trail will be created for the reroute to connect to the pedestrian bridge over Gold Creek. See attached map.

On all of these projects, old trail material such as woody or gravel will be removed and the trails will be blocked off with native plant and woody material if being relocated. Vegetation will only be removed as needed for new trail locations and the trails will be routed to avoid large trees and minimize vegetative removal. The Development permit is attached for this work. Please let me know if you have any questions.

Michele Elfers
Deputy Director
Parks and Recreation Department



Duck Creek

Duck Creek Loop

Replaced
section
of trail in
setback,
50'

Stephen Richards Drive



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

MEMORANDUM OF AGREEMENT

PROJECT NAME: JNU: MENDENHALL LOOP ROAD IMPROVEMENTS

STATE PROJECT #: Z676220000

FEDERAL-AID PROJECT #:

PARCEL #: 6, E-6 & TCE-6

AGREEMENT has been reached this _____ day of _____, 2020, between THE CITY AND BOROUGH OF JUNEAU hereinafter OWNERS, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, for the purchase of said parcel or parcels. The amount to be paid and other considerations to be given in full satisfaction of this Agreement are as follows:

Right-of-Way Acquisition:	\$	<u>43,500.00</u>	
Administrative Settlement	\$	<u>24,175.00</u>	
		Total Compensation	\$ <u>67,675.00</u>

Fixtures and improvements purchased: \$ _____

Area purchased: **6 = 7,878 SF**
E-6 = 459 SF
TCE-6 = 1,543 SF

Damages are a consideration: ☐ yes ☒ no Amount of Damages \$ _____ included in total compensation

Other Conditions:

- Modifications for requested design concessions from CBJ were made. They consisted of steepening a slope to 1:1 and development of a Bioswale within the existing drainage easement, including an oil water separator upstream.
- An administrative settlement for the habitat features of the gravel trail and wetland feature (see attached).

DOT&PF in no way supports nor opposes the Wetland Feature mentioned.

1. Taxes and Special Assessments, if any, delinquent from former years, and Taxes and Special Assessments for the current year, if due and/or payable, shall be paid by the vendor or vendors.
2. This Memorandum embodies the whole Agreement between the parties hereto as it pertains to the real estate, and there are no promises, terms, conditions or obligations referring to the subject matter hereof, other than as contained herein.
3. The vendor or vendors hereby agree that the compensation herein provided to be paid includes full compensation for their interest and the interests of their life tenants, remaindermen, reversioners, liens and lessees, and any and all other legal and equitable interest that are or may be outstanding and said vendor or vendors agree to discharge the same.
4. THIS AGREEMENT shall be deemed a CONTRACT extending to and binding upon the parties hereto and upon the respective heirs, devisees, executors, administrators, legal representative, successors and assigns of the parties, only when the same shall have been approved by the Regional Chief Right-of-Way Agent on behalf of the Department.

Of the total amount of compensation hereinabove agreed upon, the sum of **\$67,675.00** shall be paid upon execution and delivery of a good and sufficient: ☒ Quitclaim Deed ☒ Easement ☒ Temporary Construction Easement or ☐ Other, and the balance of the compensation amounting to \$ n/a shall be paid upon compliance by the vendor or vendors with the terms hereof.

Disbursement of funds will be made in the following manner:

Vendor or Vendors	Amount of Payment
THE CITY AND BOROUGH OF JUNEAU	\$67,675.00

The Vendor or Vendors certify that there are no known hazardous materials on the property.

The terms of this Agreement are understood and assented to by us and payment is to be made in accordance with the above. The Vendor occupants will be allowed a thirty-day rent-free period after receipt of the warrant and legal occupants will not be required to vacate the premises without at least ninety days written notice.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

DESIGN PROJECT MANAGER

Date

Note: Design Project Manager or Designee must sign when construction consideration is involved

BY: Kelly Harp
Kelly Harp, Right-of-Way Agent

Date

4/29/20

Vendor and Vendors
CITY AND BOROUGH OF JUNEAU

BY: Duncan Rorie Watt 4/24/2020

DUNCAN RORIE WATT, City Manager Date

APPROVED FOR PAYMENT AS ABOVE

Greg A. Weinert
Greg A. Weinert, REGIONAL ROW CHIEF
Region: SOUTHCOST

Date

4/29/20

Estimate for Habitat Features at Stephen Richards Loop Road Conservation Area

Gravel Trail

Remove 100' of road through conservation area and replace with walking path, approximately 8' wide. Revegetate shoulders with native vegetation. Excavation for topsoil will be used as trail bedding. Install split rail fence to separate loop road from trail entrance.

Item	Qty	Unit	Cost	Extended Cost
Remove asphalt	140	SY	\$ 4	\$ 560
Excavation	40	CY	\$ 14	\$ 560
2" D1 cap for trail surface	6	CY	\$ 40	\$ 240
6" Topsoil	22	CY	\$ 90	\$ 1,980
Split Rail fence	30	LF	\$ 100	\$ 3,000
Planting	LS	LS	\$ 2,788	\$ 2,788
Estimating Contingency 20%				\$ 1,826
				\$ 10,954
Design, Permitting, Management, Contingency				\$ 4,381
Project Cost				\$ 15,335

Wetland Feature

Create 30'x60' vegetated wetland feature by removing small second growth trees, excavating to water table, and revegetating with native wetland emergent plants.

Item	Qty	Unit	Cost	Extended Cost
Excavation	150	CY	\$ 20	\$ 3,000
Tree Removal	LS	LS	\$ 1,000	\$ 1,000
Planting	LS	LS	\$ 1,262	\$ 1,262
Estimating Contingency 20%				\$ 1,052
				\$ 6,314
Design, Permitting, Management, Contingency				\$ 2,526
Project Cost				\$ 8,840

AS 24175

6.

67622: E-6, TCE-6



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: ADF&G Habitat Section

STAFF PERSON/TITLE: Kelsey Dean Habitat Biologist

DATE: 6/17/2021

APPLICANT:

TYPE OF APPLICATION: VAR2021 0003: Variance to stream setback requirements

PROJECT DESCRIPTION:

Multiple trail stream crossings.

LEGAL DESCRIPTION: Multiple, see application.

PARCEL NUMBER(S): Multiple, see application.

PHYSICAL ADDRESS: Switzer Marriott Education Trail, Duck Creek Trail, Amalga Meadows, Christopher Trail Cope Park

SPECIFIC QUESTIONS FROM PLANNER:

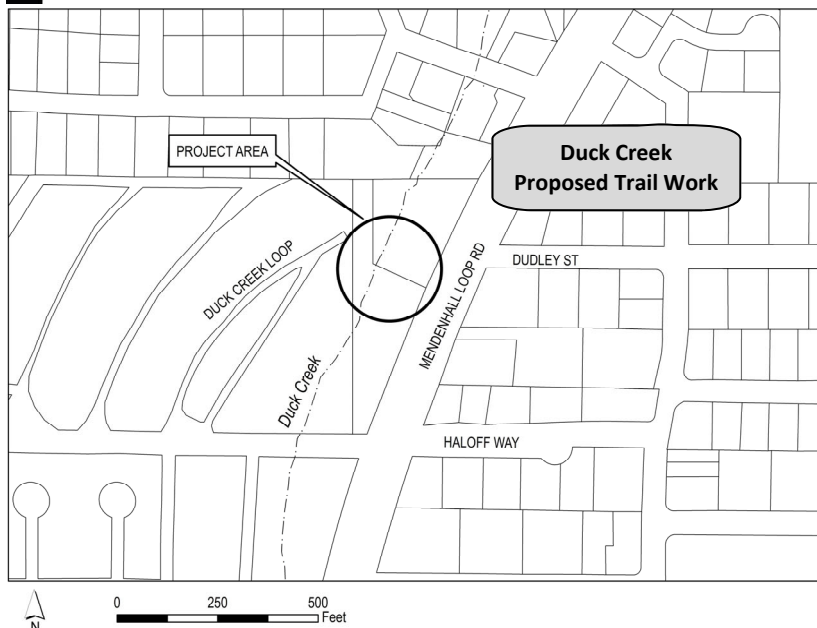
AGENCY COMMENTS:

We coordinated with Michele Elfers, CBJ parks and Rec, and Ryan O'Shaughnessy, Trail Mix Inc., and obtained additional information about the proposed trail work. A fish habitat permit is required for the bridge replacement on the Amalga Meadows trails; the remaining proposed work does not require a permit.

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission

Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for **pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream in Duck Creek.**

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Irene Gallion, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0007
Parcel No.: 5B1201300130
CBJ Parcel Viewer: <http://epv.juneau.org>



Attachment E - Public Notice Sign

Irene Gallion

From: Michele Elfers
Sent: Thursday, June 24, 2021 8:04 AM
To: Irene Gallion
Subject: FW: Variance signs
Attachments: IMG_7027.jpg; ATT00001.txt; IMG_7026.jpg; ATT00002.txt; IMG_7025.jpg; ATT00003.txt; IMG_7024.jpg; ATT00004.txt

Signs posted yesterday.
Have a great day!
Michele

-----Original Message-----

From: Michele Elfers <michele@alaskaflyfishinggoods.com>
Sent: Thursday, June 24, 2021 7:59 AM
To: Michele Elfers <Michele.Elfers@juneau.org>
Subject: Variance signs

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Irene Gallion

From: Irene Gallion
Sent: Thursday, June 17, 2021 9:50 AM
To: Michele Elfers
Cc: Irene Gallion
Subject: Please call Joe Olsen regarding the Duck Creek project

(907) 957-8690

His concerns are:

- The public notice sign does not match what he is being told about the hearing date.
- There is unmarked equipment in the area.
- The alignment does not make sense. He says it looks like a new trail is being built, rather than upgrading the existing road and bike trail that already provide access.
- The alignment goes through a swamp.
- He and the neighbors recently did a trash clean up. He is concerned that an improved trail will result in more trash.

If you miss him he will return your call (he does not want to seem evasive but he has things he is doing today).

Let me know when you've followed up with him and I'll check back in and see if he'd like to modify his comments. I was not knowledgeable enough about the project to address his concerns.

Thank you,

Irene Gallion | Senior Planner

[Community Development Department](#) | City & Borough of Juneau, AK

Location: 230 S. Franklin Street | 4th Floor Marine View Building

Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

VAR2021 0003: Switzer
VAR2021 0005: Amalga
VAR2021 0007: Duck Creek

Pedestrian trail work within 50 feet of an anadromous water body.

VAR21-03: Packet Page 107

VAR21-05: Packet Page 87

VAR21-07: Packet Page 135



What we will cover

- Similarities and differences
- Variance criteria

What makes these cases different from others heard tonight?

- Public pedestrian access
- Public land
- Include streamside revegetation
- Switzer: trails moved outside of 25 foot no-disturb buffer
- Trails within 50 foot no-development provide access to or across water
- Trail relocation and revegetation common mitigation and rehab activities



VAR21-03: Packet Page 108

Switzer

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Moving a trail away from stream, outside of 25' no-disturb buffer

Amalga

Similarities:

- Pedestrian access to park land
- Bank and worksite revegetation

Difference:

- Move bridge and trail, bridge crossing will be shorter



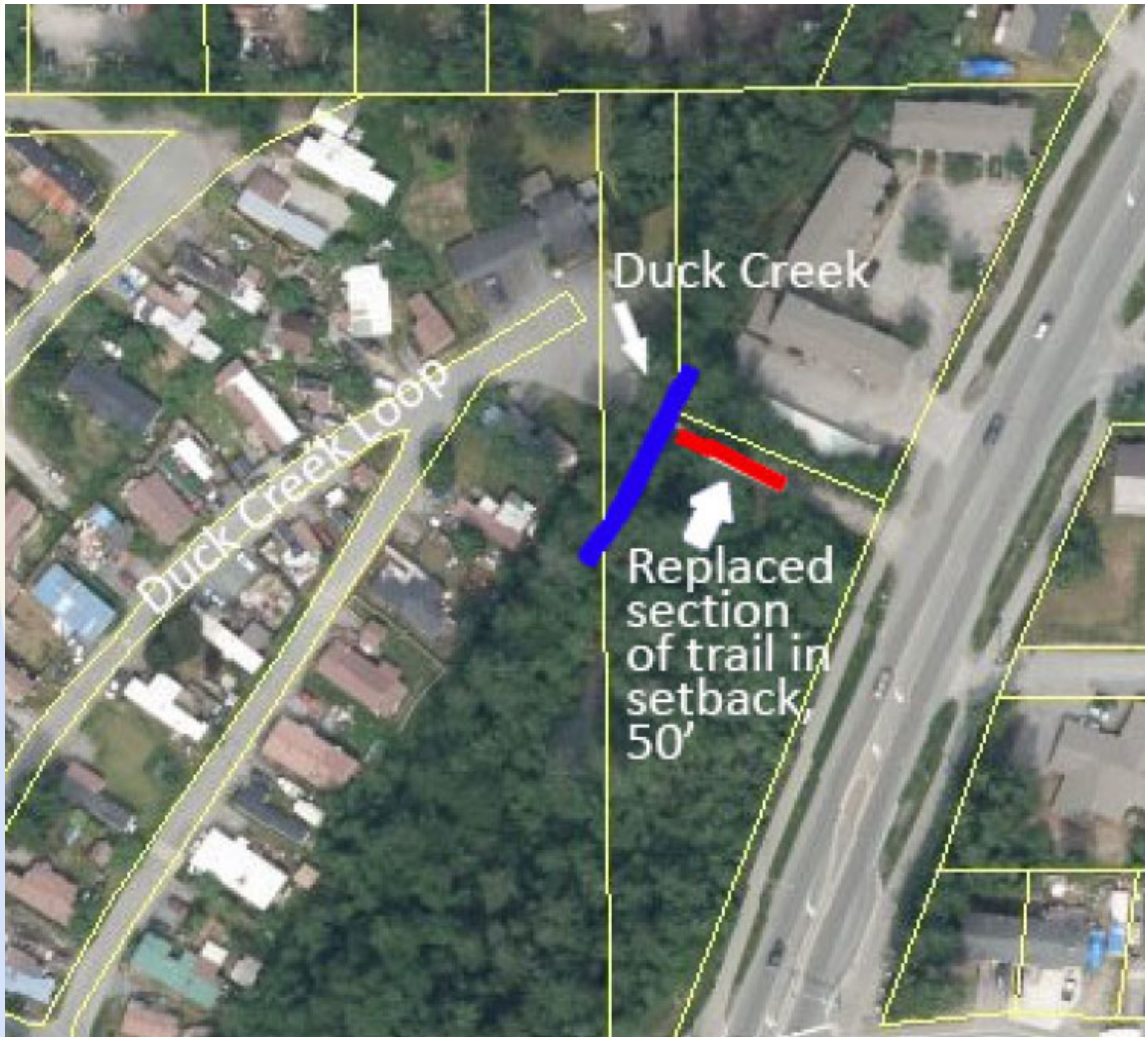
Duck

Similarities:

- Pedestrian access
- Bank and worksite revegetation

Difference:

- Rehab of urban trail system – urban connectivity



Variance criteria

- Is there a hardship?
- Is there an unusual or special condition?
- Is it caused by the party seeking the variance?
- Are there negative impacts to health, safety and well-being?
- Is it narrowly-tailored?

HARDSHIP – inability to use the land like your neighbors: Switzer and Amalga

What are neighboring uses?

- P&R Master Plan = access to natural areas and water
- Anadromous streamside = revegetation



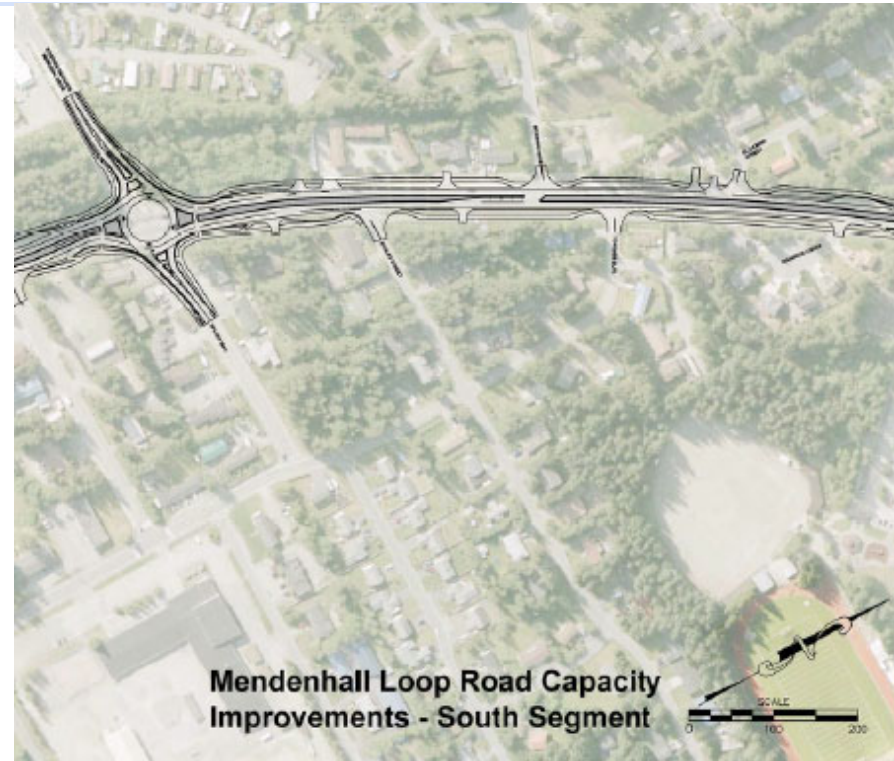
VAR21-03: Packet Page 110

VAR21-05: Packet Page 90

HARDSHIP – inability to use the land like your neighbors

What are neighboring uses?

- Administrative agreement = urban trail system
- Anadromous streamside = revegetation



Unusual or Special Condition

- 5% of Juneau parcels w/in 50 feet of stream
- Park land provides access to land and water
- Urban walkway part of system connectivity

LAND USE REQUIRES
RESPONSIBLE
PROXIMITY



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Are the problems caused by CBJ P&R?

- Streams and salmon exist as natural phenomena
- Without some help, natural phenomena have difficulty returning to a healthy state
 - Trail relocation
 - Revegetation
 - Bridge relocation

VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Health, Safety and Well-Being

- Anadromous stream well-being improved
- Recreational opportunities improved
- Walkability = improved health
- Alternate urban routing



VAR21-03: Packet Page 111
VAR21-05: Packet Page 91
VAR21-07: Packet Page 138

Narrowly tailored

- Switzer – work moves trails away from stream, outside 25' buffer
- Amalga – work moves bridge crossing to area of lesser impacts
- Duck Creek – work rehabilitates existing, makes it better
- All projects revegetate

VAR21-03: Packet Page 111

VAR21-05: Packet Page 91

VAR21-07: Packet Page 139

Variance criteria

- Is there a hardship? **YES**
- Is there an unusual or special condition? **YES**
- Is it caused by the party seeking the variance? **NO**
- Are there negative impacts to health, safety and well-being? **NO**
- Is it narrowly-tailored? **YES**

Recommend APPROVAL

VAR2021 0003: Switzer

VAR2021 0005: Amalga

VAR2021 0007: Duck Creek



Photo credit:
Pat McGonegal

VAR21-03: Packet Page 112

VAR21-05: Packet Page 92

VAR21-07: Packet Page 140



Planning Commission

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

BOARD OF ADJUSTMENT NOTICE OF DECISION

Date: July 16, 2021
File No.: VAR2021 0007

City & Borough of Juneau
Attn: Michele Elfers
155 S. Seward Street
Juneau, AK 99801

Proposal:	Pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream in Duck Creek.
Property Address:	Duck Creek
Legal Description:	Field Acres Block A Fraction
Parcel Code No.:	5B2101300130
Hearing Date:	July 13, 2021

The Board of Adjustment, at its regular public meeting, **failed to approve** the Variance to be conducted as described in the project description and project drawings submitted with the application.

Attachment: July 1, 2021, memorandum from Irene Gallion, Community Development, to the CBJ Board of Adjustment regarding VAR2021 0007.

This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

City & Borough of Juneau

File No: VAR2021 0007

July 16, 2021

Page 2 of 2


Nathaniel Dye for Michael LeVine, Chair
Planning Commission

7/19/2021
Date


Filed With City Clerk

7/19/2021
Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

APL2021 0003: An appeal related to VAR2021 0004 - FAILED TO ACCEPT

AGENDA ITEM:

Case No.: APL2021 0003
 Applicant: Kodzoff Acres, LLC
 Location: 3221 Mendenhall Loop Road & 9090 Cinema Drive
 APL2021 0003: An appeal related to VAR2021 0004

ATTACHMENTS:

Description	Upload Date	Type
☐ Application for APL2021 0003	7/8/2021	Application



NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

APPELLANT'S CONTACT INFORMATION

Kodzoff Acres, LLC

kodzoff@alaskan.com

907 789 5154

Appellant's Name (please print)

E-mail Address

Phone

PO Box 33200

Juneau

AK 99803

Mailing Address

City

State Zip

X

Appellant's Signature

DECISION THAT IS BEING APPEALED*

Date of Director's Determination June 15, 2021

Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.).

* Notice must be submitted within 20 days of the date of the decision being appealed.

APPEAL SPECIFICS (please fill in all that apply)

Parcel Number 5B21010030001; 5B2101320030

Zoning District

D-15

Case Number VAR2021 0004

Title 49 Code Section

49.15.130(b); 49.20.250(b)

Current Use of Land or Buildings N/A

49.20.230

Proposed Use of Land or Buildings N/A

Other Acceptance of incomplete application for Non-Administrative Variance; Misleading and Incomplete Notice of Hearing; Improper Phasing of Permit Review; Failure to Require

ALL REQUIRED MATERIALS ATTACHED



Complete Application



Appeal Decision



Narrative including:



Grounds for Appeal



Specific questions you would like the Planning Commission to address

DEPARTMENT USE ONLY BELOW THIS LINE

APPEAL FEES	Fees	Check No.	Receipt	Date
Notice Fees	\$ <u>200.00</u>			
Refund (Yes/No)	\$ _____			
Total Fee	\$ <u>200.00</u>			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number

Date Received/Intake Initials

APL21-003

6/30/21

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

GROUND'S FOR APPEAL

- (1) The Director's decision application for VAR2021 0004 was complete and scheduling it for a premature public hearing was arbitrary and capricious in violation of CBJ 49.15.130(b); 49.20.230 ; 49.20.250(b) and Alaska law.
- (2) The Director's authorization of a misleading and incomplete public hearing notice for VAR2021 0004 was arbitrary and capricious.
- (3) The Director's sequencing of permit review for the full scope of work described in application for VAR2021 0004 violates CBJ 49.15.130; 49.20.230; 49.20.250(b); and, Alaska law.
- (4) The Director's Failure for require a Major Development permit with respect to ongoing and proposed development on USS Survey 1053 Tract A-2 is arbitrary, capricious and violates Alaska and CBJ municipal law.

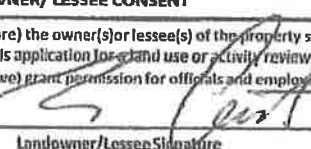
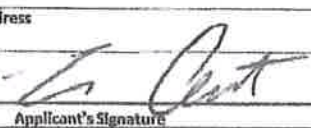
SPECIFIC QUESTIONS FOR PLANNING COMMISSION

- (1) Whether the Director's decision application for VAR2021 0004 was complete and scheduling it for a premature public hearing was arbitrary and capricious in violation of CBJ 49.15.130(b); 49.20.230 ; 49.20.250(b) and Alaska law?
- (2) Whether the Director's authorization of a misleading and incomplete public hearing notice for VAR2021 0004 was arbitrary and capricious?
- (3) Whether Director's sequencing of permit review for the full scope of work described in application for VAR2021 0004 violates CBJ 49.15.130; 49.20.230; 49.20.250(b); and, Alaska law?
- (4) Whether the Director's Failure for require a Major Development permit with respect to ongoing and proposed development on USS Survey 1053 Tract A-2 is appropriate?



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address 9090 Cinema Drive		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) Gross Lot 2		
	Parcel Number(s) 5B2101320030		
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
	LANDOWNER/ LESSEE		
	Property Owner Juneau Condos, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
	Mailing Address 10840 Lilac Drive		
	E-mail Address constellation_dev@hotmail.com		
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review or development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X  Landowner/Lessee Signature		5/24/21 Date	
X _____ Landowner/Lessee Signature		_____ Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME"			
Applicant Same		Contact Person	
Mailing Address		Phone Number(s)	
E-mail Address			
X  Applicant's Signature		5/24/21 Date of Application	

DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Intake Initials 
Date Received 6/15/21

Case Number VAR21-04



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant

PROPERTY LOCATION		
Physical Address 3221 Mendenhall Loop Road <i>3101 Mendenhall Loop Rd (check w/ Quinn)</i>		
Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) USS No. 1053 Tract A-2		
Parcel Number(s) 5B2101030001		
☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
LANDOWNER/ LESSEE		
Property Owner TDLH, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
Mailing Address 10840 Lilac Drive		
E-mail Address constellation_dev@hotmail.com		
LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:		
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.		
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X	<i>[Signature]</i> Landowner/Lessee Signature	<i>5/24/21</i> Date
X	_____ Landowner/Lessee Signature	_____ Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT (From owner or lessee to be "SAME")		
Applicant SAME	Contact Person	Phone Number(s)
Mailing Address		
E-mail Address		
X	<i>[Signature]</i> Applicant's Signature	<i>5/24/21</i> Date of Application

DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number VAR 21-04	Intake Initials LEC
	Date Received 6/15/21



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

**NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.
Not to be used for Administrative Variances**

To be completed by Applicant	PROJECT SUMMARY			
	Stream and Stream bank Restoration			
	VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to)			
	49.70.310 Habitat			
	Previous Variance Applications? YES ☐ NO ☒ Date of Filing: _____			
Previous Case Number(s): _____		Building Permit related to this variance? YES ☐ NO ☐		
Was the Variance Granted? YES ☐ NO ☐				
UTILITIES AVAILABLE: WATER ☒ Public ☐ On Site SEWER: ☒ Public ☐ On Site				
ALL REQUIRED MATERIALS ATTACHED				
Complete application per CBJ 49.65.210				
Narrative including:				
Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure				
Why a variance would be needed for this property regardless of the owner				
What hardship would result if the variance is not granted				
Site Plan				

DEPARTMENT USE ONLY BELOW THIS LINE

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$400			
Adjustment	\$150			
Total Fee	\$550			

Public Notice Sign Fee/Deposit

Fee Waived per Director

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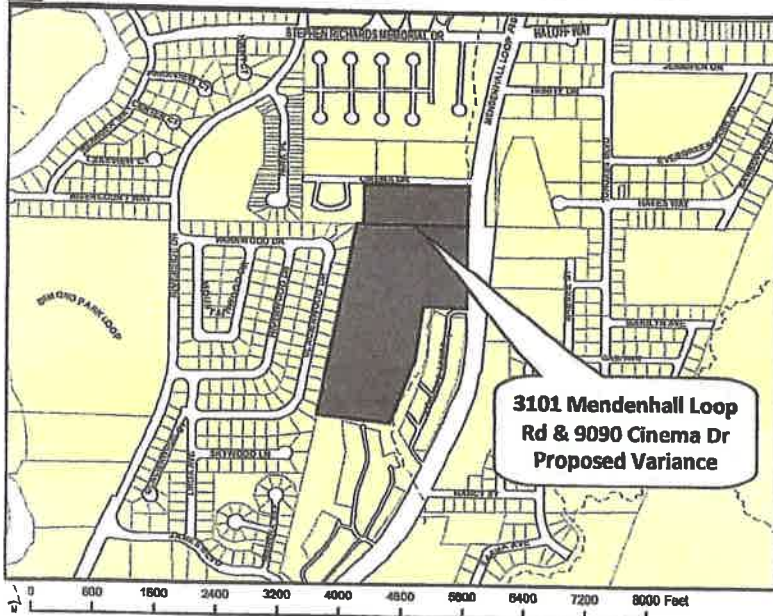
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Case Number	Date Received
VAR 21-04	LEC 6/15/21

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission

Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1)** to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek at 3101 Mendenhall Loop Road & 9090 Cinema Drive in a D15 Zone.

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Laurel Christian, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0004
Parcel No.: 5B2101030001 & 5B2101320030
CBJ Parcel Viewer: <http://epv.juneau.org>

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

July 1, 2021

City & Borough of Juneau
Planning Commission
155 So. Seward Street
Juneau, Alaska 99801

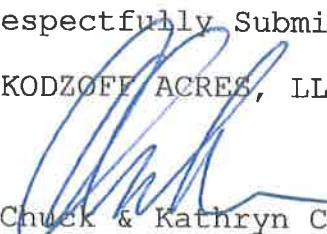
RE: Appeal of Director's Decision
APL2021 0003
Initial Memorandum in Support of Appeal

Dear Commission Members:

Yesterday we sent the enclosed letter to Director Jill Maclean requesting she reconsider and reverse decisions which gave rise to this appeal, and cancel and re-notice the variance hearing scheduled for the Board of Adjustment set for July 13, 2021. Enclosed is a copy of our letter. Against the possibility the director declines to honor our request, this letter is submitted to the Planning Commission as our initial memorandum in support of our appeal.

Respectfully Submitted,

KODZOFF ACRES, LLC



Chuck & Kathryn Cohen

Enclosure (1):

Letter Dated June 30, 2021
Kodzoff Acres, LLC to Director Jill Maclean

RECEIVED

JUL 01 2021

Permit Center/CDD

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d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
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CBJ - VAR 2021 0004

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were scheduled for a hearing July 13, 2021. We are not certain whether you participated personally in this permit processing.

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CBJ 49.15.130 (b), which governs applications for all land use permits in general, provides: [an] application is complete when it contains all of the necessary information to determine if the development will comply with all of the requirements of the permit applied for." This variance application, by the admission of the applicant, is intentionally incomplete and, therefore, must be rejected. The proper approach is to require the applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work at the inception of the review process. Failure to do so constitutes "phased" permitting which is generally disfavored and likely illegal here.

Next, the public notice of hearing provided by CDD is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered at the hearing. The CDD notice here is for a variance to: "allow stream bank and stream restoration" of Duck Creek, nothing further. Describing what the applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: "A proposed roadway crossing and culvert system to serve access for the future major residential development". Or, "Large floodplain fill adjacent to 800 lineal feet of Duck Creek to expand uplands for future residential development". After the applicant has just destroyed the natural habitat of Duck Creek on its western bank beyond any possible restoration benefit which might occur in the future, to describe this request for a variance as "stream restoration" seems disingenuous and misleading. We are uncertain how this classification of the work was made, whether by the applicant or CDD but it is, nonetheless, incomplete and misleading for a public notice.

Processing and conducting a public notice and hearing on a request for a non-administrative variance in advance of CDD obtaining from the applicant and providing to the public all the details of the work to be authorized compounds the problem. CBJ 49.25.250(b) states that a variance may only be approved as a narrow exception to address specific development hardship not

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Since CDD and GE review of a grading permit or a floodplain permit would not require public notice and comment or even a notice of decision, an aggrieved adjacent property owner such as ourselves has no way of knowing when to file a timely appeal. This creates a confusing and unspecified procedural process where the public has no idea how or when the CDD decision-making will occur or if, in fact, it has occurred. Such a procedure is, on its face, a denial of procedural due process. It is precisely the reason we did not learn about the applicant's original plan to harvest timber and regrade fill into the floodplain until after the project was well underway. (BLD2021 0039) The permitting occurred without any notice to adjacent property owners, other government agencies or adjacent riparian property owners. That really was a big but avoidable mistake so why repeat it?

Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

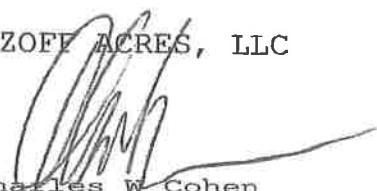
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Now the applicant has proposed a set of related permits to: authorize stream habitat destruction to narrow and channel the watercourse and generate more developable uplands (ironically called stream restoration); a stream crossing for access before any specific residential development is proposed on the other side; removal of all remaining mature tree stumps and vegetative cover to regrade the entire parcel to reverse the natural westerly surface storm-water drainage and direct it toward Duck Creek; and a massive project to fill most of the floodplain adjacent to Duck Creek to generate more developable uplands (again, ironically called stream rehabilitation) It is about time CDD treat this series of permit requests as a major development and stop the illegal phased permitting process.

We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen

Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

From: Chuck Cohen kodzoff@alaskan.com
Subject: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)
Date: June 30, 2021 at 12:23 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: Palmer Robert Robert.Palmer@juneau.org, Koester Katie katie.koester@juneau.org

Jill:

Attached is a letter detailing our concerns regarding procedure for the pending variance application.

Best regards,

Chuck & Kathryn



Premature
Applica...e.docx

**PLANNING COMMISSION AGENDA
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Additional Materials for July 13, 2021 Planning Commission

ATTACHMENTS:

Description	Upload Date	Type
▣ Additional Materials for July 13, 2021 Planning Commission - Part 1	7/12/2021	Miscellaneous
▣ Additional Materials for July 13, 2021 Planning Commission - Par 2	7/12/2021	Miscellaneous

Additional Materials

Regular Planning Commission Meeting

Virtual Meeting Only
7:00pm
Meeting Date: July 13, 2021

1. VAR2021 0004:

- a. Public Comment – Charles & Kathryn Cohen, received via email 6.30.21
- b. Public Comment – Charles & Kathryn Cohen, received in person 7.1.21
- c. Public Comment – Charles & Kathryn Cohen, received via post mail 7.7.21
- d. Public Comment – Lorilyn Swanson, received 7.7.21
- e. Public Comment – Lorilyn Swanson, received 7.7.21
- f. Public Comment – Charles & Kathryn Cohen, received 7.8.21
- g. Public Comment – John Hudson, Southeast Alaska Watershed Coalition, received 7.9.21
- h. Public Comment – Charles & Kathryn Cohen, received 7.12.21

2. APL2021 0003:

- a. Application Materials
- b. Public Comment – Charles & Kathryn Cohen, received 7.12.21

Laurel Christian

From: Jill Maclean
Sent: Thursday, July 1, 2021 9:02 AM
To: Laurel Christian
Cc: 'Chuck Cohen'
Subject: FW: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)
Attachments: Premature Application for Non-Administrative Variance.docx

Good morning,

Laurel, please add Mr. Cohen's email to the public comments received.

Thanks,

Jill

-----Original Message-----

From: Chuck Cohen <kodzoff@alaskan.com>
Sent: Wednesday, June 30, 2021 12:23 PM
To: Jill Maclean <Jill.Maclean@juneau.org>
Cc: Robert Palmer <Robert.Palmer@juneau.org>; Katie Koester <Katie.Koester@juneau.org>
Subject: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

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Chuck & Kathryn

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d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
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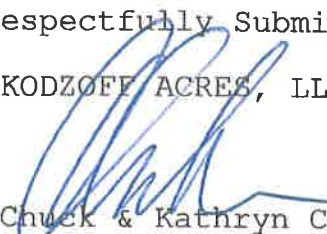
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JUL 01 2021

Permit Center/CDD

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Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

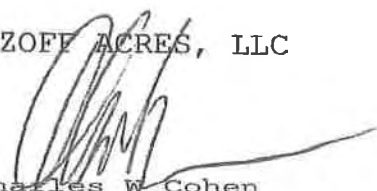
A Major Development permit process is the intended vehicle to manage the complex multi-CBJ-permit as well as multi-State and Federal agency permitting process for a large tract development. This applicant's phased permitting on these two adjacent lots started with a condo project. It was followed with a gym. Next was an illegal violation of CBJ 49.70.310 twice: the water line across Duck Creek to the gym; and, illegal logging which was also a zoning violation. In the meantime, before CDD issued its Stop Work order, all of the mature trees and ground cover which was intended to be protected by CBJ 49.70.310 had been destroyed. So much for protecting an impaired urban stream.

Now the applicant has proposed a set of related permits to: authorize stream habitat destruction to narrow and channel the watercourse and generate more developable uplands (ironically called stream restoration); a stream crossing for access before any specific residential development is proposed on the other side; removal of all remaining mature tree stumps and vegetative cover to regrade the entire parcel to reverse the natural westerly surface storm-water drainage and direct it toward Duck Creek; and a massive project to fill most of the floodplain adjacent to Duck Creek to generate more developable uplands (again, ironically called stream rehabilitation) It is about time CDD treat this series of permit requests as a major development and stop the illegal phased permitting process.

We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen

Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

From: Chuck Cohen kodzoff@alaskan.com
Subject: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)
Date: June 30, 2021 at 12:23 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: Palmer Robert Robert.Palmer@juneau.org, Koester Katie katie.koester@juneau.org

Jill:

Attached is a letter detailing our concerns regarding procedure for the pending variance application.

Best regards,

Chuck & Kathryn



Premature
Applica...e.docx

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

RECEIVED

JUL 07 2021

Permit Center/CDD

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
9090 Cinema Drive - 5B2101320030
CBJ - VAR 2021 0004

Dear Ms. Maclean:

On March 10, 2021, we were informed that effective Monday March 8, 2021, Permit BLDG 20210039 authorizing similar work within the Duck Creek setbacks previously issued to TDLH, LLC, had been revoked and a stop work order issued. The stop work order is the subject of an administrative appeal which has been suspended by stipulation without our participation before we had an opportunity to file our request to intervene.

Thereafter, we had several constructive meetings to discuss going forward regarding Duck Creek storm drainage and flood plain issues as well as collaborative Duck Creek rehabilitation and possible stream realignment and channeling. Following those meetings, Kathryn and I thought you had committed to providing us with direct notice if any future permit requests were accepted by CBJ in connection with Duck Creek and adjacent development. Late last week we were quite surprised to first learn by a CBJ postcard that the above reference permit applications had been received and

were scheduled for a hearing July 13, 2021. We are not certain whether you participated personally in this permit processing.

We immediately called CDD and received an email copy of Mr. Arndt's submission. (VAR 2021 0004) Today we reviewed CDD files and requested additional copies of relevant documents. Following our initial review, we have several procedural and substantive concerns with the work proposed. This letter will briefly deal with our procedural concerns.

CBJ 49.15.130 (b), which governs applications for all land use permits in general, provides: [an] application is complete when it contains all of the necessary information to determine if the development will comply with all of the requirements of the permit applied for." This variance application, by the admission of the applicant, is intentionally incomplete and, therefore, must be rejected. The proper approach is to require the applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work at the inception of the review process. Failure to do so constitutes "phased" permitting which is generally disfavored and likely illegal here.

Next, the public notice of hearing provided by CDD is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered at the hearing. The CDD notice here is for a variance to: "allow stream bank and stream restoration" of Duck Creek, nothing further. Describing what the applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: "A proposed roadway crossing and culvert system to serve access for the future major residential development". Or, "Large floodplain fill adjacent to 800 lineal feet of Duck Creek to expand uplands for future residential development". After the applicant has just destroyed the natural habitat of Duck Creek on its western bank beyond any possible restoration benefit which might occur in the future, to describe this request for a variance as "stream restoration" seems disingenuous and misleading. We are uncertain how this classification of the work was made, whether by the applicant or CDD but it is, nonetheless, incomplete and misleading for a public notice.

Processing and conducting a public notice and hearing on a request for a non-administrative variance in advance of CDD obtaining from the applicant and providing to the public all the details of the work to be authorized compounds the problem. CBJ 49.25.250(b) states that a variance may only be approved as a narrow exception to address specific development hardship not

created by the applicant and that cannot otherwise be accommodated. Here applicant's request is for a "blanket" variance. The application states details would require: "significant expenditure, time and agency coordination and detailed design will be completed after issuance of the variance." This is improper.

A comment period and public hearing before CDD administrative review of other related permits denies to the Board of Adjustment information vital to a reasoned adjudication. It is like asking a judge to render a verdict before hearing the evidence. Any Board of Adjustment decision under such circumstances would be arbitrary and capricious simply because it cannot possibly be narrowly drawn. Moreover, the public and affected adjacent property owners such as ourselves are denied due process. In order to meet due process standards, the public must be provided a reasonable opportunity to comment on the details of the proposed design for the work before the Board of Adjustment adjudicates the variance issue.

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Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

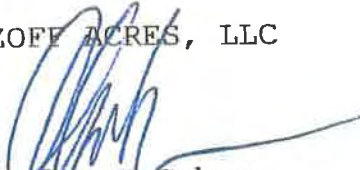
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We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen
Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

From: paulswan@gci.net
Sent: Wednesday, July 07, 2021 3:22 PM
To: PC_Comments
Subject: Case No. VAR2021 0004 Parcel No. 5B2101030001 and 5B3101320030

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

My name is Lorilyn E. Swanson, I live at 3101 Riverwood Drive in Riverwood Subdivision.

To the Commissioners of the Planning Committee regarding the Variance to 49.70.310(a)(2) and 49.70.310(b)(1)

I am asking the Commissioners to not grant this variance and to ask those who are developing this property to

Replant trees and be held to the original property lines and variances that should have been done in the first place.

Too many contractors are asking for forgiveness after not adhering to the property lines and it is time that the

Planning Commission step up to the plate and hold people accountable.

This project owners had no consideration for the neighbors on Cinema Drive, Chinook Apartments or those on Glacierwood

Avenue when they clear cut right up to their property line with no consideration of notice to anyone or not considering a

Small 5 foot green belt between the properties.

I am also asking the Planning Commission and the Fire Chief to give notice to this group that they cannot burn

The huge slag piles that have been left behind after logging the property. The smoke from such a burn could be cause

For severe smoke at the entrance to the Mendenhall Valley and throughout the entire area.

It would also cause, many who have issues with smoke to seek medical attention due to smoke coming from this property.

Consideration needs to be given to those living around this area on both sides of the Mendenhall Loop Road and I feel

This could be a huge concern if burning be allowed.

Property lines need to be adhered to without forgiveness being asked for after the fact – too much of this is happening in Juneau!!!!

Thank you for your consideration of my comments.

Lorilyn E Swanson

From: paulswan@gci.net
Sent: Thursday, July 08, 2021 1:16 PM
To: alice.edwards@alaska.gov
Cc: PC_Comments
Subject: Riverwood Subdivision, Juneau Alaska Air Quality Concern
Attachments: Riverwood Qir Quality Concern .pdf

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Director Edwards:

I have attached a copy of an email that I sent to the Juneau Planning Commission regarding my and the Riverwood Subdivision residents concern we have for burning on the designated property as noted in my email.

I have been advised, as you can see to contact the State DEC and Air Quality Control Division regarding my concerns.

I do not understand the emission content from a Commercial Incinerator so I am sending this email to you regarding the concerns

Of this burning permit being approved. I am asking that the permit request for this project be reviewed and the area and surrounding areas be evaluated prior to Issuing any burning permit.

This area is in the middle of a very large section of the Juneau Mendenhall Valley with a main roadway to one side which leads

To the Mendenhall Valley and Glacier. It is surrounded by private residents right up to the area that the burning will be taking place in.

It is surrounded by condominiums and a large low income housing property as well as large residential housing areas on all sides.

I am asking that the permit request for this project be reviewed and the area and surrounding areas be evaluated prior to Issuing any burning permit.

Thank you for any consideration regarding this issue.

Lorilyn E Swanson

paulswan@gci.net

907 957 8540.

paulswan@gci.net

From: Dan Jager <Dan.Jager@juneau.org>
Sent: Thursday, July 8, 2021 10:00 AM
To: Laurel Christian; 'paulswan@gci.net'
Cc: Rich Etheridge
Subject: RE: Case No. VAR2021 0004 Parcel No. 5B2101030001 and 5B3101320030

Hello Lorilyn,

The property owner for this project has a commercial incinerator, and with that comes special approval for use not by the fire department, but through the EPA and State DEC Air Quality offices. Incinerators are not within the scope of regulation in the fire code or local ordinance.

Thank you for expressing your concerns, but this is not regulated by the fire department.

Daniel M. Jager EFO, CFO
 Fire Marshal



Capital City Fire Rescue
 820 Glacier Avenue
 Juneau, Alaska 99801
 907-586-0260 (Office)
 907-586-8323 (Fax)

*"If it is predictable, then it is preventable.
 If it is preventable then it is not an accident".*

From: Laurel Christian <Laurel.Christian@juneau.org>
Sent: Thursday, July 08, 2021 8:36 AM
To: 'paulswan@gci.net' <paulswan@gci.net>
Cc: Dan Jager <Dan.Jager@juneau.org>
Subject: RE: Case No. VAR2021 0004 Parcel No. 5B2101030001 and 5B3101320030

Good morning Lorilyn,

Thank you for your comments regarding the proposed variance, they will be sent to the Planning Commission to read over the weekend prior to the hearing on Tuesday.

I have also forwarded your comments to Dan Jager, Fire Marshal with CCFR as he reviews most commercial burn permits. I do not know whether or not there has been an application for a burn permit on these properties.

Thank you,

Laurel Christian | Planner II

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street | 4th Floor Marine View Building

Office: 907.586.0753 ext. 4208 ←New



Fostering excellence in development for this generation and the next.

From: paulswan@gci.net <paulswan@gci.net>

Sent: Wednesday, July 07, 2021 3:22 PM

To: PC_Comments <PC_Comments@juneau.org>

Subject: Case No. VAR2021 0004 Parcel No. 5B2101030001 and 5B3101320030

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Thank you for your consideration of my comments.

Lorilyn E Swanson

RECEIVED

JULY
03 JUN 08 2021

PERMIT CENTER/CDU

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

July 7, 2021

City & Borough of Juneau
Planning Commission
Board of Adjustment
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
9090 Cinema Drive - 5B2101320030
CBJ - VAR 2021 0004

Dear Commissioners:

Land use planning, zoning, traffic planning, floodway and floodplain management, storm water management, and habitat protection laws are all designed to protect the reasonable expectations of all property owners as well as the public. Kodzoff Acres is an owner occupied residential leased land community directly adjacent to Duck Creek and this ongoing development. We have legitimate concerns. Our concerns must be addressed fully before this development activity is permitted to continue.

The failure of CDD to initially deem this constellation of proposed development activity as a "major development" under the CBJ planning code and follow permitting procedure with full public participation and transparency engenders conflict between adjacent landowners when collaboration and cooperation is needed. The incremental, phased permitting here defeats the entire purpose of comprehensive planning. Accordingly, this variance application should not be adjudicated in isolation from its context. Doing so

would be a classic example of "not seeing the forest for the trees" and "putting the cart before the horse".

At this point we have no alternative but to rigorously oppose this variance request simply because there is not enough detail in the application to assure us these stream modification proposals will not result in additional flooding and erosion on our property. We also have concerns about the proposed but thus far unstudied traffic intersection from the west side of this property to Mendenhall Loop Road very near our well establish left turn access. ADOT needs to be part of this process as it controls the roadway and the Duck Creek highway culverts.

We have addressed this Planning Commission about these issues before in connection with the Conditional Use permit for the gym. We were assured our concerns would be fully addressed in the building permit review process. We were never again contacted and none of our concerns have been discussed since.

Last summer we met with Mr. Arndt to discuss his plan to narrow and channel and re-align Duck Creek and perhaps remove the culvert on our property and the remnants of an old log bridge from both sides of the stream. We expressed our concerns about drainage but recognized we did not have the requisite expertise and offered to share costs for a hydrologist to study the issue and make recommendations. The next thing we knew the floodplain was being logged down to the stream and we had no idea what was going on.

Enclosed is our formal opposition to this variance request. We begin with a discussion of how we arrived at this juncture. Before adjudicating this variance request, it is important all Board of Adjustment members understand how and why this planning process has devolved and why it has failed. We follow with our legal analysis on each issue. We recommend before any action is taken by this Board of Adjustment, each of these legal issues receive thorough and rigorous analysis by the City Attorney. Doing so will avoid the recent past mistakes which have already resulted in unnecessary and serious losses to the natural Duck Creek habitat which will require years to remediate.

Accordingly, we believe the best way forward is to take no immediate action on this variance request until the Applicant has assembled all the necessary permits to proceed. At that point, any specific development hardships may be narrowly addressed with a habitat protection variance. This approach will allow the adjacent

property owners to work toward solutions and avoid further conflict.

In the event this Board of Adjustment finds immediate action on this blanket variance request is necessary, we request it be denied without prejudice as premature, incomplete and unsubstantiated.

Respectfully submitted,

KODZOFF ACRES, LLC



Chuck & Kathryn Cohen

Charles W. Cohen
Kodzoff Acres, LLC
PO Box 33200
Juneau, Alaska 99803

BEFORE BOARD OF ADJUSTMENT
PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU

In Re:

TDLH, LLC & Juneau Condos, LLC
Joint Application for a Non-Administrative
Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road –
5B2101030001
Gross Lot 2
9090 Cinema Drive – 5B2101320030

CBJ - VAR 2021 0004

OPPOSITION TO VARIANCE REQUEST

STATEMENT OF FACTS

Kodzoff Acres, LLC owns and operates Kodzoff Acres Mobile Home Parks, (herein, Kodzoff Acres), a leased land residential community located on Tract A-1, US Survey 1053. This property has been a single-family residential development providing affordable housing in Juneau continuously since the mid 1960's. A portion of the development, known locally as

1 Kodzoff II, was properly permitted by CBJ and build out by former owners in the 1970's. It
2 is located directly adjacent to Duck Creek (Exhibits at 1)
3

4 TDLH, LLC, and Juneau Condos, LLC, as well as Constellation Development, LLC
5 (herein, "Applicant") collectively own the 25 acres which is the subject of this variance
6 application. Development on all parcels is directly controlled by Travis Arndt. (Exhibit at 2-
7 4). Mr. Arndt also serves on this Planning Commission and Board of Adjustment. In 2020, the
8 Planning Commission approved the "Condos at Cinema Drive", a 72 unit development on Gross
9 Lot 2. At the same meeting, the Planning Commission considered and approved Applicant's
10 request for a Conditional Use Permit to build a private gym facility on Tract A-2, a commercial
11 use within a residential zone. During that meeting Kodzoff Acres was allowed two minutes of
12 public comment. Our concerns regarding the preservation and protection of Duck Creek, the
13 adequacy of drainage, the capacity of Duck Creek to carry future development storm water,
14 access to the remainder of the parcel and traffic and safety considerations on Mendenhall Loop
15 Rd. to our property was neither discussed nor seriously considered. We were informed that all
16 those issues would be addressed by CDD during the building permitting process. This has not
17 occurred.
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19
20
21

22 In May, 2020, Applicant and Kodzoff Acres met and walked the stream. We discussed
23 Applicant's ideas regarding narrowing and realigning Duck Creek and removing the culvert on
24 our property and the remnants of an old log bridge. Applicant sought to gain more developable
25 ground and believed we might benefit as well. We discussed our concern regarding possible
26 future flooding and erosion on our property from anticipated storm water drainage increases.
27

1 We offered to share the cost for a qualified hydrologist to prepare flood projections assuming
2 proposed stream channeling and re-alignment and assuming maximum zoned residential
3 development on our adjoining properties. We heard nothing further.
4

5 Last winter Applicant contacted us regarding timber harvesting. Applicant learned
6 timber prices were high and it planned to harvest timber and believed we might be interested in
7 harvesting timber from our under-developed property. We made some inquiries and decided
8 not to participate. We assumed all commercial timber harvesting would be outside the Duck
9 Creek regulatory preservation setback and properly permitted by CDD.
10
11

12 During the period January 20 to February 3, 2021, Applicant approached CDD to
13 discuss timber harvest, stump removal, fill and grading on the approximately 18.5 acres of Tract
14 A-2 west of Duck Creek. It described the plan as "stream bank stabilization". The plan was to
15 remove all the mature trees and vegetation within the Duck Creek floodplain and use stumps
16 and organic soils as fill. The unstated but actual goal was to narrow the stream and floodplain
17 and grade the property to generate more developable uplands. There was no public notice or
18 notice to adjacent property owners. The Wetlands Advisory Committee was not notified.
19 ADF&G was not notified. No Fish habitat permit applied for or granted. No variance was
20 requested or required. No floodplain permit was required. No major development allowable
21 use permit was required notwithstanding the scale of the development activity. No major
22 development conditional use permit was required for the channelization of Duck Creek or the
23 fish enhancement work. This Planning Commission never had any opportunity to consider the
24 matter.
25
26
27

1 Following these informal discussions, CDD staff incorrectly decided, based on an
2 invalid code interpretation, that this activity did not require any actual development permitting.
3 The Applicant was simply required to apply for a “grading permit”. General Engineering did
4 not do any meaningful review of the grading application and issued a building permit as an
5 accommodation. (Exhibits at 13-14) Besides a complete failure of notice to adjacent property
6 owners, CBJ took no effort to notify and seek comment from other agencies with regulatory
7 authority such as ADF&G, ADEC, or NMFS or the Planning Commission. As a result, nobody
8 outside of the Applicant and CDD staff had any notice whatsoever.
9

10
11 We first observed timber harvesting in the protected Duck Creek area on February 14,
12 2021. We immediately contacted Mr. Arndt and CBJ. (Exhibit 5-9) What followed was a
13 protracted three-week exchange of correspondence with CDD to obtain records. (Exhibits at
14 5-41) We could not understand how such a permit could possibly have been lawfully issued.
15 On March 7, 2021 we provided CDD with our legal analysis and requested the illegal “grading
16 permit” be revoked. (Exhibits at 12-22) We also recommended the City Attorney review it.
17 We followed it with another legal analysis letter on March 8, 2021. (Exhibits at 23-25) On
18 March 10, 2021, we were notified Permit BLDG 20210039, authorizing much of the same work
19 now proposed in this variance application, had been revoked. Unfortunately, by then all of the
20 timber had been cut and the Duck Creek habitat adjacent to our property had been completely
21 destroyed. (Exhibits at 61-81). Thereafter, ADF&G inspected the site and found trees had been
22 cut illegally within the OHW of Duck Creek in violation of State law. (Exhibits at 47-51). This
23 memorandum also delineates ADF&G’s opinion on the OHW of Duck Creek. Trees on our
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25
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side of Duck Creek now suffer potential windfall damage and pose risks to homeowners at Kodzoff Acres.

Mr. Arndt has appealed the permit revocation order. The Planning Commission declined to hear the appeal to avoid any appearance of impropriety. The Assembly assigned it to a hearing officer. Recently Applicant and CDD requested a delay before we had an opportunity to file our motion to intervene. The appeal is pending but has been stayed.

On April 3, we sent CDD a formal complaint about continuing commercial timber harvest in violation of CBJ zoning. (Exhibits at 26). We followed up with a letter on April 13, 2021, with our legal interpretation that no grading permit may be legally issued for timber harvest or and regrading Tract A-2 prior to and Planning Commission approval of an overall major development permit. (Exhibits at 27-30). On April 12, 2021 we learned the Applicant had submitted a new “grading permit” application on April 9, 2021, BLD2021 0128 and CDD intended to issue it shortly. Again, on April 14, 2021, we again wrote to CDD to protest against issuance on any so called “grading” permit. (Exhibits at 31-32) Thereafter, the Applicant withdrew its application.

During this period of time we had several constructive meetings with CDD Directors and the City Attorney to discuss going forward regarding Duck Creek storm drainage and floodplain issues. We sought to work on a collaborative Duck Creek rehabilitation and possible stream realignment and channeling plan. Following those meetings, we were left with the impression CDD would be meeting with the Applicant in due course and provide us direct notice if any future permit requests were accepted by CBJ in connection with Duck Creek and adjacent development. Late last week we were quite surprised to first learn by a CBJ postcard

1 that the above reference variance applications had been received and were scheduled for a
2 hearing July 13, 2021. On June 30, 2021, we again wrote to CDD to express our concerns that
3 the sequencing of permit review for this “variance” request was improper and the application
4 was woefully incomplete and should never have been accepted. (Exhibit at 169-172).
5

6 Now it seems we are caught in a “time warp” wherein CDD staff ignore the obvious
7 fact the Applicant is embarking upon a major residential development project on a 20.5 acre lot
8 and there are issues which must be addressed by the Planning Commission with full public
9 participation before the development process begins so cumulative impacts can be fairly
10 considered. Accordingly, we believe the CBJ Code and Alaska Supreme Court decisional law
11 require no subsidiary CDD permit process should proceed, regardless of whether it is “grading”,
12 “floodplain”, “variance” or anything else, until the Applicant submits a complete major
13 development permit for Planning Commission review. Doing otherwise creates a “phased”
14 permitting process unfavored and likely invalid.
15
16

17 18 LEGAL ANALYSIS

19 20 A. This variance application is incomplete, overbroad and premature. 21

22 CBJ 49.15.130 (b), which governs applications for all land use permits in general,
23 provides: “[an] application is complete when it contains all of the necessary information to
24 determine if the development will comply with all of the requirements of the permit applied for.”
25 This variance application is, by the Applicant’s admission, intentionally incomplete and,
26 therefore, must be rejected. (Packet 72) It certainly fails to contain information necessary to
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28

determine whether the proposed fish stream rehabilitation or streambank stabilization is needed in the first place and the precise location of that work as well as the location and magnitude of the habitat incursions necessary to complete it. The proper approach is to require the Applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work before this variance request is noticed and adjudicated. In that way the Applicant will have generated all the necessary information, the need for the work will have been confirmed or not, the State agencies and public have an opportunity for informed comment, and the Board of Adjustment may proceed to apply its discretion in a reasonable manner.

B. The public notice for this variance hearing is misleading and illegal.

The public notice for this variance hearing is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered. The CDD notice here is for a variance to: “allow streambank and stream restoration” of Duck Creek . (Exhibits at 59). Describing what the Applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: “ A proposed roadway crossing and culvert system to serve access for the future major residential development”. Or, “a large floodplain grading and fill project within the Duck Creek habitat to expand developable uplands”. Since the applicant has just destroyed the natural habitat of Duck Creek beyond any possible restoration benefit, to describe this request for a variance as “stream restoration” is absurd. More importantly, it is legally deficient and misleading.

1 C. Applicant's request for a "blanket" variance is illegal.

2
3 Public notice and hearing on this request for a non-administrative variance before CDD
4 has obtained and provided to the public all the details of the work to be authorized is illegal.
5 CBJ 49.25.250(b) provides that a variance may only be approved as a narrow exception to
6 address a specific development hardship. Here, the Applicant has not provided evidence
7 regarding the hardship it will suffer. Neither ADF&G nor any non-profit group is a party to
8 this application for stream enhancement. The Applicant has not obtained a Conditional Use for
9 "channel or fish habitat enhancement" required by CBJ 49.25.300 (14.150). The need for
10 stream enhancement at this location is an issue of fact in dispute not a proven assumption.
11

12
13 The application says details will be provided later. The Applicant's excuse for not
14 providing details now is doing so would require "significant expenditure, time and agency
15 coordination". The need for upfront permit time and effort is not a legally cognizable excuse.
16 Detail after issuance of the variance is improper.

17
18 A comment period and public hearing before consideration all factual disputes for all
19 related permits denies to the Board of Adjustment information vital to reasoned decision-
20 making. It is like asking a judge to render a verdict before hearing the evidence. Any Board of
21 Adjustment decision under such circumstances would be arbitrary and capricious simply
22 because it cannot possibly be narrowly drawn. Moreover, the public and affected adjacent
23 property owners are denied due process. In order to meet due process standards, the public
24 must be provided a reasonable notice and opportunity to comment on the details of the proposed
25 work before the Board of Adjustment adjudicates the variance issue.
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1 If this requested variance were granted before the other permits in the current
2 sequencing of permitting requested by the Applicant, neither Kodzoff Acres nor the public
3 would have any future opportunity for comment. Neither a “grading permit” nor a “floodplain
4 permit” require public notice and comment. Planning Commission review would not be
5 required. There would be no published notice of decision. An aggrieved party would no
6 opportunity to have its concerns considered. Moreover, there would not be a reliable way of
7 knowing when or if further permit request(s) has been filed, whether such request(s) had been
8 approved or rejected, or when to file a timely appeal.
9

10
11 This is precisely the reason we did not learn about the Applicant’s original plan to
12 harvest timber and regrade fill into the floodplain with respect to BLG2021 0039 until after the
13 project was well underway. The permitting occurred without any notice to adjacent property
14 owners, or other government agencies or the Planning Commission. We believe this was an
15 avoidable mistake. It resulted in illegal logging, destruction of the Duck Creek habitat and
16 conflict between adjacent property owners. The Planning Commission must not allow the same
17 mistake to happen again.
18

19
20
21 D. Phased development permitting is disfavored and likely illegal.

22 A Major Development Permit must be required for any development work on Tract A-2.
23 This is a twenty plus acre D-15 parcel which has so far been permitted illegally in phases. To
24 be legal, this permitting process must be comprehensive, transparent and coordinated. The
25 reason why “phased permitting” is disfavored and likely illegal is it prevents a comprehensive
26
27
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review of all potential future impacts. The Alaska Supreme Court has suggested several guiding principles concerning “phasing” including:

[P]hasing is prohibited if it can result in disregard of cumulative environmental impacts of a project. . . . [P]hasing through conditions is prohibited where it is feasible to obtain the information necessary to determine whether environmental standards will be satisfied before granting the initial permit.”

Thane Neighborhood Assn. v. City & Borough of Juneau, 922 P.2d 901, ___ (1966)

The Applicant has been intentionally phasing its development permitting at this location since it acquired Gross Lot 2 and the adjacent Tract A-2. Applicant’s projects in the past and present are multi-family residential projects. Gross Lot 2 has been approved for 72 housing units. Tract A-2, a 20.5 acre parcel zoned D-15 has residential zoning at a density of 15 units per acre. This would accommodate about 300 additional housing units. Rather than informing CDD it owned and controlled both lots with access to an existing public right of way at Cinema Dr., Juneau Condos, LLC transferred Tract A-2 to THLH, LLC, another entity with the same owners and then applied for a conditional use permit for a private gym facility without subdividing the property. The Applicant depicted its future road as merely a single use driveway for the private gym and the Planning Commission approved it without an ADOT traffic study even though at least one commission member questioned whether ADOT would allow it. The Applicant also used the vegetative cover ratios for the entire 20.5 acres parcel. (Exhibits at 82-83)

The gym facility is now under construction as are the Condos at Cinema Dr. In this variance request the Applicant proposes to place a road culvert in alignment with the gym driveway to provide access across Duck Creek claiming hardship without bothering to mention

1 it might have just as easily built road access from Cinema Dr. across Gross Lot 10 property it
2 controlled. This is quite likely still possible by reconfiguring the detached garage location
3 from the west to the south side of Gross Lot 10. Also, Applicant now plans to sub-divide Tract
4 A-2 after the driveway location has been set. PAC 2021 0036 (Exhibits at 106-168) The result
5 will be a major traffic intersection on Mendenhall Loop Rd. without any public input,
6 meaningful ADOT review, or Planning Commission evaluation as to where would have been
7 the best location for the community and adjacent property owners as balanced against the
8 Applicant's proposal. If the variance were approved, the culvert will likely be installed, the
9 road built and intersection location confirmed without meaningful regulatory review or public
10 notice or participation.
11

12
13 Consider the alternative. Had a major development permit been required as we had
14 proposed during the gym Conditional use - Planning Commission hearing, access to the western
15 portion of Tract A-2 would have been considered in a public process. ADOT and the public,
16 would have been offered an opportunity to comment on alternative intersection locations. The
17 process might have considered the concerns of twenty one (21) Kodzoff Acres homeowners
18 who opposed the project because of the need for continued left turn access from Mendenhall
19 Loop road. We might have collaborated with the Applicants to build an intersection to serve
20 both our properties, the gym and future Tract A-2 access, as well as deal with Duck Creek storm
21 drainage issues and floodplain issues. Instead, we now have had unpleasant conflict along with
22 unnecessary destruction of valuable habitat. So much for "comprehensive" urban planning.
23
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1 E. This request fails to satisfy legal requirements for a variance and must be denied.

2 This application must be rejected because it fails to satisfy the mandatory legal
3 requirements for a variance. CBJ 49.20.250(b)(1)and(2) states this Board of Adjustment may
4 only grant a request for variance to an applicant who proves:
5

6 (1) Enforcement of the ordinance would create an undue
7 hardship resulting from the unusual or special conditions of
8 the property;

9 (2) The unusual or special conditions of the property are not
10 caused by the person seeking the variance.

11 There are two types of work loosely discussed in the variance application: a culvert system
12 and roadway crossing of Duck Creek; and, a revetment along Duck Creek from the pond adjacent
13 to Gross Lot 2 to the southern property line of Tract A-2. This latter work would involve grubbing
14 stumps from uplands, regrading 18.5 acres of land to reverse the natural surface drainage toward
15 Duck Creek. Stump and organic overburden disposal would fill in the Duck Creek floodplain
16 to backfill against the revetment. The Applicant argues the following undue hardship with
17 respect to the culvert and stream crossing:
18
19

20 “The enforcement of CBJ 49.70.310 would stop the access from a
21 public right of way (ROW) to approximately 18 acres of land zoned
22 D15. Having no ROW access would render one of the largest tracts
23 of flat, developable, multifamily land in the Mendenhall Valley
24 undevelopable.”

25 (Packet 73). This argument fails both prongs of the CBJ 49.20.250(b)(1) and (b)(2) code
26 standard for approval. The west portion of Tract A-2 may be accessed without crossing Duck
27

Creek from the public ROW of Cinema Drive. This access has been available to the Applicant since 2019. (Exhibit 2-4)

Juneau Condos, LLC purchased USS Survey 1053 Tract A-2 October 18, 2018. Juneau Condos, LLC purchased Lot 2, Gross Subdivision December 19, 2019. Together these parcels are controlled by Mr. Arndt. Together, they have full public ROW access from the western portion of Tract A-2 without any "undue hardship". Moreover, any access limitations which now may exist as a result of the Applicants related development on Gross Lot 2 at Cinema Dr. were clearly avoidable and have been generated and maintained by the Applicant itself.

A variance is an equitable remedy provided by law to alleviate untended hardship resulting from strict planning code enforcement. But to benefit, the Applicant must have "clean hands". The Applicant is not entitled to relief after it knowingly creates its own hardship. This request for a variance from enforcement of CBJ 49.70.310 must be denied.

We turn next to the proposed stream revetment from the pond on Gross Lot 2, along both sides of the stream south through the proposed culvert, then to the culvert at the north end of our property, continuing along the Applicant's boundary to the southern boundary end of Tract A-2 on its side of the stream only. This reach of Duck Creek is nearly a quarter mile in length. The Applicant argues the following undue hardship with respect to the proposed revetment along Duck Creek:

"[T]he enforcement of CBJ 49.70.310 would also stop the coordinated rehabilitation of Duck Creek. Work must be completed within the buffers in order to rehabilitate the stream and its banks. Without such work, the habitat conditions within this reach of the Duck Creek will remain impaired and a blight, wpile(sp)other sections of Duck Creek, upstream and down, have been rehabilitated". (Packet 73)

1 This argument is frivolous because it assumes, but does not prove, two essential premises: the
2 existence of an approved plan for “coordinated rehabilitation of Duck Creek”; and, Duck Creek
3 is “impaired and a blight” at this location
4

5 There is no coordinated plan for rehabilitation of Duck Creek. So far, only one local
6 ADF&G area biologist has informally commented at a site visit that narrowing the stream in
7 some limited areas of the proposed crossing culvert will be beneficial. His view may or may
8 not be shared by other ADF&G habitat specialists or other qualified professionals routinely
9 consulted on this subject. In particular, NMFS has considerable expertise as do several local
10 non-profit groups. Until an ADF&G fish habitat permit is issued, the need for this work is
11 speculative at best. This same biologist commented in direct response to this variance request
12 that “there appears to be no need to stabilize the banks of Duck Creek with root wads, a
13 technique designed for larger rivers in the absence of infrastructure requiring protection.”
14 (Exhibits at 173-174) He further noted “removing the riparian timber that was cut and
15 encouraging re-growth of the riparian trees through planting, and generally restricting
16 disturbance within 50 ft, would provide the greatest value to the stream.” (Exhibitat 173-174)
17 In short, with the exception of the area directly needed for a roadway stream crossing with a
18 culvert, any variance should be strictly limited to remediating the damage already done. He
19 explained:
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21
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23 “[t]he 50 ft no development setback provides benefits to
24 anadromous streams including a location for surface water to be
25 filtered and reabsorbed into the water table; space for the stream to
26 migrate naturally; maintenance of riparian trees to provide shade,
27 food, and periodic recruitment into the creek; and a corridor for
28 wildlife movement and refuge.” (Exhibits at 173-174)

1 There is simply no habitat need for any tree stump or other revetment for streambank
2 rehabilitation or stabilization and no factual basis for granting a variance to construct it. This
3 reach of Duck Creek, before the applicant's recent illegal logging, was the best unspoiled
4 natural habitat throughout all of Duck Creek. There is no question Duck Creek is an impaired
5 urban stream at other locations, but not here. This stream was surrounded by mature and stable
6 trees and vegetation. All entities with expertise in anadromous habitat protection and water
7 resource management would agree. There has never been a report which concluded this reach
8 of Duck Creek was "blighted", and it has been studied repeatedly.
9
10

11 This entire project is promoted by the Applicant to advance its own commercial interest
12 to narrow the stream and stream setback and gain more developable uplands. Stream
13 rehabilitation and bank stabilization is and has always been a subterfuge. Applicant's argument
14 about the pre-existing culvert and FEMA floodplain analysis is a good example. Applicant
15 argues our preexisting culvert and remnants from a log bridge on our property but not its
16 property impairs the flow of the stream during periods of high water and requires fill with
17 stumps to stop stream erosion to its property. (Packet 72-73). That argument is nonsense.
18
19

20 What the Applicant fails to mention is the culvert was placed at least 50 years ago by
21 former owners of the property who owned all of USS 1053 Tract A. The effect of the culvert
22 has been to channel the stream flow toward our development on our property and away from
23 Applicant's vacant property. This effect has been compounded by the remnants of the old log
24 bridge across Duck Creek south of the culvert on Applicant's property. If the culvert and
25 remnants of the log bridge were removed from both sides of the stream, and the stream returned
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1 to its original alignment, Duck Creek would flow down the westerly side of the adjoining
2 floodplain as it did before the culvert was place or braid as it now does further south. (Exhibits
3 at 60 and 175) or braid. Any legitimate discussion and plan for coordinated stream
4 rehabilitation now that all the trees have been cut should consider and evaluate this alternative.
5

6
7 Presently during high flow periods, Duck Creek simply flows around the culvert to the
8 west onto the existing floodplain. From a fish stream habitat perspective, this is actually the
9 preferred alignment. The Applicant seeks to eliminate this highwater stream flow on the
10 floodplain toward its property below the culvert with grading and fill. The Applicant seeks
11 more developable uplands on its side of the floodplain. Applicant's entire grading plan and
12 stump fill project has nothing to do with bank stabilization or fish habitat restoration. This is
13 also true for the area north of our culvert. When and if a qualified habitat specialist designs this
14 stream enhancement project, that will be the time to consider a variance. Until that happens,
15 there is no basis for this variance request .
16

17 It is impossible to effectively adjudicate, regulate or enforce boundary issues of any type
18 without accurate survey data. A stream setback is a regulatory boundary. At a minimum, before
19 a variance was noticed and brought before this Board of Adjustment for a hearing, CDD has an
20 obligation to provide the public and this Board of Adjustment with its determination of the
21 exact geographic location of the stream setback anywhere a variance is sought. This variance
22 application has no accurate stream location or habitat boundaries reduce to accurate cartography.
23
24

25 In sum, there are two reasons why no variance should be granted for this work. First, the
26 Applicant has not offered any independent development hardship which would require the
27 variance. Just claiming a need for coordinated streambank stabilization and then claiming it
28

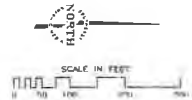
cannot be completed outside the stream setback is not an acceptable "hardship" basis for a variance. At least with respect to the area south of our culvert, there is no habitat justification whatsoever for any streambank stabilization. ADF&G comments recently submitted confirm this. There is no need to grade within the stream setback and the Applicant has shown no hardship.

CONCLUSION

At this point, we still have no idea when, where, how or to whom our more generalized concerns about access, flooding, storm water and floodplain management will be addressed. We have no idea whether and when the damage already done to Duck Creek will be remediated. This needs to change. This Planning Commission needs to instruct staff to initiate and complete a major development permit process before any further development occurs on Tract A-2. This entire variance application should be denied without prejudice.

Respectfully submitted this 7th day of July, 2021.

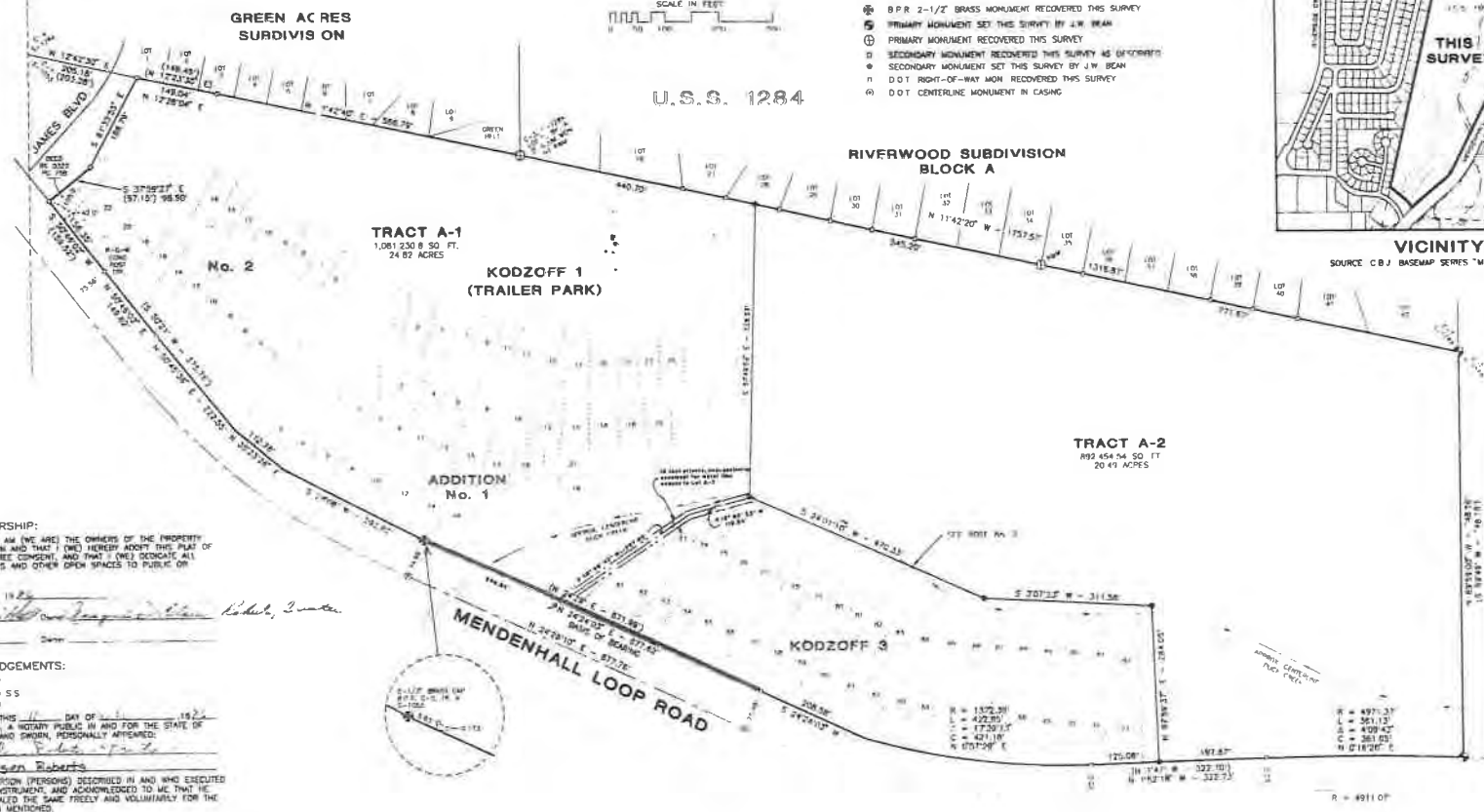

KODZOFF ACRES, LLC



- LEGEND**
- ⊕ B.P.R. 2-1/2" BRASS MONUMENT RECOVERED THIS SURVEY
 - ⊕ PRIMARY MONUMENT SET THIS SURVEY BY J.W. BEAN
 - ⊕ PRIMARY MONUMENT RECOVERED THIS SURVEY
 - ⊕ SECONDARY MONUMENT RECOVERED THIS SURVEY AS SHOWN
 - ⊕ SECONDARY MONUMENT SET THIS SURVEY BY J.W. BEAN
 - ⊕ D.O.T. RIGHT-OF-WAY MON. RECOVERED THIS SURVEY
 - ⊕ D.O.T. CENTERLINE MONUMENT IN CASING
- TYPICAL SECONDARY MON. 1" YELLOW PLASTIC CAP 5/8" RHTMR. 36" LONG
- TYPICAL PRIMARY MON. 3" ALUM. CAP ON 5/8" ALUM. PIPE



VICINITY MAP
SOURCE: C.B.J. BASEMAP SERIES "M-1" SCALE: 1" = 400'



STATEMENT OF OWNERSHIP:
I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT (WE) HEREBY ADMIT THIS PLAT OF SUBDIVISION WITH MY (OUR) FREE CONSENT AND THAT (WE) DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS AND OTHER OPEN SPACES TO PUBLIC OR PRIVATE USE AS INDICATED.

Date: 12-6-96
Witness: [Signature]
Notary Public for [Signature]
My Commission Expires 12-6-97

NOTARY'S ACKNOWLEDGEMENTS:
UNITED STATES OF AMERICA)
STATE OF ALASKA) SS
THIS IS TO CERTIFY THAT ON THIS 12 DAY OF DECEMBER, 1996, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA, DID COMMISSIONED AND SWORN, PERSONALLY APPEARED:

Madeline D. Olsen Roberts
KNOWN TO ME TO BE THE PERSON (PERSONS) DESCRIBED IN AND WHO EXECUTED THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE (SHE) (THEY) SIGNED AND SEALED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES THEREIN MENTIONED.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

Notary Public for [Signature]
My Commission Expires 12-6-97

CERTIFICATE OF REGISTERED LAND SURVEYOR
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, REGISTERED IN THE STATE OF ALASKA, AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, THAT THE ACCURACY OF THE SURVEY IS WITHIN THE LIMITS REQUIRED BY TITLE 4, COMMUNITY DEVELOPMENT REGULATIONS AND TITLE 48 OF THE CODE OF THE CITY AND BOROUGH OF JUNEAU, THAT ALL DIMENSIONS AND RELATIVE BEARINGS ARE CORRECT AND THAT MONUMENTS ARE SET IN PLACE AND NOTED UPON THIS PLAT AS PRESENTED.

Date: 12-6-96

CERTIFICATE OF APPROVAL
I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH TITLE 4 COMMUNITY DEVELOPMENT REGULATIONS AND TITLE 48 OF THE CODE OF THE CITY & BOROUGH OF JUNEAU AND IS APPROVED BY THE CITY AND BOROUGH OF JUNEAU DEPARTMENT OF COMMUNITY DEVELOPMENT FOR RECORDING IN THE OFFICE OF THE JUNEAU RECORDING DISTRICT, JUNEAU ALASKA.

Dated: 12-6-96 1996
Attest: [Signature]
City & Borough of Juneau
Department of Community Development

U.S.S. 1053
TR. A-2, FR. LOT 1, BLOCK 1
TALL TIMBERS SUBDIVISION

- NOTES:**
1. RIGHT-OF-WAY OF MENDENHALL LOOP ROAD FROM PLAT 88-30
 2. CENTER LINE OF DUCK CREEK LOCATION FOR FUTURE DEVELOPMENT MAY BE SUBJECT TO C.B.J. ZONING REQUIREMENTS OF STREAM SETBACK

- NOTES:**
1. ALL PLAT BEARINGS SHOWN ARE TRUE BEARINGS AS ORIENTED TO THE BASIS OF BEARINGS
 2. ALL DISTANCES SHOWN ARE REDUCED TO HORIZONTAL
 3. RECORDED BEARINGS AND DISTANCES ARE SHOWN ENCLOSED IN PARENTHESES MEASURED OR CALCULATED BEARINGS AND/OR DISTANCES ARE SHOWN WITHOUT PARENTHESES



OWNER BY: SOUTHCOST GRAPHICS, INC.	ORIGIN: 12-6-96
DATE: 12-6-96	FIELD BOOK: 12-6-96
SCALE: 1" = 100'	DATE: 12-6-96
BY: J.W. BEAN	DATE: 12-6-96

J.W. BEAN
PROFESSIONAL SURVEYOR
1870 ARCTIC CIRCLE
JUNEAU - ALASKA
99801-7700
SURVEYOR PLANNER

76-106
Juneau
12-6-96
12-6-96

A PLAT OF
TRACT A-1 AND TRACT A-2
A SUBDIVISION OF
TRACT A, U.S. SURVEY No. 1053
JUNEAU RECORDING DISTRICT
JUNEAU - ALASKA

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2019-005752-0

Recording Dist: 101 - Juneau

12/19/2019 11:56 AM Pages: 1 of 2



File for Record at Request of:

First American Title Insurance Company

AFTER RECORDING MAIL TO:

Name: Juneau Condos LLC

Address: 10840 Lilac Drive

Juneau, AK 99801

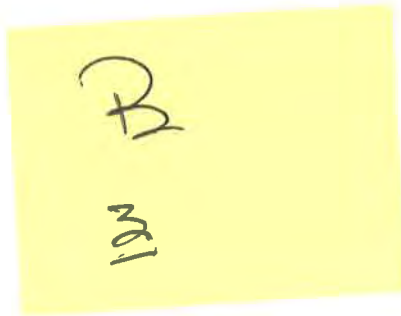
File No.: **0231-3359463 (IK)**

STATUTORY WARRANTY DEED

THE GRANTOR, **Gross-Alaska, Inc. formerly known as Twentieth Century Investment Company, Inc., an Alaska corporation**, whose mailing address is **9090 Cinema Drive, Juneau, AK 99801**, for and in consideration of **TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION**, in hand paid, conveys and warrants to **Juneau Condos LLC, an Alaska limited liability company**, residing at **10840 Lilac Drive, Juneau, AK 99801**, the following described real estate, situated in the **Juneau Recording District, First Judicial District, State of Alaska**:

Lot 2, GROSS SUBDIVISION, according to Plat 83-60, Records of the Juneau Recording District, First Judicial District, State of Alaska.

SUBJECT TO reservations, exceptions, easements, covenants, conditions and restrictions of record, if any.



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2019-002031-0

Recording Dist: 101 - Juneau

5/23/2019 11:55 AM Pages: 1 of 1



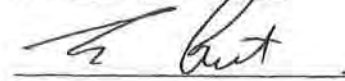
QUIT CLAIM DEED

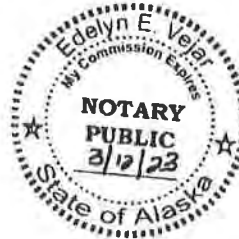
2019-84

The Grantor, Juneau Condos, LLC, a limited liability company, who acquired title as Juneau Condo, LLC, a limited liability corporation, whose address is 10840 Lilac Dr. Juneau, AK 99801 for and in consideration of valuable consideration, conveys and quit claims all interest, if any, to Grantee, TDLH LLC, a limited liability corporation of 10840 Lilac Drive, Juneau, AK 99801, the following described real property:

Tract A-2, a plat of Tracts A-1 and A-2, a subdivision of Tract A, U.S. Survey 1053, according to the official plat thereof, filed under Plat Number 96-106, Records of the Juneau Recording District, First Judicial District, State of Alaska.

Date: 23rd day of May, 2019


Travis Arndt, Member



STATE OF ALASKA)

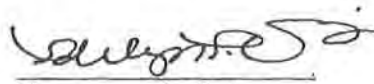
)ss.

FIRST JUDICIAL DISTRICT)

On this 23rd day of May, 2019, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Travis Arndt, to me known to be a Member, of Constellation Development, LLC the limited liability company that executed the foregoing instrument, and he acknowledged the said instrument to be the free and voluntary act and deed of said liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said limited liability company.

Witness my hand and official seal hereto affixed the day and year first above-written.

This instrument is being recorded by
FIRST AMERICAN TITLE INSURANCE
COMPANY OF ALASKA INC. as an
accommodation only. It has not been
examined as to its effect., if any on the
title of the estate herein.


Notary Public for Alaska
My Commission Expires: 3/12/23

After recording return to:

TDLH LLC
10840 Lilac Drive
Juneau, AK 99801

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A**2018-004503-0**Recording Dist: 101 - Juneau
10/19/2018 01:09 PM Pages: 1 of 2File for Record at Request of:
First American Title Insurance Company

AFTER RECORDING MAIL TO:

Name: Juneau Condos LLCAddress: 10840 Lilac DriveJuneau, AK 99801File No.: **0231-3074656 (ev)**

STATUTORY WARRANTY DEED

THE GRANTOR, JKCZ, LLC, an Alaska limited liability company, whose mailing address is 508 W 2nd Ave 3rd Floor, Anchorage, AK 99501, for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, conveys and warrants to Juneau Condos LLC, an Alaska limited liability company, residing at 10840 Lilac Drive, Juneau, AK 99801, the following described real estate, situated in the Juneau Recording District, First Judicial District, State of Alaska:

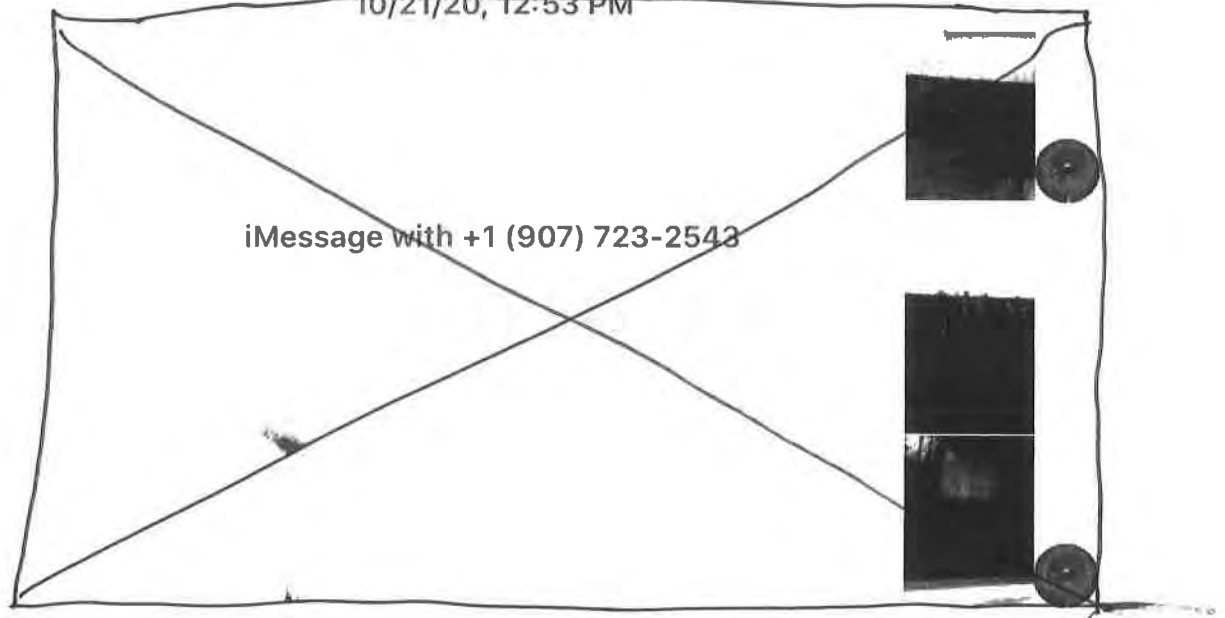
Tract A-2, a plat of Tracts A-1 and A-2, a subdivision of Tract A, U.S. Survey 1053, according to the official plat thereof, filed under Plat Number 96-106, Records of the Juneau Recording District, First Judicial District, State of Alaska.

SUBJECT TO reservations, exceptions, easements, covenants, conditions and restrictions of record, if any.

Dated: October 19, 2018

SMS with +1 (907) 723-2543 (TRAVIS ARNDT)

10/21/20, 12:53 PM



2/14/21, 3:39 PM



These trees are within the Duck Creek. That area is wet all summer long, and merely frozen now. Please stop cutting within the ordinary high water area of the creek.

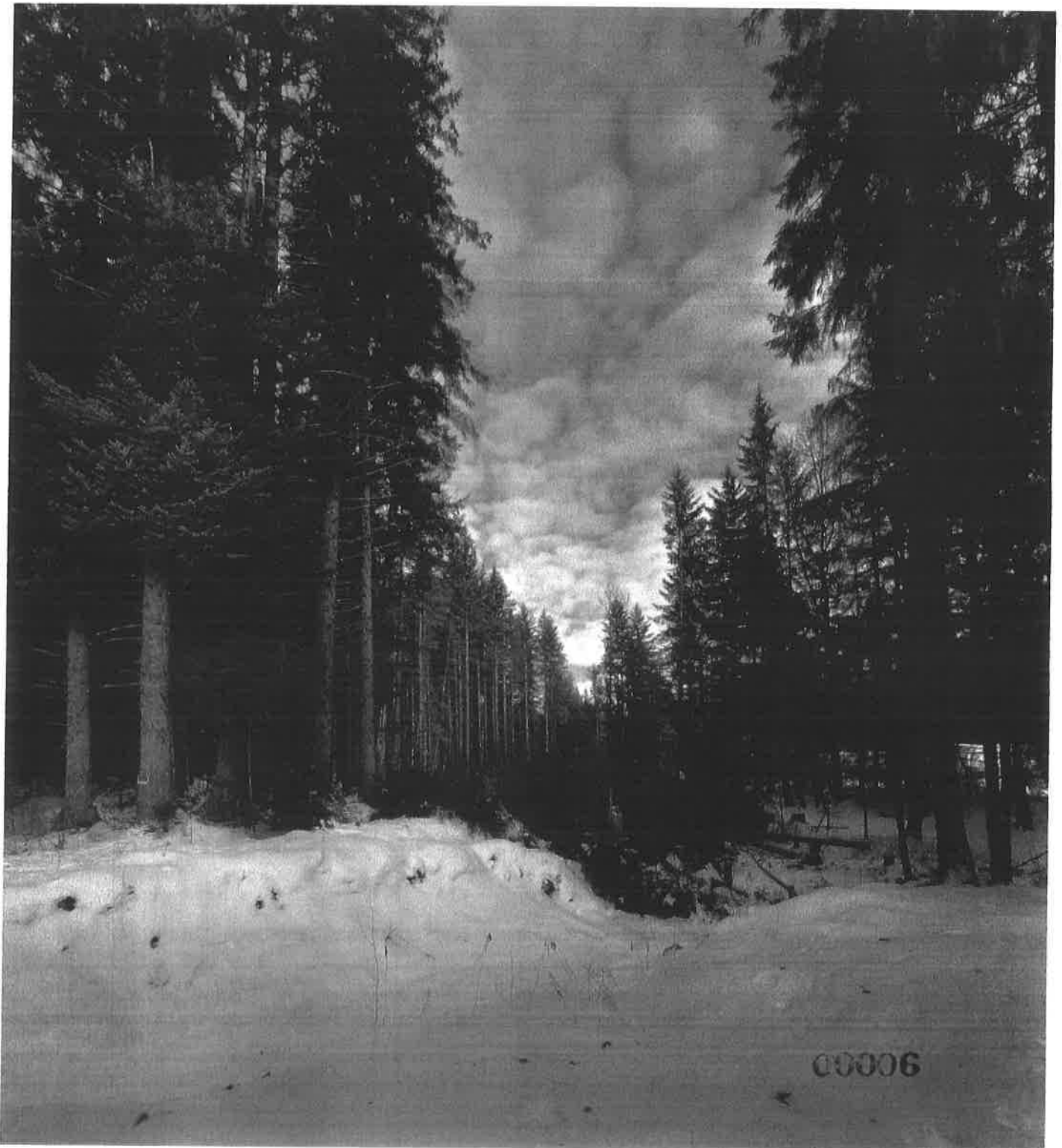


Read 2/14/21

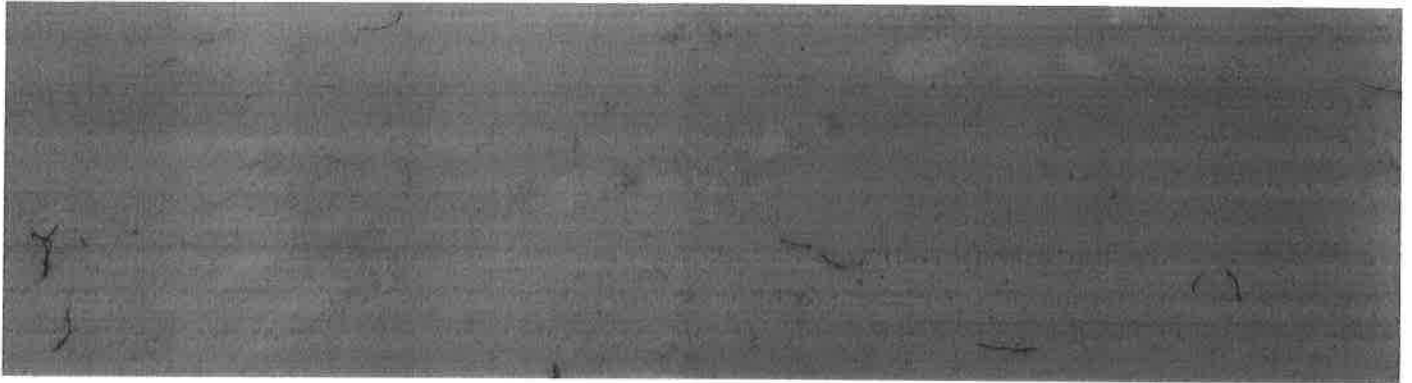
00005

From: Chuck Cohen kodzoff@alaskan.com
Subject: Clearing trees within Duck Creek
Date: Feb 14, 2021 at 4:54:04 PM
To: jill.maclean@juneau.org

Good Morning:



00006



I am the managing Member of Kodzoff Acres, LLC which owns the adjacent and down stream property Duck Creek. Not sure who is supervising this project or reviewed and approved the delineation of the ordinary high water of at this location Duck Creek, but this tree clearing is well within the area of Duck Creek normally wet year around, and certainly within 25 feet of the ordinary high water area of the creek drainage. We have just notified Travis Arnt of our concerns, but the cutting needs to be stopped until proper CBJ delineation of the Duck Creek is undertaken, reviewed and completed. This work will both damage the creek drainage and also our property.

Regards,

Chuck Cohen

Kodzoff Acres, LLC
907 723 5154

00007

<image001.jpg>

From: Chuck Cohen <kodzoff@alaskan.com>
Sent: Wednesday, February 17, 2021 3:22 PM
To: Teri Camery <Teri.Camery@juneau.org>; Jill Maclean
 <Jill.Maclean@juneau.org>
Subject: Re: Duck Creek questions

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES
 OR FOLLOWING LINKS

Teri:

I sent a picture, passed along by our acting mobile home park manager, to the Director showing clearly that trees were being cut on a braided part of Duck Creek.

The original plat Tract A-1 and A-2, US Survey 1053, shows this area as an extended peninsula running from north to south in the creek just north of our shop. The area west of these trees is wet year around, and frequently during periods of ordinary high water the creek flows on both sides not the island. There are several other similar meanders in the creek. During the past 25 years we have owned our property along Duck Creek it has and will continue to shift within the drainage. A protective stream barrier needs to account for this, or we will convert Duck Creek from a threatened stream into a drainage ditch. The cut bank to the west of the creek is a remnant of river once as large or larger than the Mendenhall River running down the east side on the Valley. Pictures from the turn of the last century taken from the glacier looking toward the area of the airport show this as does the soils.

We sent the picture to the Director in an effort to protect the watershed as well as our down stream property. We had hoped a knowledgeable person would go out and field check ongoing work before it was too late. When we spoke today you called to tell me you could not spare the time to talk to me because you're so busy, but I was not free to talk with other planners in the department to find out in a timely way the approval process so I would know "with particularity" what documents to request. We are in a hurry; trees protect the creek and watershed. Once cut, the harm cannot be reversed. I have been simply trying to figure out whether the issue is an obvious error in the stream delineation or cutting beyond it so we know how to proceed.

00008

Now you have it in writing. I still do not have the documents, if any, I requested, and an answer to my question, or any indication whether someone in CBJ Planning might take a second look.

Best regards,

Chuck

On Feb 17, 2021, at 12:29 PM, Teri Camery
<Teri.Camery@juneau.org> wrote:

Hello Mr. Cohen,

Please provide your questions in writing.
There will be no further communication
over the phone.

Teri Camery

Teri Camery | Senior Planner, CFM
Community Development Department | City & Borough
of Juneau, AK
Location: 230 S. Franklin Street, 4th Floor Marine View
Building
Office: 907.586.0755

<[image001.jpg](#)>

<FW_Duck Creek Bank Stabilization and Rehab.pdf>
<FW_Stream Bank Stabilization Grading Permit - 3221 Mendenhall Loop
Road - 5B2101030001.pdf>
<Response from GE.pdf>



Application Date: January 25, 2021

BUILDING PERMIT APPLICATION

NOTE: THIS IS NOT A BUILDING PERMIT

* NOTE: "Building Permit" is a generic term which includes Building Safety Inspections, Grading Permits, and permits for Electrical, Plumbing and Mechanical work.

Case No: **BLD20210039**

Case Description: **Bank stabilization of Duck Creek**

00009

From: Jill Maclean Jill.Maclean@juneau.org
Subject: FW: Logging, grading and Fill - Duck Creek Watershed - US Survey 1053 Tracts A-1 and A-2
Date: March 4, 2021 at 2:59 PM
To: kodzoff@alaskan.com
Cc: Teri Camery Teri.Camery@juneau.org

JM

Mr. Cohen,

I've read your email, and reviewed the attached documents. I've also been kept apprised of your conversations with Ms. Camery and Ms. Pierce. As Ms. Camery explained, after further review (subsequent to the emails you've attached) it was determined that Mr. Arndt's work is not in the floodway and doesn't require a no-rise analysis for compliance with flood regulations. In addition, bank stabilization is exempted from the 50-foot stream setback requirement, and a grading permit was approved.

Thank you,

Jill

From: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Sent: Thursday, March 4, 2021 12:26 PM
To: Jill Maclean <Jill.Maclean@juneau.org>
Subject: FW: Logging, grading and Fill - Duck Creek Watershed - US Survey 1053 Tracts A-1 and A-2

From: Chuck Cohen <kodzoff@alaskan.com>
Sent: Thursday, March 4, 2021 11:57 AM
To: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: Logging, grading and Fill - Duck Creek Watershed - US Survey 1053 Tracts A-1 and A-2

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Alex:

Our understanding in Teri is out until mid month and this matter is time sensitive. Enclosed is an exchange of correspondence between you and Teri concerning Travis Arndt's proposal for stump



FW_ Duck Creek
 Bank S...ab.pdf

disposal and fill in the guise of a stream bank stabilization and rehabilitation project in an 800 foot long stretch of Duck Creek which runs between his property and Kodzoff Acres.

00010

It is important to note that Duck Creek in its current natural configuration does not generally need of "bank stabilization", nor has any reason or expert opinion provided to support such a notion and the proposed solution.

Also enclosed are copies of the "plans" for that work. These plans involve a massive stump disposal and fill in riparian wetlands.



BLD21-0039
Plans.pdf

We find no exemption in the code for disturbance of the stream watershed 50 foot setback for the grading and fill plan of this magnitude merely to generate more uplands level grade land. There is no record of any significant departmental analysis of this request for stream bank stabilization or best practice to accomplish that goal if needed in specific locations. It certainly does not appear in 49.70.950(f)

Based on our 25 year experience with this stream, the work described in these plans definitely will occur in the FEMA floodway of this stream. Moreover, on the scale of these plans and the FEMA maps it would be impossible to make that determination without careful inspection and independent expert review, which did not occur. The "plan" sketches are not stamped, do not show the delineation of the floodway or the OHW of the stream and, based on our personal knowledge, the area proposed to be filled includes both.

At this point there is ongoing illegal work within the stream setback no disturb zone without legal justification.

As the adjacent riparian property owner we have a direct and immediate interest in protecting out property from windfall, flooding and erosion to our side of the stream which will ultimately occur if this stump disposal and fill plan is allowed to continue. We demand this project be stopped until such time as there can be a thorough examination of the need and best means for any changes to this endangered natural drainage. We have previously offered and we are still willing to share the cost an expert hydrologic and environmental evaluation with best practices recommendations for this adjoining area of Duck Creek. Unfortunately, during this entire process nobody at CBJ notified us of this proposed grading plan proposal until we observed trees in the watershed were being cut.

Please advise.

Best regards,

Chuck

00011

From: Chuck Cohen kodzoff@alaskan.com
Subject: Re: Logging, grading and Fill - Duck Creek Watershed - US Survey 1053 Tracts A-1 and A-2
Date: March 4, 2021 at 5:30 PM
To: Jill Maclean Jill.Maclean@juneau.org

Jill:

I am doing this on an iPhone so excuse the likely typos. Thank you for your attention to this matter. You have merely restating the unsupportable conclusory positions taken by your staff in full and unreasonable reliance on verbal representations which are in conflict with the proposed written grading plans.

Perhaps, before you respond with such certainty, you might make an independent site review as well as review any such physical inspections CBJ staff conducted to determine that the proposed work described in the grading plan is not will not be in the FEMA floodway or beyond the year around seasonal OHW of Duck Creek.

You might also wish to reconsider the arbitrary standard that your staff applied to justify a blanket exception for mandatory no disturb stream setback regulations to all 800 linear feet of the Duck Creek stream adjacent to Tract A-2? How will stabilization on Travis's side affect erosion on our side of the stream? A stream is a system and to be fair reasonable to all riparian owners it must be treated as such.

In addition, you also might reconsider precisely what legal exception was applied to exempt this project from a required grading permit for the proposed fill of at least a 50,000 sq. ft. area and well upward of 200,000 cubic feet of fill material and compare those calculations to the representations of the in the grading permit application form. The regulatory exceptions cited by Mr. Millay in his justification memo for why no grading permit was required was based on conversations and the application form not the drawings. The code exceptions he cited do not appear to apply to a fill of this magnitude both in terms of quantity elevation changes.

You also might reconsider whether it is appropriate to merely exempt Carte Blanc this proposed development for clearing and initial grading of a 20 acre D-18 parcel without a good legal reason for ignoring the potential public harm to Duck Creek and the risks to the 21 riparian property home owners at Kodzoff Acres as well as our underlying property from this major development project. We believe substantially more due diligence is required to protect CBJ from direct legal liability to those property owners who might suffer flooding and loss of life. You might consider referral of this matter to the City Attorney and risk management before you make a final decision.

We request you immediately void the "building permit" issued and stop the work on this illegal project pending a full and thorough review by a qualified expert and, perhaps, intergovernmental and agency review regarding Duck Creek. As noted we are prepared to assist and share expenses for a proper and considered review and best practices recommendation to protect the interests of all parties. We have made the same offer to Travis.

Best regards,

Chuck

Sent from my iPhone

00012

From: Chuck Cohen kodzoff@alaskan.com
Subject: Duck Creek - Improper waiver of grading permit requirement
Date: March 7, 2021 at 2:35 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: BoroughAssembly@juneau.org, Rorie.Watt@juneau.org

Jill:

We have previously discussed our concerns regarding improper waiver of CBJ stream protection laws for the development project under the guise of "stream bank stabilization". There is no rational basis or demonstrated need for stream stabilization in the decisional record. Moreover, the exception cited is not legally applicable.

After further review we have also learned that all of the requirements for a grading permit were also improperly waived. We believe BLDG 20210039 must be withdrawn as imprudently issued and any grading work on Tract A-2 stopped until a proper grading permit process is completed. A development project of this environmental significance and magnitude involving Duck Creek and adjacent riparian property owners should receive thorough consideration before granting a grading permit and ongoing compliance inspections during the work.

Our legal analysis on this point grading issue attached. We recommend the City Attorney review it. We believe he should also review the blanket waiver the stream setback protections. We are available to discuss those issues anytime. We would like to see this matter resolved.

Regards,

Chuck Cohen



CBJ Failure to
 Requir...ess.pdf

00012

CBJ Failure to Require Grading Permit Process

TDLH is in the process of conducting the following activities without a mandatory CBJ grading permit:

1. Commercial logging, grubbing and clearing approximately 18.5 acres of heavily forested timber on all of US Survey Tract A-2 west of Duck Creek;
2. Grubbing the stumps and removing the organic overburden to clear the land for development;
3. Using the stumps, excavated soils and organic overburden to construct a fill estimated from the plans to contain about 200,000 cubic feet (7,400 Cubic Yards) of material directly adjacent to Duck Creek, an anadromous fish stream, and within the FEMA 100 - year flood plain area designation AE and the "no disturb" stream setback requirements in CBJ 49.70.310; and,
4. All in furtherance of a major development project, not yet fully defined or permitted on 20.5 acre parcel zoned D-15.

TDLH submitted its application for this work on an application and checklist form and later three drawings (copies attached). It is not clear whether CBJ Engineering department personnel actually reviewed these drawings. Mark Millay of CBJ Engineering made the determination that all of the above TDLH development activities were exempt from any and all grading permit requirements. In reply to our formal request for documents, the following explanation was provided in his inter-office email:

"Just for clarification, the activities under this permit is exempted from being classified as grading under Title 19.01.105.2.(8)(9). General Engineering reviewed the activity as a courtesy to the CDD plan review because of the association with Duck Creek and to confirm exemption status. G.E. has no records to contribute."

This regulatory determination is clearly erroneous and borders on gross negligence and malfeasance.

The requirement for a grading permit is set forth in CBJ 19.01.105.1.1.1 and again in CBJ 19.12.060:

19.12.060.1 Permits Required. Grading permits required. Except as exempted in section 19.01.105.2.2 of this code, no person shall do any grading without first obtaining a grading permit from the building official. A separate permit shall be obtained for each site, and may cover both excavations and fills.

The exemption he cites as authority is set forth in CBJ 19.01.105.2.2 and is clearly not applicable. It provides in pertinent part:

19.01.105.2.2 - Exempt grading work. A grading permit shall not be required for the following:

* * * *

8. An excavation that (1) is less than two feet (610 mm) in depth or (2) does not create a cut slope greater than five feet (1,524 mm) in height and steeper than one unit vertical in two units horizontal (66.7 percent slope) and does not change the drainage pattern of the property;

9. A fill less than one foot (305 mm) in depth and placed on natural terrain with a slope flatter than one unit vertical in five units horizontal (20 percent slope), or less than three feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m) on any one lot and does not obstruct a drainage course.

This work involves excavations greater than two feet and fills that have a depth greater than one foot, as well as greater than three feet that exceed 50 cubic yards. Most important, a substantial portion of this fill will reduce the floodplain and obstruct the current drainage pattern in the Duck Creek FEMA flood plain zone AE. It is not possible to pull 18 acres of mature Sitka spruce tree stumps and root wads without multiple excavations of greater than two feet. Moreover, even a cursory review of the plan TDLH drawing before and after shows a fill well in excess of one foot and three feet with substantially more fill than 50 cubic yards.

Prior to any continuing work grading on Tract A-2, TDLH must fully complete the grading application process requirements set forth in CBJ 19.12.060.1-7 as follows:

19.12.060.2 Application. The provisions of CBJ 19.01.105.3 are applicable to grading. Additionally, the application shall state the estimated quantities of excavation and fill and include a drainage plan.

19.12.060.3 Grading Designation. Grading in excess of 1,000 cubic yards (765 m³) shall be performed in accordance with the approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than 1,000 cubic yards (765 m³) shall be designated "regular grading" unless the permittee chooses to have the grading performed as engineered grading, or the building official determines that special conditions including steep slopes or unusual hazards exist, in which case grading shall conform to the requirements for engineered grading.

19.12.060.4 Soils Engineering Report. The soils engineering report required by CBJ 19.01.106.1.1.7 shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes.

19.12.060.5 Engineering Geology Report. The engineering geology report required by CBJ 19.01.106.1.1.7 shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors.

19.12.060.6 Liquefaction Study. The building official may require a geotechnical investigation in accordance with IBC Sections 1802.2.1 and 1802.4 when, during the course of an investigation, all of the following conditions are discovered, the report shall address the potential for liquefaction: 1. Shallow ground water, 50 feet (15,240 mm) or less. 2. Unconsolidated sandy alluvium.

19.12.060.7 Issuance. The provisions of CBJ 19.01.106.4 are applicable to grading permits. The building official may require that grading operations and project designs be modified if weather-generated problems occur which were not considered at the time the permit was issued. The building official may require professional inspection and testing by the soils engineer. When the building official has cause to believe that hazards due to geologic factors may be involved, the grading will be required to conform to engineered grading.

CBJ 19.12.060.5 and .7 are particularly significant here. This commercial logging, clearing and regrading of Tract A-2 is not an isolated event but is part of a larger major development on this parcel. Duck Creek only has a certain storm water carrying capacity. In the grading permitting process storm water drainage is a major factor. CBJ must require TDLH to provide a qualified hydrogeology report with recommendations to protect both Duck Creek and adjoining property owners. Future sheet drainage from this cleared but previously forested and fully vegetated 18.5 plus parcel may be itself an short term problem, but once D-15 housing and infra structure of paved roads and storm water drainage is added to the mix, the carrying capacity of the Duck Creek floodplain will certainly become an issue. Allowing grading and fill of critical and substantial portions of the existing floodplain FEMA zone AE without due consideration of TDHL's future drainage issues in complete disregard of Duck Creek and the neighboring riparian owners is reckless malfeasance. But improperly waiving all grading permit requirements and oversight as well as public notice, due process, administrative and planning processes, inter-governmental coordination, appeal and Planning Commission Review, if requested, and then going ahead and doing it under the guise of "stream bank stabilization" is absurd and illegal. CBJ must immediately withdraw BLDG 20210039 as imprudently granted.



Grading Permit Checklist

JUNEAU PERMIT CENTER, 4TH FLOOR MARINE VIEW CENTER, (907) 586-0770

All grading must conform with CBJ Title 19.12, Excavation and Grading.

Section I:

Case Number: BLD20210039

Applicant's Name TDLH, LLC
 Mailing Address 10840 Lilac Drive, Juneau
 Phone Number 907-321-3118
 Project Address 3221 Mendenhall Loop Road
 Project Parcel Number 5B2101030001

Section II:

GRADING PLAN REQUIREMENTS

Grading permit applications must be accompanied by a drawing which graphically shows the grading site and the proposed grading changes. The plan shall show the following features:

- ☐ A. Name, address and phone number of applicant
- ☐ B. Lot number, legal description, and street address of grading site
- ☐ C. Lot boundary lines
- ☐ D. Buildings (existing and proposed)
- ☐ E. All easements affecting lot
- ☐ F. Location of driveway, including width and size of culvert
- ☐ G. Streams, ditches, swales and all other drainage features including locations where drainage leaves the grading site. (PLAN SHALL SHOW ALL DRAINAGE FLOWING INTO AN APPROVED DRAINAGE WAY)
- ☐ H. Location of underground utilities (water, sewer, phone, power, tv)
- ☐ I. Limits of all proposed cuts and fills
- ☐ J. Elevations and dimensions of proposed grading and buildings
- ☐ K. All structures within 15 feet of the boundaries of the site
- ☐ L. Survey of existing terrain shown with, elevations, cross sections or contours

The Building Official may require a more detailed plan and/or survey by licensed professionals for grading on sites with steep slopes, large excavations or fills (greater than 5,000 cubic yards), or for structural fills.

Section III:

Will there be excavation activity? ☒ YES ☐ NO

How many cubic yards? 500 Cubic Yards

What type of material will be excavated? Organics and Silty Sand

Will excavated material be removed from the site? ☐ YES ☒ NO

How many cubic yards of material will be removed? _____ Cubic Yards

What is the location of the disposal site? _____

Has a permit been obtained for the disposal site? ☐ YES ☐ NO

Will fill be brought on to site? ☐ YES ☒ NO

How many cubic yards? _____ Cubic Yards

What type of material? _____

From where will the material be obtained? on Lot

Will stumps need to be removed? ☐ YES ☒ NO

Describe method of disposal: Used for streamside stabilization

Will erosion protection be required? ☒ YES ☐ NO

Describe method: Silt Fence along OHW

Will a retaining wall be required to hold the cut or fill? ☐ YES ☒ NO

(Note: Walls four feet or greater in height must be designed by a professional engineer licensed in the State of Alaska.)

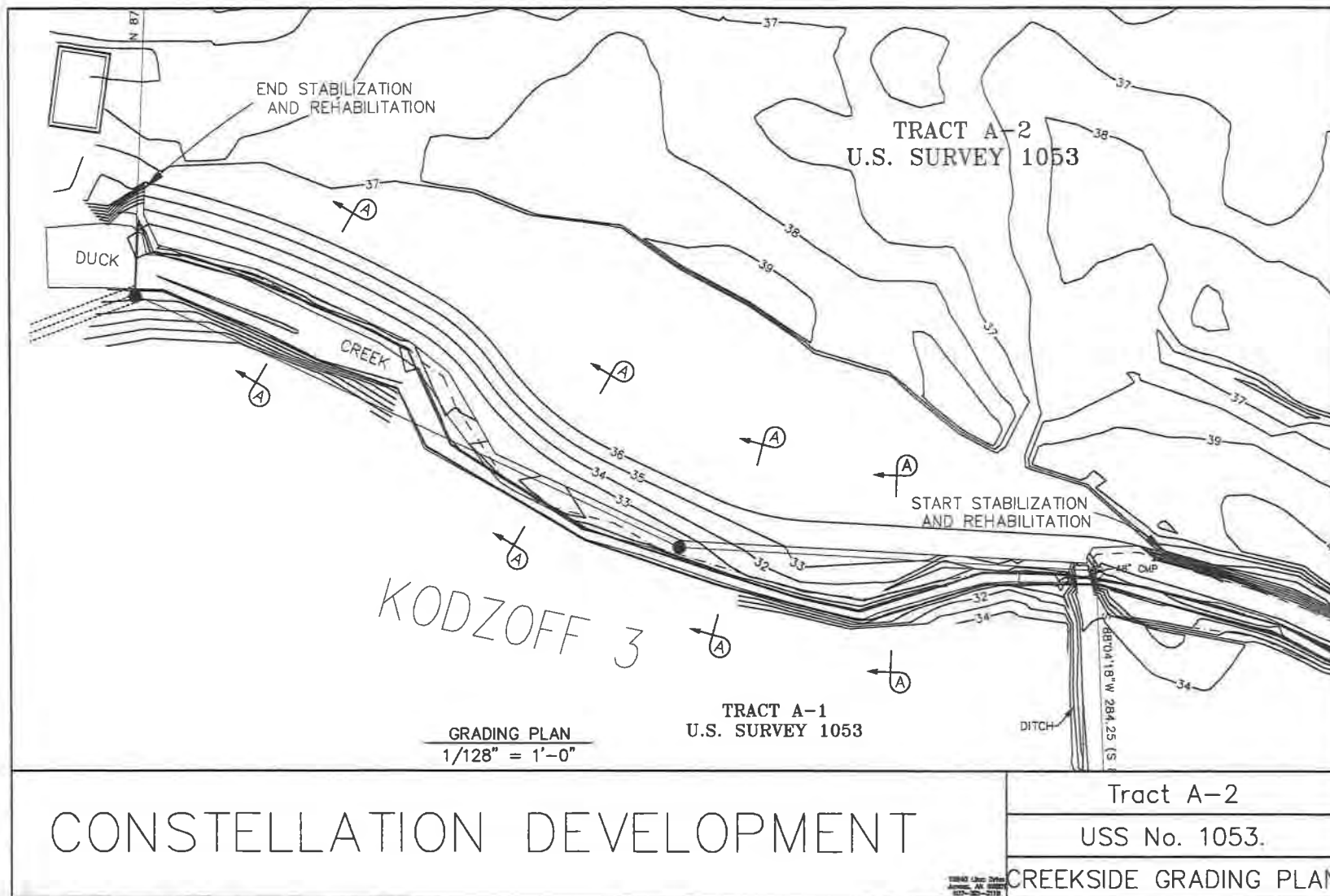
Section III:

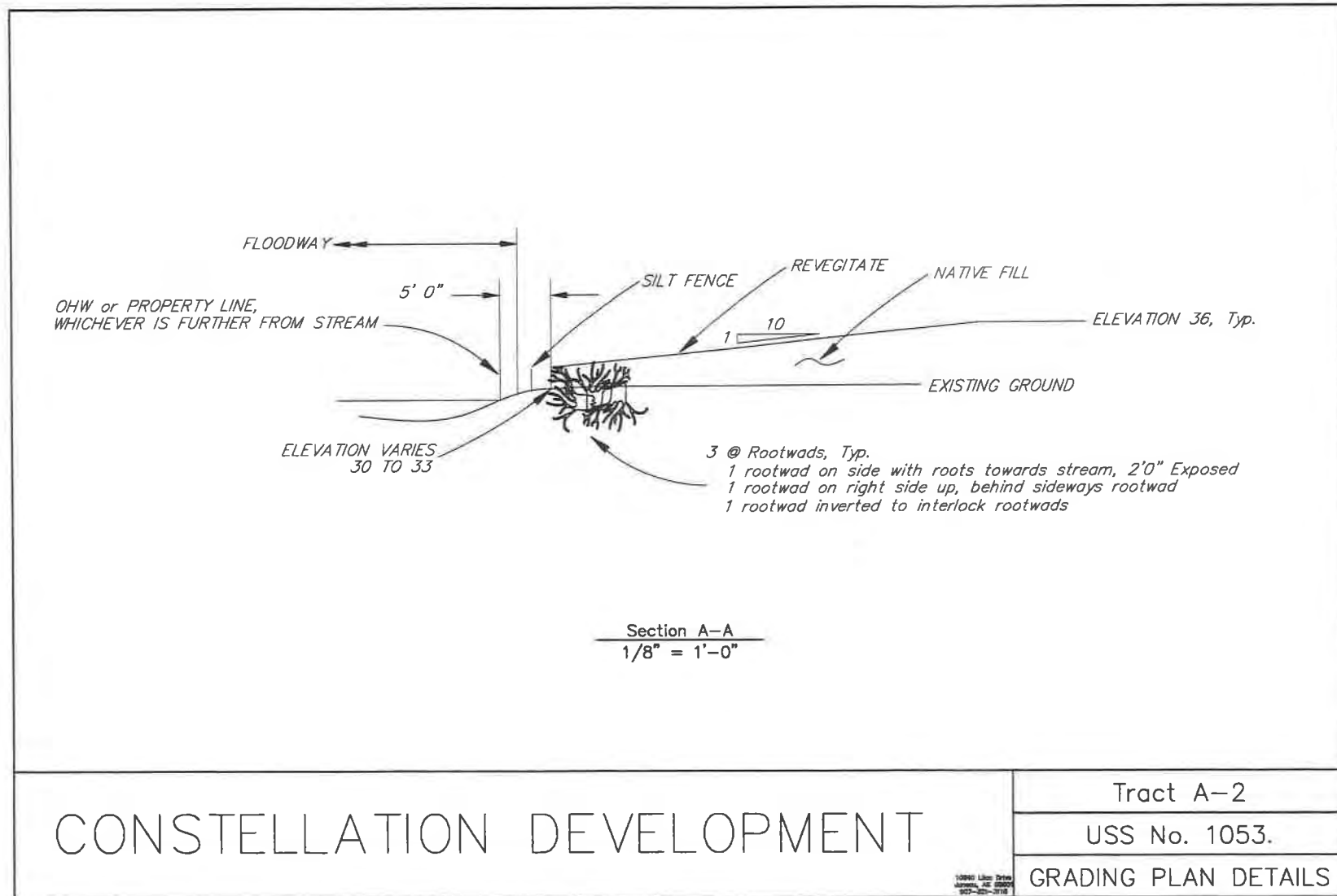
Has a grading plan been stapled to this checklist? (Note: See Grading Plan Requirements on the back of this page.)	YES	NO
If a driveway is to be constructed to a State of Alaska Department of Transportation right-of-way, attach a copy of the ADOT driveway permit. (Note: Glacier Highway, Mendenhall Loop Road, and other major arterial roads in the CBJ are ADOT rights-of-way.) Are ADOT permits required and attached to this checklist?	YES	NO
If grading project will require a well or on-site sanitary sewer disposal, permits from the State of Alaska Department of Environmental Conservation are required. Are ADEC permits required and attached to this checklist?	YES	NO
CBJ Land Use Code may require a Conditional Use Permit be issued by the Planning Commission for Sand and Gravel Extraction. Please respond to the following questions in order to determine if the extraction is exempt from a planning permit.		
Is the extraction a necessary incident to work authorized under a valid building permit for a proposed permitted use?	YES	NO
Has a building permit been issued for the proposed permitted use?	YES	NO
Is the extraction a necessary incident to improvements which are part of an approved subdivision plat?	YES	NO
If associated with subdivision improvement, will the material excavated remain entirely on the property or original tract or parcel subdivided?	YES	NO
Is the extraction less than two feet in depth and not creating a slope greater than five feet in height or steeper than one and one-half horizontal to one vertical?	YES	NO
Does the extraction involve the removal of less than two hundred cubic yards from the lot?	YES	NO
Is the extraction a necessary incident to the location or placement of work located primarily in the public way which is exempt from the building code?	YES	NO
Is the extraction for cemetery graves, excavations for wells or tunnels, utilities or exploratory excavation totaling less than two hundred cubic yards?	YES	NO

A NO answer to one or more of the questions A through H above may indicate that a Conditional Use Permit is required.

⇒ **See Example Grading Plan. Required features are shown on example plan by encircled letters which correspond to the above list.**

1. All grading must conform with CBJ Title 19.12, Excavation and Grading. (Note: Grading activity shall comply with grading setbacks.)
2. Prior to placing fill, all organic material and overburden must be removed.
3. Stumps shall be disposed of in an approved manner.
4. If fill or excavation has the potential to endanger adjoining property, the Building Official may require a soils engineering report.
5. If drainage is modified, the site plan must show no additional drainage impact on adjoining properties.
6. All retaining walls shall be shown on the grading plan, and with a detail which shows the wall's construction. Walls four feet in height or greater must be designed by a professional engineer licensed in the State of Alaska.
7. Some projects on steep slopes will require a HILLSIDE DEVELOPMENT PERMIT as defined in section 49.70 of the municipal code. For information, contact the CBJ Community Development Department at 586-0770.
8. Fills placed on existing slopes between 5:1 and 2:1 shall be benched to minimize slippage.
9. Fills placed on slopes steeper than 2:1 must be placed in accordance with an approved soil engineer's or geologists plan or report.
10. Fills to be used to support structures must be placed in accordance with an approved plan and soils report prepared and submitted by a civil or soils engineer licensed in the State of Alaska.





KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

March 8, 2021

Via email at: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: THLH - Logging, Stump Disposal, Grading
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road – 5B2101030001

Dear Ms. Maclean:

We have previously discussed our concerns regarding improper waiver of CBJ stream protection laws for TDLH development project including logging, stump removal and fill and grading to acquire more developable uplands within the Duck Creek floodplain and stream buffers. After further review of documents finally provided to us last week, we learned that the initial request for this work was submitted on January 20, 2021 in a brief email from Travis Arndt to staff following some prior conversation and discussion. The next day staff determined on its own initiative that all requirements of CBJ 49.70.310 would be waived without a variance based on their "code interpretation". Respectfully, their "code interpretation" was flat wrong.

A variance is required. It is the only legal procedure for TDLH to avoid the mandatory prohibitions in CBJ 49.70.310, which provide in pertinent part:

(a) Development in the following areas is prohibited:

* * * *

Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update;

00023

There is no staff level interpretive exception. There is nothing to interpret. A variance pursuant to CBJ 49.20.200 - .270. is the only legal procedure for an applicant to seek a waiver.

Intra-office communication shows that staff relied on a misinterpretation of an unrelated coastal zone habitat provision, specifically CBJ 49.70.950 (f). This is a quote:

"Further, my code interpretation is that this work meets the stream setback exception language in CBJ 49.70.950(f) as a use that *must be in or adjacent to a stream or lake in order to function.*" A variance would not be required.

There are at least two reasons this "code interpretation" is wrong. First, CBJ 49.70.950(f) by its terms is not an exception to the requirements of CBJ 49.70.310. Second, this exception language was pulled out of context and clearly does not apply.

CBJ 49.70.950 (f), part of Article IX, Coastal Management, reads in full as follows.

(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. (Emphasis added)

This is a separate and independent stream setback rule limited to "*structures and foundations*" in the coastal zone. It simply does not apply to the separate prohibitions in CBJ 49.70.310. Logging, grubbing and on-site disposal of tree stumps and organic overburden and grading – which are certainly not "*structures or foundations*". Even if an applicant describes the work of grading and fill on this parcel along its entire 800 foot boundary with Duck Creek work under the guise of "stream bank stabilization", it is still not a "*structure or foundation*" necessary "for mining, fish culture, water supply intakes or similar uses...." Further, even if an applicant were to clearly demonstrate a need for "stream bank stabilization" in some precise and carefully delineated section of Duck Creek, the proper procedure is to request a variance to do the work.

The variance procedure serves many critical purposes. It avoids any appearance of impropriety by staff and public officials. It provides specific legal standards to be applied to decision-making to avoid the arbitrary decisions. It protects the due process rights of adjacent property owners, including Kodzoff Acres and all of the 21 leasehold homeowners whose lots back on this section of Duck Creek, as well as the public. It requires specific notice. It provides

for a public hearing and an opportunity to be heard. It informs other government agencies with an interest or parallel legal responsibility for pending action. It allows for conditions or limitations to be imposed when needed. CBJ 49.20.230-.260. There was simply no justification for violating our due process rights in this matter.

At this point, all TDLH activities in violation of CBJ 49.70.310 are illegal. We suggest you discuss this issue with the City Attorney and forthwith withdraw BLDG20210039 as imprudently issued. Please instruct TDLH to immediately halt any development activities prohibited by CBJ 49.70.310. In the meantime, it is important to note, based on our review of the documents you provided, TDLH has not provided CBJ personnel with its stamped survey of the precise location of the "banks" of Duck Creek for field check and review and approval by CBJ or ADFG personnel.

We are available to discuss this matter at your convenience. The City Attorney may contact me by cell phone at: 907 723 5154 or return email.

Best regards

KODZOFF ACRES, LLC



Charles W. Cohen

From: Chuck Cohen kodzoff@alaskan.com
Subject: Illegal Timber Harvest - US Survey 1053, Tract A-2
Date: April 3, 2021 at 1:01 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: Palmer Robert Robert.Palmer@juneau.org

Enclosed is a letter concerning continuing illegal timber harvesting on the above referenced parcel.

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

April 3, 2021

Via email: jill.maclean@juneau.org and USPS mail to:

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: Timber Harvest - US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001

Dear Ms. Maclean:

On March 10, 2021, we were informed effective Monday March 8, 2021, Permit BLDG 20210039, previously issued to TDLH, LLC, has been revoked. In the meantime, full on timber harvesting continues on this parcel without any public notice or valid CBU permit.

The affected parcel is approximately 20 acres zoned D-15. According to the Table of Permissible Uses, "timber harvesting" on this parcel is not a permissible use and, absent a variance, is illegal. No development permit has been issued or even applied for so this timber harvesting is not in conjunction with any approved land development plan. Please advise.

Best regards,

KODZOFF ACRES, LLC

Charles W Cohen

00026

copy

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

April 13, 2021

Via email: katie.koester@juneau.org and USPS mail to:

Katie Koester, Director
City & Borough of Juneau
Department Engineering & Public Works
155 So. Seward Street
Juneau, Alaska 99801

TDLH, LLC Building "Grading" Permit Application
BLDG 2021-0128
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001

Dear Ms. Koester:

This letter will confirm our brief telephone conversation yesterday. Our call followed shortly after an earlier Zoom meeting yesterday with Ms. Maclean and Mr. Palmer. During that meeting we were informed your department would be primarily responsible for review and approval of the above noted permit for grading. We have a number of concerns.

On March 10, 2021, we were informed effective Monday March 8, 2021, Permit BLDG 20210039, previously issued to TDLH, LLC, has been revoked. In the meantime, timber harvesting and stump grubbing has continued on this parcel without any public notice or valid CBJ permit.

The affected parcel is approximately 20 acres zoned D-15. According to the Table of Permissible Uses, "timber harvesting" on this parcel is not a permissible use and, absent Planning Commission approval, is illegal. No lawful land development permit has been issued so ongoing timber harvest and stump grubbing is not in conjunction with any approved land development plan. This work has already destroyed all of the natural trees in the habitat of Duck Creek as it borders this parcel. Now, not later, is the legal and prudent time for the

Planning Commission to consider and evaluate the best way forward.

We do not believe any grading permit may be legally issued for this parcel prior to a Planning Commission approved overall land use site development plan and permit. The CBJ Development Code is clear: if a land use activity or development activity is not specifically authorized it is illegal. The reason is each of the permissible types of development or land use activities specified in the code, ie. a subdivision, PUD, cottage housing, etc. have enumerated requirements which cannot be applied or enforced retrospectively. There is no specific development category in the code for "harvesting timber, grubbing stumps, removing all the natural organic cover and then grading in preparation for sale or an unspecified future development". A land owner in Juneau does not have that right or privilege. Our land use, zoning and development rules are designed as a compromise between various land owners and the general public. As adjacent property owners' we have rights too. We expect the CBJ planning, zoning and building permit rules to be strictly enforced.

It is simply impossible in good faith to apply the CBJ grading code to a 20 acre parcel without knowing in advance what is planned for the site. One simple but certainly not the only example is CBJ 19.12.120 regarding erosion control. It provides that "all grading, excavation, and removal or destruction of natural top soil, trees or other natural vegetation shall conform to an erosion and sedimentation plan" . . . "as well as the following":

1. The smallest practical area of land should be exposed at any one time during development.
2. When land is exposed during development, the exposure should be kept to the shortest practical period of time.
3. Sediment and other pollutants, including but not limited to oil, grease, nutrients, bacteria and heavy metals generated by development activity, should be removed from stormwater runoff waters and from land undergoing development, by means of appropriate water quality control

measures, before the runoff waters are permitted to be discharged into natural streams, lakes or other approved drainages.

4. Wherever feasible, natural vegetation should be retained and protected.

5. Ground cover should be replaced as soon as practical in the development.

6. The development plan should be fitted to the topography and soil conditions to create the least erosion potential.

7. Provisions should be made to effectively accommodate the increased runoff and pollutant loads caused by changed soil and surface conditions after development. Such provisions to include both stormwater and water quality control measures.

We have just received a copy of the "grading permit" application and have barely had time to review it. However, several immediately obvious questions come to mind as follows:

1. Where is the legal access to the site?
2. What is the precise scope of the grading on this lot?
3. Has a sand and gravel permit been applied for or approved.
4. What is the proposed, permitted use?
5. When will that work commence or be completed?
6. What will be the final grading of the entire parcel following this proposed work is completed?
7. Has a stormwater and erosion - drainage plan been submitted? Please provide a copy if it has been submitted.
8. What is the approved subdivision plat this work is incident to as referenced in the application?

9. What are the details of the subdivision referenced in the application?
10. Why is grading for "bank stabilization" necessary at this time along a natural land feature which has been present on the site for at least 80 to 100 years?
11. How will the proposed "grading" affect the Duck Creek watercourse?
12. How were the 500 CY excavation and fill quantities calculated? We believe these values are a serious under estimates.
13. Since the excavated material includes tree stumps, where is the disposal site?
14. Has a permit been obtained for disposal at this site?
15. What percentage of natural vegetation will remain after grading?
16. Is on-site tree stump disposable and organic overburden removal and relocation a permissible purpose to justify a grading permit?

We expect may more questions will be raised once we have a chance to review this entire file. In the meantime, it would appear, based on the current ongoing unpermitted work, many questions need to be answered.

We believe it would be most helpful to have a meeting with yourself, Mr. Palmer and any appropriate other folks before this matter is allow to move forward further through the CDD and related Engineering and Public Works department permitting process. We are available anytime at your convenience. Please advise.

Best regards,

KODZOFF ACRES, LLC

Charles W Cohen
Kathryn A. Cohen

CC: Robert Palmer

copy

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

April 14, 2021

Via email: jill.maclean@juneau.org and USPS mail to:

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH Building "grading" Permit BLD20210128
US Survey 1053, Tract A-2 -Floodplain Permit
3101 Mendenhall Loop Road - 5B2101030001

Dear Ms. Maclean:

This letter is in reference to the TDLH, LLC application for a Building "grading" Permit, BLD20210128 together with a Grading Permit Checklist, and various supporting sketches of the planned work. We just received this material together with some CDD staff inter-office memos April 12, 2021, and although we have not had adequate time to review it in detail, we have several concerns. During our recent Zoom meeting you informed us that you intended to "issue" this "grading permit" forthwith. It appears to us CDD is in a hurry to repeat the same mistake twice.

On February 14, 2021, the day we first learned about timber harvest in the Duck Creek watercourse, we sent you an email with a picture describing the problem. (Copy enclosed) What followed was a month-long and unnecessary delay until March 8, 2021, when the original "grading permit" - BLD20210039 was revoked. In the meantime, most all of the timber and natural protective stream cover of the Duck Creek watercourse adjacent to this 20-acre parcel was irreversibly destroyed.

During our Zoom meeting we suggested more time was needed for prudent consideration of serious issues related to this development. In particular we noted the need for the applicant to apply for and receive a floodplain permit pursuant to CBJ 49.70.400(h). Ms. Camery, your staff FEMA coordinator, concurred with our position. (Copy of 3/31/2021 email enclosed)

00081

She also noted areas where the proposed development would violate CBJ 49.70.310. Even the more revised April 9, 2021, TDLH plan sketch shows potential encroachments into the Duck Creek waterway which violate both CBJ 49.70.310 and 49.70.400.

Yesterday we sent you a copy of a recorded stamped survey of this parcel, Tract A-2, US Survey 1053. It contains a detailed delineation of the OHW of Duck Creek and accurate surveyed topography of the entire parcel. We have marked two areas of particular concern which require further evaluation. (Copy enclosed) You have also been provided with the opinion of ADF&G regarding the OHW of Duck Creek. The information supplied by TDLH regarding the OHW of Duck Creek, specifically at the north and south extremes of its proposed development work, is grossly inaccurate. We are not aware TDLH has provided any calculations or samples in support of its 500 CY fill quantity or quality. We have not been provided any CBJ survey or survey data regarding the location of the OHW of Duck Creek which should inform your final determination on this critical disputed issue.

In the simplest terms, TDLH, LLC is proposing to build an 800 foot long, 3 to 6 foot high retaining wall constructed of tree stumps and timber waste, and then cover and backfill various portions of the floodplain and lower natural grade with timber debris and organic overburden in direct violation of CBJ 19.12.010-.150; and 49.70.400(d)(6);(e)(5)-(7);(f)(2)-(3);and (h)(1)-(2). The location, quality and quantity of this proposed fill is grossly misrepresented in the TDLH, LLC "grading permit" diagrams and checklist. Issuance of any such permit under such circumstances would be illegal.

We believe there are responsible ways forward. We are prepared to work with CBJ to develop workable solutions. In the balance is further irreparable harm to the Duck Creek watercourse, a valuable public resource, and increase flooding risks to adjacent developed residential private property.

Best regards,
KODZOFF ACRES, LLC

Charles W Cohen
Kathryn A. Cohen

CC: Robert Palmer

From: Teri Camery Teri.Camery@juneau.org 
Subject: FW: T. Arndt new grading permit
Date: March 31, 2021 at 2:18 PM
To: Irene Gallion Irene.Gallion@juneau.org

Teri Camery | Senior Planner, CFM

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0755



From: Jill Maclean <Jill.Maclean@juneau.org>
Sent: Wednesday, March 31, 2021 2:19 PM
To: Teri Camery <Teri.Camery@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

From: Teri Camery <Teri.Camery@juneau.org>
Sent: Wednesday, March 31, 2021 2:15 PM
To: Jill Maclean <Jill.Maclean@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

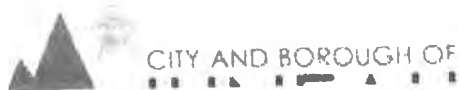
Thanks Jill. It would be the planner that took it in, except when I am specifically assigned to the case like with Lemon Creek gravel extraction, etc.

Teri Camery | Senior Planner, CFM

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0755



000J3



From: Jill Maclean <Jill.Maclean@juneau.org>
Sent: Wednesday, March 31, 2021 2:10 PM
To: Teri Camery <Teri.Camery@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

Thanks for reviewing this quickly. Do you typically fill out the permit, or does the planner that took it in (in this case Irene)?

Jill

From: Teri Camery <Teri.Camery@juneau.org>
Sent: Wednesday, March 31, 2021 1:44 PM
To: Jill Maclean <Jill.Maclean@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

Hello Jill,

I have reviewed the proposed grading permit. Mr. Arndt's drawings indicate several points of grading that are between .5 feet and 2 feet into the required 50 foot setback. CBJ Code 49.70.310 prohibits development within 50 feet of an anadromous stream, and CBJ's definition of development includes grading. So the development cannot be approved without an approved variance.

In addition, Mr. Arndt's drawings show that the proposed grading is not within the FEMA-mapped floodway, so a no-rise certification would not be required. However the development does include fill within a small area of the blue AE floodzone. This does not raise concerns, however a Floodplain Development Permit would be required per CBJ Code 49.70.400(h).

I have placed the grading permit materials on the circular desk in

00034

your office. Please let me know if you need anything else.

Teri

Teri Camery | Senior Planner, CFM

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0755



From: Jill Maclean <Jill.Maclean@juneau.org>

Sent: Tuesday, March 30, 2021 12:45 PM

To: Teri Camery <Teri.Camery@juneau.org>

Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>; Irene Gallion <Irene.Gallion@juneau.org>

Subject: FW: T. Arndt new grading permit

Hi Teri,

I wanted to see the grading permit to see what's being proposed, and then review it prior to issuance to make sure the applicable code is being applied. Please conduct the usual stream setback / floodplain review for the grading permit and provide the analysis to Alix and I, and we'll review it prior to issuing the permit.

Thanks,

Jill

From: Irene Gallion <Irene.Gallion@juneau.org>

Sent: Tuesday, March 30, 2021 11:27 AM

To: Jill Maclean <Jill.Maclean@juneau.org>

Subject: FW: T. Arndt new grading permit

BLD2021 0128

Per Teri's message below, I'm forwarding this to you for review. I'm putting some handy documents in your box that give you some idea of special elements, I think.

Will a no-rise be required?

00035

Will a flood plain certificate be required?

Thanks,

IMG

From: Teri Camery <Teri.Camery@juneau.org>
Sent: Tuesday, March 30, 2021 11:16 AM
To: Irene Gallion <Irene.Gallion@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

I'll pass this on to Jill, thanks.

Teri Camery | Senior Planner, CFM
Community Development Department | City & Borough of Juneau, AK
Location: 230 S. Franklin Street, 4th Floor Marine View Building
Office: 907.586.0755



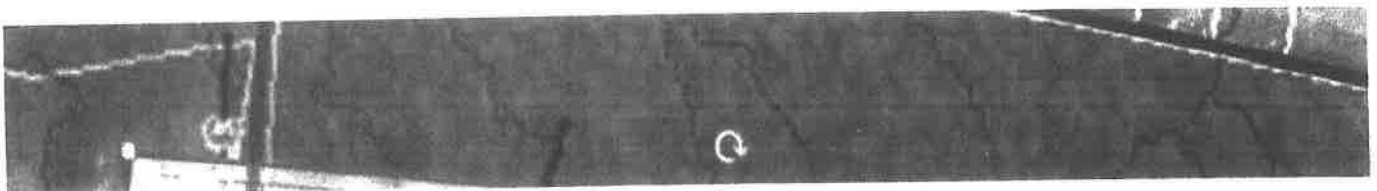
From: Irene Gallion <Irene.Gallion@juneau.org>
Sent: Tuesday, March 30, 2021 11:09 AM
To: Teri Camery <Teri.Camery@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: T. Arndt new grading permit

Will a no-rise be required?

Will a flood plain certificate be required?

I'd like to let Jill know.

Here is his plan superimposed on our flood plain maps. The green is proposed fill.



00036



From: Teri Camery <Teri.Camery@juneau.org>
Sent: Tuesday, March 30, 2021 11:04 AM
To: Irene Gallion <Irene.Gallion@juneau.org>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: FW: T. Arndt new grading permit
Importance: High

Hi Irene,

I got your phone message, thanks. Sounds like the grading permit needs to go straight to Jill, per her message below.

Teri Camery | Senior Planner, CFM
Community Development Department | City & Borough of Juneau, AK
Location: 230 S. Franklin Street, 4th Floor Marine View Building
Office: 907.586.0755



From: Jill Maclean <Jill.Maclean@juneau.org>
Sent: Tuesday, March 30, 2021 10:58 AM
To: Autumn Sapp <Autumn.Sapp@juneau.org>; Mark Millay <Mark.Millay@juneau.org>; Edward Quinto <Edward.Quinto@juneau.org>; Teri Camery <Teri.Camery@juneau.org>
Cc: Charlie Ford <Charlie.Ford@juneau.org>; Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: T. Arndt new grading permit
Importance: High

Hi,

Please let me review the grading permit that Travis Arndt has submitted. We need to confirm that he's using the applicable setback.

Thanks,

Jill M. Maclean, AICP | Director
Community Development Department | City & Borough of Juneau, AK
Location: 230 S. Franklin Street, 4th Floor Marine View Building
Office: 907.586.0757



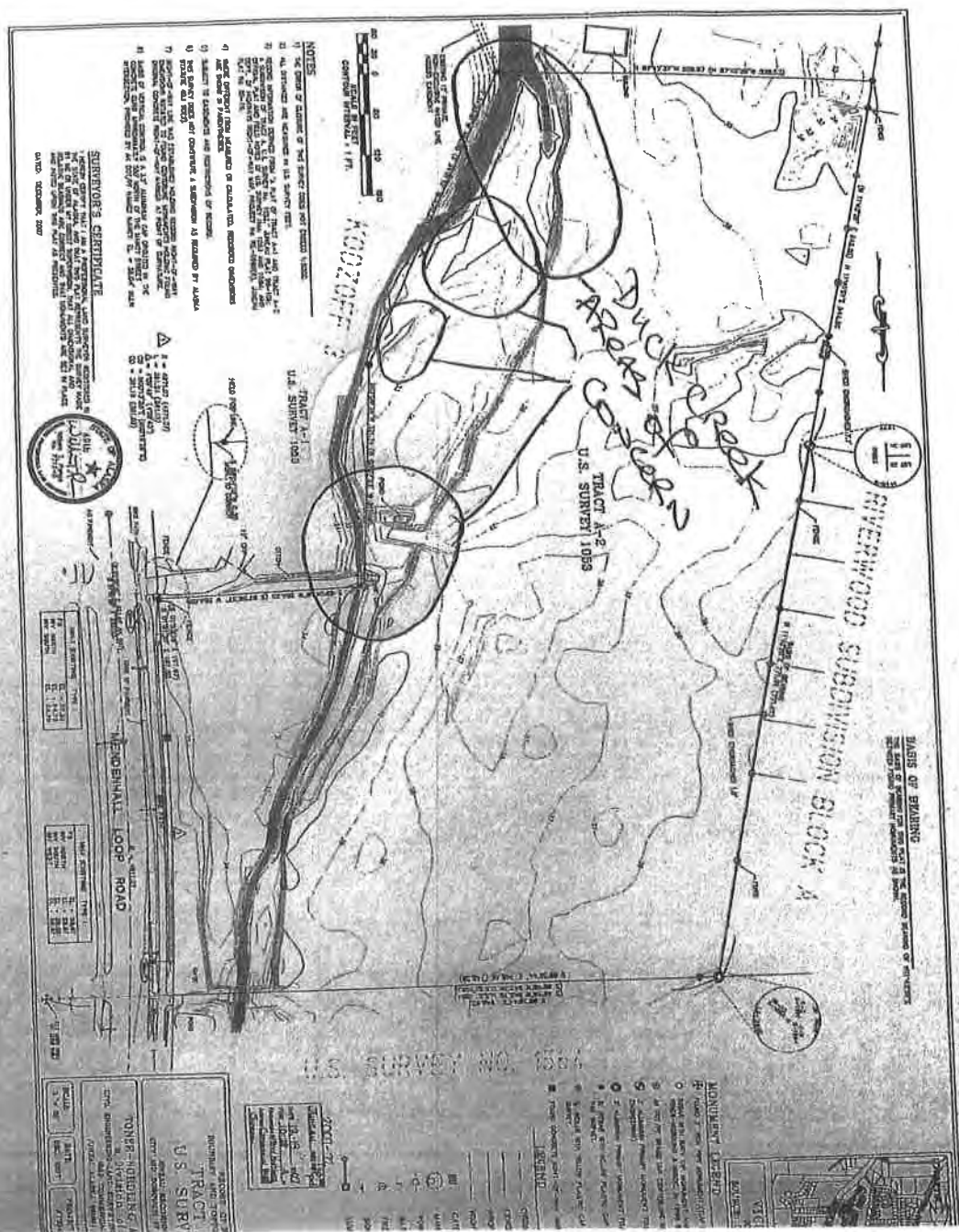
Fostering excellence in development for this generation and the next.

00038

From: Chuck Cohen kodzoff@alaskan.com
 Subject: Survey
 Date: April 14, 2021 at 10:50 AM
 To: Cohen Chuck kodzoff@alaskan.com

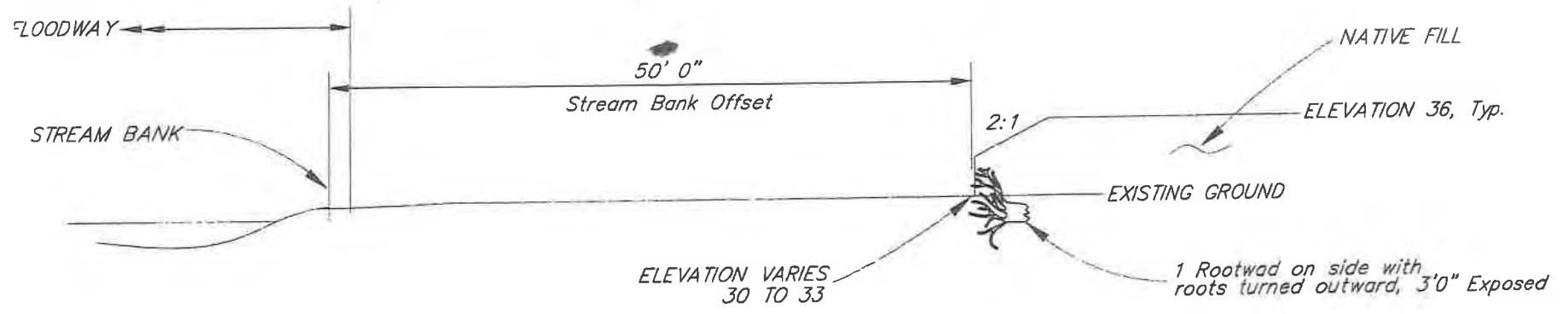
101-2007-2007-72.TIF 14,384x8,222 pixels

http://dnr.alaska.gov/recorded-Plats/Phase2Plats/101-Juneau/2007/101-2007-2007-72.TIF



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Section A-A
1/8" = 1'-0"

RECEIVED
APR 09 2021
PERMIT UNIT

BLD 2021 - 0128

CONSTELLATION DEVELOPMENT

10540 Linn Drive
Jensen, AK 99601
907-321-3118

Tract A-2
USS No. 1053.
GRADING PLAN DETAILS

MEMORANDUM**State of Alaska**Department of Fish and Game
Habitat SectionTO: Kate Kanouse
Southeast Regional Supervisor

DATE: March 11, 2021

FILE: 58.3802 N, 134.5780 W

SUBJECT: 2021 Duck Creek Land
Development Trip ReportFROM: Greg Albrecht *GA*
Habitat Biologist

PHONE NO: (907) 465-6384

On June 18, 2018, I met with Mr. Travis Arndt at Duck Creek^a who had recently acquired adjoining land and was interested in making fish habitat improvements and other modifications to the creek.^b

On March 4, 2021, I was contacted by Mr. Chuck Cohen, an adjacent property owner, concerned about tree removal and fill below the ordinary high water line.^c On March 5, 2021, I visited Duck Creek downstream of Cinema Drive, where a subcontractor was clearing trees on behalf of Mr. Arndt in preparation to construct an 800 ft long bank of root wads and soil that would be at least 3–5 ft back from the ordinary high water line on the west side of the creek (Figure 1). Mr. Arndt and I walked the line of stakes delimiting the filter fabric, behind which root wads, stumps, and earth would be placed. The majority of the staked line was upland of the ordinary high water mark within established conifers (Figures 2, 3); however, we encountered two areas where backwatering during ordinary high water stage would cross the line of the proposed bank and fill, as staked in the field. The first area was a depression about 10 ft wide by 20 ft long (Figure 4), the second area was about 20 ft wide at the mouth and opened into a larger area which was difficult to identify the exact ordinary high water line due to ice, snow, and downed timber (figure 5).

I informed Mr. Arndt that placing fill in these two locations requires a Fish Habitat Permit.

^a Stream No. 111-50-10500-2002, cataloged for pink, chum, and coho salmon, cutthroat trout, and Dolly Varden char.

^b Greg Albrecht, Habitat Biologist, to Jackie Timothy, Southeast Regional Supervisor, ADF&G Division of Habitat. Memorandum: Duck Creek Land Development Trip Report; dated 10/31/2018.

^c Mr. Arndt submitted an application to the Habitat Section to trench a utility line through Duck Creek, for which FH20-I-0033 was issued.

00042

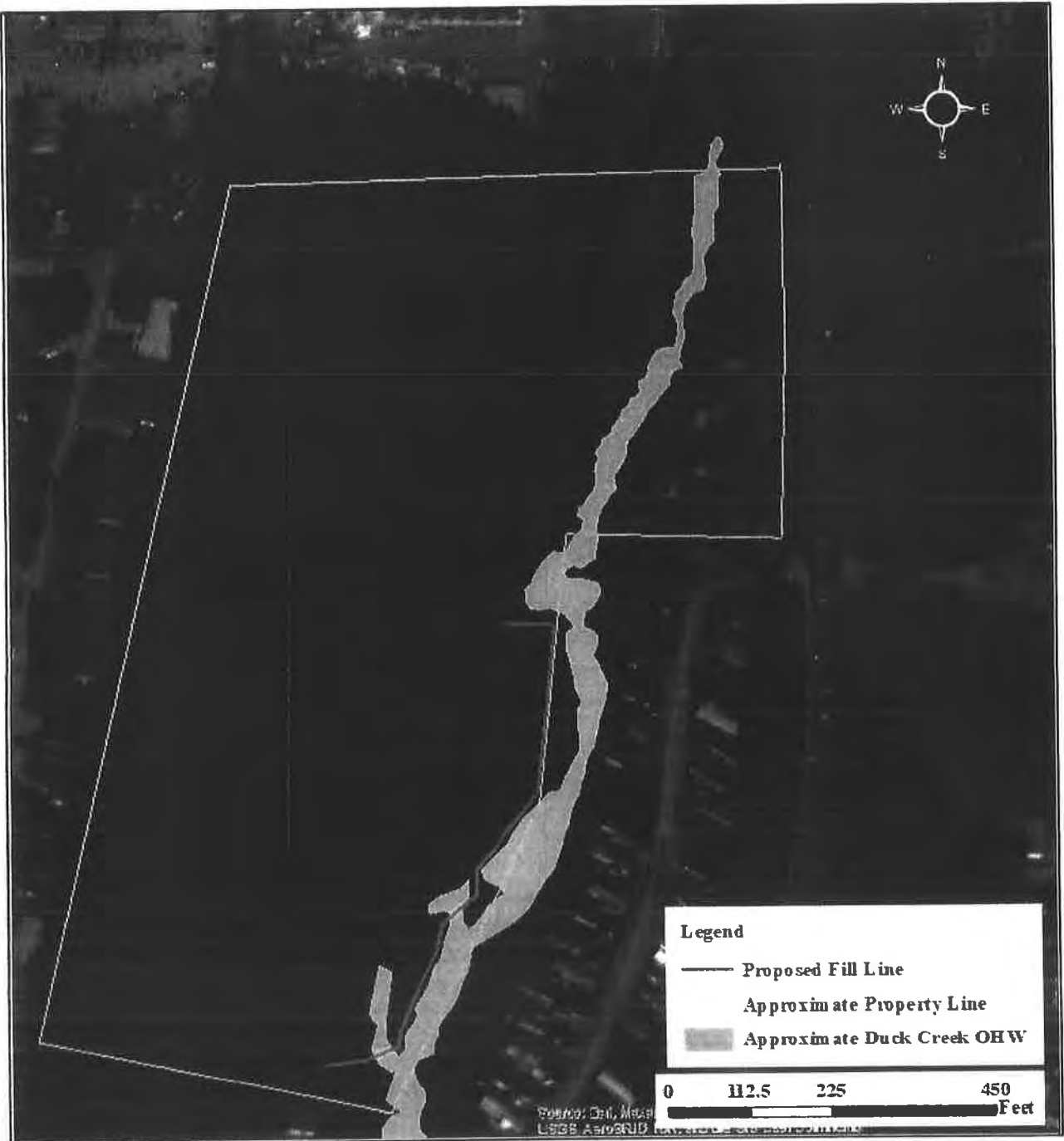


Figure 1.—Area map with approximate project features.

DUCK CREEK LAND DEVELOPMENT, INC.

3

MARCH 11, 2021



Figure 2.—Trees felled behind the proposed line staked in the field; Duck Creek on the left.



Figure 3.—Trees felled behind the line staked in the field above Duck Creek.

00044



Figure 4.—Area below the ordinary high water line (blue) and the field staked line (red), main channel is in the background.



Figure 5.— Area below the ordinary high water line (blue) and the field staked line (red), main channel is in the background.

DUCK CREEK LAND DEVELOPMENT, INC.

J

MARCH 11, 2021

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
ADF&G Habitat Staff, Douglas
Dan Teske, ADF&G SF, Douglas
David Harris, ADF&G CF, Douglas
Roy Churchwell, ADF&G WC, Douglas
Teri Camery, CBJ, Juneau
Jill Maclean, CBJ, Juneau
Travis Arndt, Constellation Development, Juneau
Chuck Cohen, Kodzoff Acres LLC, Juneau
Ben Soiseth, USACE, Soldotna
Doug Cooper, USFWS, Anchorage
Habitat Conservation Division, NMFS, Juneau

MEMORANDUM**State of Alaska**Department of Fish and Game
Habitat SectionTO: Kate Kanouse
Southeast Regional Supervisor

DATE: March 11, 2021

FILE: 58.3802 N, 134.5780 W

SUBJECT: 2021 Duck Creek Land
Development Trip ReportFROM: Greg Albrecht *GA*
Habitat Biologist

PHONE NO: (907) 465-6384

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^b Greg Albrecht, Habitat Biologist, to Jackie Timothy, Southeast Regional Supervisor, ADF&G Division of Habitat. Memorandum: Duck Creek Land Development Trip Report; dated 10/31/2018.

^c Mr. Arndt submitted an application to the Habitat Section to trench a utility line through Duck Creek, for which FH20-I-0033 was issued.



Figure 1.—Area map with approximate project features.



Figure 2.—Trees felled behind the proposed line staked in the field; Duck Creek on the left.



Figure 3.—Trees felled behind the line staked in the field above Duck Creek.



Figure 4.—Area below the ordinary high water line (blue) and the field staked line (red), main channel is in the background.



Figure 5.— Area below the ordinary high water line (blue) and the field staked line (red), main channel is in the background.

DUCK CREEK LAND DEVELOPMENT, INC.

MARCH 11, 2021

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
ADF&G Habitat Staff, Douglas
Dan Teske, ADF&G SF, Douglas
David Harris, ADF&G CF, Douglas
Roy Churchwell, ADF&G WC, Douglas
Teri Camery, CBJ, Juneau
Jill Maclean, CBJ, Juneau
Travis Arndt, Constellation Development, Juneau
Chuck Cohen, Kodzoff Acres LLC, Juneau
Ben Soiseth, USACE, Soldotna
Doug Cooper, USFWS, Anchorage
Habitat Conservation Division, NMFS, Juneau

00051

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Exhibit
E

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
9090 Cinema Drive - 5B2101320030
CBJ - VAR 2021 0004

Dear Ms. Maclean:

On March 10, 2021, we were informed that effective Monday March 8, 2021, Permit BLDG 20210039 authorizing similar work within the Duck Creek setbacks previously issued to TDLH, LLC, had been revoked and a stop work order issued. The stop work order is the subject of an administrative appeal which has been suspended by stipulation without our participation before we had an opportunity to file our request to intervene.

Thereafter, we had several constructive meetings to discuss going forward regarding Duck Creek storm drainage and flood plain issues as well as collaborative Duck Creek rehabilitation and possible stream realignment and channeling. Following those meetings, Kathryn and I thought you had committed to providing us with direct notice if any future permit requests were accepted by CBJ in connection with Duck Creek and adjacent development. Late last week we were quite surprised to first learn by a CBJ postcard that the above reference permit applications had been received and

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were scheduled for a hearing July 13, 2021. We are not certain whether you participated personally in this permit processing.

We immediately called CDD and received an email copy of Mr. Arndt's submission. (VAR 2021 0004) Today we reviewed CDD files and requested additional copies of relevant documents. Following our initial review, we have several procedural and substantive concerns with the work proposed. This letter will briefly deal with our procedural concerns.

CBJ 49.15.130 (b), which governs applications for all land use permits in general, provides: [an] application is complete when it contains all of the necessary information to determine if the development will comply with all of the requirements of the permit applied for." This variance application, by the admission of the applicant, is intentionally incomplete and, therefore, must be rejected. The proper approach is to require the applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work at the inception of the review process. Failure to do so constitutes "phased" permitting which is generally disfavored and likely illegal here.

Next, the public notice of hearing provided by CDD is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered at the hearing. The CDD notice here is for a variance to: "allow stream bank and stream restoration" of Duck Creek, nothing further. Describing what the applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: "A proposed roadway crossing and culvert system to serve access for the future major residential development". Or, "Large floodplain fill adjacent to 800 lineal feet of Duck Creek to expand uplands for future residential development". After the applicant has just destroyed the natural habitat of Duck Creek on its western bank beyond any possible restoration benefit which might occur in the future, to describe this request for a variance as "stream restoration" seems disingenuous and misleading. We are uncertain how this classification of the work was made, whether by the applicant or CDD but it is, nonetheless, incomplete and misleading for a public notice.

Processing and conducting a public notice and hearing on a request for a non-administrative variance in advance of CDD obtaining from the applicant and providing to the public all the details of the work to be authorized compounds the problem. CBJ 49.25.250(b) states that a variance may only be approved as a narrow exception to address specific development hardship not

00053

created by the applicant and that cannot otherwise be accommodated. Here applicant's request is for a "blanket" variance. The application states details would require: "significant expenditure, time and agency coordination and detailed design will be completed after issuance of the variance." This is improper.

A comment period and public hearing before CDD administrative review of other related permits denies to the Board of Adjustment information vital to a reasoned adjudication. It is like asking a judge to render a verdict before hearing the evidence. Any Board of Adjustment decision under such circumstances would be arbitrary and capricious simply because it cannot possibly be narrowly drawn. Moreover, the public and affected adjacent property owners such as ourselves are denied due process. In order to meet due process standards, the public must be provided a reasonable opportunity to comment on the details of the proposed design for the work before the Board of Adjustment adjudicates the variance issue.

Since CDD and GE review of a grading permit or a floodplain permit would not require public notice and comment or even a notice of decision, an aggrieved adjacent property owner such as ourselves has no way of knowing when to file a timely appeal. This creates a confusing and unspecified procedural process where the public has no idea how or when the CDD decision-making will occur or if, in fact, it has occurred. Such a procedure is, on its face, a denial of procedural due process. It is precisely the reason we did not learn about the applicant's original plan to harvest timber and regrade fill into the floodplain until after the project was well underway. (BLD2021 0039) The permitting occurred without any notice to adjacent property owners, other government agencies or adjacent riparian property owners. That really was a big but avoidable mistake so why repeat it?

Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

00054

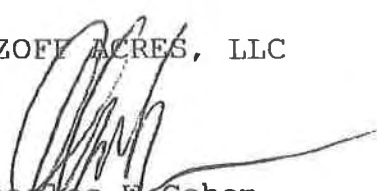
A Major Development permit process is the intended vehicle to manage the complex multi-CBJ-permit as well as multi-State and Federal agency permitting process for a large tract development. This applicant's phased permitting on these two adjacent lots started with a condo project. It was followed with a gym. Next was an illegal violation of CBJ 49.70.310 twice: the water line across Duck Creek to the gym; and, illegal logging which was also a zoning violation. In the meantime, before CDD issued its Stop Work order, all of the mature trees and ground cover which was intended to be protected by CBJ 49.70.310 had been destroyed. So much for protecting an impaired urban stream.

Now the applicant has proposed a set of related permits to: authorize stream habitat destruction to narrow and channel the watercourse and generate more developable uplands (ironically called stream restoration); a stream crossing for access before any specific residential development is proposed on the other side; removal of all remaining mature tree stumps and vegetative cover to regrade the entire parcel to reverse the natural westerly surface storm-water drainage and direct it toward Duck Creek; and a massive project to fill most of the floodplain adjacent to Duck Creek to generate more developable uplands (again, ironically called stream rehabilitation) It is about time CDD treat this series of permit requests as a major development and stop the illegal phased permitting process.

We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen
Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

From: Chuck Cohen kodzoff@alaskan.com
Subject: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)
Date: June 30, 2021 at 12:23 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: Palmer Robert Robert.Palmer@juneau.org, Koester Katie katie.koester@juneau.org

Jill:

Attached is a letter detailing our concerns regarding procedure for the pending variance application.

Best regards,

Chuck & Kathryn



Premature
Applica...e.docx

00056

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

July 1, 2021

City & Borough of Juneau
Planning Commission
155 So. Seward Street
Juneau, Alaska 99801

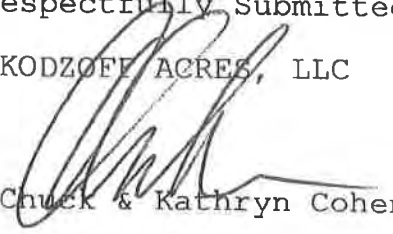
RE: Appeal of Director's Decision
APL2021 0003
Initial Memorandum in Support of Appeal

Dear Commission Members:

Yesterday we sent the enclosed letter to Director Jill Maclean requesting she reconsider and reverse decisions which gave rise to this appeal, and cancel and re-notice the variance hearing scheduled for the Board of Adjustment set for July 13, 2021. Enclosed is a copy of our letter. Against the possibility the director declines to honor our request, this letter is submitted to the Planning Commission as our initial memorandum in support of our appeal.

Respectfully Submitted,

KODZOFF ACRES, LLC



Chuck & Kathryn Cohen

Enclosure (1):

Letter Dated June 30, 2021
Kodzoff Acres, LLC to Director Jill Maclean

00057

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission

Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:



An application has been submitted for consideration and public hearing by the Planning Commission for a **Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1)** to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek at 3101 Mendenhall Loop Road & 9090 Cinema Drive in a D15 Zone.

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Laurel Christian, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

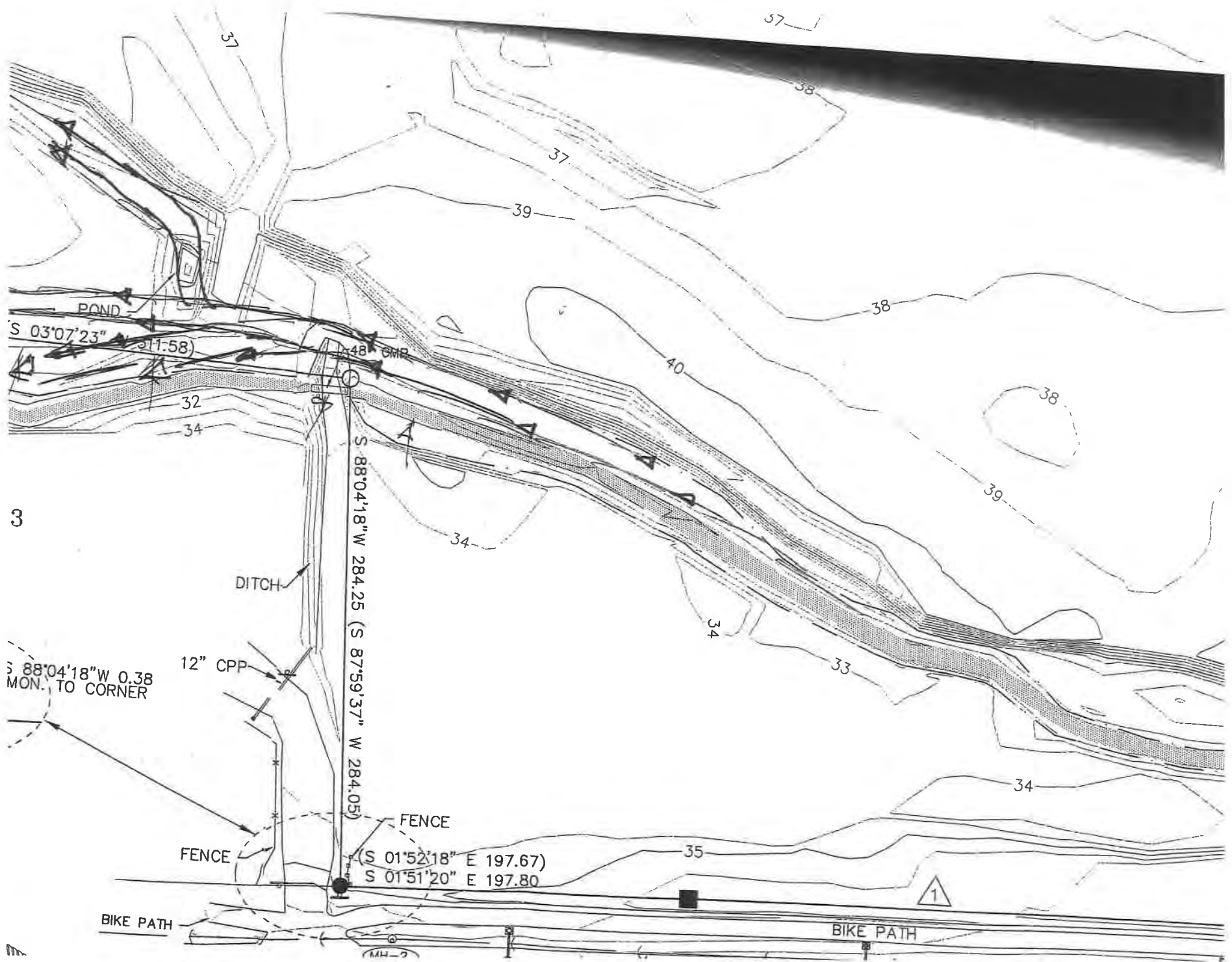
The results of the hearing will be posted online.

00059

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed: June 18, 2021

Case No.: VAR2021 0004
Parcel No.: 5B2101030001 & 5B2101320030
CBJ Parcel Viewer: <http://epv.juneau.org>



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit

00062



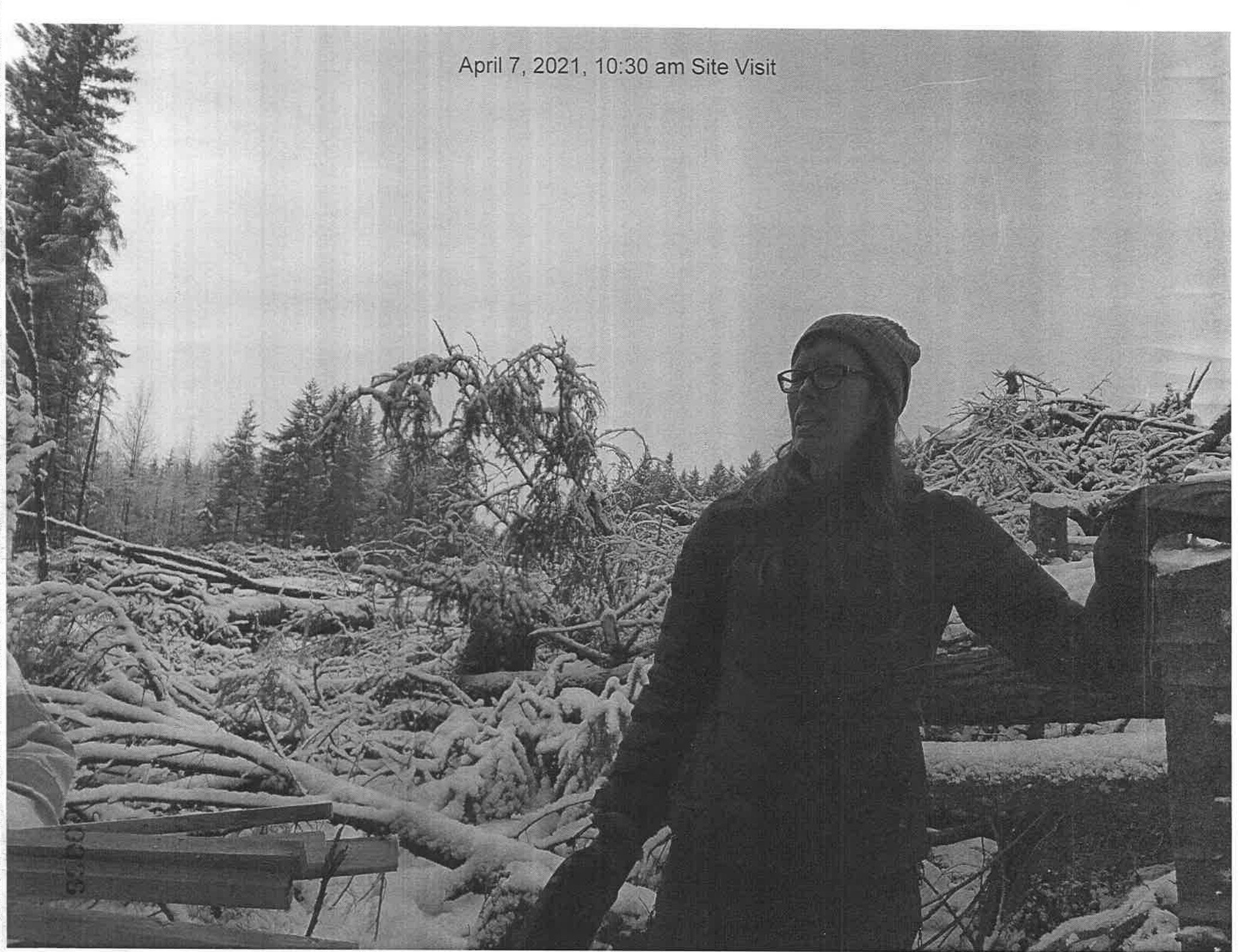
April 7, 2021, 10:30 am Site Visit



April 7, 2021 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



00038

April 7, 2021, 10:30 am Site Visit



00079

April 7, 2021, 10:30 am Site Visit



00069

April 7, 2021, 10:30 am Site Visit



00071

April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



00073

April 7, 2021, 10:30 am Site Visit



00074

April 27, 2021 10:30 am Site Visit

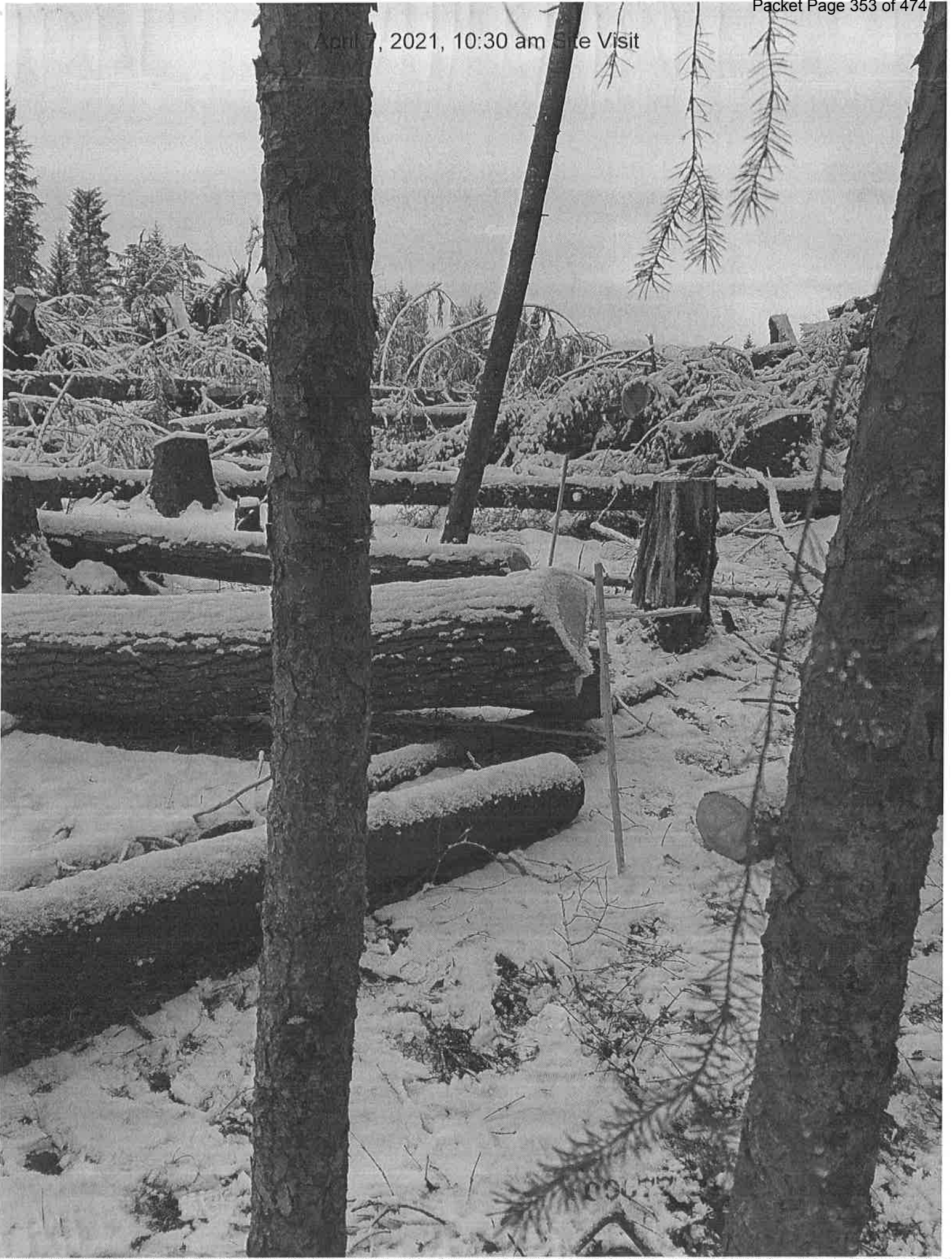


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April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



April 7, 2021, 10:30 am Site Visit



09079

April 7, 2021, 10:30 am Site Visit



00080

April 7, 2021 10:30 am Site Visit



00082

NORTH
→

Building capacity is 100 per CBJ Building Code Official.
Parking required = 25 spaces, 1 must be ADA van accessible
LEC 6/10/20

Parking Spaces
9' x 20', Typ.

40'
50' x 100'
Bldg
Loading Area
12' x 30' 26'

2 @ Van Accessible Spaces
Sharing 8' aisle

Parking Plan

1/128" = 1'-0"

AIRPORT

MENDENHALL LOOP ROAD

GLACIER

NOTES:

45 PROPOSED SPCS.

40 REQUIRED SPCS.

CONSTELLATION DEVELOPMENT

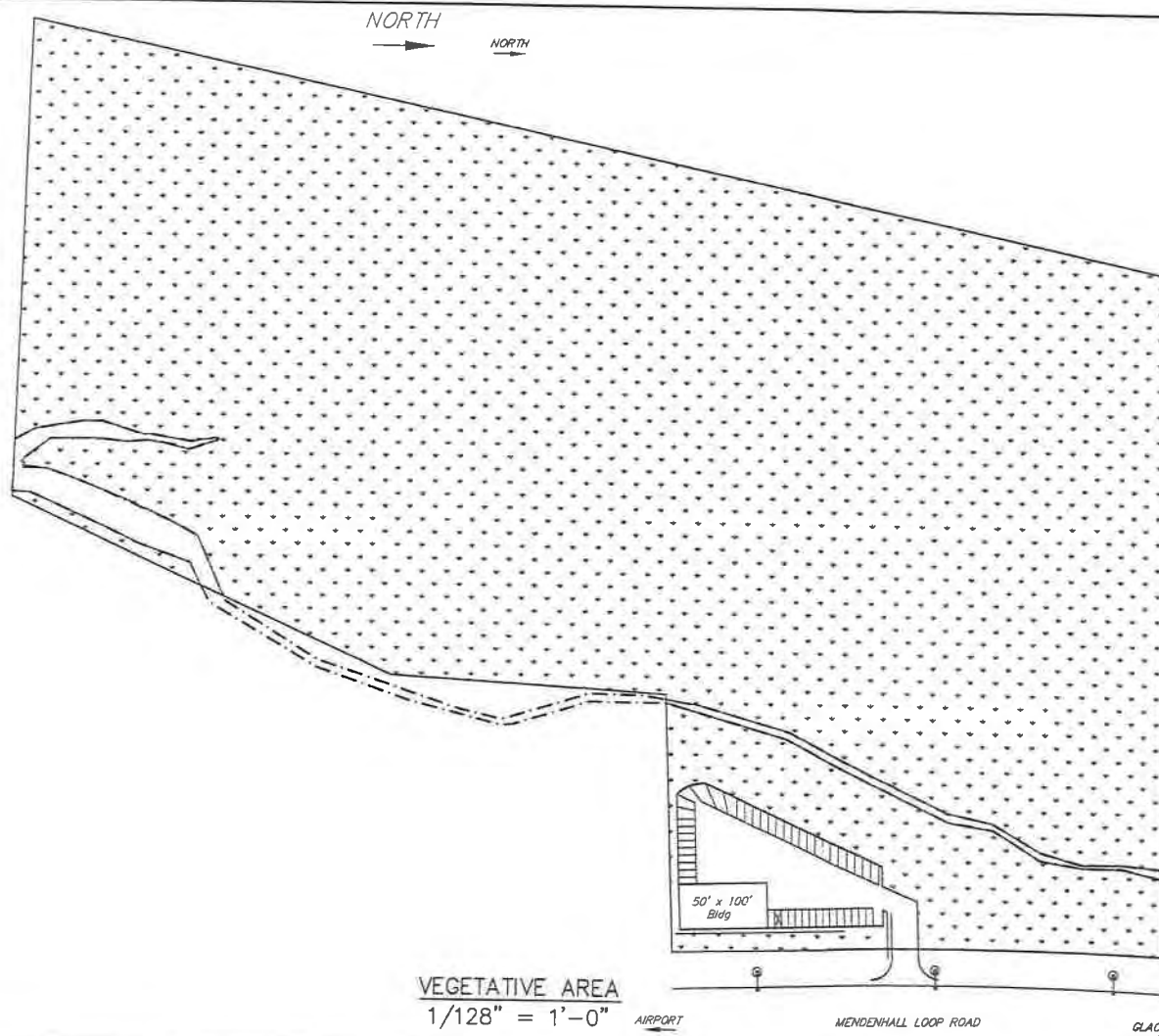
Tract A-2

USS No. 1053

PARKING PLAN

10940 Line Drive
Jupiter, FL 33458
887-321-3118

05083



NOTES:
VEGETATIVE AREA >> 30%

CONSTELLATION DEVELOPMENT

Tract A-2

USS No. 1053

VEGETATIVE AREAS

10540 Elm Drive
Norfolk, VA 23507
907-321-3118

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
May 28, 2019



I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:00 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Shannon Crossley, Dan Hickok, Andrew Campbell, Travis Arndt

Commissioners absent: Ken Alper

Staff present: Jill Maclean, CDD Director, Alex Pierce, Planning Manager; Tim Felstead, Planner II; Laurel Christian, Planner I; Jane Mores, Assistant Municipal Attorney

Assembly members: Wade Bryson

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None

III. APPROVAL OF MINUTES

A. April 23, 2019 DRAFT Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. LeVine, to approve the Planning Commission April 23, 2019, regular meeting minutes with any minor changes by staff or Commission member.*

The motion passed with no objection.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

V. ITEMS FOR RECONSIDERATION - None

VI. CONSENT AGENDA

Items USE2019 0009, PDF 2019 0001, SMP2019 0002 and SMF 2019 were pulled from the consent agenda and placed under the regular agenda.

USE2019 0010: A Conditional Use Permit for an accessory apartment above a detached garage on an undersized lot
Applicant: Ronald Aline & Sandra Garcia-Aline
Location: 19933 Cohen Drive

Both Mr. Voelckers and Mr. Arndt said they may have potential conflicts associated with this item.

Mr. Arndt said he is acquainted with the applicant and that he spoke with them about the project before they knew they needed a Conditional Use Permit.

Neither the Commission nor the public voiced any objection to Mr. Arndt remaining on the panel for this item.

Mr. Voelckers said the architect involved with this item is on his staff, but that he has no involvement with this item or any financial interest in the project.

Neither the Commission nor the public voiced any objection to Mr. Arndt remaining on the panel for this item.

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 600 square foot accessory apartment above a detached garage.

MOTION: by Mr. LeVine, to accept staff's findings, analysis and recommendations, and approve SMP 2019 0010.

The motion passed with no objection.

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

At the suggestion of Mr. LeVine, the Commission agreed to hear items USE2019 0009 and

USE 2019 0013 sequentially as they are both located in the same area and connected through the same developers.

Mr. Arndt left the panel for this item, as he has a conflict of interest.

USE2019 0009: A Conditional Use Permit for a 72-unit condominium development

Applicant: Travis Arndt

Location: Cinema Drive

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 72-unit condominium complex in a D15 zone.

The approval is subject to the following conditions:

1. Sidewalk or a separated walking path along Cinema Drive for the length of the development shall be installed by the Developer. If a separated walking path is chosen, the developer shall record an easement for the public use of that path.
2. The applicant shall submit a revised parking plan including the following information to be reviewed during the building permit process:
 - a. Accessible parking spaces
 - b. Pedestrian paths within the development.
3. Parking spaces shall be striped and signed with required accessible signage prior to the issuance of a Certificate of Occupancy.
4. Prior to the issuance of a Certificate of Occupancy, the Developer shall submit a Homeowner's Association (HOA) Agreement that addresses the following:
 - a. Maintenance of the parking and circulation areas,
 - b. Maintenance of the required vegetative cover, and
 - c. Snow storage and disposal.
5. The applicant shall submit a lighting plan for review by the Department during the building permit process, the lighting shall be designed, located, and installed to minimize off-site glare.
6. The applicant shall submit a detailed drainage and snow storage plan to be reviewed during the building permit process.

Mr. Voelckers wanted to address traffic analysis on this issue. He said that is the primary concern he has with this project.

Ms. Christian told the Commission this development is on almost five acres located on Cinema Drive off the Mendenhall Loop Road. It is zoned D15. It is estimated this development will generate about five vehicle trips per condominium unit a day. That figure would equal about

418 vehicle trips per day generated by the condominium development, said Ms. Christian. When the threshold of trips per day is between 250 and 500 vehicle trips per day, the Director can determine that no Traffic Impact Analysis is required. It has been determined that no Traffic Impact Analysis will be required for this project, said Ms. Christian. They have also requested as a condition of approval that the developer install sidewalks on one side of the street, said Ms. Christian.

Mr. Voelckers said he had never seen saw any input from the DOT regional traffic engineer on this development, even though this was motioned by another DOT representative as being an item in the process.

Ms. Christian apologized for the confusion listed in the report. She said the opinion of DOT that this project would not generate too many average daily trips came out in the pre application conference meetings, where it was of the opinion that a development of this size would not generate the average daily trips to trigger a traffic impact analysis for DOT .

Ms. Maclean stated that this DOT opinion in the preapplication meeting is mentioned in the preconference materials before the Commission.

Mr. LeVine said that the other item on the agenda from the same developer in the same area will be generating its own trips per day. He said it seemed to him the trips generated by each use should be averaged together.

Ms. Maclean said that Mendenhall Loop Road is a DOT right-of-way, not a CBJ right-of-way. Therefore, they are very limited in imposing any conditions on that portion of property.

The Alaska Department of Transportation (DOT) does not think a Traffic Impact Analysis is required, said Ms. Christian. She said that DOT plans to construct a turn lane from the Mendenhall Loop Road onto Cinema Drive. It also plans to install a pedestrian light at this intersection. Ms. Christian added that most of the traffic at this intersection is through traffic. She said the one sidewalk or separated path on the side of Cinema Drive, which has no sidewalks today, which they suggest should be upgraded by the developer was a requirement that they could stipulate. They cannot require work along the DOT side of the right-of-way, she added.

Mr. LeVine asked if DOT had considered the cumulative impacts of both proposed developments on Cinema Drive on the traffic.

Ms. Christian said she sent both developments to DOT at the same time, but that she did not know if its traffic analysis addressed each development separately or together in terms of trips per day generated.

Mr. LeVine asked what "level F" service means.

Ms. Maclean said "level F" service is considered as "failing". She added that DOT has a number of projects planned for the area, which will help address current and future traffic issues in the vicinity. She said DOT may be of the opinion that future work for traffic in the area will have a positive effect on this area as well.

Mr. LeVine asked if the Commission's input on the level of service might have a positive impact on DOT's traffic work in the area.

Ms. Maclean said she did not believe that a traffic impact analysis for this area would have any effect on DOT's projected traffic work for the two primary Valley corridors.

Mr. Dye said he did not see any attendance comment from DOT listed in the preapplication materials. He said he wanted to be able to find the statement from DOT regarding the average daily trips being less than 100 for the peak times.

Ms. Maclean said those comments from DOT are on page 21. She said she also consulted with CBJ Engineering and Public Works to see if they thought a TIA (Traffic Impact Analysis) was necessary. They did not think that a Traffic Impact Analysis is necessary, she said. Since they have no right to require work on a DOT right-of-way, they thought it was better to ameliorate the area where they did have a right to see some positive changes made, which is why they listed the work on a Cinema Drive sidewalk as a condition, said Ms. Maclean.

Mr. LeVine said he is bothered that they have a "level F", and that the response of the CBJ was that they cannot do anything about that level, so its response was to approve more trips for the area. He asked if there is something they can do within the purview of the Commission to not just continue to approve permits for an area already receiving an "F" grade in service.

Ms. Maclean said she would hesitate to go down that path, considering the increasing development on Douglas Island with just one bridge. She said any action the Commission takes now on this permit may have an effect on future decisions regarding traffic.

Applicant

Speaking for the applicants, Mr. Doug Trucano told the Commission that he and his partners have constructed condominiums in Juneau at two different locations: Breezy Street and on Riverside Drive. They are building these condominiums to keep them in the price range where more members of the public can afford them. He said he has not noticed any significant problems resulting from the traffic generated by these developments. He said they chose this site because of its proximation to the movie theater so that children in the proposed development could walk to the movies. He said he has driven through the area both at noon and quitting time, and that neither peak traffic time resulted in much diminished traffic flow in the area.

Public Comment

Mr. Chuck Cohen, the manager of Kodzoff Acres, told the Commission that he was here on another agenda item, and that he was not aware this item would be on this agenda. He said that the two items on the agenda concerning added traffic to Mendenhall Loop road should be considered together when considering the traffic effects. The cumulative effects of the traffic on Mendenhall Loop road will add up to a major issue, he said.

Commission Comments and Questions

Mr. Voelckers asked Ms. Mores (attorney) what the Commission's role is in decisions that may involve vehicular safety. He said on a broad level the Commission is to assure that they do no harm, and that public welfare is protected.

Ms. Maclean said she did not want to give the Commission the impression that they were not interested in public safety. She said she consulted City staff and past decisions of the Commission to come to her determination about traffic in the area.

Ms. Mores said there are jurisdictional issues that are appropriate to be addressed by the Commission. She said she did feel the Commission should be cautious in proceeding in proposing conditions to an individual developer. It would be within the Commission's purview to direct the staff to request a meeting with DOT, or invite them to give a presentation about how traffic and its ramifications are addressed, said Ms. Mores.

Mr. LeVine asked if the decision about whether a TIA is required can be made by the Commission.

Ms. Maclean said the Commission does have the authority to override the Director's conditions. She said the Commission does have the authority to require a TIA.

Mr. Campbell asked the staff if they are aware of planned improvements that DOT will be making in the area.

Ms. Christian said she has some idea, which includes two roundabouts for Mendenhall Loop road, plus a pedestrian beacon on Cinema Drive, a crosswalk on Mendenhall Loop road, and a turn lane onto Cinema Drive.

Mr. Campbell asked if there had been mention about additional lanes.

Ms. Christian said she is not aware of whether or not there had been mention about additional lanes.

Mr. Campbell said he had seen mention in DOT tentative advertising on a planning improvements list generated by DOT that vehicular lanes had been mentioned.

Ms. Christian said she was not aware of that.

Mr. Dye asked if DOT had provided a timetable for the Cinema Drive project.

Ms. Christian said she believed the dates may be 2020 or later. She said she thought the Cinema Drive work was bundled with the two roundabouts it had scheduled for 2020.

MOTION: *by Mr. Dye, to approve USE2019 0009 and accept staff's findings, analysis, and recommendations.*

Speaking in favor of his motion, Mr. Dye said that reading over the DOT analysis, that he did not think that a TIA was warranted at this time. He said their comments were that they did not expect a significant negative impact on the area with this anticipated additional traffic on Cinema Drive. In addition, said Mr. Dye, the DOT expects to improve traffic flow in this area at a later date. Mr. Dye added that the CBJ cannot do any traffic improvements of its own on DOT right-of-way's.

Speaking in favor of the motion, Mr. Campbell said he feels the Director has done a good job with her analysis, and that he agrees with her decision. It is up to DOT to solve this problem, not the Planning Commission, said Mr. Campbell.

Mr. Voelckers said he would be voting in favor of the motion as well, but with some misgivings. He said he would like to follow up with the suggestion that they have DOT appear before the Commission and give a presentation. He said he would like the Commission to be given the opportunity to express its concern about the traffic situation to the DOT. Mr. Voelckers said it is a problem for him to continue to incrementally increase traffic at an intersection already at "level F" for service.

Chairman Haight said he would also support this motion. In its discussion with DOT, Chairman Haight said he felt it would also behoove the Commission to discuss other roads that have a level F status.

Ms. Maclean said that DOT will have a presentation before the Planning Commission on June 11, 2019, for the Stephen Richards, Mendenhall Loop and Floyd Dryden intersections. At that time, they could also be invited to speak more generally about traffic issues within the community.

Mr. LeVine said they will be adding numerous trips to this intersection, which already has a failing grade. He said it appears the Commission is doing this because only DOT can do something about the traffic situation in this area. He said he has significant misgivings about the incremental additions of traffic to an area already deemed substandard for handling its traffic.

Roll Call Vote:

The motion passed by a unanimous vote.

USE2019 0013: A Conditional Use Permit for a 5,000 sq. ft. indoor recreational facility
Applicant: Juneau Condos LLC

Location: Mendenhall Loop Road

Mr. Arndt is recused from participating on the panel for this item as he has a conflict of interest.

Staff Recommendation

It is recommended that the Planning Commission adopt the director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of an approximately 5,000 square foot recreation facility.

The approval is subject to the following conditions:

1. The applicant must submit a lighting plan during the building permit process for review by the Community Development Department; the lighting shall be designed, located, and installed to minimize off-site glare.
2. The applicant shall submit a parking plan during the building permit process for review by the Community Development Department; the parking plan shall include:
 - a. accessible and van-accessible parking spaces
 - b. off-street loading areas
 - c. standard parking spaces
3. The parking spaces shall be striped or wheel stops shall be placed, and spaces shall be signed with required accessible and van-accessible signage prior to the issuance of a Certificate of Occupancy.

Ms. Christian said the proposed 5,000 sq. ft. recreation center for a nonprofit wrestling group is located on Mendenhall Loop road, with access only from Mendenhall Loop Road. Duck Creek, an anadromous waterbody, runs through the parcel. She said the project is expected to generate an estimated 29.2 Average Daily Trips (ADT's). The site is around twenty acres, with a zoning of D15, said Ms. Christian.

She said plans for drainage and grading are typically reviewed under the building permit process. The building will be constructed above the flood plain, in accordance with the existing 2013 flood plain maps, which will be changed soon. This facility is a conditional use within the Table of Permissible Uses, said Ms. Christian.

Commission Comments and Questions

Mr. Voelckers asked if the hard line displayed on the map represents the property line.

Ms. Christian said the hard line represents the base flood elevation transect. It is a coincidence that it is also located near the property line, she added.

Mr. LeVine noted the staff analysis calls for 20 parking spaces, but that the parking plan provided by the applicant is for over twice that many parking spaces. He asked if the staff had given thought to actually requiring more than 20 parking spaces for the facility.

Ms. Christian said the staff had not given thought to requiring more parking spaces.

Ms. Maclean said she wanted to make it clear that the CBJ is not holding up the adoption of the 2018 flood maps. FEMA adopts those maps, and they are late in providing the update, she said. Adoption of the updated plan is probably about a year out, said Ms. Maclean.

Mr. Voelckers said he is frustrated that the drawing shows where the driveway is intended, and that it is relatively close to Cinema Drive. He asked if DOT had expressed any reservations about that location.

Ms. Christian said DOT did not make any comment about the drive location. It was interested in where the curbs would be situated, the appearance of the drive, and how crossing the bike path would look, she added. She said they wanted more information on these items before providing comments on the driveway.

Mr. Voelckers said he did not think it was a typical practice of DOT to allow incremental property driveways at this point.

Ms. Christian said it is her understanding that if a property's only access was on to a DOT highway, that it would issue a driveway permit. Every legal lot can be granted a driveway, she said.

Mr. LeVine asked if the lot fronted Cinema Drive.

Ms. Christian said it did not front Cinema Drive.

Mr. Dye asked if the contour lines on the current map correspond to the new FEMA maps.

Ms. Christian said she was not sure what FEMA used to accomplish its current mapping.

Ms. Maclean said she thought that FEMA used LIDAR for its draft FEMA maps for 2018.

Ms. Mores clarified that even though Mr. Arndt has interests in two items on the agenda, that since he is the primary landowner on this item that he is free to testify before the Commission.

Applicant

Mr. Arndt told the Commission their goal is to build a home for the wrestling club in town. He said it is very difficult to find locations for their club to practice. Gym space in the schools is

typically only available late in the evening after the school programs have finished, he said. This is difficult especially for younger children, and also the parents. Mr. Arndt said there has been some concern of the public over the impact to property values in the area. He said the recreational facility should instead be a boon to property values, which he learned after speaking with numerous appraisers. He handed out a letter to this effect from a local appraiser.

Wrestling club secretary Summer Baxter said the club is a nonprofit entity. She said their club is also a financial support for wrestling in the schools. They utilize many sources of donations, which helps to offset the costs for gear and travel, she said. They had over 80 youth from Kindergarten through 12th grade in their program, she said.

Mr. Arndt said the proposed elevation in the new FEMA maps is actually lower than the elevation on the current map.

Mr. Hickok asked where the current location for the club was located.

Mr. Arndt repeated for Mr. Hickok that they had no club location, which is why they are building their own facility. He said they rent space and sometimes use space at the gymnastics academy.

Mr. Voelckers asked for more information on how they anticipated to use their building.

Mr. Arndt said the facility would not be big enough to host a tournament. They would have to use a larger school space for that, he said. Mr. Arndt said they do want to plan for those occasions when there would be a larger number of participants at the facility, which is why they plan to install over twice as many of the parking spaces required by the staff.

Ms. Crossley asked if there are also condominiums and mobile homes adjacent to the gymnastics academy.

Mr. Arndt said the gymnastics academy is in an area of single-family homes.

Public Comment

Charles VanKirk told the Commission there have been numerous athletes in his family over the years, and that wrestling has served them well. He said it would be wonderful to have their own facility, and that it would help participants when competing in the state.

Ken Brown said he is the previous secretary of the club. He added that he is the former coach for Juneau Douglas High School wrestling, and he now coaches middle school students. He said the facility would be a great opportunity for the wrestling club.

Dana Richards told the Commission she is in support of the new wrestling facility, and that

wrestling is a great sport for children. She said the new site would make life easier for youth and their parents.

Austin Quintero said he is involved with another club for the grappling arts, and they often share participants with Juneau Youth Wrestling. He said his daughter, who is five, will be starting wrestling next year, and that the recreational facility will be a benefit for the community, and that it is within walking distance for many youth, and is within proximity to several schools.

Janet Lassiter said she is the site manager for Kodzoff Acres Mobile Home Park. She spoke against the location for the facility, stating that they had concerns about the facility being the cause of future flooding, that it would have a negative impact on home value in the area, and that they were also concerned about the additional traffic generated by the facility. She said the postcards sent out about the facility wrongly marked Cinema Drive as its entrance, that posted signs were hidden from residents, that there was no drainage plan, and no green space proposed between Kodzoff Acres and the proposed facility.

Jim Erickson said his son has been involved with the Tornadoes wrestling program for many years. He said this program is composed of dedicated parents and participants. He said there will not be 80 participants at the facility at one time, and that typically there would be 15 to 20 participants.

Mr. Gerald Wilson said he lives on Glacierwood Drive and that this property would be located against his back yard. He said this seems like it is a great program, but that he would like to see a buffer between his property and the proposed facility.

Joe Lassiter said he is in favor of any sports program for the benefit of youth. He added that he feels this is the wrong lot for the facility, as it will take away the drainage area for Kodzoff Acres, and create problems for anyone living next to the creek.

Jan Cummins told the Commission that she is the mother of five children who have wrestled with the club, and that her husband has been a coach in Juneau for a number of years. She said wrestling teaches children self-discipline and self-control, and that the children are positively guided by physical activity.

Carson Cummins said the facility would give the participants more space and alleviate the odd hours they were often forced to practice due to a lack of space of their own. He said wrestling gives kids a "legal way to roughhouse", and that the proposed facility is in a good location for access by the community.

Club participants Jaeger and Dane Hubert told the Commission they were in favor of the facility. They said they would not need to stay up as late at night to participate in practice, and that

there would be adequate parking at the facility as opposed to the gymnastics academy, which has a very small parking space.

Camden Erickson said he has been wrestling for 11 years. He said that sometimes they have had to cancel practice due to a lack of space to practice. He said he felt the advantages of the facility outweighed the disadvantages.

Kerra Baxter said this is her third year of wrestling, and that she loves it. She said it teaches participants how to win and lose gracefully.

Stephanie Harvey said she is the vice president of the wrestling club. She said her two children, a first grader and a sixth grader, have participated in wrestling since preschool. She said the sport teaches children good sportsmanship and self-confidence, and that the late hours often required so that there would be a space available for practice, turned off parents who would otherwise want to have their children participate in the sport.

Lynn VanKirk said for many years she has ferried children to multiple locations so they could participate in wrestling. She said the recreational center would provide a permanent location, and that there would be adequate parking, unlike the parking at the gymnastics academy.

Ben Ny said he is in favor of the facility. He said he has had two children go through the program. He said building codes are already in place and that as the property development proceeds, that the questions posed by the neighbors would be answered.

Logan Harvey told the Commission that he has been a coach for youth wrestling for six years. He said if there are concerns by the neighbors regarding the facility, that the parents in the club have many talents in the building trade, and that they would be willing to help out with any problems.

Chad Scussel said he is in favor of the program and the proposed facility location.

Mr. Chuck Cohen said he is the managing member of Kodzoff Acres. He said his concerns are for the residents of the mobile home park. He said they have sent 18 letters against the facility to the Planning Commission. He said he is in support of wrestling, but not at this location, which has no proposed vegetative barrier between the proposed facility and the mobile home park.

Commission Comments and Questions

Mr. Dye asked Mr. Cohen how he would like the use regulated.

Mr. Cohen said there has to be a legal entity identified with the use so that it could be regulated in the future. He said there was no public meeting on this facility, that there had been no opportunities for the neighbors to provide input, and that the application does not have floor plans, elevations, or drainage information supplied. He said the conditions specified in the permit have nothing to do with the actual problems that would be created by the facility.

Mr. Dye clarified that the drainage from the Kodzoff Acres property drains to the property of the proposed facility.

Mr. Cohen verified that it did drain to the proposed property.

Mr. Voelckers asked Mr. Cohen what specific understanding he has about the proposed building site.

Mr. Cohen said the LIDAR data for the 2013 maps was incorrect, and that the surface grades were not correct. He said if the building is placed next to the road of Kodzoff acres, there will be nowhere for the water to drain. He said there is no water provided for the site and there remains the problems of access and buffering. The real problem is drainage, and the conditions specified have nothing to do with the actual problems.

Mr. Dye asked if there is a water collection site on the Kodzoff Acres property.

Mr. Cohen said that there was one on the site.

Mr. Hickok asked if ascertaining if a property is viable for the permit request is not required at the beginning of the process.

Ms. Maclean said this is true, but that if the project were approved there would be further permit requirements. Ms. Maclean apologized that all of the boxes of the application were not checked, but showed that the following pages in the application had all of the information Mr. Cohen claimed was missing.

Adam Messner told the Commission that he has been a wrestling coach for ten years. He said that every year the participants pick up garbage from McDonalds to past Kodzoff Acres. He said a third of the garbage they collect comes form the trees near Kodzoff Acres, and that it is needles. He said he felt having the program located at a permanent location in the Valley, and being more accessible to more families, would help with the drug situation in town, by providing youth with a more healthy and positive activity.

Ms. Maclean said the CDD does take public notice very seriously, and that public notice was properly posted for this facility. She said it properly identifies the property in question.

Mr. Arndt said the public notice sign was not just for Kodzoff Acres, but also for all of the public. Mr. Arndt added that there is no drainage easement provided by Kodzoff acres between the two properties, and that after listening to Mr. Cohen, it appears that there is an issue of Kodzoff Acres drainage entering their property. He added that Kodzoff Acres has been storing snow on their property. The debris in the buffer area was removed before they purchased the property, said Mr. Arndt. He said the area where Kodzoff Acres wants the buffer is the area where they have been storing their snow.

Mr. Voelckers asked the applicant if they had thought of creating a larger buffer on the Kodzoff Acres side of the property by angling the site, slightly, to provide a little more buffer for the Kodzoff Acres residents.

Mr. Arndt said the area where the debris was removed from the buffer area is greater than the size of the building. They tried to leave a buffer of trees along Mendenhall Loop Road, said Mr. Arndt. If they move the building, it would make less space for the parking area, said Mr. Arndt.

Mr. Dye asked the applicant about the use of a type of pavement where water can go through. He asked if they had thought of that option for this property.

Mr. Arndt said they plan on a gravel parking lot for the foreseeable future, which would allow for water drainage.

Chairman Haight asked what their plans were for providing utilities to the site.

Mr. Arndt said they have several options for utilities, and that connection to the sewer is just down the street.

Chairman Haight asked if they had thought of providing a provision to the existing pathway to Mendenhall Loop Road.

Mr. Arndt said he thought that was a great idea.

Mr. Dye asked if the use of the property was changed if a new Conditional Use Permit would be necessary.

Ms. Maclean said if the facility was sold, that a new permit would not be necessary for the new owners and the current permit could be modified if it was for a similar use. If the use were substantially different, then the new owners would have to acquire a new Conditional Use Permit.

Mr. Campbell asked if the wrestling club could rent their facility to other activities to keep the costs down.

That would be fine if the use was in line with the wrestling club's Conditional Use Permit, said Ms. Mores.

Mr. LeVine said the Commission may want to keep the use for the facility fairly open so that other activities could make use of the facility. He said it seemed to him that a youth facility would suit the purpose.

Mr. Voelckers said there appear to be divergent opinions on the watershed. He asked if the Commission should be addressing the hydrology of the site, or if this was a mechanism taken

care of at a different stage of the development.

Ms. Maclean said if the permit is approved, the applicant will need to apply for a grading permit, and then the engineering staff would review it for drainage, and the staff would evaluate it for the flood plain.

Mr. Voelckers asked if there is a mechanism to sort out the hydrology of the site if the threshold is not met, at 40 yards of fill, for example.

Mr. Campbell said he could guarantee there is no way this project could be accomplished for less than 50 yards of fill.

Ms. Christian said when the building permit is reviewed, that a survey is required in order to receive a certificate of elevation.

MOTION: *by Mr. Levine, to approve USE 2019 0013 and accept staff's findings, analysis and recommendations.*

Speaking in favor of the motion, Mr. Campbell said the applicant has provided documentation that property values would not be negatively affected. There is no proof that there is a drainage issue, he said. They have already discussed the traffic issue, which DOT has deemed would not significantly effect the area. There are numerous ways that utilities can be brought to the site, he said. The placement of the building on an awkward corner lot seems to be putting the land to good use, said Mr. Campbell.

Speaking in support of the motion, Mr. Dye said he agrees with the assessment of Mr. Campbell.

Roll Call Vote:

The motion passed by unanimous vote.

PDF2019 0001:	A major amendment to Montana Creek West Planned Unit Development (PUD) to allow subdivision of two (2) lots into four (4) lots
SMP2019 0002	Preliminary plat approval for a major subdivision within Montana Creek West Phase 2B PUD
SMP2019 0001	Final plat approval for a major subdivision within Montana Creek West Phase 2B PUD
Applicant:	Roscoe G Bicknell III & Roscoe Bicknell IV
Location:	Timberwolf Lane

Ms. Crossley disclosed that she is the first cousin of Mr. Felstead, the staff in charge of these items, but that she has no financial interest in these items.

Neither the Commission nor the public voiced any objections to Ms. Crossley remaining on the panel.

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Final Plat. The permit would allow Final Plat Approval for the subdivision of Lots 5 and 11, Montana Creek West Phase 2B.

Mr. Felstead told the Commission the applicants are proposing to further subdivide two lots into four lots within the Montana Creek West Planned Unit Development (PUD). This would be an amendment to the existing PUD approval, he said.

Mr. LeVine said he felt the conditions could be shortened as the explanations are already in the staff report. He asked if Mr. Felstead would be amenable to shortening some of the conditions.

Mr. Felstead said that would be no problem.

Public Comment

Jared (no legible last name provided) told the Commission that his wife has a disease that makes his wife very sensitive to mold. Their only option is new construction, he said. In order for this to be affordable for them, the lots need to be subdivided, he said. They would then contract with Bicknell Construction, which would build them a house, he said.

Mr. Felstead said they need the final plat preliminary approval and final plat approval on this item.

If they provide these approvals, they can strike all of the conditions from SMF2019 0002, said Mr. Levine, and from SMF2019 0001, if they do them in order.

Chairman Haight voiced no objection to the suggestion of Mr. LeVine.

Mr. Felstead agreed with Mr. LeVine, and said that first the Commission must approve the PUD amendment, then the preliminary plat, and then the final plat.

Mr. LeVine suggested that they change Condition 2 to: *Planned Unit Development, Plat Note 1, shall be amended to accurately reflect the number of dwelling units per lot.* He suggested that Condition 4 be changed to: *Planned Unit Development Plat Number 5 shall be amended to make clear that the restriction to one dwelling unit does not preclude accessory apartments.* The plat note should additionally state: *That accessory apartments may be allowed in accordance with accessory apartments.*

MOTION: by Mr. LeVine, to accept staff's findings, analysis and recommendations, and approve PDF2019 0001 subject to the small corrections to the conditions named above.

The motion passed with no objection.

MOTION: by Mr. LeVine, to approve SMP2019 0002 and SMF2019 0001 and accept staff's findings, analysis and recommendations, striking all of the conditions written into the staff report as they are unnecessary.

The motion passed with no objection.

CSP2018 0012: Planning Commission review of Fiscal Year 2020 Capital Improvement Program

Staff Recommendation

It is recommended that the Planning Commission report to the Assembly that the CIP projects recommended for funding in FY2020 as listed in Resolution 2845(c) conform to the policies of the Juneau Comprehensive Plan.

Mr. Felstead told the Commission that this version of the CIP, which will be presented to the Assembly on June 3, 2019, has very few changes to the previous version reviewed by the Commission.

MOTION: by Mr. Dye, to move CSP2018 0012 favorably to the Assembly with the recommendation that this CIP is in conformance with the Comprehensive Plan.

The motion passed with no objection.

Mr. LeVine commented that he thinks this CIP process is slowly improving. He said he wanted to note that at least one of the items recommended by the Commission, which is the money to begin the study for the Capital Avenue improvements, has remained in the CIP. He said his neighbors in the Flats have commented on this favorably and he said that he appreciates that it has remained in the CIP.

VIII. BOARD OF ADJUSTMENT - None

IX. OTHER BUSINESS - None

X. STAFF REPORTS

Ms. Maclean reported that May 29, 2019, is the neighborhood meeting for the Auke Bay zoning. She said this is the second to the last meeting.

The Title 49 committee meeting is May 30, 2019, at noon at CDD offices to discuss shared access. She said that the Title 49 committee might want to consider that accessory apartments on substandard lots do not need a Conditional Use Permit provided they can meet the parking requirements. She said a request of this nature has not yet been turned down by the Commission.

Ms. Maclean said there will be a Committee of the Whole meeting on June 11, 2019, at 5:45 p.m., prior to the regular meeting, to discuss the rules of order.

XI. COMMITTEE REPORTS

Downtown Blueprint Juneau

Mr. Dye reported that Downtown Blueprint Juneau met and decided they need to meet in a larger venue. The main subject at the meeting was the need to identify sub areas early in the process.

Lands Committee

Mr. Voelckers reported the Lands committee met and identified that the City has a few leased properties up for auction. There was also some discussion about a gravel site across from Skater's cabin dumping some refuse in that area.

Public Works and Facilities

Mr. Campbell reported that the Public works and Facilities committee met on May 20, 2019. They had an update on the Centennial Hall remodel, and a presentation by Michelle Elfers on the playground CIP.

XII. LIAISON REPORTS

Mr. Bryson reported that on May 15, 2019, the Assembly finance committee did pass the City budget for \$375 million. That includes Bartlett Hospital, the airport, and the school district allocations, he said. The Assembly had a Committee of the Whole meeting on May 20, 2019, where they discussed a potential ordinance for nuisance properties. They had an update from the Valley Transit Center. Tax abatement is a forthcoming topic for the Assembly, said Mr. Bryson. Mr. Bryson said he was not sure if it was appropriate to ask the Commission to give its opinion on the topic to the Assembly.

Ms. Mores said she does not see where weighing in on the tax abatement issue really fits the duties assigned to the Commission within Title 49. She said if the Assembly requested an opinion from the Planning Commission, then that would be appropriate.

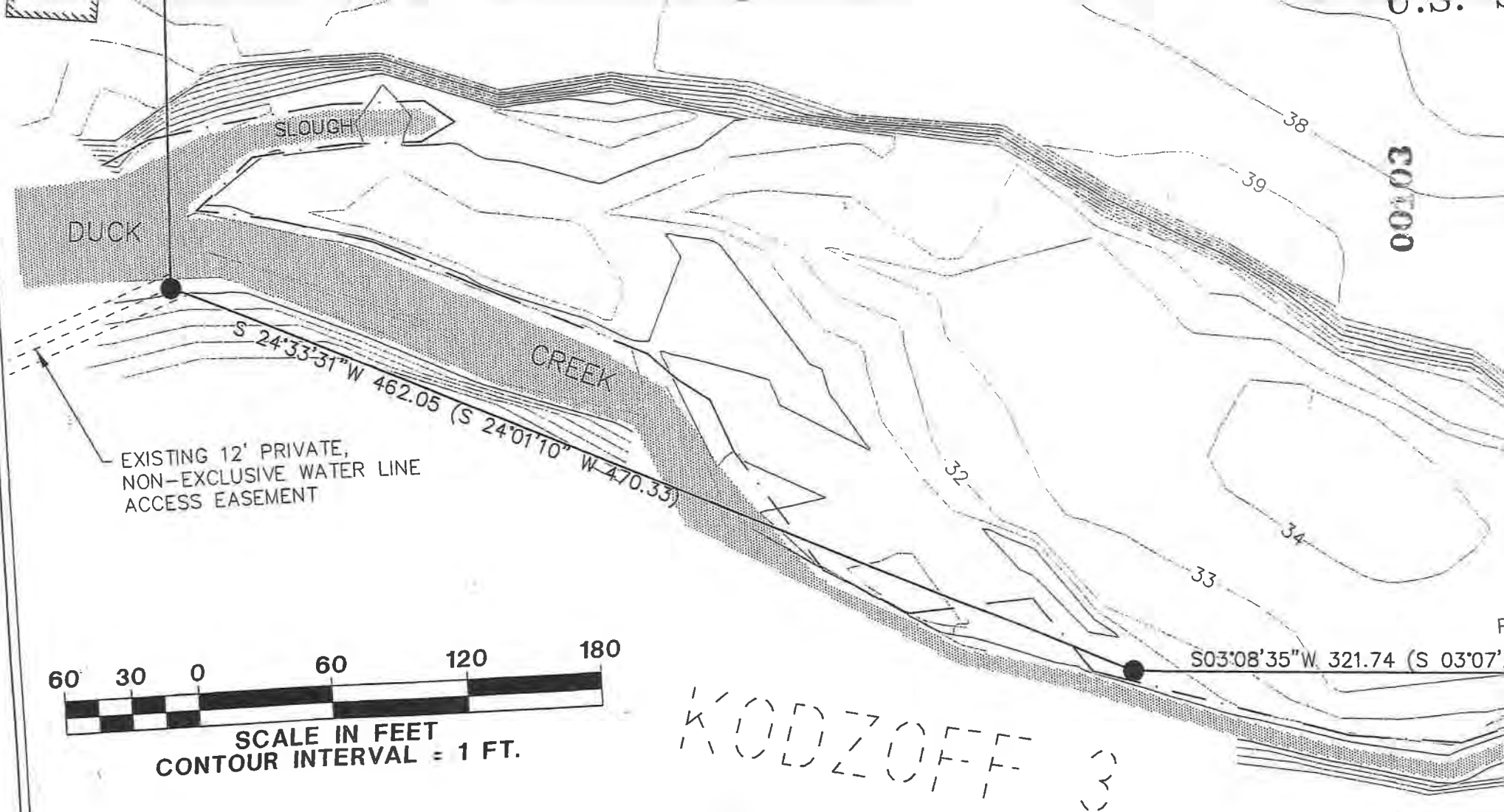
XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XV. EXECUTIVE SESSION - None

XVI. ADJOURNMENT

The meeting was adjourned at 10:42 p.m.

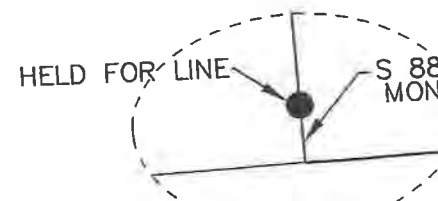


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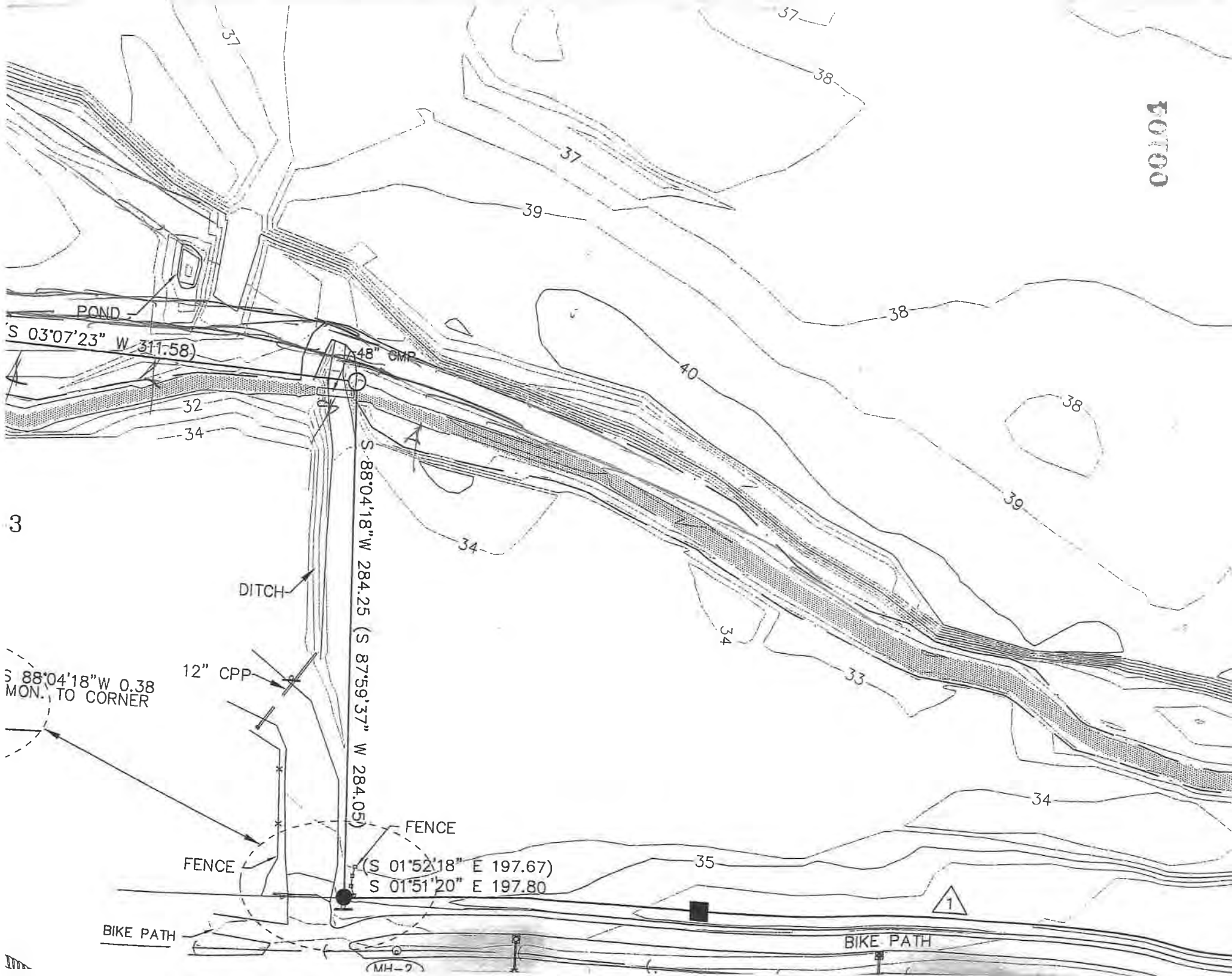
- 1) THE ERROR OF CLOSURE OF THIS SURVEY DOES NOT EXCEED 1:5000.
- 2) ALL DISTANCES ARE MEASURED IN U.S. SURVEY FEET.
- 3) RECORD INFORMATION DERIVED FROM "A PLAT OF TRACT A-1 AND TRACT A-2 A SUBDIVISION OF TRACT A, U.S. SURVEY No. 1053," JUNEAU PLAT 96-106; OFFICIAL PLAT AND FIELD NOTES OF U.S. SURVEY Nos. 1053 AND 1584; AND DEPT. OF HIGHWAYS RIGHT-OF-WAY MAP, PROJECT No. RE-0966(8), JUNEAU PLAT No. 80-79.
- 4) WHERE DIFFERENT FROM MEASURED OR CALCULATED, RECORDED DIMENSIONS ARE SHOWN IN PARENTHESES

RESTRICTIONS OF RECORD

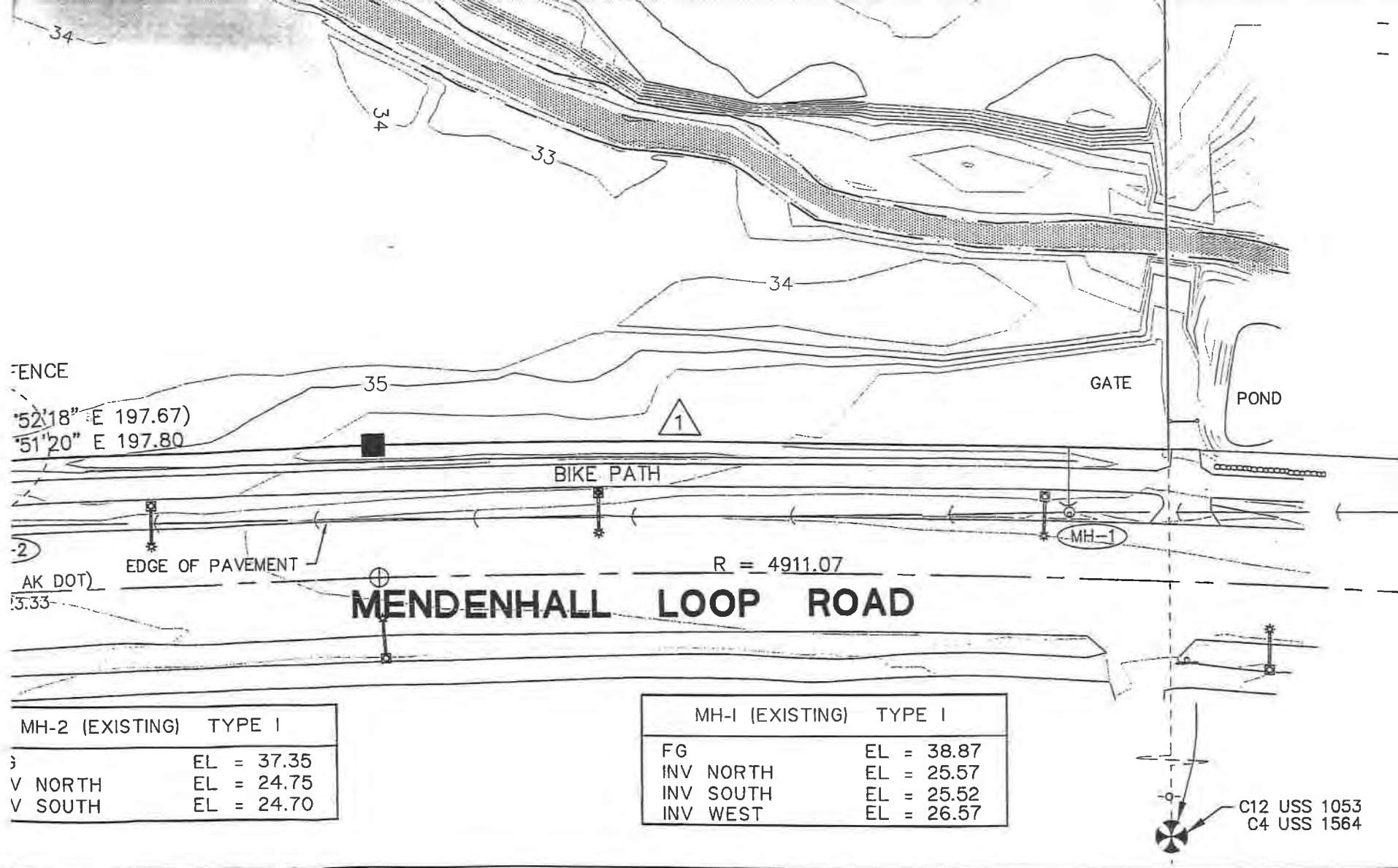
TRACT A-1
U.S. SURVEY 1053



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

Mendenhall Loop Road Subdivision and Variance

Case Number: PAC2021 0036

Applicant: Travis Arndt, Constellation Development

Property Owner: Tdlh LLC and Juneau Condos LLC

Property Address: 3101 Mendenhall Loop Road and 9090 Cinema Drive

Parcel Code Number: 5B2101030001 and 5B2101320030

Site Size: 892,544 sq. ft. (20.49 acres)

Zoning: D15 Multi-family Residential

Existing Land Use: Indoor Sports Gym (under construction);
 Cinema Drive Condos 72 unit development (under construction)



Conference Date: 5/27/2021

Report Issued: 6/2/2021

DISCLAIMER: Pre-application conferences are conducted for purposes of providing applicants with a preliminary review of a project and timeline. Pre-application conferences are not based on a complete application, and are not a guarantee of final project approval.

List of Attendees

Note: Copies of the Pre-Application Conference Report will be emailed, instead of mailed, to participants who have provided their email address below.

Name	Title	Email address
Travis Arndt	Applicant	constellation_dev@hotmail.com
Laurel Christian	Planning	Laurel.christian@juneau.org
Jill Maclean	CDD	Jill.maclean@juneau.org
Autumn Sapp	General Engineering	Autumn.sapp@juneau.org

00106

Pre-Application Conference Final Report

Conference Summary

Questions/issues/agreements identified at the conference that weren't identified in the attached reports.

The following is a list of issues, comments and proposed actions, and requested technical submittal items that were discussed at the pre-application conference.

Project Overview

Applicant proposes to subdivide one lot into two. The indoor sports gym (wrestling center) will be on one lot, the remaining lot will be vacant until further development plans. The applicant also requests a non-administrative variance to CBJ 49.70.310 to allow work within the 25' no disturbance and 50' no development buffers from Duck Creek. The variance would allow channelization work. This type of variance requires Planning Commission (Board of Adjustment) approval.

The director has determined that the subdivision shall be processed as a major subdivision per 49.15.220(1):

Unless otherwise specified in this title, minor development shall require department approval. If the director determines that a series of applications for minor developments, taken together, constitute a major development, the applications shall be subject to the appropriate major development permit procedures and standards.

Planning Division

1. **Zoning** – Lot is zoned D15.
2. **Subdivision** –
 - a. **Minimum lot size** – 5,000 sq. ft.
 - b. **Minimum lot width** – 50'
 - c. **Minimum lot depth** – 80'
3. **Setbacks** – 20' front; 15' rear; 5' side; 13' street side.
 - a. Where one zoning district abuts another, the greater setback applies. The lot abuts D5 to the west. The setbacks will be established based on lot line assignments through the preliminary plat application.
4. **Height** – 35' permissible uses; 25' accessory uses
5. **Access** – Mendenhall Loop Road
 - a. Mendenhall Loop Road is classified by CBJ as a minor arterial.
 - b. An easement is required for the existing driveway. The existing driveway must serve both lots, and future lots if further subdivision occurs.
 - c. 49.35.210(b) applies:

(b) Major and minor arterials. Except as provided in subsection (3) of this section, if a new subdivision involves frontage along an arterial street:

 - (1) The plat shall note that no lots shall access directly onto the arterial;*
 - (2) Access shall be provided onto an interior access street or a separate frontage road.*

Pre-Application Conference Final Report

(3) A parcel of land with less than 500 feet of frontage on a street, or with less than 350 feet in depth may be subdivided so as to allow access directly onto a minor arterial street if all of the following conditions are met:

(A) All of the resulting lots must meet the minimum lot area standard for a single-family dwelling in the D-1 zoning district (36,000 square feet).

(B) All of the lots must share a common access point and further subdivision of the newly created lots is not allowed.

(C) Common access to all lots is required and back out parking is prohibited. The applicant must submit a plan that shows the feasibility of off street parking for all lots and an adequate area for a turnaround to prevent back out parking.

(D) The applicant must provide assurance in the form of an easement, plat note, and maintenance agreement that is recorded with the subdivision, all of which must be acceptable to the director, that ensures the required common access will be constructed and maintained by the property owners.

(E) The proposed subdivision must meet all other applicable subdivision standards and requirements.

6. Parking & Circulation – Dependent on use.

- a. Parking for the wrestling facility should be completely on the new lot, or a shared parking agreement will be required.

7. Lot Coverage – Maximum 50%

8. Vegetative Coverage – Minimum 30%

- a. The applicant should submit a site plan showing that after the subdivision, each lot will have the required minimum vegetative cover.

9. Lighting – Will be reviewed with building plans.

10. Noise – Dependent on use.

11. Flood – A Flood Development Permit will be required for work within the flood zone.

- a. The revised Floodplain Ordinance is attached to this report – it is effective May 26th, 2021 and not yet available on the muni-code website as of the date of issuing this report.
- b. Special provisions apply to work within floodways, and will be reviewed with a flood development permit. See the attached ordinance.

12. Hazard/Mass Wasting/Avalanche/Hillside Endorsement – Not applicable.

13. Wetlands – No known.

14. Habitat – Duck Creek is an anadromous waterbody.

15. Traffic – Dependent on use.

16. Nonconforming situations – No known.

Building Division

17. Building – Will review completed applications.

18. Outstanding Permits –

Pre-Application Conference Final Report

- a. **BLD2020 0293** – New Gymnasium
- b. **BLD2021 0039** – Bank Stabilization of Duck Creek
- c. **BLD2021 0128** – Grading
- d. **Stop Work Order** – Issued March 10, 2021

General Engineering/Public Works**19. Engineering –**

- a. Any structures or development including culverts and fill within the 50' streamside setbacks shall be included in the variance. Please also keep in mind the following requirements for development within the floodway, 49.70.400 Floodplain, (i) Additional provisions in floodways:

Encroachments, including fill, new construction, and other development, except subdivisions, within a floodway are prohibited unless an engineer licensed in the State of Alaska submits a hydrologic and hydraulic analyses to the director indicating that the encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. The hydrologic and hydraulic analyses must be performed in accordance with standard engineering practice acceptable by the Federal Emergency Management Agency.

- b. **Easements:** Site plan (plat) shall include all existing (and proposed) easements for drainage, utility lines including plumbing lines, access, snow storage, trash (dumpster) storage, or any other shared use that requires crossing the property line. For plats include the width, ownership, use, and record reference of all proposed and existing easements within the subdivision and within 100 feet of the subdivision boundary.
- c. **Agreements:** A maintenance and hold harmless (of CBJ) agreement will need to be drafted, signed, and recorded for all shared infrastructure for the development, e.g. driveway, water, sewer, etc.

20. Drainage – Submit with the preliminary plat the following information:

- a. Drainage report. A preliminary report specifying the method by which the applicant proposes to manage surface and subsurface drainage for the subdivision and the effect of such method on adjacent areas. Unlike the drainage plan required by CBJ 49.35.510, the preliminary drainage report does not need to be prepared by a licensed engineer. The report must address the following:
 - (A) A calculation of the increase in stormwater runoff resulting from the proposed development as well as the runoff from all drainage areas associated with the site. Runoff calculations shall be based on a fully-developed subdivision and a 25-year storm event;
 - (B) How drainage from the proposed subdivision will join an established drainage channel or channels, unless the director of engineering and public works approves use of an alternative drainage way;
 - (C) An evaluation of existing drainage ways and structures located between the subdivision and the receiving water body, and verification that the existing drainage ways can accommodate the increased runoff. If the increased runoff cannot be handled, the plan must propose solutions to the problem; and
 - (D) All required improvements, on or off site, that are shown on the construction plans in accordance with CBJ 49.35, article V, and that will be constructed as part of the subdivision.

Pre-Application Conference Final Report

- b. Erosion control. A report explaining the method by which the applicant proposes to control erosion and manage runoff, and potential impacts to adjacent properties or water bodies. The report shall include a plan for preservation of ground cover in areas where runoff and resulting erosion need to be minimized.
21. **Utilities** – (water, power, sewer, etc.) A minimum of 1" water service and 4" sewer service will need to be installed to the property line of each newly created lot within one-year of recording of the plat. At the time of preliminary plat submittal, please submit a construction plan for the new utilities. The submittals must meet current CBJ Standards and Specifications. The plan needs to include pipe locations, type, sizing, for both water and sewer and grades for sewer to indicate appropriate fall will be achieved. The construction plan can be shown on an existing as-built drawing that also includes existing features such as structures and other existing utilities. Permits required for the proposed work will be identified during the review of the submitted construction plan.
22. **Grading Plan:** The submitted grading plan, BLD20210128, shall be modified to include all areas of grading work. As the grading work will or has taken place over an area greater than two acres, tree and stump removal shall be indicated on the plan. Additionally, after further discussions with the Developer it is believed that fill in excess of 1,000 cubic yards has or will be taking place. As a result the following is requirement for the revised plan per 19.12.060.3 Grading Designation:

Grading in excess of 1,000 cubic yards (765 m³) shall be performed in accordance with the approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading."

The modified engineered plan shall include the floodway delineation on both the plan view and cross section view.

The engineered grading plan shall adhere to all requirements as outlined in 19.12 – Excavation and Grading Code. This specifically the plan shall address fills, compaction, setbacks, and erosion control and stormwater quality.

As this is an engineered grading plan a Special Inspection shall be required by a civil engineer of all grading work and shall adhere to 19.12.140.2 Civil Engineer. The Special Inspection form is attached. The form shall be completed by both the Developer and the inspecting Engineer and will need to be submitted to the Permit Center prior to issuance of the Grading Permit. Upon completion of the work the final report shall include the following per 19.12.150.1 Final Reports:

- a. *An as-built grading plan prepared by the civil engineer retained to provide such services in accordance with Section 19.12.140.5 showing original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, and the locations and elevations of surface drainage facilities and of the outlets of subsurface drains. As-constructed locations, elevations and details of subsurface drains shall be shown as reported by the soils engineer.*

Civil engineers shall state that to the best of their knowledge the work within their area of responsibility was done in accordance with the final approved grading plan.

- b. *The grading contractor shall submit in a form prescribed by the building official a statement of conformance to said as-built plan and the specifications.*

Fire Marshal

23. **Fire Items/Access** – Will review completed applications.

Pre-Application Conference Final Report

Other Applicable Agency Review

1. DOT&PF may be consulted for access requirements onto Mendenhall Loop Road (AKDOT ROW).
 - a. If the subdivision is approved, DOT permits may be required. Applicant should consult DOT.
2. Support from the Alaska Department of Fish and Game is critical for the variance. Staff will request agency review comments once an application is submitted.
 - a. If the variance is granted, ADFG permits may be required. Applicant should consult ADFG.
3. ACOE may be consulted during review of the variance.
 - a. If the variance is granted, ACOE permits may be required. Applicant should consult ACOE.

List of required applications

Based upon the information submitted for pre-application review, the following list of applications must be submitted in order for the project to receive a thorough and speedy review.

1. Major Subdivision Preliminary Plat Application
2. Variance Application
3. Development Permit Application

Additional Submittal Requirements

Submittal of additional information, given the specifics of the development proposal and site, are listed below. These items will be required in order for the application to be determined Counter Complete.

1. For the subdivision:
 - a. A copy of this pre-application conference report.
 - b. Preliminary Plat Checklist – required items are highlighted on the attached document.
 - c. Preliminary Plat
 - d. Sketch plat in accordance with 49.15.410
 - e. Drainage plan and drainage report for the subdivision – At this time, the drainage plan does not need to be engineered.
 - f. Preliminary construction drawings for additional water and sewer service.
2. For the variance:
 - a. Narrative must demonstrate the grounds for the variance, and discuss the reasons channelizing the creek and why grading is being requested within the 50' buffer for bank stabilization.
 - b. Narrative will demonstrate the reasons for storing the fill.
 - c. Site plan showing areas of work
 - d. Typical sections for the creek
 - e. Site plan showing flood development areas.
 - f. Drainage report is necessary to demonstrate the grounds for a variance, including:
 - i. A preliminary report specifying the method by which the applicant proposes to manage surface and subsurface drainage for the variance and the effect of such method on adjacent areas. Unlike the drainage plan required by CBJ 49.35.510, the preliminary

Pre-Application Conference Final Report

drainage report does not need to be prepared by a licensed engineer. The report must address the following:

- ii. A calculation of the increase in stormwater runoff resulting from the proposed development (channelization) as well as the runoff from all drainage areas associated with the site. Runoff calculations shall be based on a fully-developed site and a 25-year storm event;
- iii. How drainage from the proposed channelization will join an established drainage channel or channels;
- iv. An evaluation of existing drainage ways and structures located between the channelization area and the receiving water body, and verification that the existing drainage ways can accommodate the increased runoff. If the increased runoff cannot be handled, the plan must propose solutions to the problem; and
- v. All required improvements, on or off site, that are shown on the construction plans in accordance with CBJ 49.35, article V, and that will be constructed as part of the channelization.

The preliminary drainage report is necessary, as this variance will change the creek. At the same, we recognize that if the variance is approved by the commission, you will then need to seek and obtain permits from Army Corps and F&G, and possibly other agencies as well. At that time, a full hydrologic study may be necessary, unless F&G has other methods. As discussed, conducting this level of work doesn't make sense unless and until you have approval of the variance.

Exceptions to Submittal Requirements

Submittal requirements staff has determined **not** to be applicable or **not** required, given the specifics of the development proposal, are listed below. These items will **not** be required in order for the application to be reviewed.

1. None.

Fee Estimates

The preliminary plan review fees listed below can be found in the CBJ code section 49.85.

Based upon the project plan submitted for pre-application review, staff has attempted to provide an accurate estimate for the permits and permit fees which will be triggered by your proposal.

1. Major Subdivision - \$110 per lot for preliminary plat review
 - a. Public notice sign fee - \$50 plus \$100 refundable deposit
2. Non Administrative Variance - \$400
 - a. Public notice sign fee - \$50 plus \$100 refundable deposit

For informational handouts with submittal requirements for development applications, please visit our website at www.juneau.org/cdd.

Submit your Completed Application

You must submit your application(s) in person with payment made to:

City & Borough of Juneau, Permit Center
230 South Franklin Street

Pre-Application Conference Final Report

Fourth Floor Marine View Center
Juneau, AK 99801

Phone: (907) 586-0715
Web: www.juneau.org/cdd

Attachments:

49.70 Article IV – Floodplain Development
49.20 - Variances
Preliminary Plat Checklist
Special Inspection Form

ARTICLE II. - VARIANCES

Footnotes:

--- (1) ---

Editor's note— Sec. 2 of Serial No. 2018-04(b), adopted May 14, 2018, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, and derived from Serial No. 87-49, 1987; Serial No. 95-33, 1995; and Serial No. 2010-15(c), adopted May 19, 2010.

49.20.200 - Variance.

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.210 - Submittal.

Except as provided in this article for an administrative variance, an application for a variance shall be submitted to the board of adjustment through the department.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.220 - Scheduling and fee.

- (a) An application for an administrative variance shall be administered by the department.
- (b) If the director determines that the request is not for an administrative variance 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 shall not be required and the variance fee shall be reduced by 20 percent. For separate variance applications, a fee and public notice according to section 49.20.230 shall be required.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.230 - Public notice.

- (a)

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Upon determination that the administrative variance application is complete, the director shall mail notice of the application to the immediately adjoining property owners, as determined by the director, and provide at least 14 days to submit written comments before issuing a decision.

- (b) For variances other than administrative, public notice according to section 49.15.230 shall be given prior to a hearing on the application by the board of adjustment.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.240 - Board of adjustment action.

The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.250 - Variance standards.

(a) *Administrative variances.*

- (1) An administrative variance may be granted to allow projections not to exceed 25 percent of the yard setback requirements of this title or two feet, whichever is less, upon the director determining the following:
 - (A) Enforcement of the setback ordinance would result in an unreasonable hardship;
 - (B) The grant of the variance is not detrimental to public health, safety, or welfare; and
 - (C) The grant of the variance is narrowly tailored to relieve the hardship.
- (2) An administrative variance decision by the director may be appealed if a notice of appeal is filed within 20 days of the date the decision is signed by the director, in accordance with section 49.15.239.

(b) *Non-administrative variances.*

- (1) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:
 - (A) Enforcement of the ordinance would create an undue hardship resulting from

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the unusual or special conditions of the property;

(B) The unusual or special conditions of the property are not caused by the person seeking the variance;

(C) The grant of the variance is not detrimental to public health, safety, or welfare; and

(D) The grant of the variance is narrowly tailored to relieve the hardship.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

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 title and to protect the public interest.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.270 - Expiration and extensions of approval.

Expiration and extensions of variances shall be governed by the procedures and standards established for development permits in chapter 49.15, article II.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

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Presented by: Planning Commission
Presented: 04/05/2021
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2021-06

An Ordinance Amending the Land Use Code Relating to Floodplain Regulations.

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

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

Section 2. Amendment of Section. CBJ 49.70.400 Floodplain, is amended to read:

49.70.400 Floodplain.

...

(b) *Interpretation.*

(1) In the interpretation and application of this article, all provisions are considered minimum requirements and are liberally construed in favor of the governing body.

(2) This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where the provisions of this article and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(3) This article shall apply to all areas of Special Flood Hazard Areas (SFHAs) within the jurisdiction of the City and Borough of Juneau.

(4) The Special Flood Hazard Areas identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled the "Flood Insurance Study" (FIS) and the Flood Insurance Rate Maps (FIRMs) dated September 18, 2020 for the City and Borough of Juneau, Alaska are adopted. The FIS and FIRMs shall be on file with the Community Development Department and available to the public at 155 South Seward Street, Juneau, Alaska.

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(c) *Implementation.*

The director is responsible for administering and implementing the provisions of this chapter and is responsible for maintaining for public use and inspection appropriate records and information relevant to implementation of this chapter. Such records and information must include:

- (1) Actual elevations, in relation to Mean Lower Low Water, of the lowest floor, including basement, of all new or substantially improved structures located in the Special Flood Hazard Area (SFHA), and whether or not such structures have basements;
- (2) Actual elevations, in relation to Mean Lower Low Water, of all new and substantially improved flood-proofed structures and the required flood-proofing certifications;
- (3) Flood Insurance Studies (FISs);
- (4) Flood Insurance Rate Maps (FIRMs);
- (5) Any reports or studies on flood hazards in the community, such as written reports by the U.S. Army Corps of Engineers, U.S. Geological Survey, or private firms provided to the director; and
- (6) A file of all floodplain permit applications, permits, exceptions, and supporting documentation.

(d) *Enforcement.* Enforcement of this chapter is per CBJ 49.10.600-660.(e) *Floodplain Development Permit Required.*

A Floodplain Development Permit is required for any development or industrial uses located within a Special Flood Hazard Area, including placement of manufactured homes. The director must:

- (1) Review all Floodplain Development Permit applications for development in the Special Flood Hazard Area for compliance with the provisions of this chapter, and to determine if other permits may be necessary from local, state, or federal governmental agencies.
- (2) Interpret the location of the Special Flood Hazard Area boundaries and regulatory floodway. If there appears to be a conflict between a mapped boundary and actual field conditions, the director must determine and interpret the documents. When base flood elevation data has not been provided, the director shall obtain, review, and reasonably utilize base flood elevation and floodway data available from any federal, state, municipal, or any other source to implement the provisions of this chapter.

(3) If the director determines that a proposed development is within a Special Flood Hazard Area, a permit fee must be collected and the following information must be provided before processing a Floodplain Development Permit:

- (A) Elevation of the lowest floor, including a basement, of all structures;
- (B) Elevation to which any structure has been floodproofed;
- (C) Certification by an engineer or architect that the floodproofing methods for any nonresidential structure meet generally accepted floodproofing standards;
- (D) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development;
- (E) Description of the plan for maintenance of the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished; and
- (F) When base flood elevation data have not been provided, the director shall obtain, review and reasonably apply any base flood elevation and floodway data available from federal, state or other sources.

(f) *Methods of reducing losses.* In order to accomplish its purpose, this article includes methods and provisions to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards, or that result in damaging increases in erosion or flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Control filling, grading, dredging, and other development that may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards in other areas.

(g) *General standards for flood hazard protection.* In Special Flood Hazard Areas the following standards apply:

- (1) Anchoring.
 - (A) Design, modify, and anchor new construction and substantial improvements to prevent flotation, collapse, or lateral movement of the structure(s).
 - (B) A manufactured home must be anchored to prevent flotation, collapse, or lateral movement and be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
 - (C) An alternative method of anchoring may be used if the system is designed to withstand a wind force of 90 miles per hour or greater. Certification must be provided to the director that this standard is met.
- (2) Construction materials and methods.
 - (A) Construct new construction and substantial improvements with materials and utility equipment resistant to flood damage.
 - (B) Use methods and practices that minimize flood damage for new construction and substantial improvements.
 - (C) Design or locate electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (D) Require adequate drainage paths around structures on slopes to guide floodwaters away from existing and proposed structures for new construction and substantial improvements within Zones AH and AO.
- (3) Utilities.
 - (A) Design new and replacement water supply systems to minimize or eliminate infiltration of floodwaters into the system.
 - (B) Design new and replacement sanitary sewage systems to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
 - (C) Locate on-site waste disposal systems to avoid impairment to them or contamination from them during flooding.
- (4) Subdivision and development proposals must meet the following criteria:
 - (A) Be designed to minimize flood damage;

- (B) Locate and construct utilities and facilities, such as sewer, gas, electrical, and water systems to minimize flood damage;
 - (C) Provide adequate drainage to reduce exposure to flood damage; and
 - (D) Include base flood elevation data if the development consists of at least 50 lots or five acres, whichever is the lesser. If base flood elevation data is not available, the proposal must provide the data and backup information for how the base flood elevation data was generated for the proposal.
- (5) Review of Floodplain Development Permits must include:
- (A) Review of the Flood Insurance Rate Map and Flood Insurance Study for flood zone determinations for new or substantially improved structures;
 - (B) For new or substantially improved structures:
 - (i) Submittal of the proposed and finished lowest floor elevations in Zones A, AE, AO, and AH.
 - (ii) Submittal of the proposed and finished bottom elevation of the lowest horizontal structural member of the lowest floor and its distance from the mean lower low water mark in Zones V and VE; and
 - (iii) Submittal of specific requirements for Zones V and VE as set forth in 49.70.400(i).
 - (C) In Zones A and V, where elevation data are not available through the Flood Insurance Study or from another authoritative source, applications for Floodplain Development Permit shall be reviewed to ensure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and may be based on historical data, high water marks, photographs of past flooding, and other similar or relevant data. Failure to elevate construction at least two feet above grade in these zones may result in higher insurance rates.
 - (D) Provision of an elevation certificate to demonstrate that the lowest floor of a structure is at or above base flood elevation. The certification must be provided on a form approved by the National Flood Insurance Program and prepared by a registered land surveyor or professional engineer who is licensed in the State of Alaska and authorized to certify such information. This requirement may be waived by the director if an approved record elevation demonstrates that the lowest floor is substantially above the base flood elevation due to natural ground level.
- (6) Other permits. The applicant must certify that all other necessary permits have been obtained from any federal or state governmental agencies.

(7) Maintain altered or relocated portions of a Special Flood Hazard Area mapped watercourse so that the flood-carrying capacity is not diminished. The Department must notify the state coordinating agency, if any, and the Federal Emergency Management Agency prior to issuance of a Floodplain Development Permit that seeks to alter or relocate any watercourse within a Special Flood Hazard Area.

(h) *Specific standards for flood hazards protection.* In Special Flood Hazard Areas where base flood elevation data is provided, the following provisions are required:

(1) New structures or substantial improvements. Fully enclosed areas below the lowest floor of new construction or substantial improvements, that are useable solely for parking of vehicles, building access, or storage in an area other than a basement, must automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect licensed in the State of Alaska or must meet or exceed the following minimum criteria:

(A) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(B) Height of the bottom of all openings must be no higher than one foot above grade; and

(C) Openings may be equipped with screens, louvers, or other coverings or devices provided that the automatic entry and exit of floodwaters is allowed.

(2) Residential construction. New construction and substantial improvement of any residential structure:

(A) Construct the lowest floor, including basement, elevated to or above the base flood elevation within Zones A, AE, or AH; or

(B) Construct the lowest floor elevated to the base flood depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO.

(3) Manufactured homes. New or substantially improved manufactured homes must:

(A) Be placed at or above, the base flood elevation, within Zones A, AH, or AE, and shall be elevated to, or above, the base flood elevation, and comply with subsection (g); or

(B) Elevate the lowest floor to the depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO; and meet the provisions of subsection (g)(1).

(4) Recreational vehicles. Recreational vehicles placed within any Special Flood Hazard Area must be:

- (A) Situated on the site for fewer than 180 consecutive days;
- (B) Fully licensed, operational, and approved for road use; or
- (C) Meet the requirements of subsection (h)(3).

(5) Nonresidential construction. New construction or substantial improvement of any nonresidential structure must:

- (A) Elevate the lowest floor, including basement, to or above the base flood elevation within Zones A, AE, and AH;
- (B) Elevate the lowest floor to the depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO; or
- (C) Floodproof the area below the base flood elevation within Zones A, AE, AH, and AO, so that:
 - (i) The structure and utility and sanitary facilities are watertight with walls substantially impermeable to the passage of water;
 - (ii) Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (D) A flood-proof structure must be designed by an engineer or architect licensed in the State of Alaska, certifying that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on the engineer's or architect's development or review of the structural design, specifications, and plans. Certification must be provided to the director;
- (E) Applicants proposing to floodproof nonresidential buildings must be notified at the time of Floodplain Development Permit application that flood insurance premiums are based on rates that are one foot below the floodproofed level.

(6) Industrial uses. Industrial uses within the Special Flood Hazard Area are subject to the following provisions:

- (A) Sand and gravel operations, recreation activities, open space, and parking lots may be allowed in 100-year floodplains if the use does not increase the flood hazard.

(B) Industrial equipment and raw materials stored in 100-year floodplains must be adequately bermed or otherwise protected.

(C) Disposal of hazardous materials in 100-year floodplains is prohibited. No new development that involves storage of hazardous materials will be permitted in the 100-year floodplain unless there is no feasible and prudent alternative and adequate safety measures are provided to prevent accidental discharge.

(D) Establishment of sanitary landfills in floodplains is prohibited.

(7) Increasing water surface elevation in Special Flood Hazard Area mapped watercourses where floodways are not mapped. Notwithstanding any other provisions of this article, development in Zones A, AE, and AH may increase the water surface elevation of the base flood:

(A) Up to one foot with the submittal of an analysis completed by an engineer licensed in the State of Alaska demonstrating the cumulative effects of the proposed, existing and anticipated, development to the base flood; or

(B) By more than one foot only after a conditional letter of map revision and final letter of map revision is approved by the Federal Emergency Management Agency flood insurance administrator.

(i) *Additional provisions in floodways.*

(1) Residential and nonresidential structures are prohibited in floodways, no exceptions apply. Culverts and bridges are not subject to this prohibition.

(2) Encroachments, including fill, new construction, and other development, except subdivisions, within a floodway are prohibited unless an engineer licensed in the State of Alaska submits a hydrologic and hydraulic analyses to the director indicating that the encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. The hydrologic and hydraulic analyses must be performed in accordance with standard engineering practice acceptable by the Federal Emergency Management Agency.

(3) Development along a floodway cannot increase the water surface elevation unless a conditional letter of map revision and final letter of map revision that revises the floodway are approved by the Federal Emergency Management Agency.

(j) *Additional provisions in Zones VE and V.*

(1) New construction and substantial improvements in Zones V and VE must be elevated on pilings and columns so that:

- (A) The bottom of the lowest horizontal structural member of the lowest floor, excluding the pilings or columns, is elevated to or above the base flood elevation; and
 - (B) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values must each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values used are those required by applicable state statute and local code. A registered professional engineer or architect licensed in the State of Alaska must develop or review the structural design, specifications, and plans for the construction and must certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (j)(1)(A) and (B) of this section.
 - (C) The use of fill for structural support of buildings is prohibited.
- (2) In Zones VE and V, new habitable construction must be located landward of the reach of mean high tide.
- (3) In Zones VE and V, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- (4) Breakaway walls must have a design safe loading resistance of not less than ten pounds per square foot and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect licensed in the State of Alaska certifies that the designs proposed meet the following conditions:
- (A) Breakaway wall collapse must result from a water load less than that which would occur during the base flood; and
 - (B) The elevated portion of the building and supporting foundation system must not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination must each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values used shall be those required by applicable state statute and local code.
 - (C) Enclosed space within breakaway walls are limited to parking of vehicles, building access, or storage. Such space must not be used for human habitation.

(k) Warning and disclaimer of liability. The degree of flood protection required by this article is intended for minimum regulatory purposes only and is based on general scientific and engineering principles. Floods larger than expected, can and will occur. Flood heights may be increased by human or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City and Borough, any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision made thereunder.

Section 3. Amendment of Section. CBJ 49.70.410 Exceptions, is amended to read:

49.70.410 Exceptions.

(a) The Planning Commission shall hear all applications for an exception from the provisions of this article, and are limited to the powers granted in this article and those necessarily implied to ensure due process and to implement the policies of this article.

(b) In passing upon such application, the Planning Commission must consider all technical evaluations, relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands and cause injury to other persons or property;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (c) Exceptions may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (b)(1)—(b)(11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the exception increases.
- (d) Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the Commission may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.
- (e) Exceptions may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.
- (f) Exceptions must not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (g) Exceptions must only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.
- (h) Exceptions must only be issued upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the exception would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.
- (i) Reserved.

Section 4. Amendment of Section. CBJ 49.80.120 Definitions, is amended to **delete** the following definitions:

Alaska Coastal Management Program and *ACMP* mean the state coastal management program which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved by the Secretary of the United States Department of Commerce under authority of Section 305 of the Coastal Zone Management Act of 1972, as amended, 16 USC 1454.

Base flood depth means the depth shown on the flood insurance rate map for Zone AO that indicates the depth of water above highest adjacent grade resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Flood hazard factor (FHF) means the average weighted difference between the ten-year and 100-year floodwater multiplied by ten.

Section 5. Amendment of Section. CBJ 49.80.120 Definitions, is amended to include the following **new definitions** in alphabetical order:

Area of shallow flooding, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means a designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Basement, for the purposes of Chapter 49.70. Article IV, Flood Hazard Areas, means any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

Floodplain Development Permit means a permit issued by the Department to allow development that conforms with the standards of Chapter 49.70. Article IV, Flood Hazard Areas.

Lowest floor elevation, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means the measured distance of a building's lowest floor above Mean Lower Low Water specified on the Flood Insurance Rate Map (FIRM) for the City and Borough of Juneau.

New construction, for the purposes of Chapter 49.70, Article IV, Flood Hazard Areas and for flood insurance rates, means structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Section 6. Amendment of Section. CBJ 49.80.120 Definitions, is **amended** at the following definitions:

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals, processes, equipment, goods or materials. For the purposes of Chapter 49.70. Article IV, *building* means a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or a manufactured home; or a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Development means any of the following:

...

(11) For the purposes of Chapter 49.70, Article IV, Flood Hazard Areas, means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Fill means a deposit of material placed by artificial means. Berms are classified as fill.

Finished elevation means the proposed elevation of the land surface of a site after completion of all site preparation work.

Floodplain or flood-prone area, means any land area susceptible to being inundated by water from any source.

Lowest floor, for the purposes of Chapter 49.70, Article IV, Flood Hazard Areas, means the lowest floor of the lowest enclosed area (including a basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor provided that it does not violate subsection 49.70.400(h)(1).

Mobile home means a detached residential dwelling unit designed for transportation, after fabrication, on streets or highways on its own wheels or on a truck or trailer, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like, and includes recreational vehicles used outside of a recreational vehicle park as living quarters, other than as temporary living quarters for recreational, camping, or travel purposes. For the purpose of Chapter 49.70, Article IV, Flood Hazard Areas, a *mobile home* is the same as a *manufactured home*.

Ordinary high water mark 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 the mean high water elevation or from the ordinary high water mark, whichever offers greater protection to the water body.

Recreational vehicle means a vehicle primarily designed and intended as temporary living quarters for recreation, camping, or travel uses, which either has its own motive power or is mounted on or drawn by another vehicle for moving from one location to another without a change in structure or design, and identified or required to be identified by a license number, registration number, serial number, or motor number for operation on state highways. For the purposes of Chapter 49.70, Article IV, Flood Hazard Areas, *recreational vehicle* means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A, AE, A99, AR (V, VO, VE). "Special Flood Hazard Area" is synonymous in meaning with the phrase "area of special flood hazard".

Start of construction, for the purposes of Chapter 49.70.400, Flood Hazard Areas, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Substantial damage, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means damage of any origin whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. This term does not include either:

1. Any project or improvement of a building to correct existing violations of a state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Section 7. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

Processing fees are established for each development, platting and other land use action in accordance with the following schedule:

...

(8) Special use or area.

...

(H) Floodplain Development Permit

- (i) Minor development, no building permit required. \$45.00;
- (ii) Major development, building permit required. \$100.00;
- (iii) Exception, \$400.00.

...

Section 8. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 26th day of April, 2021.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk



PRELIMINARY PLAT CHECK LIST

Name of Proposed Subdivision: _____

The following items must be included with the initial submittal of a Preliminary Plat:

- ☐ Application, filled out completely
- ☐ Project Narrative
- ☐ Pre-application Conference Report
- ☐ Disclosure of all known environmental hazards and any proposed mitigation measures recommended in the applicable environmental document.
- ☐ Preliminary Plat Checklist: I have reviewed the checklist and all submittals for completeness and accuracy.
- ☐ Application fee (see fee schedule)
- ☐ Five (5) – 24" by 36" Copies PDF acceptable for review
- ☐ Lot Closure Report

Applicant or Surveyor - Signature

Date

Applicant or Surveyor - Print Name

GENERAL REQUIREMENTS

- ☐ The preliminary plat shall be prepared by a professional land surveyor, registered in the State of Alaska
- ☐ The preliminary plat shall be submitted on 22 by 34 inch sheets. The director of engineering and public works may approve alternate sheet sizes
- ☐ The preliminary plat shall be drawn with black ink to a scale of one-inch to 100 feet or less, or other suitable scale approved by the director of engineering and public works
- ☐ The preliminary plat shall be oriented with north toward the top of the sheet.
- ☐ A vicinity map shall be located in the upper right-hand corner of the sheet
- ☐ The vicinity map shall be oriented in the same direction as the plat
- ☐ A suitable north arrow shall be shown for the plat and vicinity map
- ☐ All line work and lettering must be of professional quality, and all line widths and lettering sizes must be of such size that all information can be clearly shown without overlap or confusion

GRAPHIC REQUIREMENTS - A preliminary plat shall contain the following information:

Title block - An enclosed title block in the lower right-hand corner containing the following information:

The proposed name of the subdivision

The legal description of the parcel to be subdivided including U.S. Survey, U.S. Mineral Survey, A.T.S. number or section, township, and range number, as applicable

"City and Borough of Juneau, Alaska"

"State Recorder's Office at Juneau" Anchorage

The date the preliminary plat was prepared and revised

The horizontal scale

The name and address of the owner of record

The name, address, and telephone number of the surveyor preparing the preliminary plat

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PRELIMINARY PLAT CHECK LIST

Lot, block, and street information:

- ☐ The area of each lot
- ☐ The dimensions in feet and hundredths of a foot
- ☐ An identifying number and letter for lots and blocks
- ☐ Lots numbered consecutively, commencing with the number "1," with no omissions or duplications
- ☐ If the remainder of an original parcel being subdivided is relatively large, it shall be designated as a "tract" with an identifying number
- ☐ All parcels of land intended to be dedicated for public use or reserved for the use of all of the property owners in the proposed subdivision shall be shown as lots, and consecutively numbered. The purpose and any conditions or limitations on the use of the parcel shall be noted on the plat
- ☐ Abutting properties shall be shown with dashed lines, numbers, and/or letters
- ☐ For resubdivisions or public way vacations, the lines and legal description of the previous lots shall be shown with light dashed lines, numbers, and/or letters, or by a separate plat on the same sheet showing the previous lot lines
 - ☐ The minimum data shown for each curve shall be as follows:
 - ☐ Length
 - ☐ Central angle
 - ☐ Radius
 - ☐ Bearing and distance of long chord
- ☐ Setbacks shall be shown on all corner lots and any lots with multiple frontage. Setbacks shall be shown on typical lots

Boundary lines:

- ☐ All boundary lines of the subdivision with bearings and distances described
- ☐ All retraced boundary lines shall show record and measured bearings and distances where they differ. Record dimension information shall be shown within parentheses and include a record source identification
- ☐ The exterior boundary lines of the subdivision shall be a solid black opaque line that is of a width that distinguishes it from all other property lines shown on the plat
- ☐ If phasing is proposed, then the boundaries and number of each phase, sequential lot numbering, and a subdivision name consistent with previous phases shall be shown

Monumentation:

- ☐ The monuments used to establish the basis of bearing
- ☐ Each monument found or set shall be identified on the plat by a symbol
- ☐ A complete description of the monument, including type and all information printed on the cap. A typical drawing shall be shown for each type of monument cap set
- ☐ A legend showing the symbols for all the types of monuments
- ☐ The identification, description location, elevation, and datum of the benchmark used to establish vertical control

Site access, circulation, and utilities:

- ☐ The widths and names of existing rights-of-way within the subdivision and within 100 feet of the subdivision boundary
- ☐ Proposed rights-of-way, including their widths and proposed names
- ☐ The grades of existing and proposed streets within these rights-of-way
- ☐ The width, ownership, use, and record reference of all proposed and existing easements within the subdivision and within 100 feet of the subdivision boundary
- ☐ The width, ownership, and use of all proposed easements

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PRELIMINARY PLAT CHECK LIST

- ☐ All proposed and existing easements shall have sufficient dimensions shown to determine their location on the ground Show easements for drainage, utilities, and access
- ☐ Existing trails or pathways within the subdivision and within 100 feet of the subdivision boundary, including the width of any associated rights-of way or easements
- ☐ Proposed trails or pathways and widths of their rights-of-way
- ☐ If the plat submitted covers only a part of the tract under the control of the applicant, a sketch plat of the prospective street system of the unplatted part shall be submitted
- ☐ The location of any existing or proposed driveways/curb cuts that access or are proposed to access any existing or proposed street

Topographic information:

- ☐ For slopes of less than five percent, show one foot contour lines and include spot elevations at all breaks in grade, along all drainage channels or swales, and at selected points not more than 100 feet apart in all directions
- ☐ For slopes between five percent and ten percent, show two foot contour lines
- ☐ For slopes greater than ten percent, show five foot contour lines
- ☐ Every fifth elevation contour shall be distinctive and clearly labeled
- ☐ Dashed lines shall represent existing contours
- ☐ Mapping shall include any significant features which can materially affect the design of the subdivision, including, but not limited to, structures, fences, walls, and utility poles
- ☐ If irregular slopes or special features are present, additional contour information may be required by the director of engineering and public works for planning or construction purposes. Additional required information may include projecting the topography of the site after grading has taken place, showing such items as:
 - ☐ Pad elevations and drainage patterns for each lot
 - ☐ Tops and toes of all manufactured slopes, including daylight lines
 - ☐ Existing and proposed retaining wall locations and heights
- ☐ For subdivisions located in hillside areas with slopes greater than eighteen percent, additional requirements apply in accordance with CBJ 49.70, Article II

Sewer and water:

- ☐ Existing sewer and water mains within the tract with pipe sizes and grades
- ☐ A draft plan for proposed water and sewer lines showing the size, approximate slope, and connection points with elevations for the purpose of determining the feasibility of construction

Multisheet plats: (If applicable)

- ☐ When a plat requires more than one sheet, exclusive of a certificate sheet, an index sheet shall be included. When a plat requires more than three sheets, a cover sheet shall also be included, showing the subdivision title, a key map, and all certificates. Each additional sheet shall include the following data:
 - ☐ North arrow
 - ☐ Legend
 - ☐ Surveyor's seal and signature
 - ☐ Title block
 - ☐ Sheet _____ of _____
 - ☐ Scale
 - ☐ All plat notes
 - ☐ Vicinity map

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PRELIMINARY PLAT CHECK LIST

ADDITIONAL MAPPING OR REPORTS- At the pre-application meeting, it will be determined if any of the following additional mapping or reports are required to be submitted with the preliminary plat. If required, the following additional mapping or reports shall be submitted:

Hazard and Special Habitat Areas:

- ☐ Any portion of a special flood hazard area, landslide or avalanche area, habitat area as defined by CBJ 49.70.310, or watersheds, either existing at the proposed subdivision site or shown on the overlay maps, adopted pursuant to this title, to exist at the proposed subdivision site, must be depicted on the preliminary plat
- ☐ The boundaries of any wetland areas must be depicted on the preliminary plat. Boundaries must be determined by a person qualified to perform wetland delineations

Soils report:

- ☐ A soils report prepared by an engineer licensed by the State of Alaska shall be required if the proposed subdivision is located farther from the existing public sewer system than specified in CBJ 49.35, and the applicant chooses to provide on-lot waste disposal rather than to connect to the public system. A soils report shall include the following:
 - ☐ Certification that the proposed lots are large enough and have soil of sufficient permeability to permit the construction of approved waste treatment systems for on-lot waste disposal
 - ☐ The location and size of drain fields for each lot
 - ☐ The locations and logs of test borings, percolation test results, and a hydrological evaluation of on-site sewage disposal
 - ☐ If the soils report indicates that the soils found on the site are not of sufficient permeability or the lots are not large enough to permit the construction of systems for on-lot waste disposal, the size of the proposed lots must be increased or alternate methods for waste disposal proposed
 - ☐ The soils report shall describe the nature of the subsurface soils and any soil conditions that would affect the design of the proposed development. The soils report shall state whether the proposed subdivision plan is feasible and provide general solutions for all known geotechnical conditions or problems

Drainage report:

- ☐ A preliminary report specifying the method by which the applicant proposes to manage surface and subsurface drainage for the subdivision and the effect of such method on adjacent areas. Unlike the drainage plan required by CBJ 49.35.510, the preliminary drainage report does not need to be prepared by a licensed engineer. The report must address the following:
 - ☐ A calculation of the increase in stormwater runoff resulting from the proposed development as well as the runoff from all drainage areas associated with the site. Runoff calculations shall be based on a fully-developed subdivision and a 25-year storm event
 - ☐ How drainage from the proposed subdivision will join an established drainage channel or channels, unless the director of engineering and public works approves use of an alternative drainage way
 - ☐ An evaluation of existing drainage ways and structures located between the subdivision and the receiving water body, and verification that the existing drainage ways can accommodate the increased runoff. If the increased runoff cannot be handled, the plan must propose solutions to the problem
 - ☐ All required improvements, on or off site, that are shown on the construction plans in accordance with CBJ 49.35, Article V, and that will be constructed as part of the subdivision

Water:

For subdivisions of five or more lots, including major subdivisions, the following shall be included, where applicable, in accordance with CBJ 49.15.412:

If a proposed subdivision is located at greater distance from the existing public water system than specified in CBJ 49.35, Article III, and the applicant chooses not to connect to the public system, a statement that the applicant will provide a community water system or that individual wells will be used

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PRELIMINARY PLAT CHECK LIST

- ☐ A report by a registered engineer or geologist that clearly supports the legal and physical availability of adequate water. Methods for proof of water availability and the standards for quantity are listed in CBJ 49.35, Article III
- ☐ A copy of the State application for a permit to appropriate water in the quantity required to meet the subdivisions demands
- ☐ This does not apply to remote subdivisions unless: the subdivider of the remote subdivision chooses to provide potable water, a public water system is available and the subdivision falls within the criteria outlined in CBJ 49.35.310(a), or the subdivision has four or fewer lots.
- ☐ The director for minor subdivisions, and the planning commission for major subdivisions, may, for good cause, temporarily waive the requirement to provide a water report and proof of water, and condition the approval of the preliminary plat upon the provision of both documents as part of the final plat application and approval process.

Erosion control:

- ☐ A report explaining the method by which the applicant proposes to control erosion and manage runoff, and potential impacts to adjacent properties or water bodies. The report shall include a plan for preservation of ground cover in areas where runoff and resulting erosion need to be minimized.

Traffic study:

- ☐ A traffic impact analysis may be required with the preliminary plat in accordance with CBJ 49.40.300.

Shadow plats:

- ☐ For subdivisions of five or more lots in transition areas, a shadow plat shall be submitted according to CBJ 49.70.710. The shadow plat shall consist of a sketch superimposed on the proposed subdivision layout. This sketch shall reflect any future resubdivision of the parcels into smaller lots consistent with the higher density and the lot size allowed under the transition zoning.

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SPECIAL INSPECTION PROPOSAL FORM

Note: This form must be completed by the Owner or Architect/Engineer of Record and approved by the Building Official prior to issuance of a Building Permit. The qualified individual special inspector must be identified along with their firm. Special Inspector may not be employed by the Contractor or anyone responsible for the construction work.

PROJECT _____ **PERMIT APPLICATION NO.:** BLD20210331

OWNER _____ **DATE:** _____

PROPOSED SPECIAL INSPECTOR Firm: _____ and Individual: _____
(Please fill out one of these forms for each Special Inspector on this project. Attach proposed inspector's qualifications.)

PROPOSED TESTING AGENCIES _____
(Specify which category they are testing.)

The use of a special inspector does not negate the need to call for and have all normal required CBJ inspections inspected and approved by CBJ Inspectors. Report requirements shall comply with the 2006 IBC Section 1704.1.2

TYPES OF INSPECTIONS REQUIRED:

Check each type of inspection required by Architect/Engineer of Record as indicated on the approved building plans and specifications.

- ☐ **1. CONCRETE**
Inspection Scope & Schedule* _____
Frequency of Sampling Materials _____
Frequency of Testing _____
- ☐ **2. BOLTS INSTALLED IN CONCRETE**
Inspection Scope & Schedule* _____
- ☐ **3. SPECIAL MOMENT - RESISTING CONCRETE FRAME**
Inspection Scope & Schedule* _____
Frequency of Sampling Materials _____
Frequency of Testing _____
- ☐ **4. REINFORCING STEEL AND PRESTRESSED STEEL TENDONS**
Inspection Scope & Schedule* _____
Method of Testing _____
- ☐ **5. WELDING**
 - ☐ **A. SPECIAL MOMENT - RESISTING STEEL FRAMES**
Inspection Scope & Schedule* _____
Type of non-destructive testing _____
Frequency of Tests _____
 - ☐ **B. STRUCTURAL WELDING INCLUDING REINFORCING STEEL**
Inspection Scope & Schedule* _____
Type of non-destructive testing _____
Frequency of Tests _____
- ☐ **6. HIGH-STRENGTH BOLTING**
Inspection Scope & Schedule* _____
Method of Testing _____
Frequency of Testing _____
- ☐ **7. STRUCTURAL MASONRY**
Inspection Scope & Schedule* _____
Frequency of Sampling Materials _____
Frequency of Testing _____
- ☐ **8. REINFORCED GYPSUM CONCRETE**
Inspection Scope & Schedule* _____
Frequency of Sampling Materials _____
Frequency of Testing _____

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☐	9. INSULATING CONCRETE FILL Inspection Scope & Schedule* _____ Frequency of Sampling Materials _____ Frequency of Testing _____
☐	10. SPRAYED-ON FIREPROOFING Inspection Scope & Schedule* _____ Method of Inspection _____ Frequency of Sampling Materials _____ Frequency of Testing _____
☐	11. PILING, DRILLED PIERS AND CAISSONS Inspection Scope & Schedule* _____ Method of Inspection _____
☐	12. SHOTCRETE Inspection Scope & Schedule* _____ Method of Inspection _____ Frequency of Sampling Materials _____ Frequency of Testing _____
☒	13. SPECIAL GRADING, EXCAVATION AND FILLING Inspection Scope & Schedule* _____ <u>The engineered fill shall be constructed in accordance with the approved plan, applicable CBJ codes and shall be stable and not create a hazard to public or private property. Upon completion of the rough grading work and at the final completion of the work, the following reports and drawings and supplements thereto are required for engineered grading:</u> 1. A minimum of 1" water service and 4" sewer service will need to be installed to the property line of each newly created lot within one-year of recording of the plat. At the time of preliminary plat submittal, please submit a construction plan for the new utilities. The submittals must meet current CBJ Standards and Specifications. The plan needs to include pipe locations, type, sizing, for both water and sewer and grades for sewer to indicate appropriate fall will be achieved. The construction plan can be shown on an existing as-built drawing that also includes existing features such as structures and other existing utilities. 2. The grading contractor shall submit in a form prescribed by the building official a statement of conformance to said as-built plan and the specifications.

SPECIAL INSPECTOR CERTIFICATION:

I hereby certify that I am qualified to perform the special inspection items marked above, that I will perform the special inspections at the appropriate times scheduled by the contractor and that I will submit weekly and final reports.

Special Inspector: _____ Date: _____

OWNER CERTIFICATION: (May be signed by Architect /Engineer of Record on Owner's behalf.)

I hereby certify that I will employ the aforementioned Special Inspector to perform the inspections shown above.

Owner: _____ Date: _____

BUILDING OFFICIAL'S APPROVAL OF PROPOSAL OF SPECIAL INSPECTION:

Building Official: _____ Date: _____

Note:

Special Inspection weekly reports must be submitted to the owner and to the Building Official within 5 working days of the last day of the week being reported to avoid Suspension of the Building Permit and possible Stop Work Order.

A monthly summary letter is required for overall status including any outstanding items that require followup. The final special inspection approval letter(s) must be submitted before use or occupancy. Any variation to the special inspection proposal requires prior approval of the Building Official.

* (extent of work inspected; continuous or periodic, frequency)

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ARTICLE II. - VARIANCES

Footnotes:

--- (1) ---

Editor's note— Sec. 2 of Serial No. 2018-04(b), adopted May 14, 2018, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, and derived from Serial No. 87-49, 1987; Serial No. 95-33, 1995; and Serial No. 2010-15(c), adopted May 19, 2010.

49.20.200 - Variance.

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.210 - Submittal.

Except as provided in this article for an administrative variance, an application for a variance shall be submitted to the board of adjustment through the department.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.220 - Scheduling and fee.

- (a) An application for an administrative variance shall be administered by the department.
- (b) If the director determines that the request is not for an administrative variance 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 shall not be required and the variance fee shall be reduced by 20 percent. For separate variance applications, a fee and public notice according to section 49.20.230 shall be required.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.230 - Public notice.

- (a)

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Upon determination that the administrative variance application is complete, the director shall mail notice of the application to the immediately adjoining property owners, as determined by the director, and provide at least 14 days to submit written comments before issuing a decision.

- (b) For variances other than administrative, public notice according to section 49.15.230 shall be given prior to a hearing on the application by the board of adjustment.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.240 - Board of adjustment action.

The board of adjustment shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify or deny the request based on the criteria in section 49.20.250(b).

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.250 - Variance standards.

(a) *Administrative variances.*

- (1) An administrative variance may be granted to allow projections not to exceed 25 percent of the yard setback requirements of this title or two feet, whichever is less, upon the director determining the following:
 - (A) Enforcement of the setback ordinance would result in an unreasonable hardship;
 - (B) The grant of the variance is not detrimental to public health, safety, or welfare; and
 - (C) The grant of the variance is narrowly tailored to relieve the hardship.
- (2) An administrative variance decision by the director may be appealed if a notice of appeal is filed within 20 days of the date the decision is signed by the director, in accordance with section 49.15.239.

(b) *Non-administrative variances.*

- (1) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:
 - (A) Enforcement of the ordinance would create an undue hardship resulting from

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the unusual or special conditions of the property;

- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and
- (D) The grant of the variance is narrowly tailored to relieve the hardship.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

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 title and to protect the public interest.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

49.20.270 - Expiration and extensions of approval.

Expiration and extensions of variances shall be governed by the procedures and standards established for development permits in chapter 49.15, article II.

(Serial No. 2018-04(b), § 2, 5-14-2018, eff. 6-14-2018)

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Presented by: Planning Commission
Presented: 04/05/2021
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2021-06

An Ordinance Amending the Land Use Code Relating to Floodplain Regulations.

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

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

Section 2. Amendment of Section. CBJ 49.70.400 Floodplain, is amended to read:

49.70.400 Floodplain.

...

(b) Interpretation.

- (1) In the interpretation and application of this article, all provisions are considered minimum requirements and are liberally construed in favor of the governing body.
- (2) This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where the provisions of this article and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (3) This article shall apply to all areas of Special Flood Hazard Areas (SFHAs) within the jurisdiction of the City and Borough of Juneau.
- (4) The Special Flood Hazard Areas identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled the "Flood Insurance Study" (FIS) and the Flood Insurance Rate Maps (FIRMs) dated September 18, 2020 for the City and Borough of Juneau, Alaska are adopted. The FIS and FIRMs shall be on file with the Community Development Department and available to the public at 155 South Seward Street, Juneau, Alaska.

(c) *Implementation.*

The director is responsible for administering and implementing the provisions of this chapter and is responsible for maintaining for public use and inspection appropriate records and information relevant to implementation of this chapter. Such records and information must include:

- (1) Actual elevations, in relation to Mean Lower Low Water, of the lowest floor, including basement, of all new or substantially improved structures located in the Special Flood Hazard Area (SFHA), and whether or not such structures have basements;
- (2) Actual elevations, in relation to Mean Lower Low Water, of all new and substantially improved flood-proofed structures and the required flood-proofing certifications;
- (3) Flood Insurance Studies (FISs);
- (4) Flood Insurance Rate Maps (FIRMs);
- (5) Any reports or studies on flood hazards in the community, such as written reports by the U.S. Army Corps of Engineers, U.S. Geological Survey, or private firms provided to the director; and
- (6) A file of all floodplain permit applications, permits, exceptions, and supporting documentation.

(d) *Enforcement.* Enforcement of this chapter is per CBJ 49.10.600-660.

(e) *Floodplain Development Permit Required.*

A Floodplain Development Permit is required for any development or industrial uses located within a Special Flood Hazard Area, including placement of manufactured homes. The director must:

- (1) Review all Floodplain Development Permit applications for development in the Special Flood Hazard Area for compliance with the provisions of this chapter, and to determine if other permits may be necessary from local, state, or federal governmental agencies.
- (2) Interpret the location of the Special Flood Hazard Area boundaries and regulatory floodway. If there appears to be a conflict between a mapped boundary and actual field conditions, the director must determine and interpret the documents. When base flood elevation data has not been provided, the director shall obtain, review, and reasonably utilize base flood elevation and floodway data available from any federal, state, municipal, or any other source to implement the provisions of this chapter.

(3) If the director determines that a proposed development is within a Special Flood Hazard Area, a permit fee must be collected and the following information must be provided before processing a Floodplain Development Permit:

- (A) Elevation of the lowest floor, including a basement, of all structures;
- (B) Elevation to which any structure has been floodproofed;
- (C) Certification by an engineer or architect that the floodproofing methods for any nonresidential structure meet generally accepted floodproofing standards;
- (D) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development;
- (E) Description of the plan for maintenance of the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished; and
- (F) When base flood elevation data have not been provided, the director shall obtain, review and reasonably apply any base flood elevation and floodway data available from federal, state or other sources.

(f) *Methods of reducing losses.* In order to accomplish its purpose, this article includes methods and provisions to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards, or that result in damaging increases in erosion or flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Control filling, grading, dredging, and other development that may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards in other areas.

(g) *General standards for flood hazard protection.* In Special Flood Hazard Areas the following standards apply:

- (1) Anchoring.
 - (A) Design, modify, and anchor new construction and substantial improvements to prevent flotation, collapse, or lateral movement of the structure(s).
 - (B) A manufactured home must be anchored to prevent flotation, collapse, or lateral movement and be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
 - (C) An alternative method of anchoring may be used if the system is designed to withstand a wind force of 90 miles per hour or greater. Certification must be provided to the director that this standard is met.
- (2) Construction materials and methods.
 - (A) Construct new construction and substantial improvements with materials and utility equipment resistant to flood damage.
 - (B) Use methods and practices that minimize flood damage for new construction and substantial improvements.
 - (C) Design or locate electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (D) Require adequate drainage paths around structures on slopes to guide floodwaters away from existing and proposed structures for new construction and substantial improvements within Zones AH and AO.
- (3) Utilities.
 - (A) Design new and replacement water supply systems to minimize or eliminate infiltration of floodwaters into the system.
 - (B) Design new and replacement sanitary sewage systems to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
 - (C) Locate on-site waste disposal systems to avoid impairment to them or contamination from them during flooding.
- (4) Subdivision and development proposals must meet the following criteria:
 - (A) Be designed to minimize flood damage;

- (B) Locate and construct utilities and facilities, such as sewer, gas, electrical, and water systems to minimize flood damage;
 - (C) Provide adequate drainage to reduce exposure to flood damage; and
 - (D) Include base flood elevation data if the development consists of at least 50 lots or five acres, whichever is the lesser. If base flood elevation data is not available, the proposal must provide the data and backup information for how the base flood elevation data was generated for the proposal.
- (5) Review of Floodplain Development Permits must include:
- (A) Review of the Flood Insurance Rate Map and Flood Insurance Study for flood zone determinations for new or substantially improved structures;
 - (B) For new or substantially improved structures:
 - (i) Submittal of the proposed and finished lowest floor elevations in Zones A, AE, AO, and AH.
 - (ii) Submittal of the proposed and finished bottom elevation of the lowest horizontal structural member of the lowest floor and its distance from the mean lower low water mark in Zones V and VE; and
 - (iii) Submittal of specific requirements for Zones V and VE as set forth in 49.70.400(i).
 - (C) In Zones A and V, where elevation data are not available through the Flood Insurance Study or from another authoritative source, applications for Floodplain Development Permit shall be reviewed to ensure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and may be based on historical data, high water marks, photographs of past flooding, and other similar or relevant data. Failure to elevate construction at least two feet above grade in these zones may result in higher insurance rates.
 - (D) Provision of an elevation certificate to demonstrate that the lowest floor of a structure is at or above base flood elevation. The certification must be provided on a form approved by the National Flood Insurance Program and prepared by a registered land surveyor or professional engineer who is licensed in the State of Alaska and authorized to certify such information. This requirement may be waived by the director if an approved record elevation demonstrates that the lowest floor is substantially above the base flood elevation due to natural ground level.
- (6) Other permits. The applicant must certify that all other necessary permits have been obtained from any federal or state governmental agencies.

(7) Maintain altered or relocated portions of a Special Flood Hazard Area mapped watercourse so that the flood-carrying capacity is not diminished. The Department must notify the state coordinating agency, if any, and the Federal Emergency Management Agency prior to issuance of a Floodplain Development Permit that seeks to alter or relocate any watercourse within a Special Flood Hazard Area.

(h) *Specific standards for flood hazards protection.* In Special Flood Hazard Areas where base flood elevation data is provided, the following provisions are required:

(1) New structures or substantial improvements. Fully enclosed areas below the lowest floor of new construction or substantial improvements, that are useable solely for parking of vehicles, building access, or storage in an area other than a basement, must automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect licensed in the State of Alaska or must meet or exceed the following minimum criteria:

(A) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(B) Height of the bottom of all openings must be no higher than one foot above grade; and

(C) Openings may be equipped with screens, louvers, or other coverings or devices provided that the automatic entry and exit of floodwaters is allowed.

(2) Residential construction. New construction and substantial improvement of any residential structure:

(A) Construct the lowest floor, including basement, elevated to or above the base flood elevation within Zones A, AE, or AH; or

(B) Construct the lowest floor elevated to the base flood depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO.

(3) Manufactured homes. New or substantially improved manufactured homes must:

(A) Be placed at or above, the base flood elevation, within Zones A, AH, or AE, and shall be elevated to, or above, the base flood elevation, and comply with subsection (g); or

(B) Elevate the lowest floor to the depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO; and meet the provisions of subsection (g)(1).

(4) Recreational vehicles. Recreational vehicles placed within any Special Flood Hazard Area must be:

- (A) Situated on the site for fewer than 180 consecutive days;
- (B) Fully licensed, operational, and approved for road use; or
- (C) Meet the requirements of subsection (h)(3).

(5) Nonresidential construction. New construction or substantial improvement of any nonresidential structure must:

- (A) Elevate the lowest floor, including basement, to or above the base flood elevation within Zones A, AE, and AH;
- (B) Elevate the lowest floor to the depth number specified on the Flood Insurance Rate Map, or higher, or if no depth number is specified, at least two feet above the highest adjacent natural grade within Zone AO; or
- (C) Floodproof the area below the base flood elevation within Zones A, AE, AH, and AO, so that:
 - (i) The structure and utility and sanitary facilities are watertight with walls substantially impermeable to the passage of water;
 - (ii) Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (D) A flood-proof structure must be designed by an engineer or architect licensed in the State of Alaska, certifying that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on the engineer's or architect's development or review of the structural design, specifications, and plans. Certification must be provided to the director;
- (E) Applicants proposing to floodproof nonresidential buildings must be notified at the time of Floodplain Development Permit application that flood insurance premiums are based on rates that are one foot below the floodproofed level.

(6) Industrial uses. Industrial uses within the Special Flood Hazard Area are subject to the following provisions:

- (A) Sand and gravel operations, recreation activities, open space, and parking lots may be allowed in 100-year floodplains if the use does not increase the flood hazard.

(B) Industrial equipment and raw materials stored in 100-year floodplains must be adequately bermed or otherwise protected.

(C) Disposal of hazardous materials in 100-year floodplains is prohibited. No new development that involves storage of hazardous materials will be permitted in the 100-year floodplain unless there is no feasible and prudent alternative and adequate safety measures are provided to prevent accidental discharge.

(D) Establishment of sanitary landfills in floodplains is prohibited.

(7) Increasing water surface elevation in Special Flood Hazard Area mapped watercourses where floodways are not mapped. Notwithstanding any other provisions of this article, development in Zones A, AE, and AH may increase the water surface elevation of the base flood:

(A) Up to one foot with the submittal of an analysis completed by an engineer licensed in the State of Alaska demonstrating the cumulative effects of the proposed, existing and anticipated, development to the base flood; or

(B) By more than one foot only after a conditional letter of map revision and final letter of map revision is approved by the Federal Emergency Management Agency flood insurance administrator.

(i) *Additional provisions in floodways.*

(1) Residential and nonresidential structures are prohibited in floodways, no exceptions apply. Culverts and bridges are not subject to this prohibition.

(2) Encroachments, including fill, new construction, and other development, except subdivisions, within a floodway are prohibited unless an engineer licensed in the State of Alaska submits a hydrologic and hydraulic analyses to the director indicating that the encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. The hydrologic and hydraulic analyses must be performed in accordance with standard engineering practice acceptable by the Federal Emergency Management Agency.

(3) Development along a floodway cannot increase the water surface elevation unless a conditional letter of map revision and final letter of map revision that revises the floodway are approved by the Federal Emergency Management Agency.

(j) *Additional provisions in Zones VE and V.*

(1) New construction and substantial improvements in Zones V and VE must be elevated on pilings and columns so that:

- (A) The bottom of the lowest horizontal structural member of the lowest floor, excluding the pilings or columns, is elevated to or above the base flood elevation; and
 - (B) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values must each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values used are those required by applicable state statute and local code. A registered professional engineer or architect licensed in the State of Alaska must develop or review the structural design, specifications, and plans for the construction and must certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (j)(1)(A) and (B) of this section.
 - (C) The use of fill for structural support of buildings is prohibited.
- (2) In Zones VE and V, new habitable construction must be located landward of the reach of mean high tide.
- (3) In Zones VE and V, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- (4) Breakaway walls must have a design safe loading resistance of not less than ten pounds per square foot and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect licensed in the State of Alaska certifies that the designs proposed meet the following conditions:
- (A) Breakaway wall collapse must result from a water load less than that which would occur during the base flood; and
 - (B) The elevated portion of the building and supporting foundation system must not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination must each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values used shall be those required by applicable state statute and local code.
 - (C) Enclosed space within breakaway walls are limited to parking of vehicles, building access, or storage. Such space must not be used for human habitation.

(k) Warning and disclaimer of liability. The degree of flood protection required by this article is intended for minimum regulatory purposes only and is based on general scientific and engineering principles. Floods larger than expected, can and will occur. Flood heights may be increased by human or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City and Borough, any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision made thereunder.

Section 3. Amendment of Section. CBJ 49.70.410 Exceptions, is amended to read:

49.70.410 Exceptions.

(a) The Planning Commission shall hear all applications for an exception from the provisions of this article, and are limited to the powers granted in this article and those necessarily implied to ensure due process and to implement the policies of this article.

(b) In passing upon such application, the Planning Commission must consider all technical evaluations, relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands and cause injury to other persons or property;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (c) Exceptions may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (b)(1)—(b)(11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the exception increases.
- (d) Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the Commission may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.
- (e) Exceptions may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.
- (f) Exceptions must not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (g) Exceptions must only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.
- (h) Exceptions must only be issued upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the exception would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.
- (i) Reserved.

Section 4. Amendment of Section. CBJ 49.80.120 Definitions, is amended to **delete** the following definitions:

Alaska Coastal Management Program and *ACMP* mean the state coastal management program which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved by the Secretary of the United States Department of Commerce under authority of Section 305 of the Coastal Zone Management Act of 1972, as amended, 16 USC 1454.

Base flood depth means the depth shown on the flood insurance rate map for Zone AO that indicates the depth of water above highest adjacent grade resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Flood hazard factor (FHF) means the average weighted difference between the ten-year and 100-year floodwater multiplied by ten.

Section 5. Amendment of Section. CBJ 49.80.120 Definitions, is amended to include the following **new definitions** in alphabetical order:

Area of shallow flooding, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means a designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Basement, for the purposes of Chapter 49.70. Article IV, Flood Hazard Areas, means any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

Floodplain Development Permit means a permit issued by the Department to allow development that conforms with the standards of Chapter 49.70. Article IV, Flood Hazard Areas.

Lowest floor elevation, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means the measured distance of a building's lowest floor above Mean Lower Low Water specified on the Flood Insurance Rate Map (FIRM) for the City and Borough of Juneau.

New construction, for the purposes of Chapter 49.70, Article IV, Flood Hazard Areas and for flood insurance rates, means structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Section 6. Amendment of Section. CBJ 49.80.120 Definitions, is **amended** at the following definitions:

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals, processes, equipment, goods or materials. For the purposes of Chapter 49.70. Article IV, *building* means a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or a manufactured home; or a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Development means any of the following:

...

(11) For the purposes of Chapter 49.70. Article IV, Flood Hazard Areas, means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Fill means a deposit of material placed by artificial means. Berms are classified as fill.

Finished elevation means the proposed elevation of the land surface of a site after completion of all site preparation work.

Floodplain or flood-prone area, means any land area susceptible to being inundated by water from any source.

Lowest floor, for the purposes of Chapter 49.70, Article IV, Flood Hazard Areas, means the lowest floor of the lowest enclosed area (including a basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor provided that it does not violate subsection 49.70.400(h)(1).

Mobile home means a detached residential dwelling unit designed for transportation, after fabrication, on streets or highways on its own wheels or on a truck or trailer, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like, and includes recreational vehicles used outside of a recreational vehicle park as living quarters, other than as temporary living quarters for recreational, camping, or travel purposes. For the purpose of Chapter 49.70. Article IV, Flood Hazard Areas, a *mobile home* is the same as a *manufactured home*.

Ordinary high water mark 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 the mean high water elevation or from the ordinary high water mark, whichever offers greater protection to the water body.

Recreational vehicle means a vehicle primarily designed and intended as temporary living quarters for recreation, camping, or travel uses, which either has its own motive power or is mounted on or drawn by another vehicle for moving from one location to another without a change in structure or design, and identified or required to be identified by a license number, registration number, serial number, or motor number for operation on state highways. For the purposes of Chapter 49.70, Article IV, Flood Hazard Areas, *recreational vehicle* means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A, AE, A99, AR (V, VO, VE). "Special Flood Hazard Area" is synonymous in meaning with the phrase "area of special flood hazard".

Start of construction, for the purposes of Chapter 49.70.400, Flood Hazard Areas, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Substantial damage, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means damage of any origin whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement, for the purposes of Chapter 49.70.400, Flood Hazard Areas, means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. This term does not include either:

1. Any project or improvement of a building to correct existing violations of a state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Section 7. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

Processing fees are established for each development, platting and other land use action in accordance with the following schedule:

...

(8) Special use or area.

...

(H) Floodplain Development Permit

- (i) Minor development, no building permit required. \$45.00;
- (ii) Major development, building permit required. \$100.00;
- (iii) Exception, \$400.00.

...

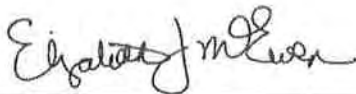
Section 8. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 26th day of April, 2021.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk

Parcel #: 5B2101030001

Legal Description: USS No. 1053 Tract A-2

Size: 20.49 acres

Zoning: D15

Existing Structure: Wrestling Gym under construction

Density: 0

Access: Commercial Driveway connecting to Mendenhall Loop Road

Utilities: All public utilities available

Parcel #: 5B2101320030

Legal Description: Gross Lot 2

Size: 4.922 acres

Zoning: D15

Existing Structure: Condominiums

Density: 72

Access: Driveway connecting to Cinema Drive

Utilities: All public utilities available

Duck Creek, an impaired anadromous water body, flows through both properties. Duck Creek cuts off access to approximately 18 acres of the larger parcel. The State of Alaska Department of Fish and Game (F&G) has noted the stream has numerous problems largely a result of being too wide. We desire to work with F&G and other agencies to improve the habitat conditions through stream and stream bank restoration.

CBJ 49.70.310 requires a 50 ft streamside buffer and 25 ft no disturbance zone. In order to rehabilitate the stream and banks, a variance to work within the buffers would now be required regardless of the respective owner.

Without a variance, habitat conditions currently cannot be improved. Resulting in this reach of the Duck Creek remaining an impaired blight, while other sections of Duck Creek have been rehabilitated.

00157

Parcel #: 5B2101030001

Legal Description: USS No. 1053 Tract A-2

Size: 20.49 acres

Zoning: D15

Existing Structure: Wrestling Gym under construction

Density: 0

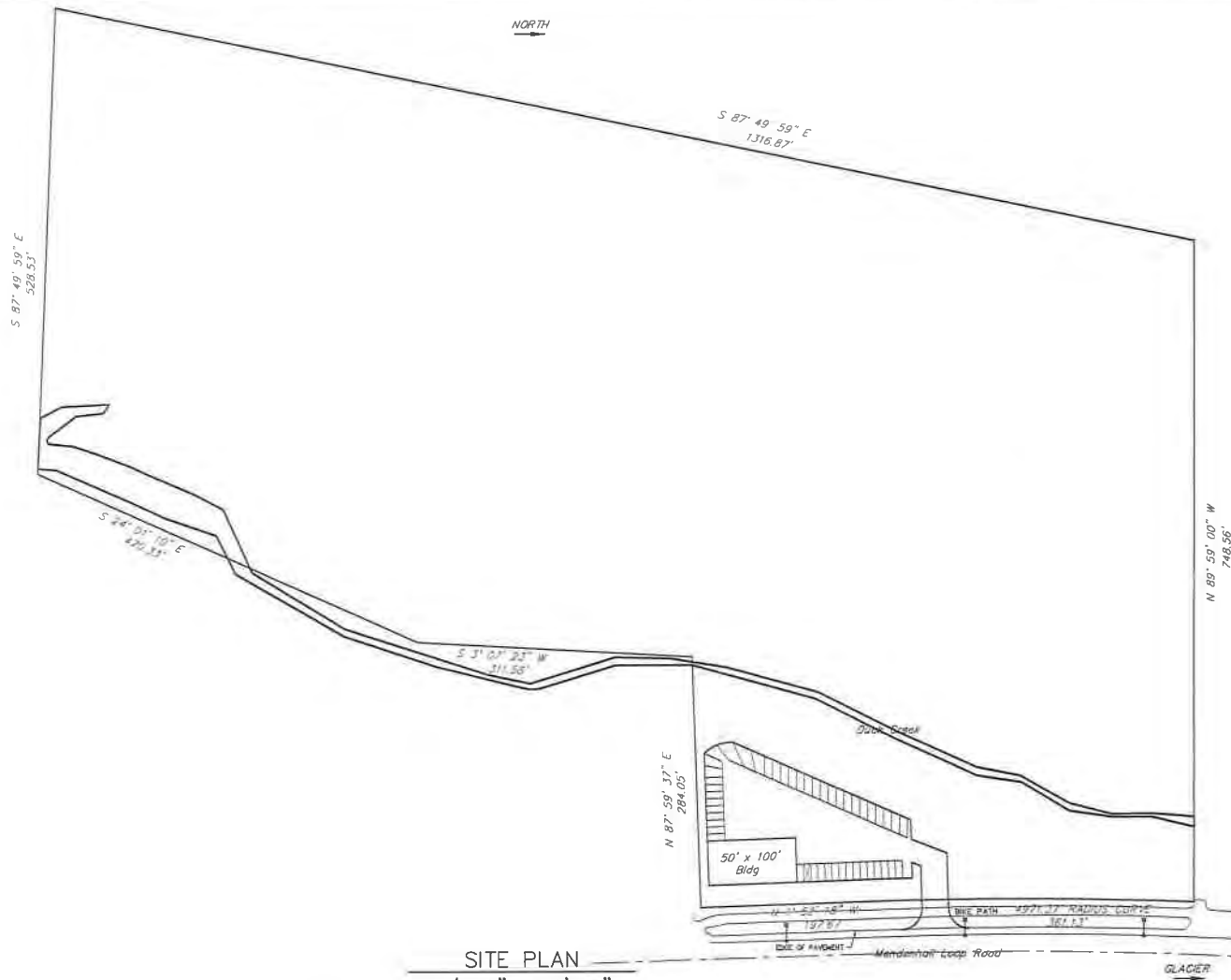
Access: Commercial Driveway connecting to Mendenhall Loop Road

Utilities: All public utilities available

Working with the CBJ assessor's office, we have learned that a non-profit entity must own the property as opposed to lease the property to qualify for the Real Property tax relief for the portion they use. Thus, in order to satisfy those requirements, we desire to subdivide our lot into two lots.

00158

00159



CONSTELLATION DEVELOPMENT

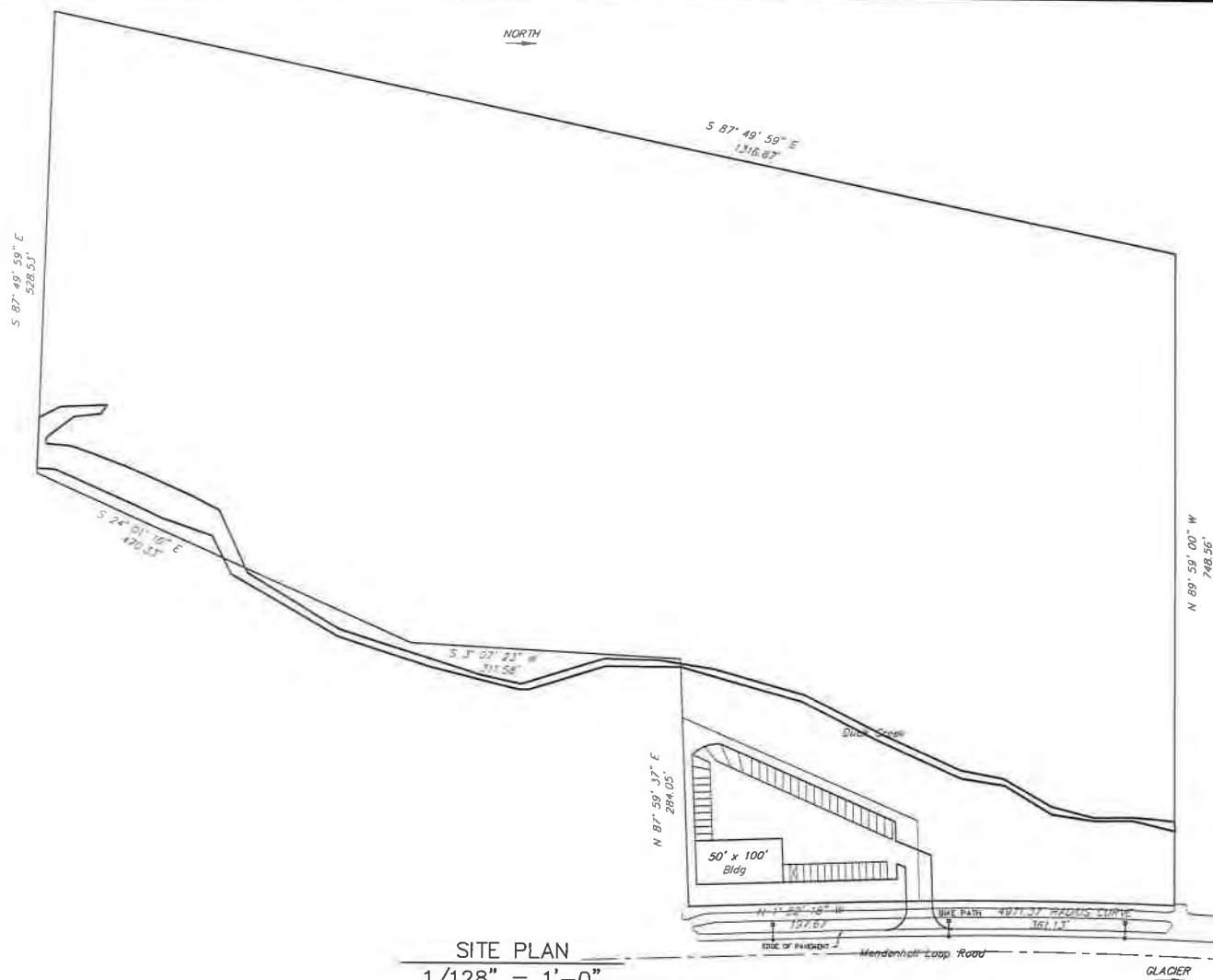
Tract A-2

USS No. 1053.

SITE PLAN - Current

15640 Lhasa Drive
Juno, AK 99801
907-321-3118

00160



SITE PLAN
1/128" = 1'-0"

CONSTELLATION DEVELOPMENT

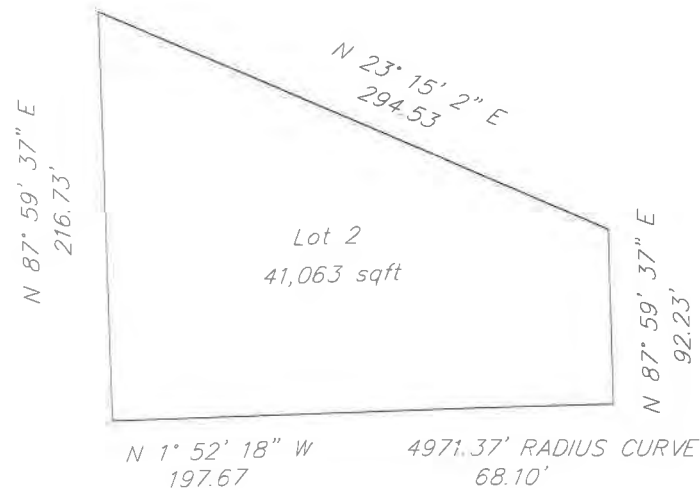
Tract A-2

USS No. 1053.

SITE PLAN - 2 Lots

10840 Lisc Drive
Anchorage, AK 99502
807-321-3118

NORTH
→



00161

SITE PLAN
1/64" = 1'-0"

CONSTELLATION DEVELOPMENT

10640 Lisc Drive
Juneau, AK 99801
907-321-3118

Tract A-2

USS No. 1053.

SITE PLAN — New Lot



PRELIMINARY PLAT CHECK LIST

Name of Proposed Subdivision: _____

The following items must be included with the initial submittal of a Preliminary Plat:

- ☐ Application, filled out completely
- ☐ Project Narrative
- ☐ Pre-application Conference Report
- ☐ Disclosure of all known environmental hazards and any proposed mitigation measures recommended in the applicable environmental document.
- ☐ Preliminary Plat Checklist: I have reviewed the checklist and all submittals for completeness and accuracy.
- ☐ Application fee (see fee schedule)
- ☐ Five (5) – 24" by 36" Copies PDF acceptable for review
- ☐ Lot Closure Report

Applicant or Surveyor - Signature

Date

Applicant or Surveyor - Print Name

GENERAL REQUIREMENTS

- ☐ The preliminary plat shall be prepared by a professional land surveyor, registered in the State of Alaska
- ☐ The preliminary plat shall be submitted on 22 by 34 inch sheets. The director of engineering and public works may approve alternate sheet sizes
- ☐ The preliminary plat shall be drawn with black ink to a scale of one-inch to 100 feet or less, or other suitable scale approved by the director of engineering and public works
- ☐ The preliminary plat shall be oriented with north toward the top of the sheet.
- ☐ A vicinity map shall be located in the upper right-hand corner of the sheet
- ☐ The vicinity map shall be oriented in the same direction as the plat
- ☐ A suitable north arrow shall be shown for the plat and vicinity map
- ☐ All line work and lettering must be of professional quality, and all line widths and lettering sizes must be of such size that all information can be clearly shown without overlap or confusion

GRAPHIC REQUIREMENTS - A preliminary plat shall contain the following information:

Title block - An enclosed title block in the lower right-hand corner containing the following information:

- ☐ The proposed name of the subdivision
- ☐ The legal description of the parcel to be subdivided including U.S. Survey, U.S. Mineral Survey, A.T.S. number or section, township, and range number, as applicable
- ☐ "City and Borough of Juneau, Alaska"
- ☐ "State Recorder's Office at Juneau" Anchorage
- ☐ The date the preliminary plat was prepared and revised
- ☐ The horizontal scale
- ☐ The name and address of the owner of record
- ☐ The name, address, and telephone number of the surveyor preparing the preliminary plat

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PRELIMINARY PLAT CHECK LIST

Lot, block, and street information:

- ☐ The area of each lot
- ☐ The dimensions in feet and hundredths of a foot
- ☐ An identifying number and letter for lots and blocks
- ☐ Lots numbered consecutively, commencing with the number "1," with no omissions or duplications
- ☐ If the remainder of an original parcel being subdivided is relatively large, it shall be designated as a "tract" with an identifying number
- ☐ All parcels of land intended to be dedicated for public use or reserved for the use of all of the property owners in the proposed subdivision shall be shown as lots, and consecutively numbered. The purpose and any conditions or limitations on the use of the parcel shall be noted on the plat
- ☐ Abutting properties shall be shown with dashed lines, numbers, and/or letters
- ☐ For resubdivisions or public way vacations, the lines and legal description of the previous lots shall be shown with light dashed lines, numbers, and/or letters, or by a separate plat on the same sheet showing the previous lot lines
 - ☐ The minimum data shown for each curve shall be as follows:
 - ☐ Length
 - ☐ Central angle
 - ☐ Radius
 - ☐ Bearing and distance of long chord
- ☐ Setbacks shall be shown on all corner lots and any lots with multiple frontage. Setbacks shall be shown on typical lots

Boundary lines:

- ☐ All boundary lines of the subdivision with bearings and distances described
- ☐ All retraced boundary lines shall show record and measured bearings and distances where they differ. Record dimension information shall be shown within parentheses and include a record source identification
- ☐ The exterior boundary lines of the subdivision shall be a solid black opaque line that is of a width that distinguishes it from all other property lines shown on the plat
- ☐ If phasing is proposed, then the boundaries and number of each phase, sequential lot numbering, and a subdivision name consistent with previous phases shall be shown

Monumentation:

- ☐ The monuments used to establish the basis of bearing
- ☐ Each monument found or set shall be identified on the plat by a symbol
- ☐ A complete description of the monument, including type and all information printed on the cap. A typical drawing shall be shown for each type of monument cap set
- ☐ A legend showing the symbols for all the types of monuments
- ☐ The identification, description location, elevation, and datum of the benchmark used to establish vertical control

Site access, circulation, and utilities:

- ☐ The widths and names of existing rights-of-way within the subdivision and within 100 feet of the subdivision boundary
- ☐ Proposed rights-of-way, including their widths and proposed names
- ☐ The grades of existing and proposed streets within these rights-of-way
- ☐ The width, ownership, use, and record reference of all proposed and existing easements within the subdivision and within 100 feet of the subdivision boundary
- ☐ The width, ownership, and use of all proposed easements

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PRELIMINARY PLAT CHECK LIST

- ☐ All proposed and existing easements shall have sufficient dimensions shown to determine their location on the ground. Show easements for drainage, utilities, and access
- ☐ Existing trails or pathways within the subdivision and within 100 feet of the subdivision boundary, including the width of any associated rights-of way or easements
- ☐ Proposed trails or pathways and widths of their rights-of-way
- ☐ If the plat submitted covers only a part of the tract under the control of the applicant, a sketch plat of the prospective street system of the unplatted part shall be submitted
- ☐ The location of any existing or proposed driveways/curb cuts that access or are proposed to access any existing or proposed street

Topographic information:

- ☐ For slopes of less than five percent, show one foot contour lines and include spot elevations at all breaks in grade, along all drainage channels or swales, and at selected points not more than 100 feet apart in all directions
- ☐ For slopes between five percent and ten percent, show two foot contour lines
- ☐ For slopes greater than ten percent, show five foot contour lines
- ☐ Every fifth elevation contour shall be distinctive and clearly labeled
- ☐ Dashed lines shall represent existing contours
- ☐ Mapping shall include any significant features which can materially affect the design of the subdivision, including, but not limited to, structures, fences, walls, and utility poles
- ☐ If irregular slopes or special features are present, additional contour information may be required by the director of engineering and public works for planning or construction purposes. Additional required information may include projecting the topography of the site after grading has taken place, showing such items as:
 - ☐ Pad elevations and drainage patterns for each lot
 - ☐ Tops and toes of all manufactured slopes, including daylight lines
 - ☐ Existing and proposed retaining wall locations and heights
- ☐ For subdivisions located in hillside areas with slopes greater than eighteen percent, additional requirements apply in accordance with CBJ 49.70, Article II

Sewer and water:

- ☐ Existing sewer and water mains within the tract with pipe sizes and grades
- ☐ A draft plan for proposed water and sewer lines showing the size, approximate slope, and connection points with elevations for the purpose of determining the feasibility of construction

Multisheet plats: (If applicable)

- ☐ When a plat requires more than one sheet, exclusive of a certificate sheet, an index sheet shall be included. When a plat requires more than three sheets, a cover sheet shall also be included, showing the subdivision title, a key map, and all certificates. Each additional sheet shall include the following data:
 - ☐ North arrow
 - ☐ Legend
 - ☐ Surveyor's seal and signature
 - ☐ Title block
 - ☐ Sheet _____ of _____
 - ☐ Scale
 - ☐ All plat notes
 - ☐ Vicinity map

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PRELIMINARY PLAT CHECK LIST

ADDITIONAL MAPPING OR REPORTS- *At the pre-application meeting, it will be determined if any of the following additional mapping or reports are required to be submitted with the preliminary plat. If required, the following additional mapping or reports shall be submitted:*

Hazard and Special Habitat Areas:

- ☐ Any portion of a special flood hazard area, landslide or avalanche area, habitat area as defined by CBJ 49.70.310, or watersheds, either existing at the proposed subdivision site or shown on the overlay maps, adopted pursuant to this title, to exist at the proposed subdivision site, must be depicted on the preliminary plat
- ☐ The boundaries of any wetland areas must be depicted on the preliminary plat. Boundaries must be determined by a person qualified to perform wetland delineations

Soils report:

- ☐ A soils report prepared by an engineer licensed by the State of Alaska shall be required if the proposed subdivision is located farther from the existing public sewer system than specified in CBJ 49.35, and the applicant chooses to provide on-lot waste disposal rather than to connect to the public system. A soils report shall include the following:
 - ☐ Certification that the proposed lots are large enough and have soil of sufficient permeability to permit the construction of approved waste treatment systems for on-lot waste disposal
 - ☐ The location and size of drain fields for each lot
 - ☐ The locations and logs of test borings, percolation test results, and a hydrological evaluation of on-site sewage disposal
 - ☐ If the soils report indicates that the soils found on the site are not of sufficient permeability or the lots are not large enough to permit the construction of systems for on-lot waste disposal, the size of the proposed lots must be increased or alternate methods for waste disposal proposed
 - ☐ The soils report shall describe the nature of the subsurface soils and any soil conditions that would affect the design of the proposed development. The soils report shall state whether the proposed subdivision plan is feasible and provide general solutions for all known geotechnical conditions or problems

Drainage report:

- ☐ A preliminary report specifying the method by which the applicant proposes to manage surface and subsurface drainage for the subdivision and the effect of such method on adjacent areas. Unlike the drainage plan required by CBJ 49.35.510, the preliminary drainage report does not need to be prepared by a licensed engineer. The report must address the following:
 - ☐ A calculation of the increase in stormwater runoff resulting from the proposed development as well as the runoff from all drainage areas associated with the site. Runoff calculations shall be based on a fully-developed subdivision and a 25-year storm event
 - ☐ How drainage from the proposed subdivision will join an established drainage channel or channels, unless the director of engineering and public works approves use of an alternative drainage way
 - ☐ An evaluation of existing drainage ways and structures located between the subdivision and the receiving water body, and verification that the existing drainage ways can accommodate the increased runoff. If the increased runoff cannot be handled, the plan must propose solutions to the problem
 - ☐ All required improvements, on or off site, that are shown on the construction plans in accordance with CBJ 49.35, Article V, and that will be constructed as part of the subdivision

Water:

- ☐ For subdivisions of five or more lots, including major subdivisions, the following shall be included, where applicable, in accordance with CBJ 49.15.412:

If a proposed subdivision is located at greater distance from the existing public water system than specified in CBJ 49.35, Article III, and the applicant chooses not to connect to the public system, a statement that the applicant will provide a community water system or that individual wells will be used

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PRELIMINARY PLAT CHECK LIST

- ☐ A report by a registered engineer or geologist that clearly supports the legal and physical availability of adequate water. Methods for proof of water availability and the standards for quantity are listed in CBJ 49.35, Article III
- ☐ A copy of the State application for a permit to appropriate water in the quantity required to meet the subdivisions demands
- ☐ This does not apply to remote subdivisions unless: the subdivider of the remote subdivision chooses to provide potable water, a public water system is available and the subdivision falls within the criteria outlined in CBJ 49.35.310(a), or the subdivision has four or fewer lots.
- ☐ The director for minor subdivisions, and the planning commission for major subdivisions, may, for good cause, temporarily waive the requirement to provide a water report and proof of water, and condition the approval of the preliminary plat upon the provision of both documents as part of the final plat application and approval process.

Erosion control:

- ☐ A report explaining the method by which the applicant proposes to control erosion and manage runoff, and potential impacts to adjacent properties or water bodies. The report shall include a plan for preservation of ground cover in areas where runoff and resulting erosion need to be minimized.

Traffic study:

- ☐ A traffic impact analysis may be required with the preliminary plat in accordance with CBJ 49.40.300.

Shadow plats:

- ☐ For subdivisions of five or more lots in transition areas, a shadow plat shall be submitted according to CBJ 49.70.710. The shadow plat shall consist of a sketch superimposed on the proposed subdivision layout. This sketch shall reflect any future resubdivision of the parcels into smaller lots consistent with the higher density and the lot size allowed under the transition zoning.

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SPECIAL INSPECTION PROPOSAL FORM

Note: This form must be completed by the Owner or Architect/Engineer of Record and approved by the Building Official prior to issuance of a Building Permit. The qualified individual special inspector must be identified along with their firm. Special Inspector may not be employed by the Contractor or anyone responsible for the construction work.

PROJECT _____ PERMIT APPLICATION NO.: BLD20210331 _____

OWNER _____ DATE: _____

PROPOSED SPECIAL INSPECTOR Firm: _____ and Individual: _____

(Please fill out one of these forms for each Special Inspector on this project. Attach proposed inspector's qualifications.)

PROPOSED TESTING AGENCIES _____

(Specify which category they are testing.)

The use of a special inspector does not negate the need to call for and have all normal required CBJ inspections inspected and approved by CBJ Inspectors. Report requirements shall comply with the 2006 IBC Section 1704.1.2

TYPES OF INSPECTIONS REQUIRED:

Check each type of inspection required by Architect/Engineer of Record as indicated on the approved building plans and specifications.

☐ **1. CONCRETE**
Inspection Scope & Schedule* _____

Frequency of Sampling Materials _____
Frequency of Testing _____

☐ **2. BOLTS INSTALLED IN CONCRETE**
Inspection Scope & Schedule* _____

☐ **3. SPECIAL MOMENT - RESISTING CONCRETE FRAME**
Inspection Scope & Schedule* _____

Frequency of Sampling Materials _____
Frequency of Testing _____

☐ **4. REINFORCING STEEL AND PRESTRESSED STEEL TENDONS**
Inspection Scope & Schedule* _____

Method of Testing _____

5. WELDING

☐ **A. SPECIAL MOMENT - RESISTING STEEL FRAMES**
Inspection Scope & Schedule* _____

Type of non-destructive testing _____
Frequency of Tests _____

☐ **B. STRUCTURAL WELDING INCLUDING REINFORCING STEEL**
Inspection Scope & Schedule* _____

Type of non-destructive testing _____
Frequency of Tests _____

☐ **6. HIGH-STRENGTH BOLTING**
Inspection Scope & Schedule* _____

Method of Testing _____
Frequency of Testing _____

☐ **7. STRUCTURAL MASONRY**
Inspection Scope & Schedule* _____

Frequency of Sampling Materials _____
Frequency of Testing _____

☐ **8. REINFORCED GYPSUM CONCRETE**
Inspection Scope & Schedule* _____

Frequency of Sampling Materials _____
Frequency of Testing _____

OVER →

☐ **9. INSULATING CONCRETE FILL**
 Inspection Scope & Schedule* _____
 Frequency of Sampling Materials _____
 Frequency of Testing _____

☐ **10. SPRAYED-ON FIREPROOFING**
 Inspection Scope & Schedule* _____
 Method of Inspection _____
 Frequency of Sampling Materials _____
 Frequency of Testing _____

☐ **11. PILING, DRILLED PIERS AND CAISSONS**
 Inspection Scope & Schedule* _____
 Method of Inspection _____

☐ **12. SHOTCRETE**
 Inspection Scope & Schedule* _____
 Method of Inspection _____
 Frequency of Sampling Materials _____
 Frequency of Testing _____

☒ **13. SPECIAL GRADING, EXCAVATION AND FILLING**
 Inspection Scope & Schedule* _____
The engineered fill shall be constructed in accordance with the approved plan, applicable CBJ codes and shall be stable and not create a hazard to public or private property. Upon completion of the rough grading work and at the final completion of the work, the following reports and drawings and supplements thereto are required for engineered grading:
 1. A minimum of 1" water service and 4" sewer service will need to be installed to the property line of each newly created lot within one-year of recording of the plat. At the time of preliminary plat submittal, please submit a construction plan for the new utilities. The submittals must meet current CBJ Standards and Specifications. The plan needs to include pipe locations, type, sizing, for both water and sewer and grades for sewer to indicate appropriate fall will be achieved. The construction plan can be shown on an existing as-built drawing that also includes existing features such as structures and other existing utilities.
 2. The grading contractor shall submit in a form prescribed by the building official a statement of conformance to said as-built plan and the specifications.

SPECIAL INSPECTOR CERTIFICATION:

I hereby certify that I am qualified to perform the special inspection items marked above, that I will perform the special inspections at the appropriate times scheduled by the contractor and that I will submit weekly and final reports.

Special Inspector: _____ Date: _____

OWNER CERTIFICATION: (May be signed by Architect /Engineer of Record on Owner's behalf.)

I hereby certify that I will employ the aforementioned Special Inspector to perform the inspections shown above.

Owner: _____ Date: _____

BUILDING OFFICIAL'S APPROVAL OF PROPOSAL OF SPECIAL INSPECTION:

Building Official: _____ Date: _____

Note:

Special Inspection weekly reports must be submitted to the owner and to the Building Official within 5 working days of the last day of the week being reported to avoid Suspension of the Building Permit and possible Stop Work Order.

A monthly summary letter is required for overall status including any outstanding items that require followup. The final special inspection approval letter(s) must be submitted before use or occupancy. Any variation to the special inspection proposal requires prior approval of the Building Official.

* (extent of work inspected; continuous or periodic, frequency)

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KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
9090 Cinema Drive - 5B2101320030
CBJ - VAR 2021 0004

Dear Ms. Maclean:

On March 10, 2021, we were informed that effective Monday March 8, 2021, Permit BLDG 20210039 authorizing similar work within the Duck Creek setbacks previously issued to TDLH, LLC, had been revoked and a stop work order issued. The stop work order is the subject of an administrative appeal which has been suspended by stipulation without our participation before we had an opportunity to file our request to intervene.

Thereafter, we had several constructive meetings to discuss going forward regarding Duck Creek storm drainage and flood plain issues as well as collaborative Duck Creek rehabilitation and possible stream realignment and channeling. Following those meetings, Kathryn and I thought you had committed to providing us with direct notice if any future permit requests were accepted by CBJ in connection with Duck Creek and adjacent development. Late last week we were quite surprised to first learn by a CBJ postcard that the above reference permit applications had been received and

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were scheduled for a hearing July 13, 2021. We are not certain whether you participated personally in this permit processing.

We immediately called CDD and received an email copy of Mr. Arndt's submission. (VAR 2021 0004) Today we reviewed CDD files and requested additional copies of relevant documents. Following our initial review, we have several procedural and substantive concerns with the work proposed. This letter will briefly deal with our procedural concerns.

CBJ 49.15.130 (b), which governs applications for all land use permits in general, provides: [an] application is complete when it contains all of the necessary information to determine if the development will comply with all of the requirements of the permit applied for." This variance application, by the admission of the applicant, is intentionally incomplete and, therefore, must be rejected. The proper approach is to require the applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work at the inception of the review process. Failure to do so constitutes "phased" permitting which is generally disfavored and likely illegal here.

Next, the public notice of hearing provided by CDD is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered at the hearing. The CDD notice here is for a variance to: "allow stream bank and stream restoration" of Duck Creek, nothing further. Describing what the applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: "A proposed roadway crossing and culvert system to serve access for the future major residential development". Or, "Large floodplain fill adjacent to 800 lineal feet of Duck Creek to expand uplands for future residential development". After the applicant has just destroyed the natural habitat of Duck Creek on its western bank beyond any possible restoration benefit which might occur in the future, to describe this request for a variance as "stream restoration" seems disingenuous and misleading. We are uncertain how this classification of the work was made, whether by the applicant or CDD but it is, nonetheless, incomplete and misleading for a public notice.

Processing and conducting a public notice and hearing on a request for a non-administrative variance in advance of CDD obtaining from the applicant and providing to the public all the details of the work to be authorized compounds the problem. CBJ 49.25.250(b) states that a variance may only be approved as a narrow exception to address specific development hardship not

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created by the applicant and that cannot otherwise be accommodated. Here applicant's request is for a "blanket" variance. The application states details would require: "significant expenditure, time and agency coordination and detailed design will be completed after issuance of the variance." This is improper.

A comment period and public hearing before CDD administrative review of other related permits denies to the Board of Adjustment information vital to a reasoned adjudication. It is like asking a judge to render a verdict before hearing the evidence. Any Board of Adjustment decision under such circumstances would be arbitrary and capricious simply because it cannot possibly be narrowly drawn. Moreover, the public and affected adjacent property owners such as ourselves are denied due process. In order to meet due process standards, the public must be provided a reasonable opportunity to comment on the details of the proposed design for the work before the Board of Adjustment adjudicates the variance issue.

Since CDD and GE review of a grading permit or a floodplain permit would not require public notice and comment or even a notice of decision, an aggrieved adjacent property owner such as ourselves has no way of knowing when to file a timely appeal. This creates a confusing and unspecified procedural process where the public has no idea how or when the CDD decision-making will occur or if, in fact, it has occurred. Such a procedure is, on its face, a denial of procedural due process. It is precisely the reason we did not learn about the applicant's original plan to harvest timber and regrade fill into the floodplain until after the project was well underway. (BLD2021 0039) The permitting occurred without any notice to adjacent property owners, other government agencies or adjacent riparian property owners. That really was a big but avoidable mistake so why repeat it?

Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

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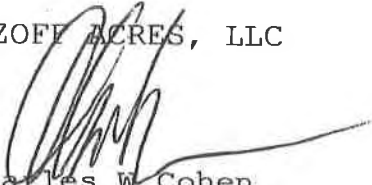
A Major Development permit process is the intended vehicle to manage the complex multi-CBJ-permit as well as multi-State and Federal agency permitting process for a large tract development. This applicant's phased permitting on these two adjacent lots started with a condo project. It was followed with a gym. Next was an illegal violation of CBJ 49.70.310 twice: the water line across Duck Creek to the gym; and, illegal logging which was also a zoning violation. In the meantime, before CDD issued its Stop Work order, all of the mature trees and ground cover which was intended to be protected by CBJ 49.70.310 had been destroyed. So much for protecting an impaired urban stream.

Now the applicant has proposed a set of related permits to: authorize stream habitat destruction to narrow and channel the watercourse and generate more developable uplands (ironically called stream restoration); a stream crossing for access before any specific residential development is proposed on the other side; removal of all remaining mature tree stumps and vegetative cover to regrade the entire parcel to reverse the natural westerly surface storm-water drainage and direct it toward Duck Creek; and a massive project to fill most of the floodplain adjacent to Duck Creek to generate more developable uplands (again, ironically called stream rehabilitation) It is about time CDD treat this series of permit requests as a major development and stop the illegal phased permitting process.

We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen
Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

00172



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Alaska Department of Fish and Game
STAFF PERSON/TITLE: Habitat Biologist
DATE: 6/29/2021
APPLICANT: Travis Arndt for TDLH LLC and Juneau Condos LLC
TYPE OF APPLICATION: Variance to

PROJECT DESCRIPTION:

Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek.

LEGAL DESCRIPTION: GROSS LT 2 & USS 1053 TR A2
PARCEL NUMBER(S): 5B2101320030 & 5B2101030001
PHYSICAL ADDRESS: 90910 Cinema Drive & 3101 Mendenhall Loop Road
SPECIFIC QUESTIONS FROM PLANNER:



AGENCY COMMENTS:

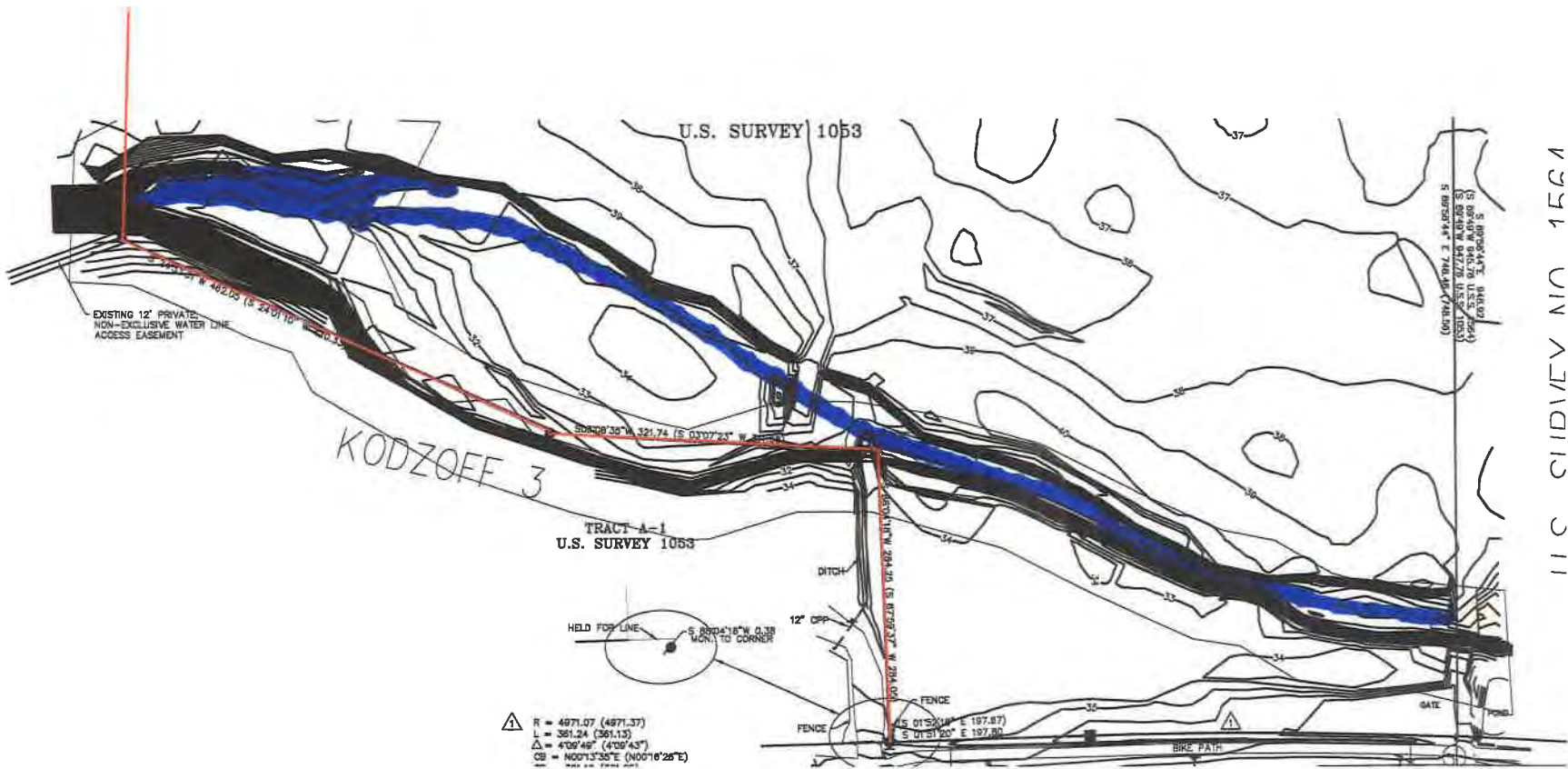
Narrowing the channel will be beneficial for fish and fish habitat at the proposed location, as described in the attached ADF&G Trip Report. ADF&G recommends not removing trees other than what is necessary to access the creek at a single location. Mr. Arndt indicated he would need to install a culvert for access to loop road, which would be the logical point for entering the channel to perform the reconstruction. All in-stream work, including the stream narrowing and culvert (if proposed) will require a fish habitat permit from ADF&G Habitat Section.

It is difficult to tell how far from the ordinary high water (OHW) mark the root wad revetment will be constructed. The typical drawing indicates the root wads could be about 5 ft from the creek. At present, there appears to be no need to stabilize this bank with a root wad technique designed for larger rivers and an absence of infrastructure requiring protection. Removing some or all of the riparian timber that was cut and encouraging regrowth of the riparian trees through planting, and restricting disturbance within 50 ft, would provide the greatest value to the stream.

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AGENCY COMMENTS (CONTINUED):

The 50 ft no development setback provides benefits to anadromous streams including a location for surface water to be filtered and reabsorbed into the water table; space for the stream to migrate naturally; maintenance of riparian trees to provide shade, food, and periodic recruitment into the creek; and a corridor for wildlife movement and refuge. Constructing the revetment within 5 ft of the OHW mark would require a fish habitat permit, constructing it 50 ft from the OHW mark would not.



U.S. SURVEY 1053

5:160



1107 W. 8th St.
Suite 4
Juneau, AK 99801
www.alaskawatershedcoalition.org
(907) 205-4028

7-9-2021

To: Michael LeVine, Chair, Board of Adjustment

From: John Hudson, Restoration Biologist, Southeast Alaska Watershed Coalition

Subject: Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50- foot, no-development and 25-foot, no-disturbance buffer from Duck Creek

Mr. Levine,

The Southeast Alaska Watershed Coalition (SAWC) works with a variety of partners to cultivate stewardship practices that maintain healthy watersheds for people, fish, wildlife, and other species throughout this region. Along with our partners, we assess watershed conditions, monitor watershed health, and protect, enhance, and restore streams, wetlands, and uplands to promote the numerous economic, social, and ecological functions that these habitats provide.

We appreciate the opportunity to provide comments concerning the above referenced subject. The applicant has applied for a variance to allow stream bank and stream channel restoration within the no development/no disturbance buffer of Duck Creek. As you are aware, the State of Alaska has designated Duck Creek as an impaired water body. The various impairments that plague Duck Creek are associated with dense urbanization within the watershed. This land development and use has severely impacted stream water quality and aquatic habitat; however, despite negative public perceptions of the stream, Duck Creek continues to provide habitat for fish and wildlife. Furthermore, Duck Creek flows into the Mendenhall Wetlands, an Audubon-designated Globally Important Bird Area. Ensuring the health of Duck Creek, along with other urban water bodies that flow into the wetlands, is essential for ensuring the health of the Mendenhall Wetlands. SAWC and our partners, including the City and Borough of Juneau, are working hard to undue the adverse impacts of past and present land development impacts on Duck Creek and our other impaired urban salmon streams.

The applicant has applied for a variance to stabilize stream banks in the lower stream reaches of the project area and to channelize (i.e., reduce channel width) the upper reaches of the stream in the project area. **We believe that both bank stabilization and stream channelization are not necessary because there is no evidence of bank erosion and the stream channel in this area is largely natural.**

Channelization

Duck Creek originated as an outwash channel of the Mendenhall Glacier. As the Mendenhall Glacier receded at the end of the Little Ice Age, glacier meltwater flowed down the east side of the Mendenhall Valley forming Duck Creek and Jordan Creek. Both streams were characterized as broad, highly braided, and shallow channels (Fig. 1). With the formation of the Mendenhall River, the volume of water flowing in Duck and Jordan Creeks was much reduced. The stream reach within the project area that has been characterized as excessively wide and shallow is, in fact, in its natural state – a relic channel braid that carries much less water than when the channel was originally formed. Unfortunately, natural reaches of Duck Creek are quite rare since most of the stream has been channelized (made narrow and relocated) or dredged (for gravel) to facilitate and accommodate development. **The channel in the project area does not require restoration and should be left as is.**



Figure 1. A 1926 aerial image of the project area showing the braided nature of Duck Creek. Flow is from lower right to upper left.

Bank Stabilization

In February 2021, the applicant received a grading permit for bank stabilization work in the project area. Following receipt of the permit, mature trees were cut down in the Duck Creek buffer along approximately 800 feet of stream on the west side of the channel (Fig. 2). We assume that the trees were removed to gain access to the bank stabilization areas. **SAWC would like the board to ask staff how the applicant was able to justify the need for bank stabilization at this site.** The existing channel size appears more than adequate to convey high flows, there is a

floodplain on the west side of the channel, and there does not appear to be any evidence of bank erosion. A failure of CBJ staff to assess the stability of stream banks prior to granting the permit has resulted in the loss of a very large area of intact riparian buffer forest consisting of hundreds of conifer trees, other tree species, and associated native understory plants.



Figure 2. View of the Duck Creek riparian buffer on the west side of the stream in April 2021. View looking northwest from the east bank.

Riparian vegetation, including trees, provides numerous physical and ecological benefits to streams and the aquatic life that lives there. These benefits include bank stabilization, shade, nutrient and carbon cycling, cover, and a source of habitat-forming large woody debris. **The applicant's request to stabilize stream banks in the project area should be denied.** Considering the significant damage to the riparian buffer that has occurred, the applicant should be required to develop and implement a riparian restoration and protection plan.

Thank you for considering these comments.

John Hudson
Restoration Biologist

Handwritten signature of John Hudson in blue ink.

RECEIVED

JUL 12 2021

Permit Center/CDD

Charles W. Cohen
Kodzoff Acres, LLC
PO Box 33200
Juneau, Alaska 99803

BEFORE BOARD OF ADJUSTMENT
PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU

In Re:

TDLH, LLC & Juneau Condos, LLC
Joint Application for a Non-Administrative
Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road –
5B2101030001
Gross Lot 2
9090 Cinema Drive – 5B2101320030

CBJ - VAR 2021 0004

SUPPLEMENTAL OPPOSITION TO VARIANCE REQUEST

The principal legal issue is “phased” permitting, which is generally prohibited because it denies this public decision-making body the information it needs to make a reasoned decision. We contend this variance process is premature. This Board of adjustment must refuse to consider this variance request or deny it in full without prejudice.

The CBJ planning code creates a permitting process that begins with measuring any proposed development against the Table of Permissible Uses. Every development has an intended land use purpose. The developer must disclose it before any development work may begin. The Table of Permissible Uses is the “gate keeper” for all development. A developer may

not simply claim it is undecided, run around the main gate, and then obtain subsidiary permitting to avoid comprehensive evaluation.

We begin with CBJ 49.15.110 which provides:

49.15.110 - Permits required. No person may perform or cause to be performed any development work within the City and Borough except in accordance with a valid development permit . . .”

There are no exceptions to this requirement. Pursuant to CBJ 49.15.210, the type of permit process required, major or minor, is specified in the Table of Permissible Uses:

49.15.210 - Type of development permit required. The type of development permit required for a particular use shall be as specified in the Table of Permissible Uses in chapter 49.25, article III. (Emphasis added)

The language of CBJ 49.15.210 is compulsory. The first step for any development permit request is to determine the type of permit required according to CBJ 49.25.300.

CBJ 49.25.300 has a column format, which creates a matrix for each land use on the vertical axis and each land classification on the horizontal axis. In each cell is a code which points to the type of permit required. If a proposed land use is not specified, it is prohibited, but the Planning Commission is given authority to add it pursuant to CBJ 49.20.320. If a land use is specified but the cell is empty for a particular land class, it is prohibited in that land class. But in all situations where a proposed land use is authorized, the first cut it is to determine whether a major or minor development process will be required and then proceed with designated permit type – ie. allowable, conditional. All development, such as what is being discussed but not yet applied for here, is either prohibited or a “major” development.

Pursuant to CBJ 49.20.200 a “variance” is for the purpose of providing an applicant with relief from certain requirements of CBJ Title 49:

49.20.200 - Variance. Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. . . .”

It was improper for the Director Maclean to forward this application for a non-administrative variance to the Planning Commission for a public hearing before a complete development permit application had been received, evaluated against CBJ 49.25.300 and proposed for approval by this Planning Commission.

Although we have repeatedly requested Director Maclean make a determination pursuant to CBJ 49.25.300 – The Table of Permissible Uses, regarding Commissioner Arndt’s proposed development on the 18.5 acres of US Survey 1053, Tract A-2 on the other side of Duck Creek, thus far she has refused to do so since Commissioner Arndt has refused to declare his intentions. Until Commissioner Arndt follows the law and submits a new development application and it is processed, there is no basis whatsoever for a variance hearing. Beyond the previously approved permits for the private gym on Tract A-2, and the Juneau Condos project on his adjacent parcel Gross Lot 10, which show no regulatory hardships, Commissioner Arndt has not applied for any future development work and his request for relief is woefully premature and improper.

Any variance request must, by definition, come after departmental consideration of all relevant development needs and apply all applicable regulations to a proposed major development so the precise contours and magnitude of any undue hardship may be identified. Only then may a variance be “narrowly tailored to relieve the hardship.” CBJ 49.20.250(b)(1)(D).

This application assumes hardships where none yet exist and lacks any specificity for constructing narrowly tailored relief. In short, this Planning Commission will be placed in the position where granting any of the requested relief sought will be arbitrary and capricious, and the relief cannot possibly be narrowly tailored as required by code.

Respectfully submitted this 13th day of July, 2021

KODZOFF ACRES, LLC

Charles W. Cohen



NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

APPELLANT'S CONTACT INFORMATION

Kodzoff Acres, LLC

kodzoff@alaskan.com

907 789 5154

Appellant's Name (please print)

E-mail Address

Phone

PO Box 33200

Juneau

AK 99803

Mailing Address

City

State Zip

X

Appellant's Signature

DECISION THAT IS BEING APPEALED*

Date of Director's Determination June 15, 2021

Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.).

* Notice must be submitted within 20 days of the date of the decision being appealed.

APPEAL SPECIFICS (please fill in all that apply)

Parcel Number 5B21010030001; 5B2101320030

Zoning District

D-15

Case Number VAR2021 0004

Title 49 Code Section

49.15.130(b); 49.20.250(b)

Current Use of Land or Buildings N/A

49.20.230

Proposed Use of Land or Buildings N/A

Other Acceptance of incomplete application for Non-Administrative Variance; Misleading and Incomplete Notice of Hearing; Improper Phasing of Permit Review; Failure to Require

ALL REQUIRED MATERIALS ATTACHED



Complete Application



Appeal Decision



Narrative including:



Grounds for Appeal



Specific questions you would like the Planning Commission to address

DEPARTMENT USE ONLY BELOW THIS LINE

APPEAL FEES	Fees	Check No.	Receipt	Date
Notice Fees	\$ <u>200.00</u>			
Refund (Yes/No)	\$ _____			
Total Fee	\$ <u>200.00</u>			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number

Date Received/Intake Initials

VAR21-003

6/30/21

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

GROUND'S FOR APPEAL

- (1) The Director's decision application for VAR2021 0004 was complete and scheduling it for a premature public hearing was arbitrary and capricious in violation of CBJ 49.15.130(b); 49.20.230 ; 49.20.250(b) and Alaska law.
- (2) The Director's authorization of a misleading and incomplete public hearing notice for VAR2021 0004 was arbitrary and capricious.
- (3) The Director's sequencing of permit review for the full scope of work described in application for VAR2021 0004 violates CBJ 49.15.130; 49.20.230; 49.20.250(b); and, Alaska law.
- (4) The Director's Failure for require a Major Development permit with respect to ongoing and proposed development on USS Survey 1053 Tract A-2 is arbitrary, capricious and violates Alaska and CBJ municipal law.

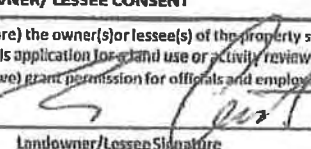
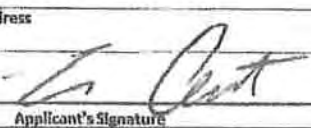
SPECIFIC QUESTIONS FOR PLANNING COMMISSION

- (1) Whether the Director's decision application for VAR2021 0004 was complete and scheduling it for a premature public hearing was arbitrary and capricious in violation of CBJ 49.15.130(b); 49.20.230 ; 49.20.250(b) and Alaska law?
- (2) Whether the Director's authorization of a misleading and incomplete public hearing notice for VAR2021 0004 was arbitrary and capricious?
- (3) Whether Director's sequencing of permit review for the full scope of work described in application for VAR2021 0004 violates CBJ 49.15.130; 49.20.230; 49.20.250(b); and, Alaska law?
- (4) Whether the Director's Failure for require a Major Development permit with respect to ongoing and proposed development on USS Survey 1053 Tract A-2 is appropriate?



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address 9090 Cinema Drive		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) Gross Lot 2		
	Parcel Number(s) 5B2101320030		
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
	LANDOWNER/ LESSEE		
	Property Owner Juneau Condos, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
	Mailing Address 10840 Lilac Drive		
	E-mail Address constellation_dev@hotmail.com		
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review (or development on my (our) property) is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X  Landowner/Lessee Signature		5/24/21 Date	
X _____ Landowner/Lessee Signature		_____ Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as Owner, write "SAME"			
Applicant Same		Contact Person	
Mailing Address		Phone Number(s)	
E-mail Address			
X  Applicant's Signature		5/24/21 Date of Application	

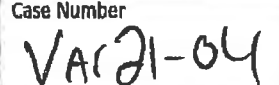
DEPARTMENT USE ONLY BELOW THIS LINE

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Intake Initials 
Date Received 

Case Number 



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

PROPERTY LOCATION		
Physical Address 3221 Mendenhall Loop Road <i>3101 Mendenhall Loop Rd (check w/ Quinn)</i>		
Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) USS No. 1053 Tract A-2		
Parcel Number(s) 5B2101030001		
☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
LANDOWNER/ LESSEE		
Property Owner TDLH, LLC	Contact Person Travis Arndt	Phone Number(s) 907-321-3118
Mailing Address 10840 Lilac Drive		
E-mail Address constellation_dev@hotmail.com		
LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:		
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.		
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X	<i>[Signature]</i> Landowner/Lessee Signature	<i>5/24/21</i> Date
X	_____ Landowner/Lessee Signature	_____ Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT		
Applicant SAME	Contact Person	Phone Number(s)
Mailing Address		
E-mail Address		
X	<i>[Signature]</i> Applicant's Signature	<i>5/24/21</i> Date of Application

DEPARTMENT USE ONLY BELOW THIS LINE

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INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number VAR 21-04	Intake Initials LEC
	Date Received 6/15/21



VARIANCE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

**NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.
Not to be used for Administrative Variances**

To be completed by Applicant	PROJECT SUMMARY			
	Stream and Stream bank Restoration			
	VARIANCE REQUESTED (list CBJ Code section you are requesting a variance to)			
	49.70.310 Habitat			
	Previous Variance Applications? YES ☐ NO ☒ Date of Filing: _____			
	Previous Case Number(s): _____		Building Permit related to this variance? YES ☐ NO ☐	
	Was the Variance Granted? YES ☐ NO ☐			
	UTILITIES AVAILABLE: WATER ☒ Public ☐ On Site SEWER: ☒ Public ☐ On Site			
	ALL REQUIRED MATERIALS ATTACHED			
	Complete application per CBJ 49.65.210			
	Narrative including:			
	Any characteristics of land or building(s) or extraordinary situations that are unusual to this property or structure			
	Why a variance would be needed for this property regardless of the owner			
	What hardship would result if the variance is not granted			
	Site Plan			

DEPARTMENT USE ONLY BELOW THIS LINE

VARIANCE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$400			
Adjustment	\$150			
Total Fee	\$550			

→ Public Notice Sign Fee/deposit \$150

Fee
Waived per
Director

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

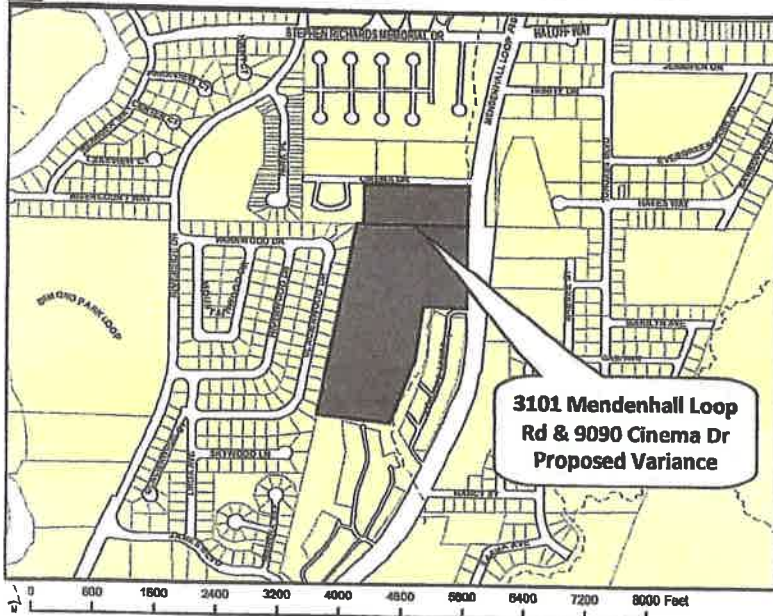
For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number	Date Received
VAR 21-04	LEC 6/15/21

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission

Your Community, Your Voice



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1)** to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek at 3101 Mendenhall Loop Road & 9090 Cinema Drive in a D15 Zone.

TIMELINE

Staff Report expected to be posted **Monday, July 5, 2021** at <https://juneau.org/community-development/planning-commission>. Find hearing results, meeting minutes and more here as well.

Now through 12 noon, July 12

Comments received during this period will be sent to Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling this case, Laurel Christian, will also read any written comments that are received. You may also contact her via the phone number listed below.

HEARING DATE & TIME: 7:00 pm, July 13, 2021

This virtual meeting will be by video and telephonic participation only. To join the Webinar, visit: <https://juneau.zoom.us/j/92097499673>. The Webinar ID is: 920 9749 9673. To join by telephone, call: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 436 2866 and enter the Webinar ID.

July 14

The results of the hearing will be posted online.

Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Printed June 18, 2021

Case No.: VAR2021 0004
Parcel No.: 5B2101030001 & 5B2101320030
CBJ Parcel Viewer: <http://epv.juneau.org>

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

July 1, 2021

City & Borough of Juneau
Planning Commission
155 So. Seward Street
Juneau, Alaska 99801

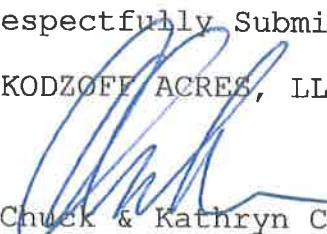
RE: Appeal of Director's Decision
APL2021 0003
Initial Memorandum in Support of Appeal

Dear Commission Members:

Yesterday we sent the enclosed letter to Director Jill Maclean requesting she reconsider and reverse decisions which gave rise to this appeal, and cancel and re-notice the variance hearing scheduled for the Board of Adjustment set for July 13, 2021. Enclosed is a copy of our letter. Against the possibility the director declines to honor our request, this letter is submitted to the Planning Commission as our initial memorandum in support of our appeal.

Respectfully Submitted,

KODZOFF ACRES, LLC



Chuck & Kathryn Cohen

Enclosure (1):

Letter Dated June 30, 2021
Kodzoff Acres, LLC to Director Jill Maclean

RECEIVED

JUL 01 2021

Permit Center/CDD

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

June 30, 2021

Via email: jill.maclean@juneau.org

Jill Maclean, Director
City & Borough of Juneau
Department of Community Development
155 So. Seward Street
Juneau, Alaska 99801

Re: TDLH, LLC & Juneau Condos, LLC
Development Permits (2) and
Joint Application for a Non-Administrative Variance
US Survey 1053, Tract A-2
3221 Mendenhall Loop Road - 5B2101030001
Gross Lot 2
9090 Cinema Drive - 5B2101320030
CBJ - VAR 2021 0004

Dear Ms. Maclean:

On March 10, 2021, we were informed that effective Monday March 8, 2021, Permit BLDG 20210039 authorizing similar work within the Duck Creek setbacks previously issued to TDLH, LLC, had been revoked and a stop work order issued. The stop work order is the subject of an administrative appeal which has been suspended by stipulation without our participation before we had an opportunity to file our request to intervene.

Thereafter, we had several constructive meetings to discuss going forward regarding Duck Creek storm drainage and flood plain issues as well as collaborative Duck Creek rehabilitation and possible stream realignment and channeling. Following those meetings, Kathryn and I thought you had committed to providing us with direct notice if any future permit requests were accepted by CBJ in connection with Duck Creek and adjacent development. Late last week we were quite surprised to first learn by a CBJ postcard that the above reference permit applications had been received and

were scheduled for a hearing July 13, 2021. We are not certain whether you participated personally in this permit processing.

We immediately called CDD and received an email copy of Mr. Arndt's submission. (VAR 2021 0004) Today we reviewed CDD files and requested additional copies of relevant documents. Following our initial review, we have several procedural and substantive concerns with the work proposed. This letter will briefly deal with our procedural concerns.

CBJ 49.15.130 (b), which governs applications for all land use permits in general, provides: [an] application is complete when it contains all of the necessary information to determine if the development will comply with all of the requirements of the permit applied for." This variance application, by the admission of the applicant, is intentionally incomplete and, therefore, must be rejected. The proper approach is to require the applicant to submit all of the information necessary for CDD to process all required permits for the full scope of work at the inception of the review process. Failure to do so constitutes "phased" permitting which is generally disfavored and likely illegal here.

Next, the public notice of hearing provided by CDD is fatally flawed. To be legal, a public notice must fairly inform the public and adjacent property owners of the issues to be considered at the hearing. The CDD notice here is for a variance to: "allow stream bank and stream restoration" of Duck Creek, nothing further. Describing what the applicant is proposing here as a habitat improvement project is unbelievably misleading. How about: "A proposed roadway crossing and culvert system to serve access for the future major residential development". Or, "Large floodplain fill adjacent to 800 lineal feet of Duck Creek to expand uplands for future residential development". After the applicant has just destroyed the natural habitat of Duck Creek on its western bank beyond any possible restoration benefit which might occur in the future, to describe this request for a variance as "stream restoration" seems disingenuous and misleading. We are uncertain how this classification of the work was made, whether by the applicant or CDD but it is, nonetheless, incomplete and misleading for a public notice.

Processing and conducting a public notice and hearing on a request for a non-administrative variance in advance of CDD obtaining from the applicant and providing to the public all the details of the work to be authorized compounds the problem. CBJ 49.25.250(b) states that a variance may only be approved as a narrow exception to address specific development hardship not

created by the applicant and that cannot otherwise be accommodated. Here applicant's request is for a "blanket" variance. The application states details would require: "significant expenditure, time and agency coordination and detailed design will be completed after issuance of the variance." This is improper.

A comment period and public hearing before CDD administrative review of other related permits denies to the Board of Adjustment information vital to a reasoned adjudication. It is like asking a judge to render a verdict before hearing the evidence. Any Board of Adjustment decision under such circumstances would be arbitrary and capricious simply because it cannot possibly be narrowly drawn. Moreover, the public and affected adjacent property owners such as ourselves are denied due process. In order to meet due process standards, the public must be provided a reasonable opportunity to comment on the details of the proposed design for the work before the Board of Adjustment adjudicates the variance issue.

Since CDD and GE review of a grading permit or a floodplain permit would not require public notice and comment or even a notice of decision, an aggrieved adjacent property owner such as ourselves has no way of knowing when to file a timely appeal. This creates a confusing and unspecified procedural process where the public has no idea how or when the CDD decision-making will occur or if, in fact, it has occurred. Such a procedure is, on its face, a denial of procedural due process. It is precisely the reason we did not learn about the applicant's original plan to harvest timber and regrade fill into the floodplain until after the project was well underway. (BLD2021 0039) The permitting occurred without any notice to adjacent property owners, other government agencies or adjacent riparian property owners. That really was a big but avoidable mistake so why repeat it?

Finally, as we commented earlier during the Conditional use permit process for the gym, a Major Development Permit process must be required for any development work on Tract A-2. This is a twenty plus acre D-15 parcel which is being permitted in phases. This is illegal. To be legal, this permitting process must be in comprehensive. Moreover, the adjacent Gross Lot 2 development is being prosecuted by the same applicant who has owned and controlled both parcels since 2019. Regardless of the particulars or precise timing, issues including maximum storm water drainage and capacity to avoid flooding and grading to minimize siltation in Duck Creek, access and traffic safety from what was originally approved as a single use driveway at Mendenhall Loop Road is now morphed without significant CDD or ADOT review or public input into a proposed major intersection.

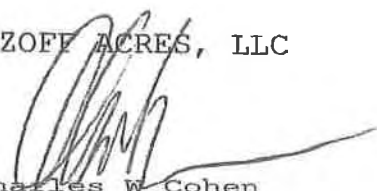
A Major Development permit process is the intended vehicle to manage the complex multi-CBJ-permit as well as multi-State and Federal agency permitting process for a large tract development. This applicant's phased permitting on these two adjacent lots started with a condo project. It was followed with a gym. Next was an illegal violation of CBJ 49.70.310 twice: the water line across Duck Creek to the gym; and, illegal logging which was also a zoning violation. In the meantime, before CDD issued its Stop Work order, all of the mature trees and ground cover which was intended to be protected by CBJ 49.70.310 had been destroyed. So much for protecting an impaired urban stream.

Now the applicant has proposed a set of related permits to: authorize stream habitat destruction to narrow and channel the watercourse and generate more developable uplands (ironically called stream restoration); a stream crossing for access before any specific residential development is proposed on the other side; removal of all remaining mature tree stumps and vegetative cover to regrade the entire parcel to reverse the natural westerly surface storm-water drainage and direct it toward Duck Creek; and a massive project to fill most of the floodplain adjacent to Duck Creek to generate more developable uplands (again, ironically called stream rehabilitation) It is about time CDD treat this series of permit requests as a major development and stop the illegal phased permitting process.

We request the Board of Adjustment variance hearing be cancelled and re-noticed in the future, if necessary. Please consider this letter an appeal to your decision to accept the application for a variance and schedule a hearing.

Best regards,

KODZOFF ACRES, LLC



Charles W. Cohen

Kathryn A. Cohen

CC: Robert Palmer, Esq.
City Attorney

From: Chuck Cohen kodzoff@alaskan.com
Subject: Premature and Incomplete Application for Non-Administrative Variance (VAR 2021 0004)
Date: June 30, 2021 at 12:23 PM
To: Jill Maclean jill.maclean@juneau.org
Cc: Palmer Robert Robert.Palmer@juneau.org, Koester Katie katie.koester@juneau.org

Jill:

Attached is a letter detailing our concerns regarding procedure for the pending variance application.

Best regards,

Chuck & Kathryn



Premature
Applica...e.docx

KODZOFF ACRES, LLC
d/b/a Kodzoff Acres Mobile Home Park

RECEIVED

JUL 12 2021

Permit Center/CDD

P.O. Box 33200, Juneau, Alaska 99803
Telephone: (907) 789-5154 Facsimile: (907) 789-5117

July 11, 2021

City & Borough of Juneau
Planning Commission
155 So. Seward Street
Juneau, Alaska 99801

RE: Appeal of Director's Decision
APL 2021 0003
Supplemental Memorandum in Support of Appeal

Dear Commission Members:

This letter is directed to our appeal of the Director's decision to submit an incomplete and premature application for a non-administrative variance to this Planning Commission in advance of receipt of an application for a development permit. The principal legal issue is "phased" permitting, which is generally prohibited because it denies this public decision-making body the information it needs to make reasoned decisions. The CBJ planning code creates a permitting process that begins with measuring any proposed development against the Table of Permissible Uses.

Every development has an intended land use purpose. The developer must disclose it before any development work may begin. The Table of Permissible Uses is the "gate keeper" for all development. A developer may not simply claim it is undecided,

run around the main gate, and then obtain subsidiary permitting to avoid comprehensive evaluation.

We begin with CBJ 49.15.110 which provides:

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in that land class. But in all situations where a proposed land use is authorized, the first cut it is to determine whether a major or minor development process will be required and then proceed with designated permit type - ie. allowable, conditional. All development, such as what is being discussed but not yet applied for here, is either prohibited or a "major" development.

Pursuant to CBJ 49.20.200 a "variance" is for the purpose of providing an applicant with relief from certain requirements of CBJ Title 49:

49.20.200 - Variance. Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title."

It was improper for the Director Maclean to forward this application for a non-administrative variance to the Planning Commission for a public hearing before a complete development permit application had been received, evaluated against CBJ 49.25.300 and proposed for approval by this Planning Commission.

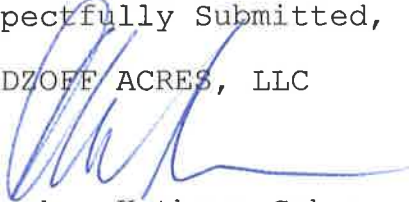
Although we have repeatedly requested Director Maclean make a determination pursuant to CBJ 49.25.300 - The Table of Permissible Uses, regarding Commissioner Arndt's proposed development on the 18.5 acres of US Survey 1053, Tract A-2 on the other side of Duck Creek, thus far she has refused to do so since Commissioner Arndt has refused to declare his intentions. Until

Commissioner Arndt follows the law and submits a new development application and it is processed, there is no basis whatsoever for a variance hearing. Beyond the previously approved permits for the private gym on Tract A-2, and the Juneau Condos project on his adjacent parcel Gross Lot 10, which show no regulatory hardships, Commissioner Arndt has not applied for any future development work and his request for relief is woefully premature and improper.

Any variance request must, by definition, come after departmental consideration of all relevant development needs and apply all applicable regulations to a proposed major development so the precise contours and magnitude of any undue hardship may be identified. Only then may a variance be "narrowly tailored to relieve the hardship." CBJ 49.20.250(b)(1)(D). This application assumes hardships where none yet exist and lacks any specificity for constructing narrowly tailored relief. In short, this Planning Commission will be placed in the position where granting any of the requested relief sought will be arbitrary and capricious, and the relief cannot possibly be narrowly tailored as required by code.

Respectfully Submitted,

KODZOFF ACRES, LLC



Chuck & Kathryn Cohen