

Introduction

The Municipality of Anchorage (MOA) has been working on an update to Anchorage Municipal Code 21.07.020.B, the section of Title 21 that contains stream setback provisions. The primary driver for this effort is language contained in the current of the code instructing the MOA to the revisit the issue of stream setbacks and to:

- a. To provide wider stream protection setbacks; and*
- b. To provide relief for property that would be impacted or rendered nonconforming by such wider setbacks.*

The code provisions reflect that, during public testimony for adoption for the current version of the stream setback provisions, there was an abundance of public testimony supporting a larger setback. Other members of the public expressed concerns about the potential impacts to private property arising from larger setbacks. Essentially, the question of larger setbacks was tabled until the impacts of larger setbacks could be considered more carefully. Watershed Management Services (WMS) and Long Range Planning (LRP) have worked to create changes outlined in the draft ordinance that address both of the goals outlined above.

In creating the current draft, staff referred to other Alaska local ordinances, particularly the new Kenai Peninsula Borough stream ordinance; examples of model stream setback ordinances at the national level; and existing policy recommendations from organizations that focus on riparian and watershed management issues.

WMS and LRP also solicited input from the development community and local stream advocacy groups. An early draft of changes was presented to the MOA Watershed and Natural Resources Advisory Commission. Commission members include representatives from the engineering and landscape architecture communities, ADF&G, and citizen representatives. Input from all of these groups was incorporated into the current draft.

Code Format and General Presentation.

Early in the process, it was decided that the scope of the desired changes was not compatible with the structure of the existing version of the code. Therefore, the draft ordinance has a different layout than prior versions. As proposed, the existing code subsection 21.07.020B would be repealed and reenacted to read as outlined in the proposed Assembly Ordinance (AO). This document is intended to make it easier to track changes from the current and proposed stream setback code subsection.

Where relevant, notes are provided that indicate where draft code language is the same as current code. Additional comments are provided for sections where minor changes were made - for instance where the draft language was changed slightly to clarify the intent of the code section. Lastly, where major changes are proposed, this document contains a longer discussion of the changes that are proposed. The comments listed below are formatted to follow the layout of the proposed AO.

Summary of Draft Codes Changes and Relationship to Existing Code Provisions

Section 1. : Revision to the *Summary of Major Title 21 Decision-Making and Review Responsibilities* table assigning stream setback variances to the Zoning Board of Examiners and Appeals (ZBEA) rather than Urban Design Commission (UDC).

Section 2.: Corresponding revision to the Title 21 UDC Code Section.

Section 3.: Corresponding revision to the Title 21 ZBEA Code Section.

Section 4.: Corresponding revision to 21.03.240 concerning the requirements for variances.

Section 5: Draft Version 21.07.020B

- 1) This section remains essentially the same, with the omission of the language directing the MOA to revisit the stream setback ordinance.
- 2) This section was shortened for brevity; the existing language is unnecessarily redundant.
- 3) This reference was added to address the subject of nonconforming uses of the setback and its relationship to other Title 21 subsections. Uses that were conforming prior to the date of passage of the new provisions will be “grandfathered” following the adoption of the draft code. In practical terms, this has been the case since the adoption of the original stream setback ordinance in the mid-1980s. Refer to Section 6. for the revision to 21.12, a new sew code section 21.12.045,
- 4) Relationship to Other Regulations (Previously Section 3)
 - a) Same as existing 3a
 - b) Same as existing 3b
 - c) Same as existing 3c
 - d) New language clarifying that setback can be used as credit towards open space or landscaping requirements.
- 5) New section clarifying that drainageways are necessary for orderly drainage and that as such, these flow paths may not be obstructed without taking alternate measures
- 6) New section that outlines the conditions under which a stream channel may be altered. No section of existing code addresses this comprehensively. Current code sections 21.07.020B.6.a and 21.07.020B.6.c address these criteria partially.
- 7) New section that outlines the conditions under which a drainageway may be altered. This section clarifies that where drainageways are concerned, protecting particular piece of ground or specific flow path is not the primary concern; rather its is the preservation of the continuity of drainage.
- 8) This section is the same as current code section 21.07.020B.5.
- 9) This section lists the proposed changes to the size of the stream setback. Under existing code provisions, all streams have a stream setback of 25-feet. The exception is within the Hillside District Planning Area and the R-10 zoning district, where a 50-setback is required. Within the respective areas, the required setback is the same, regardless of stream size. To a large degree, this is at odds with recommended riparian management principles. It is generally recognized that larger streams require larger setbacks for normal stream functions such as erosion protection and floodplain storage. Under the current version of the code, it is most often the case that the smallest streams have the largest setbacks. Another factor in determining the

Stream Setback Ordinance Update – Change Summary

21.07.020.B

appropriate setback in past pattern of development. In areas of Anchorage where past development has led to channelization and for adjacent uses to encroach on the stream, less benefit is gained with a larger buffer than would be along sections of stream where natural stream channels and riparian buffers still exist.

- a) Current code provisions essentially delineate the entire stream setback as a non-disturbance zone, with exceptions for things as utility service, and property access. The changes proposed in the new code present the concept of two-zone setback: 1.) an inner 25-foot zone with protections similar to those in existing code, and 2.) an outer zone that varies in size depending on the stream in questions. This outer setback area is also more flexible in terms of allowed uses, such as allowing accessory structures, but is still intended primarily for stream protection.
- b) Setback Widths for Streams
 - i) Same as existing methodology (21.07.020B.4.a.i)
 - ii) Refer to table. The largest streams have a Streamside Zone of 25 feet, plus an additional 75 feet of Riparian Zone setback (Uses allowed in each zone are outlined in 21.07.020B.9.d and e. A description of each zone is included in the changes to definitions contained in Section 7.). Medium-sized streams have a Streamside Zone setback of 25 feet plus an additional 25 feet of Riparian Zone setback. The smallest streams, those that have been highly channelized or piped, or those that have high levels of encroaching development simply have a 25-foot Streamside Zone setback. Lastly, ephemeral channels have a Streamside Zone setback of 10 feet. As discussed above, in creating the tiers for the varied setback, stream size and stream characteristics were the primary factors considered. Deference was given to the Hillside District Plan (HDP) in creating tiers. Many of the named streams on the Anchorage Hillside are smaller than other streams occupying the “middle tier.” Consistent with the recommendations the HDP, these were placed in the 50-foot setback group. The desire to have a consistent standard based on hydrologic principles means that the smallest streams on the Hillside are proposed to be in the smallest group and have a 25-foot vs. a 50-foot setback. Beyond the table in the draft ordinance, so that the setback information is readily available to the public, the MOA stream mapping layers will be updated and maintained to provide the correct stream name information and setback.
- c) Exceptions
 - i) This provision is intended to provide relief from the larger setbacks to property owners of lots less than 10,000 feet in size.
 - ii) The proposed change reverts back to the standard contained in setback ordinance versions prior to the current code. Staff is unclear why this was changed in current code, but it clearly introduced unintended consequences related to real world situations involving such things as short driveway culverts.
 - iii) This change was added to clarify how to treat situations where streams run parallel to roads, such as in road ditches.
 - iv) Situations have arisen where a strict reading of the current code (as well as previous versions) discouraged projects that would otherwise benefit the stream, increase riparian areas, and generally improve upon the condition of surrounding areas as a whole. This section is intended to clarify that the MOA supports projects that further the

Stream Setback Ordinance Update – Change Summary

21.07.020.B

goals of stream setback provisions such as stream restorations, creation of urban greenways, etc.

- d) This section lists the allowable uses in the Streamside Zone. Generally, this setback zone is similar to the current 25-foot stream setback.
 - i) Refer to subsection B.13
 - ii) Same as existing 21.07.020B.2.d
 - iii) This section clarifies that utilities should not run parallel to streams within 25-feet of them. Also utility exceptions are for the routing of utility mainlines and for service connections for a property. Structures that are chiefly building appurtenance are not exempted from setback requirements.
 - iv) Same as existing 21.07.020B.2.a and b.
 - v) This clarification is missing in the current code and provided in response to the increased number of inquiries the MOA has received about power generation.
 - vi) Historically, far and away the majority of money spent within the MOA on stream and bank restoration projects has been to mitigate the impacts of paved trails that encroach on streams. National recommendations encouraging the placement of trails in green spaces and along streams are not referring to large, paved bike trails that have been built close to streams as part of past practice within the MOA. The runoff characteristics, maintenance requirements, inherent infrastructure protection demands, and public safety concerns associated with these trails require them to be located 25 feet or further from streams.
 - vii) A clarification missing from the current code.
 - viii) A clarification missing from the current code.
 - ix) A clarification missing from the current code. This section clarifies the setback provisions are not intended to prevent property owners from taking actions necessary to protect life or property. As noted, such actions may require a permit or mitigation, after-the-fact.
- e) The Riparian Edge Zone is a new setback area that does not exist in current code.
 - i) Self-explanatory.
 - ii) Allows for utilities to run parallel to streams. Contains additional clarifying details.
 - iii) Large, paved trails are allowed.
 - iv) These uses preserve open space, and consist of pervious surfaces.
 - v) These uses preserve open space, and consist of pervious surfaces.
 - vi) This is intended to allow for small outbuildings such as sheds and greenhouses.
 - vii) Self-explanatory.
 - viii) Self-explanatory.
 - ix) As outlined in the cited code section this does not refer to the operation of a commercial snow storage site. It is intended to speak to temporary snow storage, parking lot and driveway push piles, etc.
- 10) Major Drainageway Setbacks (21.07.020B.4.a.ii in current code). The draft ordinance provides more clearly differentiates between drainageway setbacks and stream setbacks.
 - a) Clarification of the need for drainageway setbacks.
 - b) Clarification of how drainageway setbacks are measured.

Stream Setback Ordinance Update – Change Summary

21.07.020.B

- c) Clarification that the setback area does not necessarily need to be vegetated but it must be appropriately sized and stably constructed.
- 11) Water Body Setbacks (21.07.020B.4.d in current code). The provisions of the draft ordinance are similar, with additional clarifying detail.
- a) Delineates the water body setback and how it is affected by the *Anchorage Wetlands Management Plan*
 - b) Allowed and Prohibited Uses
 - i) Allowances for boathouses, docks, etc.
 - ii) Allowances for access areas to docks, ramps, etc.
 - iii) Allowances for recreational public improvements
 - iv) Allowances for fish and wildlife related public improvements
- 12) Wetland Setbacks (21.07.020B.4.c.ii in current code). The provisions of the draft ordinance are similar, with additional clarifying detail.
- a) Same as current code
 - b) Allowances for decks, etc
 - c) Same as existing 21.07.020B.8
 - i) An expansion of 21.07.020B.8.a with additional requirements for placing class A and B in separate tracts from development areas.
 - ii) Same as 21.07.020B.8.b
- 13) Vegetation management has historically been one of the most difficult aspects of the stream setback provisions to administer. Staff felt that an expansion of the current 21.07.020B.7 with more objective criteria would lead to less conflict.
- a) Normal pruning is allowed, subject to conditions
 - b) This simply puts into writing existing practice. The ADF&G has regulations in place regarding trees in creeks. The retention of root wad helps prevent subsequent erosion and aids in revegetation.
 - c) Expanded, objective criteria governing tree and shrub removal
 - d) More specific criteria for replacing vegetation removed as part of c.
 - e) Watershed Management is responsible for ensuring that herbicides do not enter streams and lakes per the conditions of the APDES stormwater permit from ADEC.
 - f) This section clarifies that the stream setback is private property, not a dedicated easement.
- 14) This section outlines the manner in which violations must be remedied, as it concerns restoration and revegetation of disturbed areas. The current version of code requires revegetation but does not contain any additional clarifying language.

Section 6.: Revisions to code section 21.12; the creation of a new section 21.12.045, *Nonconforming Encroachments into Water Course, Water Body, and Wetland Setbacks*

Section 7.: Revisions to code section 21.40.040 to reflect proposed 21.07.020B.