

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

November 30, 2021
Virtual Meeting Only
12:00 PM

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I. ROLL CALL

II. APPROVAL OF AGENDA

III. AGENDA TOPICS

A. AME2017 0001: Proposed Revisions to CBJ Code 49.70.310

IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS


V. ADJOURNMENT



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DATE: November 23, 2021

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner, CFM 

SUBJECT: AME2017 0001: Proposed Revisions to CBJ Code 49.70.310

INTRODUCTION

The purpose of this memo is to review suggested edits to the stream ordinance from a former CDD staff member, Meredith Savage. Ms. Savage was the CDD Administrative Officer and left the department recently. She reviewed the draft ordinance because of her expertise as an environmental scientist. Staff seeks feedback from the Committee, on the edits detailed below. Staff will also provide an overview of remaining revisions.

REVISIONS FOR DISCUSSION

Ms. Savage's proposed revisions are attached.

Staff generally agrees with the following changes:

- a. A change in the order under "Anadromous Waterbody Permit Required" to put allowed uses first and prohibited uses and uses not listed last.
- b. Many word changes to the purpose statement: referring to fish habitat rather than fish; referring to riparian alteration rather than shoreline (riparian refers to lake and stream as intended, while shoreline may imply coastline); consistency of terms regarding streambank buffer, waterbody buffer, habitat protection buffer;
- c. Always stating anadromous waterbodies rather than just waterbodies. I think this is a bit redundant because we only regulate waterbodies in the ADFG Anadromous Waterbodies catalog, but I can see that it helps to clarify.
- d. Moved "standards shall apply to any portion of a tree (i.e limbs or trunk) within the buffer" from the Measurement section to the "Uses Allowed" section, since this sentence doesn't apply to measurement.

- e. Moved “When a development is both above and below the Ordinary High Water Mark, an Anadromous Waterbody permit shall be required unless otherwise exempted” from the measurement section to the “Anadromous Waterbody Permit required” section
- f. Adding language to clarify that on coastal lots that transition from the waterbody to the zero setback of tidewater shall be Mean High Water “as determined by a licensed surveyor.”
- g. Stormwater management needs to be defined, and/or require conformance with city and/or state code or regulations. I’ll check with engineering on what we can refer to here, and add a definition.
- h. Clarification on what needs or does not need a licensed arborist and what that means. This echoes comments by the Committee in the past, and Law will need to look at it as well.
- i. Add public and private infrastructure under uses allowed in the 0-25. I believe that we already made this correction and perhaps Ms. Savage was looking at an earlier draft of the ordinance. We will be sure that edits made from her proposed changes are coming from the latest version.
- j. Add removal of individual or select trees or other woody vegetation causing or at risk of causing damage. I can see that this is helpful, to ensure that the public is not removing any vegetation beyond what is necessary to address the issue. She has added “woody” to several places before vegetation and I generally agree.
- k. Under “uses not requiring a permit” Meredith states that surveillance equipment needs to be defined. This echoes T49 committee comments.

Staff disagrees with the following edits:

- l. Adding the language that the ordinance applies to anadromous waterbodies listed in the Catalog “that fall within the City and Borough of Juneau.” That clarification is not necessary because we cannot legally regulate outside of CBJ boundaries.
- m. Under Uses Allowed within the 0-25 foot buffer, bank and buffer restoration, need clarification as to type and extent allowed. There’s no question that all types are allowed—it’s just a question of which review process is required, which is in the Tier One/Tier Two section.
- n. Under construction of a fence, add what type, concrete barrier allowed or not, etc. Staff considers this to be overkill. Adverse impacts can be addressed with the requirements to follow vegetation standards and best management practices.
- o. Under “uses not requiring a permit,” and “mining activities conducted entirely below the Ordinary High Water Mark,” Ms. Savage says that the type and extent of mining activities need to be defined. Staff disagrees, because this is regulated under our Mining Exploration Permits.

- p. Ms. Savage has proposed a totally new list of what uses require Tier One versus Tier Two review or Planning Commission review, based on the percentage impact to ground cover and slope stability. Staff disagrees, because this approach requires measurements to impacts that CBJ is not capable of addressing unless we hire a biologist or require the applicant to. Staff also disagrees because our proposed list has been developed with the intention to streamline development for common uses in the buffer where impacts can be addressed. From Ms. Savage's perspective we are very lax, however the ordinance is a big step forward on a relative scale for Juneau—it provides flexibility and departmental approval while also requiring better vegetation and BMP measures.
- q. Staff disagrees with Ms. Savage's comment that stream channel alteration needs to have defined limits, size, flow, etc. I don't think that needs to be in code, because we allow all of it if it gets an approved Conditional Use Permit and meets flood regulations. Extreme and/or poor proposals will not be approved.

Staff is confused by or has no opinion on the following issues:

- r. Under Uses allowed within the 0-25 foot inner buffer, Ms. Savage has suggested adding extensive language regarding guidelines, specific document references, practices for different types of invasive species. Her point is valid because some types of invasive species can be dug up while others can't, and some will proliferate further if they are removed incorrectly. Incorrect removal procedures can also destabilize the streambank. I wonder if there is a way to provide clarity and avoid worst case scenarios without getting into detailed regulations about invasive species practices, which are far too complex for this ordinance or for staff to regulate. Or refer to a manual, but then that manual would need to be frequently updated in code. Alternatively, we could develop internal policies that could be more frequently/easily updated.
- s. Under "uses allowed in the 25-50 foot outer buffer" Ms. Savage suggests that "selective removal of branches" for viewshed enhancement needs a definition, or a percentage of limbs that can be removed, or a percentage of the entire buffer area. The T49 Committee has questions on this too. Staff agrees that it needs to be clarified, but we need something manageable/enforceable that staff can reasonably assess. It's true that if too many limbs are cut, trees die.

Outstanding Issues

At the meeting Staff will provide an overview of outstanding revisions to be addressed.

Attachments:

49.70.310 suggested edits from Ms. Savage

49.70.1300 Anadromous Waterbody Protection

(a) Purpose

The purpose of this chapter is to protect and preserve the stability of anadromous fish habitat through:

1. Controlling shoreline alterations and mitigating disturbances to in-stream and streambank buffer habitat;
2. Preserving nearshore habitat and restricting the removal of natural riparian vegetation;
3. Controlling pollution sources;
4. Prohibiting certain uses and structures detrimental to anadromous waters and streambank buffer habitat;
5. Decreasing significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
6. Prohibiting certain uses and structures detrimental to the shore land area;
7. Regulating improved access to and within the habitat protection buffer; and
8. Regulating building setbacks from anadromous waterbodies.

Commented [MS1]: Just checking on terms- I typically associate shoreline, shore land, and nearshore as areas proximal to tidal/saltwater areas; is that what is intended in #s 1 (shoreline), 2 (nearshore), and 6 (shore land area)? If so, clarify- if not, consider using just streambank..

Commented [MS2]: See comment above- #2, 4, and 6- consistency of terms and/or clarify as needed regarding freshwater or tidal areas.
Ex: are #s 4 and 6 different areas

Commented [MS3]: Wording- choose either: "Regulating access to" or "Improving access to" -

Commented [MS4]: Consistency of terms needed: whether streambank buffer, waterbody buffer, anadromous waterbody buffer, etc.- pick/choose one and use throughout.

(b) Applicability

This chapter applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game Anadromous Waters Catalog [hereafter, Catalog].

Commented [MS5]: Provide catalog title and citation; cite section/map applicable to Juneau, or provide website link: https://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=maps_AWCData.

(c) Establishment of Streambank Buffers

All anadromous waterbodies listed in the Catalog that fall within the jurisdiction of the City and Borough of Juneau 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.

Consider attaching the stream list at the end of this ordinance (or elsewhere), even if it is just the major waterways or watersheds, i.e. "Stream XX and its tributaries."

(1) Measurement of Streambank Buffers

(A) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by the Community Development Department.

Commented [MS6]: See comment above- insert whichever term chosen- as a marker, I have chosen "streambank."

~~(B) Standards shall apply to any portion of a tree (i.e. limbs or trunk) within the buffer.~~

Commented [MS7]: Suggested wording- the extent of the waterbody should be clarified.

~~(C)(B)~~ On coastal lots, the transition point from the waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet, as determined by a [licensed surveyor, wetland scientist, e.g.].

Commented [MS8]: I can't remember- did the PC/Assembly decide to go with top of bank instead?

~~(D) When a development is both above and below the Ordinary High Water Mark, an Anadromous Waterbody Permit shall be required unless otherwise exempted.~~

Commented [MS9]: Whether top of bank or OHWM, a definition will be needed. Also, TOB and OHWM are typically delineated by professional wetland scientists or stream biologists- I strongly suggest replacing "CDD" with who gets to establish the boundary line and what their qualifications need to be, otherwise the potential for challenge will be high.

NOTE: I did a fair amount of re formatting the numbering and reorganizing of the following sections to provide numbering consistency and for clarification. And, because it would have been intolerably messy, I took it off review mode- my sincere apologies up front if I got the intent wrong!! I have provided a separate document that provides a summary of the numbering outline.

Commented [MS10]: I deleted it because it doesn't pertain to buffer measurement- this item is addressed in "Uses allowed within the 0 to 25..." and "Uses allowed within the 25 to 50..." sections.

My rationale: Section (d) was titled "Anadromous waterbody permit required", but it was followed by items 1-3: uses not requiring a permit, prohibited uses, and uses not listed. Section (e) also had "permit

Commented [MS11]: See comment re: TOB or OHWM- language is needed as to who gets to establish this point; i.e., licensed surveyor, wetland scientist, e.g.

Commented [MS12]: Moved out of buffer measurement section and into text of section (d) below.

requirements” in the title, which was confusing. So, I combined sections (d) and (e) and re-organized the material in a way that I think is linear and has better flow. All the information is there- it is just renumbered.

(d) ~~Anadromous waterbody~~ Waterbody permit-Permits required

Any development within the inner (0-25 feet) or outer (25-50 feet) ~~anadromous waterbody~~ streambank buffer requires a valid Anadromous Waterbody Permit issued by the director, unless otherwise directed or exempted. When a development is both above and below the [Ordinary High Water Mark / Top of Bank], an Anadromous Waterbody Permit shall be required unless otherwise exempted.

Commented [MS13]: I suggest using “streambank” buffer instead of “anadromous waterbody” –the subject of the regulation is anadromous waterbodies.

(1) Uses Requiring an Anadromous Waterbody Permit

- (A) An Anadromous Waterbody Permit issued by the Director must be obtained prior to beginning development within the inner or outer ~~anadromous waterbody~~ streambank buffer.
- (B) A developer who requires a permit under this chapter must file an application with the department according to the requirements established in ~~----~~, Contents of Application.
- (C) Anadromous waterbody permits will undergo a Tier One or a Tier Two review process as outlined in sections 49.70.1300(e) through (h)

Commented [MS14]: Capitalized or not, both are used here-choose one and make global change.

Commented [MS15]: Text needed

Commented [MS16]: Suggested wording. I added this because a preview of some sort is needed for the Tier One/Two reviews.

(2) Uses Allowed within the 0 to 25 Feet Inner Buffer

The following uses and types of development are allowed within the 0 to 25 foot inner buffer ~~with approval of an Anadromous Waterbody Permit, approved by the Director,~~ provided that those uses cannot be reasonably completed outside the inner buffer, and that they meet the ~~Riparian Vegetation Standards and Anadromous Waterbody~~ Best Management Practices and Riparian Vegetation Standards listed in ~~49.70.13XX~~ 1300(i) and (j):

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Commented [MS17]: Permit requirement already stated in (d)

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- (A) Bank and buffer restoration; [may need language as to type and extent allowed]
- (B) Removal of non-native invasive plant species, as listed in ~~an official document specific to the State of Alaska~~ [document name and citation]; [Guidelines are needed, either here or elsewhere in the document regarding how invasive plants can be removed (mowing, hand pulling, burning, scraping, etc.) and disposed of (mulched, bagged, burned), and what percent area of removal triggers replanting. It’s a tricky subject and often species specific. Example: mowing the common streambank invasive Japanese knotweed stimulates additional growth and if the mowed material is not bagged, or falls into the waterway, it will re-root wherever it lands. However, if removed by scraping, it destabilizes the streambank.]
- (C) Stormwater management to improve water quality and/or water quantity that conform with [cite state AK statute, or CBJ code, or specific document];
- (D) Construction of a fence; [Provide types/standard- i.e., wood, chain link allowed, concrete barrier not allowed, etc.]
- (E) Trail construction ~~or~~ and trail maintenance for accessing a crossing or enhancement to the waterbody;
- (F) Bridges, utilities, and related public and private infrastructure, including culverts that conform with CBJ 49.70 Article IV, Flood Hazard Areas, where applicable;
- (G) Removal of individual or select trees or other woody vegetation ~~that are~~ causing or at risk of causing damage to structures [will/may] be allowed with written determination from a licensed certified arborist;

Commented [MS18]: Suggest deleting this unless “where applicable” is defined/explained.

- ~~(H) Removal of vegetation to mitigate damage to structures require a letter of documentation from a licensed arborist; or~~
- (H) Removal of individual or select trees or **other woody** vegetation ~~in the Jordan Creek Corridor south of Egan Drive on Juneau International Airport property~~ that constitute a threat to public safety ~~as determined by [a licensed certified arborist/CBJ Public Safety Official]~~. ~~due.~~
- (I) Removal of **trees or other woody** vegetation ~~[for any reason other than stated in the preceding (G) or (H)]~~ shall be allowed only after less-damaging alternatives have been evaluated and/or proven unsuccessful; ~~or~~
- (J) Bank stabilization conducted in accordance with the ADF&G **2005 revised edition of Streambank Revegetation and Protection: A Guide for Alaska Guide**, where applicable. Bank stabilization projects requiring rip-rap require review and approval by the Director of Engineering and Public Works. Additional requirements may apply. Bank stabilization must conform with CBJ ~~47-7049-70~~ Article IV, Flood Hazard Areas, ~~where applicable.~~
- (3) *Uses Allowed within the 25 to 50 Feet Outer Buffer*
 In addition to the uses and types of development allowed in the inner buffer, the following uses and types of development are allowed within the outer buffer ~~with approval of an Anadromous Waterbody Permit, approved by the Director~~, provided that those uses cannot reasonably take place outside of the buffer, and provided that those uses meet the **Anadromous Waterbody Best Management Practices and Riparian Vegetation Standards listed in 49.70.1300(i) and (j) Riparian Vegetation Standards and Best Management Practices listed in 49.70.13XX:**
- (A) **Selective removal of branches or** trees for viewshed enhancement; ~~[Needs definition- often this is given as a percentage of the linear length of streambank and/or percentage of the entire buffer area, and/or percentage of tree branches that can be removed.]~~
- (B) Trail construction **and maintenance** parallel to a waterbody; ~~or~~
- (C) Grading, vegetation removal, and placement of utilities associated with construction of a structure. ~~[Is new construction of houses allowed in the 25-50 feet zone? If so, this should be its own item and standards-if any-provided]~~
- (4) *Uses Not Requiring a permit*
- (A) Placement of water quality or water quantity monitoring equipment by a resource agency.
- (B) Placement of fish weirs by a resource agency.
- (C) Placement of surveillance **equipment**.
- (D) **Mining activities** conducted entirely below the Ordinary High Water Mark.
- (5) *Prohibited Uses in the Inner and Outer Buffer*
- (A) Storage of fuel or other hazardous materials.
- (B) Storage of explosives.
- (6) *Uses Not Listed*
 Similar use determinations shall be made by the Director. Uses not listed, not eligible for a similar use determination, or not otherwise prohibited may be allowed with a Conditional Use Permit issued by the commission.

~~(4) Variances and conditional use permits~~

Commented [MS19]: (H) and (G) combined.

Commented [MS20]: (h)(2)(C)(ix) states this instead of arborist

Commented [MS21]: I made this its own item because I was unclear on intent. Delete if it pertains to (G) and (H) because by definition removal is occurring due to damage or safety reasons. Keep if there are other reasons to allow woody veg removal

Commented [MS22]: "where applicable"- clarify or delete.

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Commented [MS23]: Consider removing all instances of "where applicable" unless clarification is given- otherwise it provides a loophole and/or a source of headache for CDD in constantly having to make decisions on what constitutes applicable.

Commented [MS24]: Consider adding limits regarding the level/extent of equipment- for example, can a permanent structure to hold a camera be added on top of bank, or below OHWM? How much equipment?

Commented [MS25]: Define type and extent: hand panning? Mechanical shoveling? To what extent can substrate and bank be disturbed?

Uses that cannot comply with the Best Management Practices and Landscaping Standards listed in section 49.70.13XX may apply for a variance unless otherwise prohibited. Uses not listed may apply for a Conditional Use Permit unless otherwise prohibited.

- (e) *Tier One and Tier Two Review.* [This needs some introductory language to clarify the intent for conducting the review and clarifying the difference between the two- i.e. Tier One less restrictive, Tier Two more restrictive. Example: "Tier One Review is intended for projects that incur less than X% disturbance to soil within the buffer zones and no impact to bank stability." The stated intent will drive what gets put into which category.]
 - (1) *Tier One Anadromous Waterbody ~~Permits are~~ Review is Required for the Following Types of Developments:* [Needs specifics: Tier One review is intended for all projects within the inner and outer buffer that will result in less than X% of ground disturbance, X% vegetation removal, etc.]
 - (A) Construction of a fence [types allowed]; [Tier One]
 - (B) Bridges, utilities, and related public infrastructure, including culverts; [Tier Two. High potential for veg and ground disturbance.]
 - (C) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska [document name and citation]; [provide standard- e.g., hand/ hand tool removal only, or mowing, or...] [Tier One and/or Two, depending on standard]
 - (D) Stormwater management to improve water quality and/or water quantity in conformance with State/CBJ code [or other cited document/standards]; [Tier Two]
 - (E) Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody; [Trail construction should be Tier Two; trail maintenance, depending on extent, could be Tier One.]
 - (F) Trail construction parallel to a waterbody [Tier Two if within 0-25 buffer, Tier One if within 25-50 buffer.];
 - (G) Selective removal of branches or trees for viewshed enhancement; [Tier One. Same comment as for (d)(3)(A)- needs standards]
 - (H) Bank and buffer restoration that requires only removal or replacement of vegetation; ~~or~~ [Tier One. Standards needed as to percent of clearing allowed.]
 - (I) Grading, vegetation removal, and placement of utilities associated with construction of a structure. [Tier Two- any grading or subsurface work]
 - (2) *Tier Two Anadromous Waterbody Permits are Required for the Following Types of Developments:* [E.g., Tier Two review is intended for projects that involve greater than X% of ground disturbance/grading, subsurface work, or any other work that carries potential risk of impact to the waterbody.]
 - (A) Bank and buffer restoration with activities that exceed entail removal or replacement of vegetation with hand tools; [match/build on whatever is Tier One standard]
 - (B) Bank stabilization that involves ...[bioengineering, rip rap, etc.];

Commented [MS26]: Same comment as(4)(A) above.

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(C) Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures; ~~or~~ if this has a certified arborist documentation, could it not be Tier One?

(D) ~~Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist.~~ Removal of individual or select trees or other woody vegetation causing or at risk of causing damage to structures, or that constitute a threat to public safety. Documentation from a licensed, certified arborist/CBJ Public Safety Officer required.

(f) ~~The following table provides a list~~ List of Uses, with the r Review Llevel, and allowed ~~to~~ Buffer Zzone.

This table should be redone after Tier One and Tier Two review categories are finalized. Consider organizing the table in the same order as Tier One and then Tier Two lists- or some other logical grouping.

Use	Review Level		Buffer Zone	
	Tier 1	Tier 2	Inner	Outer
Bank and buffer restoration with activities that exceed removal or replacement of vegetation with hand tools.		X	X	X
Bank and buffer restoration that require only removal or replacement of vegetation with hand tools.	X		X	X
Construction of a fence.	X		X	X
Bridges, utilities, and related public <u>and private</u> infrastructure, including culverts.	X		X	X
Removal of non-native invasive plant species.	X		X	X
Stormwater management to improve water quality and/or water quantity.	X		X	X
Bank stabilization.		X	X	X
Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures. Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist.		X		X
Removal of individual or select trees or vegetation in the Jordan Creek Corridor south of Egan Drive on Juneau International Airport property that constitute a threat to public safety due. Removal of vegetation shall be allowed only after less-damaging alternatives have been evaluated and proven unsuccessful.		X	X	X
<u>Selective removal of branches or trees for viewshed enhancement.</u>	X			X

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Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody.	X		X	X
Trail construction parallel to a waterbody	X			X
Grading, vegetation removal, and placement of utilities associated with construction of a structure.	X			X

(g) Tier One Application Requirements.

(1) ~~Pre-application Conference. Prior to submitting a Tier One Anadromous Waterbody Permit, a pre-application is not required. Pre-application conference is not required for Tier One review.~~

(2) ~~Tier One Submission.~~ The ~~developer-applicant~~ shall submit to the director ~~[department?]~~ one copy of the completed permit application together with all supporting materials and the permit fee.

~~(A)~~ A graphic and legal description of the property and property boundaries;

~~(A)(B)~~ A site plan or graphic depicting the location of the proposed project on the parcel.

~~(B)(C)~~ A narrative statement describing the proposed action, potential impacts to habitat ~~values~~ as defined pursuant to 49.70.13XX, and proposed measures to mitigate impacts to habitat ~~values~~, if applicable; and

~~(C)(D)~~ Additional information as determined by the Director.

~~(3) Department approval.~~

~~(A) Purpose.~~ The department shall review developments to ensure compliance with this title.

~~(B) Application form.~~ The director shall provide a minor development application form to be submitted as part of the application process for a building permit.

~~(D)~~

(3) Community development director procedure-Approval Process

(A) Review of application. The director ~~[department?]~~ shall review the application, consult with the applicant, and approve a ~~minor development~~ development anadromous waterbody permit unless:

- (i) The application is incomplete;
- (ii) Issuance of the requested permit is beyond the director's authority according to the table of permissible uses; or
- (iii) The development as proposed will not comply with one or more requirements of this title.

(B) Conditions on approval. The director may condition department approval as necessary to ensure compliance with this title.

~~(C) Vegetation shall be maintained according to submitted plans.~~

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Commented [MS27]: Doesn't seem to fit here. Needs separate category? i.e. Long-term maintenance?

(h) Tier Two Application Requirements.

(1) Pre-application Conference.

Prior to submission of an Anadromous Waterbody Permit application, the ~~developer-applicant~~ shall meet with the director [department?] for the purpose of discussing the site, the proposed development activity, and the permit procedure. The director shall discuss with the developer, regulation which may limit the proposed development as well as standards or bonus regulations which may create opportunities for the developer. 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. A copy of this subsection shall be provided to the developer at the conference.

Commented [MS28]: Consider different wording? Do we have bonus regulations?

(2) Tier Two Submission.

The ~~developer-applicant~~ shall submit to the director one copy of the completed permit application together with all supporting materials and the permit fee.

(A) A graphic and legal description [written? Or surveyed?] of the property and property boundaries;

~~(B) An existing conditions map including, at minimum, showing the existing topography, vegetation, drainage features, structures, significant natural and artificial conditions of the land, and existing vegetation [type and extent/percent cover?];~~

~~(C) A site plan or graphic detailing the location and extent of the project on the parcel; and~~

~~(D) A narrative statement describing the existing conditions, proposed activities, and site restoration plan, including:~~

- (i) Proposed activities and methods, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;
- (ii) A ~~narrative description~~ An explanation of how the development meets the purpose of the ordinance;
- (iii) Existing Site conditions;
- (iv) ~~A narrative~~ An explanation of why the development must be located within the inner or outer buffer;
- (v) Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;
- (vi) Existing species of vegetation and proposed species to be used for revegetation;
- (vii) Schedule for development activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Best Management Practices and Riparian Vegetation Standards pursuant to 49.70.13XX;
- (viii) Maintenance schedule, if applicable;
- (ix) Removal of vegetation to address a public safety issue requires a letter of documentation from a CBJ Public Safety Official. Removal of trees to address damage to structures requires a letter of documentation from a licensed arborist; and [Note- this could be Tier One review]

(x) Additional information as determined by the Director.

~~(C) Director's review procedures.~~

(3) ~~Director's Review Procedures~~ Approval Process

- (A) Upon receipt of an application and the required filing fee, the department shall review the submission for completeness.
- (B) Upon a determination that the application is complete the department shall transmit the application to interested agencies. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director. Tier One reviews with minor impacts may have a reduced agency review period at the Director's discretion. Tier Two reviews may be reviewed by an additional scientific board, such as the Wetlands Review Board, for advisory recommendations at the Director's discretion.
- (C) The Department shall issue an Anadromous Waterbody Permit Notice of Decision, with findings and conditions that ensure conformance with the Purpose and Intent of this ordinance. The permit will expire 18 months after the effective date if no Building Permit or Grading Permit has been issued and/or substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date in accordance with CBJ 49.15.250.

(4) *Conformance with permit.*

After approval of the permit, staff shall inspect the site prior to commencement of activity to ensure the site is properly marked and the site matches the plans submitted with the application. Staff shall inspect the site upon project completion to ensure maintenance of vegetation, conformance with approved plans, and conformance with title.

(i) Anadromous Waterbody Best Management Practices_ that

Anadromous Waterbody Best Management Practices shall apply to all uses or types of development within the inner or outer buffer:

Commented [TC29]: Numbering/formatting are off here.

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

- (3) Erosion and sediment control Best Management Practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMP's must be implemented in accordance with the standards in the Alaska Storm Water Guide (<http://dec.alaska.gov/water/wnpspc/stormwater/docs/AKSWGGuide.pdf>) (DEC, 2011);
 - (4) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state law;
 - (5) Uses and activities shall implement measures to minimize pollutant discharges into the waterbody and buffer including but not limited to providing for water management, establishing staging, fueling, and maintenance areas outside of the buffer;
 - (6) Structures allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage; ~~and~~ [Define structures; must adhere to Floodplain regulations]
 - (7) Developments must comply with the CBJ Manual of Stormwater Best Management Practices.
- (j) *Riparian vegetation standards.* Riparian vegetation standards shall apply to all uses or types of development within the inner or outer buffer. All uses and types of development within the inner and outer buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:
- (1) The vegetation plan shall consider a diversity of native species appropriate for the site conditions found in the Recommended Plan List in Appendix E of the CBJ's Manual of Stormwater Best Management Practices (2010) and/or the Plant Selection List in the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska (2005). The vegetation plan shall favor natural plant reclamation from neighboring plant communities when possible. If the site was considered to be in a natural state prior to the use/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 staff as applicable to the permitted development; and
 - (2) Uses and activities shall not introduce or redistribute invasive species.
- (k) *Mitigation measures.* Mitigation measures may be required by the Commission or Department to address impacts and ensure conformance with the Purpose of this ordinance. Mitigation measures include, but are not limited to:
- (1) Standard erosion and stormwater runoff control measures;
 - (2) Restoration and maintenance of native vegetation and water quality protection functions;

(3) Removal of non-conforming structures from the buffer.

(4) Other measures as agreed upon by the director or the commission and applicant, such as removal of riprap, jetties, debris, or structures that may be detrimental to fish habitat, improvements to water treatment systems, or widening buffers in other areas.

(l) *Stream channel alteration.* [Allowed?!! Define limits, size, flow, etc.]

A stream shall not be moved, ditched, or piped, unless a Conditional use permit is issued with consideration of potential impacts including the following:

- (1) Practical alternatives to moving, piping, or otherwise altering the channel;
- (2) The potential to increase flooding or erosion problems upstream or downstream;
- (3) Any potential obstruction of water flow;
- (4) The flow lines of the altered section of the channel as related to those in the existing channel at the endpoints of the alteration;
- (5) The adequacy of the gradient/meander balance, grade control, and bed stability to maintain the natural stream function of water conveyance and sediment transport;
- (6) Conformance with CBJ 47.70 Article IV, Flood Hazard Areas, where applicable; and
- (7) Conformance with the Purpose ~~and Intent~~ of this ordinance.

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(m) *Emergency permits.*

(1) In an emergency, the director may issue a temporary permit, in writing, to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency providing that:

- (A) An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation;
- (B) An emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter; and
- (C) Work shall be conducted using Best Management Practices to ensure that any adverse effect on the anadromous water body and buffers is minimized.

(2) The written permit shall include the following:

- (A) A description of the activity;

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

(3) Conditions may be attached to emergency permits to comply with this title. A final report that includes the plans and specifications for the work that was completed must be submitted to the department within 60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous waters or adjacent buffers and ensure conformance with the Purpose and Intent of this ordinance.

(4) All permitting shall be defined and be started within XX week(s) of Emergency.

49.80 *Definitions.*

“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” shall mean significant sloughing, washout, or discharge of soil arising from manmade sources or causes.

Prior existing uses and structures

~~A. Intent. There are uses which were conducted, and structures which were under construction, or exist and were in use before the enactment of this ordinance which would be prohibited or restricted under the terms of this ordinance or future amendments. It is the intent of this section to allow these prior existing uses or structures to continue but not be increased, expanded, or intensified. Any prior existing uses or structures must still comply with other applicable laws.~~

~~B. The burden of proof is on the applicant to show that a prior existing use or structure existed, when the use or structure was established, and the size, location, and level of use.~~

~~C. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter, shall be allowed to continue, provided that a structure under construction must have been substantially completed by (date)~~

~~1. Upon Proof of Nonconforming Status in accordance with (new non-conforming code) principal structures may be replaced, repaired or reconstructed within three years after damage or destruction. If a principal structure is not substantially damaged and only a portion of the structure has been damaged or destroyed, only that portion may be repaired or replaced. The height of an original principal structure and area encompassed by the original footprint cannot be increased, unless necessary to comply with the requirements of (non-conforming code). The structure must be similar in size and use to the structure being repaired or replaced. Repair, replacement, or~~

Commented [JM30]: I'm inclined to strike this entire section, as the nonconforming section of code should cover it

Commented [TC31]: This is a new section that has not been reviewed by the Planning Commission T49 Committee. This language comes almost entirely from Kenai Peninsula Borough Code 21.18.090 with only minor modifications. It also needs to be consistent with 40.30, Non-conforming sections, which has been adopted since this revision was last reviewed by the Title 49 Committee and other entities.

Commented [BM32]: This paragraph could refer to the new nonconforming language—specifically requiring the applicant to comply with the Proof of Nonconforming Status process and requirements.

Commented [BM33]: The nonconforming section of code uses the 75% cost of replacement language that exists in our current code. The replacement is only allowed for accidental damage. If the damage is intentional then any replacement structures must comply w/current regulations.

Commented [BM34]: You may want to rethink this. We allow for an upfill conditional use which I guess would apply to these structures. Do you think that is what you want?

Commented [TC35]: I am leaving this as is, because we do not want the option of an upfill CU in the stream buffer. We need every incentive for the non-conforming to be reduced, not increased.

reconstruction may only encompass the same square footage that the structure occupied prior to damage or destruction, and the structure must be more compliant with this chapter which shall be determined by application of mitigation measures set forth in _____ to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:

a. The structure will not increase significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems.

b. Permitting repair, reconstruction, or replacement shall be consistent with the purposes of this chapter as set forth in _____, the borough comprehensive plan, another applicable chapters of the borough code, and other applicable planning documents adopted by the borough;

c. The reconstruction, replacement, or repair will not physically damage the adjoining property;

d. Removal of materials or debris remaining from the damage or destruction; and

e. Owner's compliance with other borough permits and ordinance requirements.

2. The right to reconstruct in nonconformity with the chapter is forever lost if:

a. the application for reconstruction or repair is not made within 24 months after the date of accidental damage or destruction or within 6 months prior to the owner's intentional damage or destruction or

b. the application is approved but the structure is not substantially reconstructed within 3 years of the date of the approval of the application for reconstruction.

(i) For reasonable and sufficient cause shown for the delay, the Director of planning may authorize an extension not to exceed 12 months to complete reconstruction.

(ii) To obtain an extension of time an applicant shall submit a written request for an extension to the department prior to the expiration of the 36 months reconstruction period. The applicant must show reasonable and sufficient cause for the extension.

3. Nothing in this section prohibits reconstruction at any time in compliance with this chapter.

4. The provisions applicable to principal prior existing structures set forth in _____ also apply to the replacement, repair or reconstruction of accessory structures within the habitat protection district. In addition to those provisions the following rules apply to accessory structures:

a. Accessory structures may be replaced or reconstructed outside of the habitat protection district without an anadromous waterbody permit.

b. The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the stream buffer in order to be permitted to replace, or reconstruct the accessory structure within the stream buffer.

D. Uses. This chapter may not prohibit or restrict nonconforming uses that were allowed or not prohibited by law when established before the effective date of this chapter, provided that, such uses are conducted in the same location and are not enlarged to include a greater number of participants or to occupy a greater area of land. Nonconforming uses that cease to be used for 365 consecutive days shall be considered abandoned..

Upon Nonconforming Certification, a change to the prior existing use may be allowed if the change results in greater conformity with code. No change shall be granted unless the change reduces the nonconformity, by use of mitigation procedures pursuant to _____, to the maximum extent

Commented [BM36]: This could refer to nonconforming code...it would create consistency in our approach.

Commented [BM37]: Do we want these uses to go thru the Proof of Nonconforming Status?

~~practicable. The Director will determine the mitigation measures to be used consistent with the following conditions:~~

- ~~1. The use will not increase significant erosion, sedimentation, damage to the buffers, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;~~
- ~~2. Permitting the use shall be consistent with the purpose of this code;~~
- ~~3. The use will not physically damage the adjoining property;~~
- ~~4. Removal of materials or debris resulting from the prior existing use; and~~
- ~~5. Developer's compliance with other borough permits and ordinance requirements.~~

~~E. Director determinations regarding prior existing structures and prior existing uses may be appealed to the commission.~~

~~F. Nothing in this chapter shall prevent any change of tenancy, ownership or management of any prior existing structure.~~

Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

(21) Anadromous Waterbody Permit Application

- (A) Tier One \$75
- (B) Tier Two \$200

Commented [BM38]: Changes to nonconforming uses are allowed outright to conforming uses. Changes to other nonconforming uses can be allowed through the Nonconforming Situation Review by the Board of Adjustment. You could say something along the lines of changes of prior existing uses can be allowed in conformity with 49.XX and the following conditions...and findings

Commented [JM39R38]: Changing from one noncom. use to another wasn't adopted