



City and Borough of Juneau  
City & Borough Manager's Office  
155 South Seward Street  
Juneau, Alaska 99801  
Telephone: 586-5240 | Facsimile: 586-5385

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To: Chair Hughes-Skandijs and Lands Housing & Economic Development Committee

From: Rorie Watt, City Manager

Re: An Ordinance Amending the Sensitive Areas Requirements of the Land Use Code Related to Marine Mammal and Anadromous Waterbody Habitat Protections

(aka Stream Setback Buffer Ordinance)

### **Background**

The anadromous waterbodies ordinance (aka stream setback / buffer) has been in the works off and on for a number of years. The desire for a revision to this code was presented years ago by developers who struggled with limited work area during construction. For example, when constructing a single-family dwelling on a property with a stream buffer, the developer has to site the dwelling at approximately 65 to 70 feet from the stream to ensure the buffer is not disturbed—no work can occur within the 50 foot buffer, per current code.

Most recently, the Planning Commission Title 49 Committee discussed the draft ordinance off and on from the spring of 2021 to the spring of 2022. At the Title 49 Committee meeting on May 4, 2022, the Committee reached consensus and forwarded a draft ordinance to the Planning Commission (Commission).

After the May 4, 2022, Title 49 Committee meeting, the ordinance was worked on by staff at CDD and Law. A revised draft ordinance, incorporating much of the Title 49 Committee revisions was then presented to the full Commission on March 14, 2023. Revisions by staff included the streamlining of a couple of uses in the proposed table, ensuring that the code was enforceable, and organizing the ordinance to fit the land use code.

At the regular March 14, 2023 Commission meeting, the Commission reviewed the revised draft language and changed the draft ordinance during the public hearing substantially, causing the new proposed ordinance to arguably no longer meet its titular purpose—to protect anadromous waterbodies. Realistically, if this path is chosen, the title should just be repealed (it makes no sense to have a stream protection requirement that doesn't actually protect stream habitat). The Commission recommended its draft ordinance to the Assembly for approval.

### **Discussion**

We find ourselves needing to balance development ease and the preservation of fish habitat. The question that must be answered is, does Juneau value anadromous waterbodies, and if so, do we enact code that protects the fish habitat? If the answer to both these questions is yes, then we need an ordinance that is reasonable and enforceable.

The Commission in committee leaned for a middle path and at public hearing changed to a more pro-development path. Neither approach is wrong, the values of preservation and development are very different public purposes. But in its discussion, the Commission focused on the needs of development – which is a worthy public purpose, but not on the needs and purpose of fish habitat.

Recognizing the need to ease development restrictions where it is reasonable and provide for flexibility in the code is critical for development in Juneau. Given the vast differences between the Commission's draft ordinance and the ordinance drafted by Title 49 Committee and reviewed by staff, I asked staff for a third option, which addresses the main concern presented by developers over the years, and maintains our historic desire to protect fish habitat.

This third option provides for developers to work within the 50 foot buffer (from 35 feet to 50 feet) during construction, with the caveat that the area disturbed must be revegetated within one growing season with native plantings. The attached

draft ordinance was drafted by the Director, and reviewed by Law to ensure compliance with state statutes, and does not duplicate authority of state agencies.

### **Recommendation**

In summary, there are really three options available:

1. Do nothing
2. Repeal the Protection Ordinance
3. Adopt the moderated path developed by staff at direction of the Manager.

I recommend that the LHEDC recommend staff's most recent ordinance to the full Assembly for adoption. The draft ordinance maintains practical protection of anadromous waterbodies, while allowing development to occur in a portion of the outer buffer during construction by providing the work area necessary to construct outside the 50 foot buffer.

Given the work load and duties of the Assembly, I also recommend that you not devote too much time on this topic, this approach is a best balance of our interests. In closing, this process really illustrates the problem of volunteer group writing of code. I further recommend that we evolve to a practice of having the Planning Commission agree on philosophical directions and refrain from group writing. Group code writing is too hard, takes too long. Code writing should be left to the Department and the Attorneys.

**An Ordinance Amending the Sensitive ~~Habitat~~ Areas Requirements of the Land Use Code  
Related to Marine Mammal and Anadromous Waterbody Habitat Protections.**

**ARTICLE III. - SENSITIVE AREAS**

**49.70.310 Marine Mammal Habitat Protections.**

- (a) Development in the following areas is prohibited:
  - (1) On Benjamin Island within the Steller sea lion habitat;
  - ~~(2) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and~~
  - ~~(3) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.~~
- (b) ~~In addition to the above requirements there shall be no disturbance in the following areas:~~
  - ~~(1) Within 25 feet from the ordinary high water mark 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 from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.~~
- (l) ~~The following developments or disturbances are exempt from the setback prohibitions of this section:~~
  - ~~(1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and~~
  - ~~(2) 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.~~

~~Except for the setback area necessary for such developments or disturbances, the remaining 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 or lake. A variance is required for any other development or disturbance in the setback prohibitions of this section.~~

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 3, 10-20-2008; Serial No. 2013-26(am), § 4, 11-4-2013, eff. 12-5-2013; Serial No. 2017-29, § 5, 1-8-2018, eff. 2-8-2018; Serial No. 2021-13, § 4, 9-13-2021, eff. 10-14-2021)

**49.70.320 Watersheds.**

Development in watersheds designated in the comprehensive plan of the City and Borough of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground water recharge capabilities of the site according to standards established by the state department of environmental conservation. Upon request of the director, the developer shall provide evidence of compliance by certification of a professional engineer.

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 4, 10-20-2008; Serial No. 2013-26(am), § 5, 11-4-2013, eff. 12-5-2013)

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#### **49.70.330 Anadromous Habitat Protections.**

- (a) Development in the following areas is prohibited:
- (1) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and
  - (2) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.
- (b) In addition to the above requirements there shall be no disturbance in the following areas:
- (1) Within 25 feet from the ordinary high water mark 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 from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.
- (c) The following developments or disturbances are exempt from the setback prohibitions of this section:
- (1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and
  - (2) 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; and,
  - (3) During construction of a development, work may be conducted within the 35 foot to 50 foot buffer in order to construct a permitted project.
  - (4) The following standards shall apply:
    - (A) Prior to issuance of a building or grading permit, the developer must submit a vegetation or revegetation plan to the director for approval.
    - (B) Such vegetation or revegetation shall be kept or arranged to maximize shade on the stream or lake.
    - (C) The area disturbed shall be vegetated with native species according to the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska.
    - (D) Except for the setback area necessary for such developments or disturbances, the remaining setback shall be vegetated or revegetated within one growing season.

~~A variance is required for any other development or disturbance in the setback prohibitions of this section.~~



## Planning Commission

(907) 586-0715

[PC\\_Comments@juneau.org](mailto:PC_Comments@juneau.org)

[www.juneau.org/community-development/planning-commission](http://www.juneau.org/community-development/planning-commission)

155 S. Seward Street • Juneau, AK 99801

### **PLANNING COMMISSION NOTICE OF RECOMMENDATION**

Date: March 17, 2023

Case No.: AME20170001

City and Borough of Juneau  
City and Borough Assembly  
155 South Seward Street  
Juneau, AK 99801

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding a text amendment to CBJ 49.70.310, Habitat, to revise the Habitat Ordinance

Property Address: Borough-wide

Legal Description: n/a

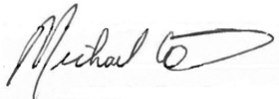
Parcel Code Number: n/a

Hearing Date: March 14, 2023

The Planning Commission, at its regular public meeting, amended the analysis and findings listed in the attached memorandum dated March 2, 2023, and recommended that the City and Borough Assembly adopt staff's recommendation, to revise the anadromous waterbodies ordinance as amended.

Attachments: March 2, 2023 memorandum from Teri Camery, Community Development, to the CBJ Planning Commission regarding AME20170001

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020 (b).



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Michael LeVine, Chair  
Planning Commission

May 18, 2023

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Date



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Filed With City Clerk

May 18, 2023

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Date

**cc: Plan Review**

**NOTE:** The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. 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.

Presented by:  
Presented:  
Drafted by:

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Serial No. 2022-46 PC2

**An Ordinance Amending the Sensitive Habitat Area Requirements of the  
Land Use Code Related to Anadromous Waterbodies.**

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 Article.** Article III of CBJC 49.70 is amended as follows:

**Article III. Sensitive Habitat Areas**

**49.70.310 Marine Mammal Habitat Protections.**

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the Steller sea lion habitat.

**49.70.320 Watersheds.**

Development in watersheds designated in the comprehensive plan of the City and Borough of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground water recharge capabilities of the site according to standards established by the state department of environmental conservation. Upon request of the director, the developer shall provide evidence of compliance by certification of a professional engineer.

**Commented [JM1]:** No changes recommended at this time; this is existing code

1  
2 **49.70.330 Anadromous waterbodies.**

3 (a) Purpose. The purpose of this section is to protect and preserve anadromous fish habitat  
4 through:

- 5 (1) Regulating alteration and mitigating disturbances to anadromous fish habitat buffers;  
6 (2) Preserving riparian habitat and restricting the removal of riparian vegetation;  
7 (3) Controlling pollution sources;  
8 (4) Prohibiting certain uses and structures detrimental to anadromous fish habitat;  
9 (5) Decreasing erosion, sedimentation, and damage to anadromous fish habitat buffers; and  
10 (6) Regulating access to and within the anadromous fish habitat buffer.

11  
12  
13 (b) Applicability. This section applies to anadromous waterbodies listed in the most recent Alaska  
14 Department of Fish and Game Atlas and Catalog of Waters Important for the Spawning, Rearing,  
15 or Migration of Anadromous Fishes.

16  
17 (c) Establishment of buffers. Waterbodies listed in the Atlas and Catalog of Waters Important for  
18 the Spawning, Rearing, or Migration of Anadromous Fishes shall have an inner buffer measuring  
19 from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet

20  
21 The following standards ~~guide application of~~ determine the buffer requirements:

- 22 (1) The buffer shall be measured by the horizontal distance from the Ordinary High Water  
23 Mark (OHWM), as determined by a ~~professional~~ land surveyor licensed in the State of  
24 Alaska.



1  
2 (2) On shoreline properties, the transition point from the anadromous fish habitat buffer to  
3 the zero setback of tidewater shall be at the point where mean high water and ordinary high  
4 water intersect, as determined by a ~~professional~~ land surveyor licensed in the State of  
5 Alaska.

6 (43) Vegetation that overhangs or overlaps the zero to 25 foot buffer or the 25 to 50 foot  
7 buffer shall follow the regulation applicable to the primary trunk or stalk of the vegetation,  
8 whichever is most specific.  
9

10  
11 (d) *Anadromous fish habitat permit.* Activity within the inner (0 to 25 feet) or outer (25 to 50 feet)  
12 buffer requires an anadromous fish habitat permit, unless otherwise exempted by this section.

13 (1) The following uses are exempt from obtaining an anadromous fish habitat permit:

14 (A) Placement of fish weirs by a resource agency;

15 (B) Placement of water quality or water quantity monitoring equipment by a resource  
16 agency;

17 (C) Docks, bridges, culverts, and public ~~or private~~ structures whose purpose is access  
18 to or ~~ac~~ross the stream or lake;

19 (D) Uses which must be in or adjacent to the stream in order to function, such as  
20 aquaculture, water supply intakes, or similar uses; or

21 (E) Exploration and mining activities complying with CBJC 49.65 Article I that must  
22 be in or adjacent to the anadromous stream in order to function.  
23

24 (2) The following uses are prohibited in the inner and outer buffer:

25 (A) Storage of fuel;

(B) Storage of explosives; or

(C) Storage of other hazardous materials.

(e) ~~Listed uses~~. There is adopted the table of permissible uses in anadromous waterbody buffers, table 49.70.330340. The uses permitted in ~~an~~ anadromous ~~waterbodies~~ ~~waterbody~~ habitat buffers shall be determined through the following table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the buffer thus located shall be as indicated thereat by the digits "1," or "3" as more fully set out in this section. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified buffer.

(1) When used in conjunction with a particular use in the table of permissible uses in anadromous waterbody buffers, the number "1" indicates that the use requires department approval pursuant to chapter 49.15, article III, in conjunction with the issuance of an anadromous ~~fish~~ habitat permit. The use is permissible in the buffer, but limited conditions may be attached to the approval.

(2) The number "3" indicates the use requires an anadromous ~~fish~~ habitat permit from the commission. The commission may approve, deny, or approve with condition(s) to ensure the compatibility of the proposed use to this title.

A combination of digits such as "1, 3" indicates that the approval procedure for the identified use in the identified buffer will vary depending on whether the project is a minor or major activity.

~~(1) Uses listed with the "1" indicate the use requires department approval. (2) Uses listed with a "3" indicate the use requires commission approval.~~

**Commented [JM2]:** Com m ission recommends streamlining this language

1  
2 (2) Uses listed with the “1, 3” indicate the use follows the associated development’s approval  
3 process. If approval of the associated development requires commission approval, one  
4 conditional use permit will address the development application comprehensively.  
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Table of Permissible Uses in Anadromous Waterbody Buffers 49.70.340

		Anadromous Waterbodies Buffers	
Use Description		Inner Buffer (zero to 25 feet)	Outer Buffer (25 to 50 feet)
1.0	Bank, buffer stabilization or restoration	1, 3	1, 3
2.0	Removal of non-native invasive plant species	1, 3	1, 3
3.0	Stormwater management to improve water quality or water quantity	1, 3	1, 3
4.0	Removal of trees that present an immediate and direct threat of falling onto a structure or vehicle.	1, 3	1, 3
5.0	Removal of vegetation, including limbing of trees, for viewshed or light enhancement		3
6.0	Grading, <del>or</del> vegetation removal, <del>or</del> placement of utilities associated with construction of a development	<u>3</u>	1, 3
<del>7.0</del>	<del>Bridges, utilities, and related public and private infrastructure, including culverts</del>	<del>1, 3</del>	<del>1, 3</del>
8.0	Installation of a fence	3	1
9.0	Trail construction for accessing or crossing a waterbody	1, 3	1, 3
<u>10.0</u>	<u>Trail maintenance for accessing or crossing a waterbody</u>	<u>1, 3</u>	<u>1, 3</u>
<u>11.0</u>	Trail construction and trail maintenance parallel to a waterbody		1, 3
12.0	Stream channelization or relocation of a stream that impacts anadromous fish habitat buffer	3	3
<del>12.0</del> <u>13.0</u>	Uses not listed, or not otherwise prohibited	3	3

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2 (f) Minor anadromous ~~fish habitat activity~~ application requirements.

3 (1) Application requirements. The developer must submit one copy of the completed  
4 application and permit fee, including:

5 (A) A graphic description of the property and all property boundaries to scale;

6 (B) A site plan drawn to scale depicting the location of the proposed project on the lot;

7 (C) A narrative statement describing the proposed activity explaining why the  
8 activity must be located within the inner or outer buffer, potential impacts to  
9 anadromous fish habitat, and an explanation of conformance with the ~~Anadromous~~  
10 ~~Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat~~  
11 ~~Best Management Practices (49.70.360); and~~

12 (D) Additional information as determined necessary by the director.  
13  
14

15 (2) Director determinations. The director reviews anadromous fish habitat permit  
16 applications if the activity would likely only cause minimal impacts in the buffer. The  
17 director shall review the application, consult with the developer, and approve and unless:

18 (A) The application is incomplete; or

19 (B) ~~The Director determines that the outcome of the proposed activity or the~~  
20 ~~cumulative effects of activity or development in a buffer would likely cause more than~~  
21 ~~minimal impacts in the buffer after project completion, the application shall be~~  
22 ~~subject to commission review~~  
23 ~~The director determines the proposed activity, series of~~  
24 ~~applications, or the potential cumulative effects of activity or development in or near~~  
25 ~~a buffer would likely cause more than minimal impacts in the buffer, the~~  
application(c) shall be subject to commission review; or

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2 (C) The application does not demonstrate compliance with the [Anadromous Fish](#)  
3 [Habitat Vegetation Standards \(49.70.350\), and the Anadromous Fish Habitat Best](#)  
4 [Management Practices \(49.70.360\); or](#)

5 (D) The activity as proposed will not comply with one or more requirements of this  
6 title.

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8  
9 (g) Major anadromous fish habitat activity requirements. The commission, ~~—~~through the  
10 conditional use permit process, ~~—~~ reviews ~~all~~ applications that could likely cause more than  
11 minimal impacts in the buffer as determined by the director.

12 (1) Pre-application conference. Prior to submission of an application, the developer shall meet  
13 with the director for the purpose of discussing the site, the proposed activity, and the  
14 procedure. It is the intent of this section to provide for an exchange of general and  
15 preliminary information only and no statement by either the developer or the director shall  
16 be regarded as binding or authoritative for purposes of this code.

17  
18 (2) Submission. The developer shall submit to the director one copy of the completed permit  
19 application with supporting materials and permit fee, including:

20  
21 (A) A graphic description of the property and all property boundaries to scale;

22 (B) A site plan drawn to scale of existing conditions, including existing topography,  
23 drainage features, structures, significant natural and artificial conditions of the land,  
24 and vegetation; and

25 (C) A narrative statement describing:

(i) The proposed activity and explaining why the activity must be located within the inner and / or outer buffer;

(ii) Potential impacts to anadromous fish habitat;

(iii) Explanation of conformance with the [Anadromous Fish Habitat Vegetation Standards \(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices \(49.70.360\)](#);

(iv) Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;

(v) Existing species of vegetation and proposed species to be used for revegetation;

(vi) Schedule for activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the [Anadromous Fish Habitat Vegetation Standards \(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices \(49.70.360\)](#);

(vii) Maintenance schedule, if applicable; and

(viii) Additional information as determined by the director.

(3) Director's review procedure.

(A) The director shall ~~endeavor to~~ determine whether the application accurately reflects the developer's ~~intentions~~ goals, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.

1  
2 (B) After accepting the application, the director shall schedule it for a hearing before  
3 the commission and shall give notice to the developer and the public in accordance  
4 with 49.15.230.

5 (C) The director shall forward the application to the commission together with a  
6 report setting forth the director's recommendation for approval or denial, with or  
7 without conditions, and the reasons therefore. The director shall review the  
8 application, consult with the developer, and make recommendations on the following  
9 issues:

10  
11 (i) Whether the application is complete;

12 (ii) Whether the application demonstrates conformance with the Anadromous  
13 Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish  
14 Habitat Best Management Practices (49.70.360); and

15 (iii) Whether the activity as proposed will comply with the requirements of  
16 this title.

17  
18 (D) Copies of the application or the relevant portions thereof shall be transmitted to  
19 interested agencies as specified on a list maintained by the director for that purpose.  
20 Referral agencies shall be invited to respond within 15 days unless an extension is  
21 requested and granted in writing for good cause by the director.

22 (E) Even if the proposed activity complies with all the requirements of this title and  
23 all recommended conditions of approval, the director may nonetheless recommend  
24 denial of the application if it is found that the activity:

25 (i) Will materially endanger the public health or safety;



1  
2 (ii) Will substantially decrease the value of or be out of harmony with property  
3 in the neighboring area; or

4 (iii) Will not be in general conformity with the land use plan, thoroughfare  
5 plan, or other officially adopted plans; or

6 (iv) Will not comply with the [Anadromous Fish Habitat Vegetation Standards](#)  
7 [\(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices](#)  
8 [\(49.70.360\)](#).  
9

10  
11 (4) Review of director's determinations.

12 (A) At the hearing on the anadromous fish habitat permit, the commission shall  
13 review the director's report to consider:

14 (i) Whether the proposed activity is appropriate according to this  
15 anadromous fish habitat protection section;

16 (ii) Whether the application is complete; and

17 (iii) Whether the activity as proposed will comply with the other  
18 requirements of this title.  
19

20 (B) The ~~planning~~ commission shall adopt the director's determination on each item  
21 set forth in subsection (3) unless it finds, by a preponderance of the evidence, that  
22 the director's determination was in error, and states its reasoning for each finding  
23 with particularity.

24 (5) ~~Planning Commission determinations.~~ Even if the ~~planning~~ commission adopts the  
25 director's determinations pursuant to subsection (3)(C) of this section, it may nonetheless

1  
2 deny or condition the permit if it concludes, based upon its own independent review of the  
3 information submitted at the hearing, that the activity will more probably than not:

4 (A) Materially endanger the public health or safety;

5 (B) Substantially decrease the value of or be out of harmony with property in the  
6 neighboring area; or

7 (C) Lack general conformity with the comprehensive plan, thoroughfare plan, or  
8 other officially adopted plans; or

9 (D) Will not comply with the [Anadromous Fish Habitat Vegetation Standards](#)  
10 [\(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices](#)  
11 [\(49.70.360\)](#).

12  
13 (h) *Emergency temporary permits.*

14 (1) The director may issue an emergency anadromous fish habitat permit, to protect life and  
15 property from imminent danger or to restore, repair, or maintain public works, utilities, or  
16 services destroyed, damaged, or interrupted by the emergency providing that:

17 (A) The emergency anadromous fish habitat permit shall only authorize the  
18 minimum amount of work required to mitigate the emergency situation and any  
19 additional work shall follow applicable permitting procedures set forth in this title;  
20 and

21 (B) Work shall be conducted using [the Anadromous Fish Habitat Best Management](#)  
22 [Practices \(49.70.360\)](#) to ensure that any adverse effect on the anadromous water body  
23 and buffers is minimized.

24  
25 (2) The emergency anadromous fish habitat application shall include the following:

(A) A description of the proposed activity;

1  
2 (B) A description of the emergency; and

3 (C) A narrative describing why the activity is necessary to protect life and property  
4 from imminent danger or to restore, repair, or maintain public works, utilities, or  
5 services destroyed, damaged, or interrupted by the emergency.

6 (3) Conditions of approval. Conditions may be attached to emergency anadromous fish  
7 habitat permits to comply with this chapter. A final report that includes the plans and  
8 specifications for the work that was completed must be submitted to the department within  
9 60 days of the date of the emergency. The director may require mitigation to repair damage  
10 to the anadromous fish habitat and ensure conformance with the section. All emergency  
11 work must be completed within two weeks of the issuance of the emergency anadromous fish  
12 habitat permit.

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15 **49.70.330-350 Anadromous fish habitat vegetation standards.**

16 Riparian vegetation standards shall apply to all uses ~~or types of development~~ within the inner  
17 or outer anadromous fish habitat buffer. All uses ~~and types of development~~ within the inner  
18 and outer anadromous fish habitat buffer shall include a vegetation plan to maintain or restore  
19 the buffer to the following standards:

20 (a) The vegetation plan shall consider a diversity of native species appropriate for the site  
21 conditions found in the ~~Recommended Plan List in Appendix E of the CBJ's Manual of~~  
22 ~~Stormwater Best Management Practices (2010) and/or the Plant Species~~ Selection List in the  
23 [Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska](#)  
24 ~~(2005)~~. The vegetation plan shall favor natural plant reclamation from neighboring plant  
25 communities when possible. If the site was considered to be in a natural state prior to the activity,

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2 the area shall require revegetation with the same species. The plan shall also implement any  
3 standards from the Alaska Storm Water Guide, ~~Landscaping and Lawn/Vegetation Management~~  
4 ~~sections in the CBJ's Manual of Stormwater Best Management Practices (2010)~~, identified by the  
5 director as applicable to the permitted development; and  
6

7 (b) Uses and activities shall not introduce or redistribute invasive species. Development that  
8 includes removal of invasive species must include documentation that removal and disposal  
9 methods will not contribute to invasive species spread.  
10

11 (c) A developer with a proposed anadromous fish habitat activity that does not comply with the  
12 Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat  
13 Best Management Practices (49.70.360) ~~Anadromous Fish Habitat Vegetation Standards~~ may  
14 apply for a non-administrative variance.  
15

16 **49.70.340-360 Anadromous fish habitat best management practices.**

17 Anadromous Fish Habitat Best Management Practices shall apply to all uses ~~or types of~~  
18 ~~activity~~ within the inner or outer buffer:  
19

20 (a) Delineate and flag work limits prior to commencing any activities to preserve existing  
21 vegetation outside of the work area and minimize impacts to the buffer. To protect large trees  
22 near, but outside of, the work area, the boundary for the natural area to be preserved should be  
23 extended to the tree drip line to protect the root zone from damage. The work limits must remain  
24 clearly marked until all work is complete. Within the work limits, the disturbed area shall be  
25 limited to that required for construction including access. Complete or partial removal of and

1  
2 damage to native vegetation shall be limited to the minimum necessary to achieve the project  
3 purpose;

4  
5 (b) When existing vegetation must be removed from the buffer, the buffer shall be revegetated  
6 with native plant species that are present or appropriate for that area within ~~one growing~~  
7 ~~season~~ 24 months. The buffer shall be revegetated and such revegetation shall be kept or arranged  
8 to enhance fish habitat. Areas previously degraded by human activity shall be revegetated;  
9

10  
11 (c) Erosion and sediment control best management practices shall be used during construction  
12 activities to protect waterbodies sediment deposition and turbidity due to adjacent soil  
13 disturbance activities. Selected BMPs must be implemented in accordance with the standards  
14 in the [Alaska Storm Water Guide](#);  
15

16 (d) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state  
17 law;  
18

19  
20 (e) Uses and activities shall implement measures to minimize pollutant discharges into the  
21 waterbody and buffer including but not limited to providing for water management, establishing  
22 staging, fueling, and maintenance areas outside of the buffer;  
23

24 (f) Structures allowed within the buffer must be constructed so as not to impede floodwaters or  
25 impede fish passage; and

1  
2 ~~(g) Developments must comply with the Alaska Storm Water Guide 2010 CBJ Manual of~~  
3 ~~Stormwater Best Management Practices.~~

4  
5 ~~(h)~~(g) A developer with a proposed anadromous fish habitat activity that does not comply  
6 with the Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish  
7 Habitat Best Management Practices (49.70.360) may apply for a non-administrative variance.  
8  
9

10 **Section 3. Amendment of Section.** CBJC 49.80.120 is amended by adding the  
11 following definitions:  
12

13 **49.80.120 Definitions.**

14 The following words, terms and phrases, when used in this title, shall have the meanings  
15 ascribed to them in this section, except where the context clearly indicates a different meaning:  
16

17 Anadromous fish means a fish or fish species that spends portions of its life cycle in both fresh  
18 and salt waters, entering fresh water from the sea to spawn and includes the anadromous forms  
19 of pacific trout and salmon of the genus Oncorhynchus (rainbow and cutthroat trout and  
20 chinook, coho, sockeye, chum and pink salmon), Arctic char, Dolly Varden, sheefish, smelts,  
21 lamprey, whitefish, and sturgeon.  
22

23 Anadromous fish habitat means any area on which anadromous fish depend, directly or  
24 indirectly, during any stage of their life cycle, including but not limited to areas of spawning,  
25 rearing, food supply, overwintering, or migration.

1  
2 Anadromous waterbody means a river, stream, or lake, in its liquid or frozen state, its braided  
3 channels, distributaries, sloughs, backwaters, and estuaries, including the portion of the bed(s)  
4 and banks up to the ordinary high water mark, from its mouth to its specified upper limit as  
5 depicted in An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of  
6 Anadromous Fishes or listed in the Catalog of Waters Important for Spawning, Rearing or  
7 Migration of Anadromous Fishes.

9  
10 Bank restoration or buffer restoration means removal of debris, removal of abandoned  
11 machinery and vehicles, grading, stabilization of banks and related cleanup activities, and  
12 preservation or restoration of riparian vegetation

13  
14 Best Management Practices (BMP) means systems of practices and management measures that:  
15 1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste,  
16 and toxins; 2. Control the movement of sediment and erosion caused by land alteration  
17 activities to protect water quality and slope stability;  
18 3. Minimize adverse impacts to surface and groundwater quality, flow, and circulation  
19 patterns; and to the chemical, physical, and biological characteristics of waterbodies;  
20 4. Minimize adverse impacts to the chemical, physical, and biological characteristics of a  
21 sensitive habitat critical area;  
22 5. Protect trees and vegetation designated to be retained during and following site  
23 construction and use native plant species appropriate to the site for revegetation of  
24 disturbed areas; and  
25

~~6. Monitor mitigation measures to ensure that functions and values impacted by a project are provided and maintained.~~

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that decrease water quality or habitat, which conform to the Alaska Storm Water Guide, which conforms to the 2010 CBJ Manual of Stormwater Best Management Practices.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio.

**Section 4. Amendment of Section.** CBJC 49.85.100 is amended by adding the following fees:

(1)(D) Anadromous fish habitat permit \$150; fee is waived if applied for in conjunction with a development permit.

(3)(A)(vii) Anadromous fish habitat permit \$150. If the application is filed in conjunction with a major development permit the fee shall be reduced by 20 percent.



**Section 4. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, ~~2022~~2023.

\_\_\_\_\_  
Beth A. Weldon, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



**PLANNING COMMISSION STAFF REPORT**  
**TEXT AMENDMENT AME2017 0001**  
**HEARING DATE: MARCH 14, 2023**

(907) 586-0715

CDD\_Admin@juneau.org

www.juneau.org/community-development

155 S. Seward Street • Juneau, AK 99801

**DATE:** March 2, 2023  
**TO:** Michael LeVine, Chair, Planning Commission  
**BY:** Teri Camery, Senior Planner, CFM  
**THROUGH:** Jill Maclean, Director, AICP

**PROPOSAL:** A text amendment to CBJ 49.70.310, Habitat, to revise the stream buffer ordinance

**STAFF RECOMMENDATION:** Forward the proposed ordinance with a recommendation of APPROVAL to the Assembly.

**KEY CONSIDERATIONS FOR REVIEW:**

- Maintains 25 and 50 foot stream buffers;
- Clarifies uses allowed and prohibited within stream buffers; and
- Allows low-impact uses in the buffer with departmental review.

GENERAL INFORMATION	
<b>Applicant</b>	Community Development Department
<b>Initiated By</b>	Community Development Department
<b>Property Affected</b>	Borough-wide

LAND USE CODE AMENDED	
<b>49.70.310</b>	Habitat
<b>49.85</b>	Definitions

WORK SESSION DATES	
<b>Title 49 Committee</b>	September 2018; July 2021; October 2021; November 2021; December 2021; January 2022

**ALTERNATIVE ACTIONS:**

1. **Amend:** modify the proposed ordinance and recommend approval to the Assembly.
2. **Deny:** recommend denial of the proposed ordinance to the Assembly. Planning Commission must make its own findings.
3. **Continue:** continue the hearing to a later 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 required for this text amendment. The Commission's recommendation will be forwarded to the assembly for final action.

**STANDARD OF REVIEW:**

- Quasi-legislative decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
  - CBJ 49.10.170(d)

**The Commission shall hear and decide the case per CBJ 49.10.170(d) Planning Commission Duties.** *The commission shall make recommendations to the assembly on all proposed amendments to this title, zonings and rezoning, indicating compliance with the provisions of this title and the comprehensive plan.*

## **DISCUSSION**

### **Background –**

The proposed text amendment would retain the 0-25 foot and 25-50 foot buffers in current code, while clarifying uses and streamlining the review process for low-impact uses that can comply with standard best management practices and riparian vegetation standards.

The Title 49 Committee has reviewed the proposed language in five meetings.

Key elements of the ordinance include:

- Clarification on how the Ordinary High Water Mark is measured;
- Clarification on allowed and prohibited uses within the stream buffer;
- Establishment of an Anadromous Waterbody Permit;
- Establishment of minor development categories for low impact uses that may be approved at the director level; and major development categories for uses that may have a greater impact and may be approved by the Planning Commission

## **COMPLIANCE WITH TITLE 49**

### **CBJ 49.05.100 - Purpose and intent. The purpose and Intent of Title 49 Land Use Code is:**

*(1) To achieve the goals and objectives, and implement the policies, of the Juneau comprehensive plan, and coastal management program;*

*(2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;*

*(3) To identify and secure, for present and future residents, the beneficial impacts of growth while minimizing the negative impacts;*

*(4) To ensure that future growth is of the appropriate type, design and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;*

*(5) To provide adequate open space for light and air; and*

*(6) To recognize the economic value of land and encourage its proper and beneficial use.*

**TITLE 49** - The proposed text amendment complies with CBJ Title 49 Land Use Code. Additionally, the proposed amendment will not create any inconsistencies in Title 49.

Code Reference	Item	Summary
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49.05.100	Purpose Statement	The proposed text amendment complies with the purpose and intent of Title 49.
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## **COMPLIANCE WITH ADOPTED PLANS**

**2013 COMPREHENSIVE PLAN VISION:** *The City and Borough of Juneau is a vibrant State Capital that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.*

<b>2013 COMPREHENSIVE PLAN</b> The proposed text amendment is in compliance with the 2013 Comprehensive Plan.			
Chapter	Page No.	Item	Summary
7	78	Policy 7.1	<p>The proposed text amendment supports Policy 7.1 by protecting valuable anadromous stream habitat from the adverse impacts of urban development.</p> <p><i>Policy 7.1. TO PROTECT THE REGION’S SCENIC, ENVIRONMENTAL, AND ECONOMICALLY-VALUABLE NATURAL RESOURCES FROM THE ADVERSE IMPACTS OF URBAN DEVELOPMENT. DEVELOPMENT SHALL BE CONTROLLED CAREFULLY AND, IF NECESSARY, PROHIBITED IN NATURALLY HAZARDOUS AND ECOLOGICALLY-PRODUCTIVE OR SENSITIVE AREAS.</i></p>

## **AGENCY REVIEW**

An agency review period was not conducted. State and federal resource agencies provided significant input into early development of the ordinance, specifically regarding uses allowed in the buffers and regarding development of best management practices and vegetation standards.

## **PUBLIC COMMENTS**

Public Notice was provided in the March 3 and March 10, 2023 Juneau Empire Your Municipality section. No public comments have been received to date.

## **FINDINGS**

### **1. Does the proposed text amendment comply with the Comprehensive Plan and other adopted plans?**

**Analysis:** The proposed amendment balances the varied Comprehensive Plan policies and is generally consistent with the overall vision.

**Finding:** **Yes.** The proposed text amendment complies with the 2013 Comprehensive Plan.

**2. Does the proposed text amendment comply with Title 49 – Land Use Code?**

**Analysis:** The proposed amendment was drafted with the purpose and intent of Title 49 taken into account. If approved as drafted, it will be consistent with the above purposes.

**Finding: Yes.** The proposed development complies with the purpose and intent of Title 49. Additionally, the proposed amendment does not create any inconsistencies within the code.

**RECOMMENDATION**

Staff recommends the Planning Commission adopt the Director's analysis and findings and make a recommendation to the Assembly to APPROVE the proposed text amendment to revise the stream buffer ordinance.

**STAFF REPORT ATTACHMENTS**

Item	Description
Attachment A	Proposed Ordinance

Presented by:  
Presented:  
Drafted by:

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**  
**Serial No. 2022-46 PC1**

**An Ordinance Amending the Sensitive Habitat Area Requirements of the  
Land Use Code Related to Anadromous Waterbodies.**

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 Article.** Article III of CBJC 49.70 is amended as follows:

**Article III. Sensitive Habitat Areas**

**49.70.310 Marine Mammal Habitat Protections.**

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the Steller sea lion habitat;
- ~~(2) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update;~~
- ~~and~~
- ~~(3) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.~~

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

- ~~(1) Within 25 feet from the ordinary high water mark 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 from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.~~

(b) The following developments or disturbances are exempt from the setback prohibitions of this section:

- (1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and
- (2) 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.

Except for the setback area necessary for such developments or disturbances, the remaining 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 or lake. ~~A variance is required for any other development or disturbance in the setback prohibitions of this section.~~

**49.70.315 Anadromous Fish Habitat Protections**

(a) Purpose. The purpose of this section is to protect and preserve anadromous fish habitat through:

- (1) Regulating alteration and mitigating disturbances to anadromous fish habitat buffers;
- (2) Preserving riparian habitat and restricting the removal of riparian vegetation;
- (3) Controlling pollution sources;

- (4) Prohibiting certain uses and structures detrimental to anadromous fish habitat;
- (5) Decreasing erosion, sedimentation, and damage to anadromous fish habitat buffers; and
- (6) Regulating access to and within the anadromous fish habitat buffer.

(b) Applicability. This section applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*. It is the developer’s responsibility to prove that a waterbody is not anadromous in accordance with AS 16.05.871.

(c) Establishment of buffers. Waterbodies listed in the *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet. The following standards guide application of the buffer requirements:

- (1) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark (OHWM), as determined by a professional land surveyor licensed in the State of Alaska.
- (2) On shoreline properties, the transition point from the anadromous fish habitat buffer to the zero setback of tidewater shall be at the point where mean high water and ordinary high water intersect, as determined by a professional land surveyor licensed in the State of Alaska.
- (3) Vegetation that overhangs the stream or overlaps the 0 to 25 foot inner buffer shall follow the regulation applicable to the inner buffer.



(4) Vegetation that overhangs or overlaps the 25 to 50 foot buffer shall follow the regulation applicable to the primary element or woody vegetation, whichever is most specific.

(d) Anadromous fish habitat permit. Activity within the inner (0 to 25 feet) or outer (25 to 50 feet) buffer requires an anadromous fish habitat permit, unless otherwise exempted by this section.

(1) The following uses are exempt from obtaining an anadromous fish habitat permit:

- (A) Placement of fish weirs by a resource agency;
- (B) Placement of water quality or water quantity monitoring equipment by a resource agency;
- (C) Uses which must be in or adjacent to the stream in order to function, such as fish culturing, water supply intakes, or similar uses; or
- (D) Exploration and mining activities complying with CBJC 49.65 Article I that must be in or adjacent to the anadromous stream in order to function.

(2) The following uses are prohibited in the inner and outer buffer:

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

(e) Listed uses. There is adopted the table of permissible uses in anadromous fish habitat buffers, table 49.70.315. The uses permitted in an anadromous fish habitat buffer shall be determined through the following table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the buffer thus located shall be as indicated thereat by the digits "1," or "3" as more fully set out in this

1  
2 section. The absence of a digit at the intersection of use and zone axes means that the identified  
3 use is not permitted in the identified buffer.

4       (1) *Unlisted uses.* The permissibility of a use not listed shall be determined pursuant to  
5 section 49.20.320.

6  
7       (2) *Uses listed more than once.* Where a use might be classified under more than one category,  
8 the more specific shall control. If equally specific, the more restrictive shall control.

9       (3) When used in conjunction with a particular use in the table of permissible uses, the  
10 number "1" indicates that the use requires department approval pursuant to chapter 49.15,  
11 article III, in conjunction with the issuance of an anadromous fish habitat permit. The use  
12 is permissible in the buffer, but limited conditions may be attached to the approval.

13  
14       (4) The number "3" indicates the use requires an anadromous fish habitat permit from the  
15 commission. The commission may approve, deny, or approve with condition(s) to ensure the  
16 compatibility of the proposed use to this title.

17 A combination of digits such as "1, 3" indicates that the approval procedure for the identified use  
18 in the identified buffer will vary depending on whether the project is a minor or major activity.

19  
20       (1) If the project is a minor activity requiring a minor development permit, the first number  
21 of the combination shall indicate the applicable procedure.

22       (2) If the project is a major activity requiring a major development permit or is in conjunction  
23 with a major activity, the second number shall indicate the applicable procedure.  
24  
25

Table of Permissible Uses in Anadromous Waterbodies Buffers 49.70.315

		Anadromous Waterbodies Buffers	
Use Description		Inner Buffer (zero to 25 feet)	Outer Buffer (25 to 50 feet)
1.0	Bank, buffer stabilization or restoration	1, 3	1, 3
2.0	Removal of non-native invasive plant species	1, 3	1, 3
3.0	Stormwater management to improve water quality or water quantity	1, 3	1, 3
4.0	Removal of trees that present an immediate and direct threat of falling onto a structure or vehicle.	1, 3	1, 3
5.0	Removal of vegetation, including limbing of trees, for viewshed or light enhancement		3
6.0	Grading, vegetation removal, or placement of utilities associated with construction of a development		1, 3
7.0	Bridges, utilities, and related public and private infrastructure, including culverts	1, 3	1, 3
8.0	Installation of a fence	3	1
9.0	Trail construction or trail maintenance for accessing or crossing a waterbody	1, 3	1, 3
10.0	Trail construction and trail maintenance parallel to a waterbody		1, 3
11.0	Stream channelization or relocation of a stream that impacts anadromous fish habitat buffer	3	3
12.0	Uses not listed, or not otherwise prohibited	3	3

(f) Minor anadromous fish habitat activity requirements.

(1) Application requirements. The developer must submit one copy of the completed application and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale depicting the location of the proposed project on the lot;
- (C) A narrative statement describing the proposed activity explaining why the activity must be located within the inner or outer buffer, potential impacts to anadromous fish habitat, and an explanation of conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards, 49.70.330; and
- (D) Additional information as determined necessary by the director.

(2) Director determinations. The director reviews anadromous fish habitat permit applications if the activity would likely only cause minimal impacts in the buffer. The director shall review the application, consult with the developer, and approve an unless:

- (A) The application is incomplete; or
- (B) The director determines the proposed activity, series of applications, or the potential cumulative effects of activity or development in or near a buffer would likely cause more than minimal impacts in the buffer, the application(s) shall be subject to commission review; or
- (C) The application does not demonstrate compliance with the Anadromous Fish Habitat Best Management Practices and the Anadromous Fish Habitat Vegetation Standards, 49.70.330; or

(D) The activity as proposed will not comply with one or more requirements of this title

(g) Major anadromous fish habitat activity requirements. The commission—through the conditional use permit process—reviews all applications that could likely cause more than minimal impacts in the buffer as determined by the director.

(1) Pre-application conference. Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed activity, and the procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code.

(2) Submission. The developer shall submit to the director one copy of the completed permit application with supporting materials and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale of existing conditions, including existing topography, drainage features, structures, significant natural and artificial conditions of the land, and vegetation; and
- (C) A narrative statement describing:
  - (i) The proposed activity and explaining why the activity must be located within the inner and / or outer buffer;
  - (ii) Potential impacts to anadromous fish habitat;

- (iii) Explanation of conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards in 49.70.330;
- (iv) Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;
- (v) Existing species of vegetation and proposed species to be used for revegetation;
- (vi) Schedule for activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards pursuant to 49.70.330;
- (vii) Maintenance schedule, if applicable; and
- (viii) Additional information as determined by the director.

(3) Director’s review procedure.

- (A) The director shall endeavor to determine whether the application accurately reflects the developer's intentions, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.
- (B) After accepting the application, the director shall schedule it for a hearing before the commission and shall give notice to the developer and the public in accordance with 49.15.230.
- (C) The director shall forward the application to the commission together with a report setting forth the director's recommendation for approval or denial, with or

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(iii) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans; or

(iv) Will not comply with the Anadromous Fish Habitat Best Management Practices and the Anadromous Fish Habitat Vegetation Standards, 49.70.330.

(4) Review of director’s determinations.

(A) At the hearing on the anadromous fish habitat permit, the commission shall review the director's report to consider:

- (i) Whether the proposed activity is appropriate according to this anadromous fish habitat protection section;
- (ii) Whether the application is complete; and
- (iii) Whether the activity as proposed will comply with the other requirements of this title.

(B) The planning commission shall adopt the director's determination on each item set forth in subsection (3) unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

(5) Planning Commission determinations. Even if the planning commission adopts the director's determinations pursuant to subsection (3)(C) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the hearing, that the activity will more probably than not:

- (A) Materially endanger the public health or safety;
- (B) Substantially decrease the value of or be out of harmony with property in the neighboring area; or



1  
2 (C) Lack general conformity with the comprehensive plan, thoroughfare plan, or  
3 other officially adopted plans; or

4 (D) Will not comply with the Anadromous Fish Habitat Best Management Practices  
5 and the Anadromous Fish Habitat Vegetation Standards, 49.70.330.

6  
7 (h) Emergency temporary permits.

8 (1) The director may issue an emergency anadromous fish habitat permit, to protect life and  
9 property from imminent danger or to restore, repair, or maintain public works, utilities, or  
10 services destroyed, damaged, or interrupted by the emergency providing that:

11 (A) The emergency anadromous fish habitat permit shall only authorize the  
12 minimum amount of work required to mitigate the emergency situation and any  
13 additional work shall follow applicable permitting procedures set forth in this title;  
14 and

15 (B) Work shall be conducted using Best Management Practices to ensure that any  
16 adverse effect on the anadromous water body and buffers is minimized.

17 (2) The emergency anadromous fish habitat application shall include the following:

18 (A) A description of the proposed activity;

19 (B) A description of the emergency; and

20 (C) A narrative describing why the activity is necessary to protect life and property  
21 from imminent danger or to restore, repair, or maintain public works, utilities, or  
22 services destroyed, damaged, or interrupted by the emergency.

23  
24 (3) Conditions of approval. Conditions may be attached to emergency anadromous fish  
25 habitat permits to comply with this chapter. A final report that includes the plans and  
specifications for the work that was completed must be submitted to the department within

1  
2 60 days of the date of the emergency. The director may require mitigation to repair damage  
3 to the anadromous fish habitat and ensure conformance with the section. All emergency  
4 work must be completed within two weeks of the issuance of the emergency anadromous fish  
5 habitat permit.  
6  
7

8 **49.70.320 Watersheds.**  
9

10 Development in watersheds designated in the comprehensive plan of the City and Borough  
11 of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground  
12 water recharge capabilities of the site according to standards established by the state  
13 department of environmental conservation. Upon request of the director, the developer shall  
14 provide evidence of compliance by certification of a professional engineer.  
15

16 **49.70.330 Anadromous fish Habitat Vegetation Standards.**  
17

18 Riparian vegetation standards shall apply to all uses or types of development within the inner  
19 or outer anadromous fish habitat buffer. All uses and types of development within the inner  
20 and outer anadromous fish habitat buffer shall include a vegetation plan to maintain or restore  
21 the buffer to the following standards:

22 (a) The vegetation plan shall consider a diversity of native species appropriate for the site  
23 conditions found in the Plant Selection List in the Alaska Department of Fish and Game's Stream  
24 Revegetation and Protection: A Guide for Alaska (2005). The vegetation plan shall favor natural  
25 plant reclamation from neighboring plant communities when possible. If the site was considered  
to be in a natural state prior to the activity, the area shall require revegetation with the same

species. The plan shall also implement any standards from the Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), identified by the director as applicable to the permitted development; and

(b) Uses and activities shall not introduce or redistribute invasive species. Development that includes removal of invasive species must include documentation that removal and disposal methods will not contribute to invasive species spread.

(c) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Vegetation Standards may apply for an administrative variance.

**49.70.340 Anadromous Fish Habitat Best Management Practices**

Anadromous Fish Habitat Best Management Practices shall apply to all uses or types of activity within the inner or outer buffer:

(a) Delineate and flag work limits prior to commencing any activities to preserve existing vegetation outside of the work area and minimize impacts to the buffer. To protect large trees near, but outside of, the work area, the boundary for the natural area to be preserved should be extended to the tree drip line to protect the root zone from damage. The work limits must remain clearly marked until all work is complete. Within the work limits, the disturbed area shall be limited to that required for construction including access. Complete or partial removal of and damage to native vegetation shall be limited to the minimum necessary to achieve the project purpose;

1  
2 (b) When existing vegetation must be removed from the buffer, the buffer shall be revegetated  
3 with native plant species that are present or appropriate for that area within one growing season.  
4 The buffer shall be revegetated and such revegetation shall be kept or arranged to enhance fish  
5 habitat. Areas previously degraded by human activity shall be revegetated;  
6

7  
8 (c) Erosion and sediment control Best Management Practices shall be used during  
9 construction activities to protect waterbodies sediment deposition and turbidity due to adjacent  
10 soil disturbance activities. Selected BMPs must be implemented in accordance with the  
11 standards in the Alaska Storm Water Guide;  
12

13 (d) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state  
14 law;  
15

16 (e) Uses and activities shall implement measures to minimize pollutant discharges into the  
17 waterbody and buffer including but not limited to providing for water management, establishing  
18 staging, fueling, and maintenance areas outside of the buffer;  
19

20  
21 (f) Structures allowed within the buffer must be constructed so as not to impede floodwaters or  
22 impede fish passage; and  
23

24 (g) Developments must comply with the 2010 CBJ Manual of Stormwater Best Management  
25 Practices.

(h) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Best Management Practices may apply for an administrative variance.

**Section 3. Amendment of Section.** CBJC 49.80.120 is amended by adding the following definitions:

**49.80.120 Definitions.**

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anadromous fish means a fish or fish species that spends portions of its life cycle in both fresh and salt waters, entering fresh water from the sea to spawn and includes the anadromous forms of pacific trout and salmon of the genus Oncorhynchus (rainbow and cutthroat trout and chinook, coho, sockeye, chum and pink salmon), Arctic char, Dolly Varden, sheefish, smelts, lamprey, whitefish, and sturgeon.

Anadromous fish habitat means any area on which anadromous fish depend, directly or indirectly, during any stage of their life cycle, including but not limited to areas of spawning, rearing, food supply, overwintering, or migration.

Anadromous waterbody means a river, stream, or lake, in its liquid or frozen state, its braided channels, distributaries, sloughs, backwaters, and estuaries, including the portion of the bed(s) and banks up to the ordinary high water mark, from its mouth to its specified upper limit as depicted in An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of

Anadromous Fishes or listed in the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes.

Bank restoration or buffer restoration means removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation

Best Management Practices (BMP) means systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins;
2. Control the movement of sediment and erosion caused by land-alteration activities to protect water quality and slope stability;
3. Minimize adverse impacts to surface and groundwater quality, flow, and circulation patterns; and to the chemical, physical, and biological characteristics of waterbodies;
4. Minimize adverse impacts to the chemical, physical, and biological characteristics of a sensitive habitat critical area;
5. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

6. Monitor mitigation measures to ensure that functions and values impacted by a project are provided and maintained.

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that decrease water quality or habitat.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio.

**Section 4. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Beth A. Weldon, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Agenda  
**Planning Commission**  
***Regular Meeting***  
CITY AND BOROUGH OF JUNEAU  
*Michael LeVine, Chairman*  
March 14, 2023

**I.     LAND ACKNOWLEDGEMENT** – Read by Commissioner Cole.

We would like to acknowledge that the City and Borough of Juneau is on Tlingit land, and wish to honor the indigenous people of this land. For more than ten thousand years, Alaska Native people have been and continue to be integral to the well-being of our community. We are grateful to be in this place, a part of this community, and to honor the culture, traditions, and resilience of the Tlingit people. Gunalchéesh!

**II.    ROLL CALL**

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in Assembly Chambers of the Municipal Building, virtually via Zoom Webinar, and telephonically, to order at 7:07 p.m.

**Commissioners present:**     Commissioners present in Chambers – Michael LeVine, Chairman; Mandy Cole, Vice Chair; Travis Arndt, Clerk; Erik Pedersen, Vice Clerk; Matthew Bell; Paul Voelckers; Adam Brown; David Epstein

Commissioners present via video conferencing – n/a

**Commissioners absent:**     Nina Keller

**Staff present:**             Jill Maclean, CDD Director; Teri Camery, Senior Planner; Emily Suarez, Planner II; Ilsa Lund, CDD Administrative Assistant; Lily Hagerup, CDD Administrative Assistant; Sherri Layne, Law Assistant Municipal Attorney

Staff present via video conferencing – None

**Assembly members:**       None

**III.   REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA** - None

**IV.    APPROVAL OF MINUTES**



**A. February 28, 2023 Draft Minutes, Regular Planning Commission**

**MOTION:** *by Mr. Pedersen to approve the February 28, 2023 Planning Commission Regular Meeting minutes with a correction to change Vice Chair designation from Mr. Voelckers to Ms. Cole.*

**V. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** by Chair LeVine

**VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

**VII. ITEMS FOR RECONSIDERATION** – None

**VIII. CONSENT AGENDA** – None

**IX. UNFINISHED BUSINESS** – None

**X. REGULAR AGENDA**

Cases **USE2023-0001** and **PWP2023-0001** were presented together.

**Case Number:** **USE2023 0001:** Conditional Use Permit for an accessory apartment on an undersized lot.

**Applicant:** Mark Regan

**Location:** 1718 Evergreen Ave

**Staff Recommendation**

Staff recommends the Planning Commission adopt the Director's analysis and findings, and APPROVE WITH CONDITIONS the requested Conditional Use Permit.

**Case Number:** **PWP2023 0001:** Parking Waiver to waive one (1) parking space for an accessory apartment.

**Applicant:** Mark Regan

**Location:** 1718 Evergreen Ave

**Staff Recommendation**

Staff recommends the Planning Commission adopt Director's analysis and findings and APPROVE the requested Parking Waiver.

**STAFF PRESENTATION** – Ms. Maclean presented **USE2023-0001** and **PWP2023-0001** together.

**APPLICANT PRESENTATION** – Mark Regan, property owner, desires to sell the property at 1718 Evergreen. To do so, the unfinished dirt floor basement would need to be finished into a

completed basement apartment. Addressing the parking, there is currently a single carport dug into the hillside. Adding another would require further excavating into the hillside and would result in the loss of available on-street parking spaces. A parking waiver would make sense for this property.

Meredith Trainor, prospective property buyer, spoke in agreement with Mr. Regan and said that the proposed parking waiver would be what is best for the neighborhood because it allows for the neighbors to utilize the parking in the case that it is not needed for the property.

#### QUESTIONS FOR APPLICANT

Mr. Voelckers referenced public comments saying parking in the area is constrained and contrasted that with CBJ statements that there are some open spaces in the area. Ms. Trainor stated there are parking spaces that are usually available. If they were to put in a carport, that would take away access to that amount of space along the street.

Mr. Pedersen asked if the applicants saw any potential problems with the proposed conditions for the accessory apartment permit.

#### AT EASE 7:30 p.m. - 7:33 p.m.

Mr. Regan said the condition related to the parking waiver is fine. The advisory condition regarding informing tenants is also fine. He did have concerns regarding the requirement for a professional engineer report, he said they are facing closing deadlines on the purchase and there will not be time to hire an engineer and get any potential work completed in that timeframe. He asked the PC for information as to what the required mitigating measures might be.

Mr. LeVine asked for confirmation that the footprint of the building would not be changed with the construction of the accessory apartment. It was confirmed that the footprint would not change, the major change would be pouring a concrete 'foundation like' floor which would serve to make the dwelling more stable.

Ms. Cole asked if she was clear that creating a private parking space would result in removal of public parking from the road. Ms. Trainor confirmed that building a dedicated space for the property would actually remove two on street parking spaces.

#### QUESTIONS FOR STAFF

Mr. Arndt asked if, based on the ordinance proposed at the COW, this property being in a moderate zone would not be regulated.

Mr. Epstein spoke in support of removing Conditions 2 and 3.

**MOTION:** *by Mr. Voelckers to accept staff's findings, analysis, and recommendations, and approve USE2023 0001 and striking conditions 2 and 3.*

Mr. Voelckers spoke in support of his motion saying he believes public welfare is well served by striking the conditions.

Ms. Cole and Mr. LeVine suggested modifying the term "conditions" to "condition" in the findings.

***The motion passed with no objection.***

**MOTION:** *by Mr. Voelckers to accept staff's findings, analysis, and recommendations, and approve PWP2023 0001.*

Mr. Pedersen and Ms. Cole spoke in support of the motion. Mr. Arndt recommended grammatical changes to the findings to reflect there are no conditions. Mr. Epstein spoke in support and pointed out that CBJ departments also supported it.

***The motion passed with no objection.***

**Case Number:**      **AME2023 0001:** Repeal Wetland Review Board

**STAFF PRESENTATION** – Ms. Maclean stated the board has met its needs, has not met in several years, and needs to be repealed.

**MOTION:** *by Mr. Pedersen to accept staff's findings, analysis, and recommendations, and REPEAL AME2023 0001.*

***The motion passed with no objection.***

**AT EASE 7:52 p.m. – 8:00 p.m.**

**Case Number:**      **AME2017 0001:** Streams & other Waterbodies Ordinance (anadromous waterbodies buffer).

**STAFF PRESENTATION** – Ms. Maclean presented **AME2017 0001** and explained the proposed Ordinance would amend CBJ 49.70.310 *Habitat* to revise the stream buffer ordinance.

#### **QUESTIONS FOR STAFF**

Mr. LeVine asked Ms. Maclean to summarize the table on page 6 of 18. Ms. Maclean explained the information in the table had previously been in the ordinance verbiage and was very lengthy and confusing. Putting it into table format makes it more user-friendly and understandable. The table lists uses and categorizes them as 1 (minor development) or 3 (major

development). Uses determined to be minor are approved at the department level. Major uses require PC decisions.

Mr. Arndt noted Page 4 Line 3 “the primary element or woody vegetation” saying the intention was where the trunk of the tree or the stalk of the brush touches the ground and asked if that is clear. Ms. Maclean said she would leave it to the preference of the PC whether to keep or change the language.

Ms. Cole cited page 5 (1) *Unlisted Uses* and page 4 table item number 12 “Uses not listed, or not otherwise prohibited” and noted they seem contradictory. Ms. Maclean agreed and explained (1) *Unlisted Uses* is the standard language in current code. She was comfortable striking either (1) or table item 12 according to PC preference. She added that, without this item in the table, the PC gives up its authority to determine unlisted uses to the Assembly.

Mr. Voelckers noted page 2 lines 8-18 seem to be only relevant to Benjamin Island within the stellar sea lion habitat. Should this be removed? Ms. Maclean explained when the coastal zone management section of code was repealed, this was in there. At that point, this section was moved here. Mr. Arndt and Mr. Voelckers noted that this seems to be out of place in the Marine Mammal Habitat Protections code section and suggested it would fit better in another or its own section. Mr. LeVine stated there is already nearly the same language in the Anadromous Stream Habitat section.

#### PUBLIC COMMENT

*Dave Hanna - Back Loop Road* – Mr. Hanna thanked the PC for bringing this forward. He suggested several changes including removing item 6 from the table on page 6 saying it is covered by item 7. He felt that (3)(A) on page 9 should be reworded. Regarding the two-week timeframe for emergency work on Page 13, he felt that requiring completion within two weeks may be too restrictive. He also suggested striking the requirement for an engineer certification.

Ms. Cole asked Mr. Hanna to clarify his thoughts regarding the two-week emergency timeframe. Mr. Hanna explained there could be a case whereby the work could be started but not completed within two weeks. Ms. Cole supports this as the exception and if it cannot be completed in two-weeks then this allows for emergency stabilization to give time for a Conditional Use Permit (CUP) to be processed.

#### QUESTIONS FOR STAFF

In discussion, it was pointed out that the ordinance references stormwater best management practices. However, they have never been officially adopted into code or regulation. Rather than requiring applicants to use particular best management practices, they could choose to obtain an engineer’s letter stating methods used meet proper thresholds.

Ms. Cole referred to the table on page 6 and asked if the Department would be comfortable with more of the items in the table being categorized as 1 (minor) and asked the Director for her feedback. Ms. Maclean explained that she felt that, at the very least, all of the items marked “3” and anything within the inner (0 – 25 feet) buffer zone should remain under PC purview.

AT EASE 8:49 p.m. – 9:01 p.m.

**MOTION:** *by Ms. Cole to accept staff’s findings, analysis, and forward a recommendation to the assembly to approve AME2017 0001 with the following modifications:*

1. *Page 2 - move Section B to its own section*
2. *Page 3 Line 24 - strike #3, and modify #4 (the new #3) with modification to read “(3) Vegetation that overhangs or overlaps any buffer shall follow the regulation applicable to the main trunk or stalk of the vegetation.”*
3. *Page 4 Line 13 - change Fish culturing to Aquaculture*
4. *Page 5 strike #1 and #2 and renumber*
5. *Page 6 Table - add a 3 in line 6, inner buffer column*
6. *Page 6 Table - add a 1 and a 3 in line 10 inner buffer column*
7. *Page 7 Line 20 - change to “The Director determines that the outcome of the proposed activity or the cumulative effects of activity or development in a buffer would likely cause severe impacts in the buffer after project completion, the application shall be subject to commission review”*
8. *Page 15 Line 3 - strike “within one growing season”*
9. *Page 16 Line 3 - strike “for an administrative variance” and replace with “may apply to the commission for approval”*
10. *Page 18 Lines 17-18 - strike both lines*

AT EASE 9:11 p.m. – 9:12 p.m.

Ms. Cole spoke to her motion, line by line:

1. This is in the wrong section and needs to be its own section.
2. This is to simplify the idea of overhang and limbs. If the trunk is within the 0-25-foot or 25–50-foot buffer than that will also govern the limbs. If the trunk is outside of 50-feet then it is allowed to be cut wherever the limbs end up with regard to the stream.
3. Fish culturing is specific to fish only and aquaculture is more general.
4. Strike #1 and #2 as they may not make sense with the table.
5. Added 3 to the inner buffer zone with the expectation that while the purpose may be to dissuade development along the inner buffer, there may be a need for vegetation removal and this allows a level of flexibility.
6. This employs the same kind of logic with trail development.

Ms. Maclean expressed concerns saying 0-25 feet is minimal and there should be some line of protection. She reminded the PC that they had denied Parks and Recreation from doing almost

the same thing telling them to relocate the trail. Mr. Voelckers recalled the case but added there still could be a case whereby a trail is against a rock cliff or other barrier and not relocatable.

7. Ms. Cole said she did not like the phrase “in or near a buffer” as this is really talking about “in a buffer”. She added that she thought the intent was that the outcome would cause the impact rather than activities of the construction phase.

Ms. Maclean felt ‘more than minimal’ is a benefit to the applicant because if it can go all the way to “severe” before the PC sees it, then it is more likely that the Director will deny the permit and the PC will never see it.

Mr. LeVine strongly disagreed with the addition of the “after project completion” phrase. Ms. Cole’s intention was to acknowledge that there may be disruption during construction but it would be restored at the end of the project. Ms. Maclean expressed concern with the change from “proposed activity” to “outcome”. She explained that the proposed activity is what she is reviewing applications for approval.

At the end of the discussion, the proposed wording is *“The Director determines that the outcome of the proposed activity or the cumulative effects of activity or development in a buffer would likely cause more than minimal impacts in the buffer after project completion, the application shall be subject to commission review”*

8. Ms. Cole felt “within one growing season” is restrictive considering it can be hard to meet that timeframe in our environment.

Ms. Maclean said the Department is understanding and allows for leeway in this but felt there should be some limit.

Mr. Brown suggested changing from “one growing season” to “two growing seasons”. Mr. LeVine suggested 2 years.

At the end of the discussion, the proposed wording became *“within 24 months of project completion.”*

9. The wording changed to *“may apply for a variance”*.
10. Ms. Cole proposed striking lines 17 and 18 because the definition is not needed.

#### COMMISSION PAGE BY PAGE DISCUSSION OF AME2017 0001

- Pages 1, 2, 3 – No changes
- Page 4 – Mr. Arndt suggested Line 22 be altered to read, “There is an adopted ~~the~~ Table of ~~p~~Permissible uUses in aAnadromous fFish hHabitat bBuffers, ...”
- Page 5 – Mr. Arndt and Mr. LeVine suggested:
  - Strike lines 4-24 and replace them with:
    - **(1) Uses listed with the number 1 indicate the use requires department approval**

- **(2) Uses listed with the number 3 indicate the use requires commission approval**
- **(3) Uses listed with digits 1,3 indicate the use follows the underlying development's approval process. If the project is a major activity requiring a major development permit, only one CUP will be required.**
- Page 6 – Table of Permissible Uses in Anadromous Waterbodies Buffers CBJ 49.70.315
  - 10.0 – Mr. Arndt suggested “Trail construction ~~and~~ **or** trail maintenance...”
  - 11.0 – Mr. Arndt suggested changing this item to distinguish 1,3 if the land is under common ownership and 3,3 if it crosses land with other owners.

Ms. Maclean felt it is important that these decisions come before the commission.

- Pages 7, 8 – No Changes
- Page 9 – Mr. Brown suggested Line 19 be clarified, “The director shall ~~endeavor to~~ determine whether the application accurately reflects the developer’s intentions **goals**, ...”

Ms. Maclean explained the department needs to be sure to understand what the applicant is proposing and guide them appropriately. She reminded the PC that applicants are not all building professionals.

- Pages 10, 11, 12 - No Changes
- Page 13 –
  - Mr. Bell asked for clarity on the requirement in line 14 to obtain an engineer. Ms. Maclean said this should not be in here and she supports removing lines 8-14. The commission agreed to strike lines 8-14.
  - Mr. Brown expressed concern with the two-week requirement in Line 4 saying two weeks may not be enough time. It was decided to leave it as is with the understanding that if conditions persist, they could request another emergency permit or use that time to apply for a regular permit.
- Page 14 –
  - Mr. Epstein suggested Line 4 be amended to, “**2010** CBJ’s Manual of Stormwater Best Management Practices ~~(2010)~~...” to match the verbiage at Page 15 Line 24.
  - Mr. Arndt suggested Line 11 be amended to read, “...may apply for ~~an administrative~~ variance.”
  - Mr. Arndt suggested pulling the Anadromous Fish Habitat Best Management Practices from the ordinance and posting them as has been done with the Stormwater BMP. Ms. Maclean did not agree that this would be the best course of action. She explained that the Assembly could remove it upon review but if the commission removes it and then the Assembly wants to add it then it would substantially slow the progress towards getting the ordinance passed. It was decided to leave it in the proposed ordinance and to note for the record that the PC believes the Assembly should consider not codifying the BMP at this point but instead reference them as is done with the Stormwater BMP.
- Page 15 –
  - Mr. LeVine suggested adding a section to read, “For all references to the 2010 CBJ Manual of Stormwater Best Management Practices, a developer may, in the

*alternative, provide a drainage plan and vegetative plan signed by an engineer licensed in the State of Alaska certifying that the plans address stormwater BMPs and plantings required for slope stability and stormwater.*

Mr. LeVine was unsure where exactly in the ordinance to put this. Ms. Maclean said she would work with Attorney Layne and put it in an appropriate location.

- Mr. Brown suggested striking “Areas previously degraded by human activity shall be revegetated” from Line 5. Ms. Maclean reminded the commission the purpose of the ordinance is protection of habitat. It was decided to delete the line.
- Page 16 – No Changes
- Page 17 – Mr. Arndt suggested delete “and” from Line 7 and add “, and improve habitat.” to the end of Line 8.
- Page 18 – No Changes

Ms. Cole rescinded her motion.

**MOTION:** *by Ms. Cole to accept staff’s findings, analysis, and forward a recommendation to the assembly to approve **AME2017 0001** with the agreed upon modifications.*

***The motion passed with no objection.***

**XI. OTHER BUSINESS** – None

**XII. STAFF REPORTS** – None

**XIII. COMMITTEE REPORTS**

Title 49 – Mr. Arndt: Next meeting will be third Thursday in April

PWFC – Mr. Voelckers: Discussion included the CIP list and New City Hall

**XIV. LIAISON REPORTS** – None

**XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

**XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS** – None

**XVII. EXECUTIVE SESSION** – None

**XVIII. ADJOURNMENT** – 10:50 p.m.

Next regular meeting April 11, 2023

*Respectfully submitted by Kathleen Jorgensen Business Assists (907)723-6134* 