



To: Mayor and Council
From: Scot Hunn, Planning Director
Date: February 28, 2025
Agenda Item: Live Stream Setback Regulations and Enforcement Discussion

Background:

Section 16-2-50(B) – *Live Stream Setback*, of the Minturn Municipal Code (MMC) has been in effect since 1999. The regulation generally prohibits human made improvements and disturbance within the 30-foot setback area – measured horizontally from the ordinary high water mark of any live stream, river, or creek - and requires that only “natural” plantings be allowed to grow within that area. Here is the regulation and definition of “Ordinary High Water Mark” for reference:

(b) Live stream setback. A strip of land measured horizontally from the ordinary high water mark on each side of any live stream, river, or creek shall be protected in its natural state free from human made structures or other improvements and appurtenances, and vegetated with natural riparian vegetation. If necessary to protect the live stream, river or creek, additional setback distances may be required by the Planning Commission. The following exceptions may be considered by the Planning Commission and/or the Town Council on a case-by-case basis:

- (1) Underground utilities may be located in the live stream river or creek setback; provided, however, that there is no practical alternative location for such utilities, and that plans and/or reports related to proposed disturbance within the setback area are prepared by qualified professionals showing limits of disturbance, erosion control measures and revegetation are approved by the Town Council.*
- (2) Roof overhangs may project a maximum of eighteen (18) inches into the live stream setback if the Planning Commission determines that such encroachments do not detrimentally impact the proper, natural functioning of the protected live stream setback area. (This provision was added in 2023).*

Ordinary high water mark means that line on the bank established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the surrounding areas.

Historically, the Town has been able to enforce this regulation upon review and approval of new homes along the Eagle River, or upon review of proposed development projects along Cross Creek, Game Creek, or Grouse Creek. For example, plans for new homes include landscape plans showing tree and shrub species as well as areas of natural or “native” seeding as well as areas where sod or seeding of grass is planned. For projects along a stream, river, or creek, this allows staff to identify areas within the 30-foot setback and to determine if proposed planting or seeding is appropriate.

However, once projects are completed and the Town has finalized its building permit inspection process, some residents along the river modify their landscaping within the 30-foot setback area by removing vegetation (cutting trees or other riparian vegetation); by mowing or manicuring areas previously approved as “native” grass; or constructing improvements such as pathways or small patios/seating areas within the setback area.

The Town has historically approached code enforcement on a complaint basis; meaning the Town has not proactively identified or pursued enforcement of violations within the 30-foot setback, choosing, instead, to respond to complaints on a case-by-case basis. The Town has also had difficulty enforcing the regulation due to limited resources (lack of code enforcement personnel and/or competing enforcement priorities).

Recent Complaints:

The Town periodically receives complaints about live stream setback violations. In the past, the Town has acted on such complaints by inspecting properties and, depending on the case and the severity of a violation, has required removal of unauthorized encroachments and/or restoration of disturbed areas.

The Town received complaints in late 2024 regarding apparent violations within the 30-foot setback along the Eagle River, including alleged human made improvements, planting/manicuring of non-native or non-riparian species, and the cutting/removal of natural riparian vegetation. In response to those complaints, staff has initiated investigations which may not be completed until late spring or early summer 2025 when the snowpack has receded and areas within the 30-foot setback can be accessed.

Next Steps:

While staff continues its investigations, the Town Council has directed staff to facilitate a discussion to address the current live stream setback regulation, recent complaints, enforcement alternatives, and other best practices that the Town could pursue to enhance river and riparian area health and protection.

The Town has invited Peter Wadden, Town of Vail Watershed Health Specialist, and Peder Franson, Eagle River Coalition Watershed Restoration Manager to join the Town Council discussion on March 5th to share their experience around river and riparian area setback enforcement, restoration, protection, and best practices.