



(907) 586-0715  
CDD\_Admin@juneau.org  
www.juneau.org/cdd  
155 S. Seward Street • Juneau, Alaska 99801

**DATE:** August 1, 2017  
**TO:** Planning Commission  
**FROM:** Teri Camery, Senior Planner  
Community Development Department

**FILE NO.:** AME2016 0019  
**PROPOSAL:** Deletion of CBJ Code 49.70.310(a)(2 and 3), Eagle Nest Buffers  
**APPLICANT:** City and Borough of Juneau  
**LOCATION:** Borough wide

The City and Borough of Juneau Code states in CBJ 49.10.170(d) that the Commission shall make recommendations to the Assembly on all proposed amendments to this title, zonings and re-zonings, indicating compliance with the provisions of this title and the Comprehensive Plan.

#### **ATTACHMENTS**

Attachment 1 Existing Code, CBJ 49.70.300  
Attachment 2 Proposed Ordinance Deletion  
Attachment 3 Draft Brochure, Bald Eagle Best Management Practices

#### **INTRODUCTION AND BACKGROUND**

Revision of the CBJ Code, Eagle Nest Buffers, Section 49.70.310(a)(2 and 3) has been on the Assembly and Planning Commission's priority list for several years because of challenges with implementation and enforcement of the ordinance and because of the high number of variances. The Community Development Department (CDD) now proposes deletion of the ordinance, rather than revision.

The Planning Commission's Title 49 Committee reviewed eagle nest buffer ordinance drafts at the August 3, 2016 and September 21, 2016 regular meetings. Review included consultation with Mr. Steve Lewis, raptor biologist with the U.S. Fish and Wildlife Service (USFWS). CDD staff followed these meetings with extensive consultation with the CBJ Law Department, additional meetings with USFWS, and research on past variance applications.

At the June 27, 2017 Planning Commission Committee of the Whole meeting, the Commission recommended deletion of the ordinance because of challenges with revising and enforcing the ordinance. The Commission also noted the importance of eagles to the community and suggested developing an informational pamphlet to promote voluntary eagle protection measures.

CDD has developed a conceptual draft of a Bald Eagle Best Management Practices brochure, included here as Attachment 3. The USFWS reviewed the draft and provided helpful revisions. The document will be available on-line and at the CBJ Permit Center when it is finalized and will also be distributed at public events as warranted.

### **DISCUSSION**

Implementation of the ordinance has been problematic because CDD has always relied heavily on the USFWS to determine the location of nests and also if a nest has actively nesting eagles, a key component of the regulation. In addition, CDD research shows that of 42 eagle nest buffer variances noted in the CBJ database, all 42 were approved. The current ordinance also uses the code definition of development, which has many elements that are irrelevant to impacts to eagle nests and are unnecessarily restrictive.

As discussed at the June 27, 2017 Planning Commission Committee of the Whole meeting, CDD has evaluated many options for revising the ordinance, rather than deleting it. However each option has had unresolvable legal problems. CDD must have a rational basis for all requirements and be internally consistent. However defining the key activities that are most disruptive to eagles and require regulation is difficult, and eagles have been habituated within urban areas. Even if a legally defensible ordinance could somehow be developed, CDD does not have the capacity to identify and track eagle nest locations, and the USFWS has not been able to provide this service for many years. Bald eagles have never been endangered or threatened in the State of Alaska, and evidence indicates that the local population is increasing.

Finally, the USFWS has an optional federal permit, titled an Eagle Take Permit, which allows applicants to disturb an eagle and avoid violating the Federal Bald Eagle Protection Act, often with mitigation conditions attached to minimize harm. In other words, the federal permit serves as a liability shield. Project Managers for all large-scale developments, especially the Alaska Department of Transportation and Public Facilities, have applied for and received this permit, and this permit has often been used as justification for approval of CBJ variances.

### **COMPLIANCE WITH THE COMPREHENSIVE PLAN**

The 2013 Juneau Comprehensive Plan contains a number of policies regarding eagle nests, listed below:

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

**Standard Operating Procedures**

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

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

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

**Development Guideline**

*7.14 - DG1 Private land within the eagle management radius should be left undeveloped or subdivided into large lots, the largest of which should contain the nest tree. Roads should be located as far from the nest as possible, preferably landward from the nest tree. Low density residential or open space/natural areas uses should be located within the eagle management radius.*

**Implementing Actions**

*7.14 - IA1 Amend the Land Use Code to include variance criteria that apply specifically to requests to allow development within the buffer area around a bald eagle nest. Developing these criteria is of crucial importance in order to allow responsible development within 330 feet of eagle nests, especially those nests that post-date adjacent development. It may be appropriate to adopt regulations for development near eagle nests based on the level of tolerance of the subject eagles to human activity.*

*7.14 - IA2 Work with the United States Fish and Wildlife Service (USFWS) on an as-needed basis to identify eagle nest locations and best practices.*

*7.14 - IA3 Consider designating as Natural Areas or other low impact land use categories areas where eagles tend to nest in concentrations.*

*7.14 - IA4 Request that the USFWS evaluate the Bald Eagle in the Urban Service Area in terms of population, behavior and tolerance of human presence and activity. Consider any new suggestions from the USFWS for enhancing the presence and health of eagles in the urban area.*

*7.14 - IA5 Support the efforts of a local non-profit eagle rehabilitation facility to rescue, heal and return to the wild, injured or vulnerable eagles and to educate the public as to the health and well-being of the species.*

The Comprehensive Plan includes an explanation of the USFWS Eagle Take Permit on pages 92-93. The Plan specifically states,

*It may be appropriate to revise this ordinance, in light of changes to federal policy regarding disturbance of eagles.*

The Plan further states,

*There is a generally held perception that the local population of bald eagles is increasing which, if true, may be attributable to an increase in fish in the area and/or a higher than expected tolerance of these birds to human presence. In any case, the eagles are still subject to special protection by law and enjoy considerable local affection.*

The Comprehensive Plan explicitly says that the existing eagle ordinance may need to be amended in light of the 2011 changes to federal law (i.e. availability of take permits). Deletion of the ordinance is consistent with the Comprehensive Plan because a federal permit exists that addresses eagle protection and development and because local eagle populations appear to be increasing with the protections offered by other code requirements and policies. CDD's proposed Bald Eagle Best Management Practices document will also promote public education regarding potential impacts to eagles.

#### **COMPLIANCE WITH CBJ LAND USE CODE**

The proposed amendment to Title 49 will not create any internal inconsistencies within the Code. The proposed change is consistent with Title 49.

#### **FINDINGS**

Based upon the above analysis, staff finds that the proposed text amendment to Title 49 is consistent with the goals and policies in the Comprehensive Plan as well as Title 49. Additionally, this change would not create any internal inconsistencies within any plans or codes.

#### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission forward the draft text amendment to the Assembly with a recommendation for approval.

## Eagle Nest Buffer ordinance

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

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

*(2) Within 330 feet of an eagle nest on public land;*

*(3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

### **The Code definition of development (49.80.120) states:**

*Development means any of the following:*

*(1) Construction, reconstruction or enlargement of a structure involving more than 120 square feet;*

*(2) A subdivision;*

*(3) Conduct of a home occupation;*

*(4) Change in use of a lot, including any structure thereon;*

*(5) Installation or emplacement of a mobile or modular home;*

*(6) Removal of substantial vegetative cover;*

*(7) Excavation, dredge or fill activity;*

*(8) Installation of a sign;*

*(9) For the purposes of Chapter 49.65, Article I, the work performed in relation to a deposit, subsequent to exploration but prior to extraction of commercial quantities of a mineral commodity, aimed at, but not limited to, preparing the site for mining, defining an ore deposit, conducting pilot plant operations, and construction of roads or ancillary facilities;*

*(10) Any site work in preparation or anticipation of the above.*

Presented by: The Manager  
Introduced:  
Drafted by: A. G. Mead

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

**Serial No. 2016-47 PC v. 1**

**An Ordinance Amending the Land Use Code Relating to Development in the Vicinity of Eagle Nests.**

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

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

**Section 2. Amendment of Section.** CBJ 49.60.200 Sensitive areas, is amended to read:

**49.60.200 - Sensitive areas.**

A development in ~~eagle nesting areas~~, stream corridors and lake shores, wetlands and intertidal areas or any combination thereof, as shown on the sensitive areas map, may be awarded:

- (1) Bonus points for interests in land which protect additional land within or adjacent to such sensitive areas beyond that which is required in chapter 49.70;
- (2) Bonus points for an interest other than a deed providing for public access through sensitive area lands, either required or voluntarily reserved; and
- (3) Bonus points for a deed to the City and Borough of required or reserved sensitive area lands.

**Section 3. Amendment of Section.** CBJ 49.70.310 Habitat, is amended to read:

1  
2 **49.70.310 Habitat.**

3 (a) Development in the following areas is prohibited:

4 (1) On Benjamin Island within the steller sea lion habitat;

5 ~~(2) Within 330 feet of an eagle nest on public land;~~

6 ~~(3) Within 50 feet of an eagle nest on private land, provided that there shall be no~~  
7 ~~construction within 330 feet of such nest between March 1 and August 31 if it contains~~  
8 ~~actively nesting eagles;~~

9 ~~(2) (4)~~ Within 50 feet of the banks of streams designated in Appendix B of the  
10 comprehensive plan of the City and Borough of Juneau, 2013 Update; and

11 ~~(3) (5)~~ Within 50 feet of lakeshores designated in Appendix B of the comprehensive plan  
12 of the City and Borough of Juneau, 2013 Update.  
13

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

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

18 (2) Within 25 feet of lakeshores designated in Appendix B of the comprehensive plan  
19 of the City of Borough of Juneau, 2013 Update.  
20

21 **Section 5. Effective Date.** This ordinance shall be effective 30 days after its  
22 adoption.

23 Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

24 \_\_\_\_\_  
Kendell D. Koelsch, Mayor

25 Attest:

\_\_\_\_\_  
Laurie J. Sica, Municipal Clerk



Alaska and Canada have the largest populations of breeding Bald Eagles in North America. Breeding bald eagles occupy "territories," areas they defend against intrusion by other eagles. In addition to the active nest, a territory may include one or more alternate nests (nests maintained but not used for nesting in a given year). Bald eagles generally nest near coastlines, rivers, or lakes that provide a food supply. They often nest in mature or old-growth trees; snags (dead trees); cliffs; rock promontories; and sometimes on structures such as power poles and communication towers. In forested areas, bald eagles often select the tallest trees with limbs strong enough to support a nest that can weigh more than 1,000 pounds. Eagle nests are usually about 4-6 feet in diameter and 3 feet deep.



## Best Management Practices

*Protecting Nesting Eagles in Juneau*



City & Borough of Juneau

City & Borough of Juneau

155 S. Seward Street  
Juneau, AK 99801

<http://www.juneau.org/>

Tel: 907 586 0770

# Juneau Cares about Eagles

**Are you planning any development? If your property is near an eagle nest this fact sheet will provide you with important information about protecting these birds and enhancing enjoyment of your property.**

Until recently the CBJ had regulations that prohibited development within 50 feet of an eagle nest on private property and 330 feet during March 1 to August 31. But because Bald Eagles are protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, because of the challenge in identifying eagle nests, and because many of Juneau's eagles are habituated to human activity, the CBJ regulations were repealed.

Eagles are not endangered or threatened in Alaska, but they remain an important, legally protected symbol, and valuable member of the Juneau ecosystem. With some thoughtful consideration, bald eagles will continue to nest in Juneau neighborhoods. In Southeast Alaska, the active nesting season is March 1 through August 31. Eaglets typically hatch from mid-May through early June, and fledge (leave the nest) in August. Both are sensitive periods for young eagles. Newly hatched chicks cannot maintain their body temperature without the warming shelter provided by their brooding mother, who may be flushed from the nest by loud, obtrusive activity. As nestlings approach fledging in August, they become more active, stretching their developing wings and hopping among the branches of their nest tree. If frightened by tree clearing, construction, or other highly visible or noisy activity, they may jump or fall from the tree before they are able to fly, exposing them to injury or death. Human actions that cause loss of eagles, their nests, or eggs, are prohibited by Federal law, unless allowed by permit.

**These guidelines are intended to provide developers and landowners with tools to minimize impacts to bald eagles. For more information on habitat needs and ways to minimize impacts, go to the 2007 Federal Bald Eagle Management Guidelines at:**

[https://www.fws.gov/alaska/eaglepermit/pdf/national\\_guidelines.pdf](https://www.fws.gov/alaska/eaglepermit/pdf/national_guidelines.pdf)

✓ Maintain a 330-foot buffer from eagle nests for all vegetation removal and construction activity. If you can't, try to follow these additional guidelines:

✓ Retain as many trees as possible, removing only what is necessary when eagles are not nesting (September 1 through February 28).

✓ Avoid noisy, obtrusive construction, blasting, clearing and similar activities during the March 1 to August 31 nesting season, especially within the critical hatching and fledging periods from May 15 to June 15 and from August 1 to 31.

✓ Eagles vary in their tolerance of human activity near their nests. Most eagles nesting near people will not be disturbed by less-obtrusive projects like interior construction, or building fences, sheds, or other small structures. Eagle pairs that nest near long-established, ongoing human activity often tolerate greater disturbance. Eagles nesting far from humans are typically more sensitive, so extra effort to avoid seasonal disturbance may be necessary when developing a remote property.

✓ If you can avoid loud, visible disturbances within 330 feet of an active nest during the nesting season, eagles will likely continue to nest successfully nearby. If you can't follow these guidelines, and are concerned that your activities could disturb eagles, you may qualify for a permit from the U.S. Fish & Wildlife Service, which would allow disturbance, or in some cases removal, of an eagle nest. The U.S. Fish and Wildlife Service office in Juneau can be reached at 907-780-1160.

[www.fws.gov/alaska/fisheries/fieldoffice/juneau/directory.htm](http://www.fws.gov/alaska/fisheries/fieldoffice/juneau/directory.htm)

