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FISH AND WILDLIFE SERVICE

Anchorage Fish & Wildlife Field Office
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SEP 20 2005

COMMUNITY PLANNING
AND DEVELOPMENT

IN REPLY REFER TO:
AFWFO

Municipality of Anchorage
Planning Department
P.O. Box 196650
Anchorage, Alaska 99519

SEP 16 2005

Re: Comments on Title 21 Rewrite
Public Review Draft #1

Dear Sir or Madam:

Thank you for the opportunity to review the June 2005 Title 21 Public Review Draft #1 (Draft) referenced above. This Draft represents a significant revision of Anchorage's current Title 21 land use code, adopted in 1969 and since only amended but not revised. One of the revision's primary purposes (Draft #1, p.6) is to implement the Anchorage Comprehensive Plan (*Anchorage 2020*), which directed substantial code changes. Of particular interest to the U.S. Fish and Wildlife Service (Service) are provisions for the balanced protection of Anchorage's unique fish, wildlife, and habitat resources. These resources are vital both to the quality of life enjoyed by Anchorage's citizens, and to our community's strong tourism market with its resulting economic benefits.

This letter includes several general comments on the Draft and a summary of our recommendations. We have elaborated on those comments and recommendations in the Enclosure. We remain excited about the opportunities offered by this planning process and look forward to further working with you, other interested groups and agencies, and citizens as the Title 21 rewrite is finalized.

General Comments

The draft revision (Modules 1-3) originally submitted by the Municipality's lead contractor, Clarion Associates, was generally outstanding. As you know, Clarion Associates drew upon their well-established expertise from countless communities across the United States to work with the many different interests and local views in Anchorage. Taking their lead from the Comprehensive Plan's finding that fish, wildlife, and habitat are priority values and important contributors to the unique character of our community (*Anchorage 2020*, p.39), the Modules appropriately integrated natural resource considerations with land use development policies and standards. The current Draft #1 has been significantly changed from the Modules in that it no longer accounts for the significance and value of wildlife and habitat in Anchorage land use planning.

In our review of the Draft and supporting materials we found ample opportunities for compromises that would better address our concerns regarding fish and wildlife while still meeting other interests in maximizing economic returns. We strongly recommend that prior to



release of the next Draft, the Municipality convene several, facilitated Work Sessions where we, along with other interested natural resources stakeholders, be provided the opportunity to sit down with the Mayor's Real Estate Task Force, representatives from the Federation of Community Councils, and whatever additional stakeholders you believe appropriate, to cooperatively work together on resolving major differences. Work sessions should be goal-oriented, to assist the Municipality in ultimately developing effective and practical land use regulations that meet the priority needs of all stakeholders.

The Municipality is to be commended for several features of Draft #1. In particular, we support the emphases on encouraging productive infill and re-development (as opposed to the alternative of sprawl), and mixed-use development that attempts to integrate quality-of-life amenities with economic sustainability. A lake/pond buffer requirement is an excellent addition. We do recommend encouraging increases in buffers, particularly where higher value waterbodies are involved, to better protect wildlife, water quality, and associated values.

The Mayor's Real Estate Task Force noted a potential conflict between the goals in *Anchorage 2020* of higher density development (versus sprawl) and increased retention or creation of natural open space. While we agree this observation deserves further exploration, we also see that higher density developments will better allow open space retention, whereas sprawl is more likely to result in fragmentation of open space into parcels less valuable for wildlife.

Summary of Recommendations:

- 1. Provide a directed opportunity for further cooperative work.** To better reconcile the directions provided in the Modules which were developed by a broadly based group of citizens, interest groups, and agencies, with those resulting from the narrower perspective of the Mayor's Real Estate Task Force, we believe it would be useful for the Municipality to now convene Work Sessions that once again involve these broad interests, as described above. In order to develop a Title 21 rewrite with the broadest buy-in possible, it is important to follow this Draft with facilitated sessions where these multiple interests can share concerns, correct misunderstandings, and explore alternatives. Through such a process we will be best able to cooperatively develop regulations ensuring that Anchorage's uniquely resource-rich and economically vibrant character is sustained and enhanced both for the short and long-term future. We are available to discuss and assist with implementation of this proposal.
- 2. Promote economic prosperity in conjunction with natural resource sustainability in Title 21 purposes.** It is possible and desirable to achieve both economic prosperity and protection of natural resources as Anchorage continues to grow.
- 3. Address the importance of wildlife habitat in Anchorage.** Best accomplished by reinstating the "Wildlife Habitat Protection" concepts and language from Module 3 (pp.14-16), the importance of wildlife habitat should be addressed in the Work Sessions recommended above and in revised language in the regulations.

4. **Increase stream setbacks.** Setbacks need to equal or approach modern standards widely accepted in other communities to adequately protect Anchorage's valued fish and wildlife resources.
5. **Maximize the use of infiltration and other environmentally-preferred drainage systems,** rather than continuing maximum dependence on piped storm-water systems that carry runoff directly into our creeks.
6. **Increase incentives and requirements for tree retention in all appropriate zoning districts,** including, but not necessarily limited to, residential, commercial, mixed-use, and public lands districts.
7. **Add requirements for retention and planting of "vegetation masses"** (i.e., natural complexes of ground, shrub, and tree layers), particularly in important habitat areas.

In conclusion, we recommend the Title 21 revision process be modified to include a facilitated, cooperative discussion among stakeholders, including resource agencies, community council representatives, and development interests. We are providing details on this and the other recommendations summarized here in our Enclosure.

We are committed to the concept that land development and resource protection can go hand in hand, and look forward to further productive discussions with you and others to create practical alternatives to meet these needs. Thank you for considering our comments and recommendations. Our project biologist is Maureen de Zeeuw and she can be reached at 271-2787 or by email at Maureen_deZeeuw@fws.gov.

Sincerely,



Ann G. Rappoport
Field Supervisor

Enclosure: Details on Issues and Recommendations regarding Title 21 Rewrite Public Draft #1

Cc: Mayor Mark Begich
ADNR (Office of Habitat Management and Permitting)
ADNR (Office of Project Management and Permitting)
ADFG (Rick Sinnott)
U.S. Army Corps of Engineers (Regulatory)
EPA
Federation of Community Councils

**DETAILED ISSUES AND RECOMMENDATIONS REGARDING
TITLE 21 REWRITE PUBLIC DRAFT #1**

Please note: Recommendations below cover issues we would like to address in facilitated Work Sessions with other stakeholders. Should those sessions not occur, then we urge you to consider these recommendations as you develop a subsequent Title 21 Draft. We would be happy to answer your questions and discuss these comments further with you.

WILDLIFE

Issue:

Land use code must be enforceable. “Guidelines” described as “voluntary” (versus required) are not enforceable and are inappropriate for land use code.

Recommendation:

All items listed under “Guidelines” (e.g., building, fences, bird feeders, etc. within the 200-ft riparian “conflict prevention area”) should be either:

- a. included with enforceable “Standards,” or,
- b. subject to a review process established by the Municipality which could involve qualified wildlife professionals. A statement to that effect should replace the current preface that “the following voluntary guidelines shall apply.” In particular, homes, fences, trails, pet runs, and livestock restrictions should be carefully considered.

WILDLIFE HABITAT

Issues:

1. **Wildlife habitat protection is an important land-use consideration in Anchorage.** The Municipal Land Use Ordinance (Title 21) should, as stated in Module 3, “ensure that the presence of wildlife habitat is considered as part of the development review process” (footnote 14, p. 14). The only wildlife aspect addressed in Draft #1 is minimizing conflict with bears in riparian corridors (Sec. 21.07.020 D., p. 344). While this is an essential item, we are concerned that other aspects of wildlife in the Anchorage Bowl are not addressed. Omission of a wildlife habitat protection standard places the urban presence of desirable wildlife at risk¹, conflicting with community vision as described in *Anchorage 2020* and the cooperatively-produced *Living with Wildlife in Anchorage Plan*.
2. **Incorrect information used to justify habitat protection omission.** According to the January 28, 2005, *Mayor’s Real Estate Task Force Report and Analysis of the Proposed Rewrite of Title 21* (Task Force Report²), primary reasons for removing protection of wildlife habitat from the current Draft are “cross-jurisdictional issues” and reliance on “outdated schemes” (p.31). We are correcting that misinformation as follows:

¹ Anchorage wildlife is diverse. Habitat protection is important to preserve the values provided by the urban presence of birds like songbirds, shorebirds, waterfowl, raptors, owls, woodpeckers, and kingfisher; and small mammals and amphibians such as fox, weasel, muskrat and frog.

² The Task Force Report available on the Municipality’s website (<http://www.muni.org/iceimages/planning/RETFFINALREPORT.pdf>) does not have page numbering. Page numbers referenced in this letter, therefore, are PDF page numbers, not document page numbers.

- a. **Review processes exist but are not sufficient to address Anchorage wildlife habitat protection.** The Task Force Report states that “a number of other governmental agencies, both state and federal, are charged with managing wildlife and habitat...they have their own permitting processes and review criteria (and) . . . to overlay the MOA land development code will create confusion and unnecessary expense to both public and private entities.” Existing review processes that may include non-federal land development actions are the Section 404 permits required from the U.S. Army Corps of Engineers (COE) for work in wetlands and other waters of the U.S. (Clean Water Act, 40 CFR 230); the State’s Title 41 permits required for work that may affect fish streams; the Alaska Coastal Management Program’s limited review of Coastal Zone projects; and water quality reviews, including the State’s Water Quality Certification. No sufficient review process exists for development proposals in non-wetland riparian zones or other important terrestrial habitats.
- b. **Current information about important Anchorage wildlife habitat areas is available.** The reference to “outdated schemes” is incorrect. The 1980 Anchorage Coastal Resource Atlas has already been partially updated by the Municipality and full revision is expected shortly. Other reliable habitat data sources and expertise exist, including the *Open Space Inventory for Anchorage*, produced by the Municipality and Great Land Trust.

3. **Issues regarding the term “critical habitat” can be resolved.** We agree that the term “critical habitat,” as it appeared on p.16 of Module 3, needs to be re-considered, clarified, or revised.

Assignment of review responsibilities deserves discussion. We do not know the source of the suggestion in the Clarion Modules version that new wildlife habitat review responsibilities be assigned to the Alaska Department of Fish and Game¹ or the Service (Module 3, p.15) and assure you that we have no interest in usurping Municipal rights or responsibilities. We assume assignment of review duties to resource agencies was because fish and wildlife resources are our area of expertise. Systems are in place to review development proposals for potential impacts to fish, wildlife, and their habitats in accord with our trust responsibilities (e.g., for wetlands under section 404 of the Clean Water Act, for migratory birds, endangered species, fish streams, Coastal Zone, and federally-funded or permitted projects, etc., under other authorities). Note that Module 3 did appropriately acknowledge the ultimate authority of the Municipality in land use decisions regarding habitat. We are available to help the Municipality with technical information, planning processes, and reviews, and would be happy to work with you in developing a review acceptable to developers and the Municipality.

Recommendations:

1. Re-instate the Natural Resource Protection development and design standards for Wildlife Habitat Protection, either:
 - a. as they appeared on pp. 14-16 of Module 3 (with corrections as described above), or
 - b. in a revised system of standards that meets the original intent and purpose (Module 3, p.14). We do not object to revising this intent and purpose so that habitat protection is achieved “while allowing (or balancing) promotion or provision of appropriate

¹ The State Department of Natural Resources, not the Department of Fish and Game, now administers Title 41 project review.

development incentives to achieve an economically balanced...community and to promote further economic development,” (or similar: see Sec. 21.01.030 “Purpose of this Title,” on p.6).

2. Revise the “critical habitat” definition to that of the *Open Space Inventory for Anchorage*: “it includes habitat necessary to maintain a viable local population of the species or species group. These areas include habitat for species that are regionally rare or in decline, and/or for species that are sensitive to disturbance during one or more of their life stages.” Alternatively, other methods of applying wildlife habitat protection standards may be developed upon further cooperative discussions.

STREAM/WATERBODY SETBACKS:

Issues:

1. **Current 25-ft minimum buffer size is well below recommended level for water quality and salmon habitat protection.** The critical importance of healthy riparian buffers to salmon, migratory birds, water quality and erosion control, is well-documented. Wetlands and riparian zones are among the most important habitats remaining in Anchorage. The national median for urban stream buffers is 100 feet per side (Heraty, 1993; Schueler and Holland, 2000), without taking into account complex habitat requirements for streams with salmon populations as Anchorage enjoys. The State’s *Streambank Restoration and Protection: Guide for Alaska* (2005) suggests that even a 50-meter buffer may be insufficient to provide desired or ideal levels of runoff treatment or wildlife habitat. The Matanuska-Susitna Borough Ordinance 05-023 recently established a minimum 75-ft buffer standard for waterbodies.
2. **An important principle of riparian zone management is ensuring protection of the naturally-occurring vegetation complex, not only the tree layer.** It is the complex of ground cover, shrub layers, trees, and dead and downed wood that provides much of the habitat, water quality, and erosion control benefits. Removal of underbrush (with some exceptions) should be generally prohibited within stream buffers (riparian zones). Further discussion may result in varying applicability of clearing prohibitions within various distances, zoning districts, and development types and sizes.
3. **Non-conforming property issues can be resolved.** It is our understanding that a chief objection to increasing buffer sizes beyond the current 25-ft minimum is the corresponding creation, among existing development, of a substantial number of “non-conforming properties.” The threat to Anchorage’s remaining riparian resources surely outweighs a problem that can, and should, be addressed in the Non-Conforming Properties section of the code, and by applying other solutions such as “grandfather rights” to existing properties.
4. **Stream and waterbody buffers will not impact access,** despite the fear expressed in the *Mayor’s Real Estate Task Force Report and Analysis of the Proposed Rewrite of Title 21* (Task Force Report). Pedestrian, boating, and other water-dependent access to streams can, and should, continue to be protected.
5. **A setback for lakes and ponds is an important addition** (p.337), although 15 feet is less than the 75 feet we believe is minimally appropriate.

Recommendations:

1. Increase the stream and river corridor setback requirements (p.336) to 100 feet per side for new development in all zoning districts. The setback is to be measured horizontally from the

ordinary high water mark of a stream or river corridor, or, if not readily discernible, from the defined bank of the stream or river. Alternatively, the protected buffer can be defined as the width of the meander belt of the stream, with a minimum of 200 feet total width. All new buildings, accessory structures, fills, and parking lots must be outside the 100-ft buffer, and outside the 100-year floodplain, as defined by FEMA guidance.

2. Prohibit clearing of vegetation or downed wood within 50 feet of the stream, although incentives should be provided to discourage vegetation removal within the entire 100-ft buffer. Exceptions or alternatives may be developed (e.g., individual lots (separate from new subdivision development); small developments; and clearing necessary for safety, access, or the control of non-native plants; etc.).

DRAINAGE

Issue:

Improvements are necessary in the treatment of run-off from urban development, in order to protect and improve the water quality of Anchorage's creeks. Numerous alternatives for improved treatment exist, and should include infiltration and treatment via bio-filtration swales or sediment basins¹.

Recommendations:

1. Include requirements from the Municipality's *Anchorage Parking Lots: 2002 Best Management Practices Guidance* publication in Off-Street Parking and Loading Development and Design Standards Minimum Plan Requirements (Sec. 21.07.090 C. 2, p.381). Specifically, require the following treatments of runoff from all parking lots greater than 2,000 square feet, paved and unpaved:
 - a. On-site run-off storage for 0.2 inches or more of rainfall runoff.
 - b. On-site Oil-Grit Separator treatment of 2-year, 6-hour events for all fuel transfer facilities handling in excess of 1,500 gallons per year and parking lots that:
 - i. are 2 acres or more in size, or
 - ii. accommodate more than 100 vehicles per day per 1,000 square feet of building, or
 - iii. include vehicle maintenance or storage lots servicing 10 or more vehicles per year over 10 tons gross weight.
2. Retain and ensure enforcement of Subdivision Drainage Design standard #7 (Sec. 21.08.030, p.453).

TREE RETENTION AND LANDSCAPING

Issues:

1. **A primary purpose or goal of the "tree retention" concept is fish and wildlife habitat retention:**
 - a. This purpose was included in Module 3 (p.16), but not reflected in Draft #1.
 - b. To achieve a reasonable goal of habitat retention, a tree (and vegetation complex, see Issue #2 below) retention program is needed, but many alternative program designs are possible. For example, applicability of tree-retention requirements and/or

¹ Note that "natural" filtration may be expected to increase with increased protection of naturally-vegetated riparian buffers.

- incentives can be focused on the most important habitat areas and/or types, such as riparian and large tracts.
2. **“Tree retention” in many cases needs to be revised and expanded to include the entire vegetation complex associated with the tree.** Table 21.07-2 alternatively uses the term “retained existing vegetation mass” (Sec. 21.07.080, p.364). See our discussion above (Stream/waterbody protection #2).
 3. **Text indicates “incentives” to retain trees are included (e.g., p.361, 363, 370), but approaches and standards are insufficient to provide true incentive.** For example:
 - a. Module 3 included the largest incentive via the Tree Retention requirement of Natural Resources Protection (Module 3, p.16), but this has been removed from Draft #1.
 - b. Trees (newly planted or retained) are now only required for generic “landscape” purposes and for certain new residential developments, and no other zoning districts.
 - c. As shown in Table 21.07-2 (pp.363-364):
 - i. The difference in earned credits (“units”) between retained and new plants is too small to provide sufficient incentive.
 - ii. Minimum units earned for some retained trees and perimeter buffer landscaping have been substantially reduced, in some cases by half or more (e.g., total landscape units required per linear foot for medium-level buffers went from 1.5 to 0.4.).
 - iii. Several “hardscape” features have been added to the list of landscape features which earn points, further reducing incentives to retain trees while providing some incentive to cover natural ground with impermeable surfaces, potentially contributing to water quality and wildlife habitat impacts.
 - d. Comparison of Table 21.07-4 (p.367) with Module 3 shows that landscaping units required has diminished in all buffer levels.
 4. **The habitat values of black spruce, cottonwood, and alder in Alaska are commonly overlooked** or misunderstood (Task Force Report, PDF pp.49, 56.) and deserve further attention. Exempting them from retention requirements in certain cases, however, may provide an opportunity for acceptable compromise.
 5. **The tree retention concept in Module 3 may have been more acceptable than Draft #1 changes reflect.** Several comments in the Real Estate Task Force Report indicate that the tree retention concept can be acceptable to development interests, providing it is applied only to certain areas/types/sizes of development. The report also suggested potential alternatives such as “tree fees-in-lieu and “tree banks” that appear to have been left out of Draft #1 (Task Force Report, PDF pp.21, 58, 59). The test case reported on PDF p.69 supports the feasibility of Module 3’s tree retention plan.
 6. **There are several discrepancies related to tree retention within the document:**
 - a. Regarding tree landscape units required for subdivisions, “Site Enhancement Landscaping” (which applies to most types of development except individual lots and subdivisions of 4 units or less, p.361) requires 871 landscape units per acre, including 435 tree units (p.364). Elsewhere in the document, “trees” are required for residential development (with same exemption for individual lots and small subdivisions, p.370), but the minimum tree density is defined as 165 tree units per acre (p.371).
 - b. Minimum landscape units required for parking lot interiors is 0.02 unit per square foot on p.364, but 0.03 units per square foot on p.369.

- c. Other conflicting requirements may exist for parking lot interiors: if “parking lot interior landscaping shall minimize vegetation . . . between 3 feet and 7 feet above grade” (p.370), it may be difficult to require “at least half of the landscape units being trees,” (p.369).
7. **“Alternative Equivalent Compliance” does not meet intent.** The criteria for alternative compliance described under General Provisions (Sec. 21.07.010 B, p.334-335) is reasonably based on achieving or exceeding the subject design standards, goals of *Anchorage 2020*, and public benefit. The criteria for alternative compliance under Landscaping are, however, inappropriately loose and open-ended (Sec. 21.07.080, p.362). We are unsure if instances of looser criteria in Landscaping as compared to General Provisions occurred only because the Landscaping discussion merely applies to “proposed” alternatives “to be considered,” and not to criteria required to “grant a request (for alternatives).” In other words, it may be interpreted that to *grant* any request for landscaping alternatives, the proposal must also meet all criteria described in Sec. 21.07.010 B 5.a-c. of General Provisions.

Recommendations:

1. **Re-instate a robust tree retention requirement** under Natural Resource Protection. Text should be similar to that of Module 3, p.6-21. Potential exceptions include reducing the percentage of minimum required tree retention (by an amount to be determined upon further cooperative discussion).
2. **Revise the concept and definition of “tree retention” to include the natural “vegetation mass” or complex associated with it** (i.e., ground cover, and shrub and sapling canopy layers). Limits may be considered for certain sizes or types of development, or certain important habitat areas. “Associated vegetation mass,” may include the area directly below the limits of the tree canopy (i.e., same width), or be otherwise defined upon further discussion.
3. **Add wildlife habitat value to the list of potential purposes** for landscaping on p.360.
4. **Return “sensitive environmental areas and existing wooded areas”** to the top priority for tree retention (p.371).
5. **Increase number of landscape units awarded for existing retained vegetation** of all plant categories to a minimum of 1.5 to 2.0 times the number awarded per newly installed plant (p.363).
6. **Re-instate minimum measurement values in Table 21.07-4** found in Module 3.
7. **Revise minimum tree density for new residential developments from 165 per acre to 330 per acre.**
8. **Add a minimum “vegetated mass” density for new residential developments and appropriate commercial and other zoning districts.** This vegetation mass is defined as (existing) natural vegetation complexes, or a tree-shrub-ground cover complex (newly installed).
9. **Delete the provision wherein hardscape materials earn landscape units for residential developments that was added to Table 21.07-2, i.e.,** flower basket support, shredded bark or rock mulch, ornamental pavers, and seating (p.364). These materials could still appear on an alternative compliance proposal as they may appropriately earn units in particular development types or sites.
10. **Remove “impractical” as a criteria** generally allowing Alternative Equivalent Compliance for landscaping where it appears in Sec. 21.07.080 D, p.361, and in D.1. p.362.

11. **Delete “soil” and vegetation” as criteria** generally allowing Alternative Equivalent Compliance for landscaping (D.1, p.362).
12. **Re-instate** the following sentence from Module 3, p.44, in Site Perimeter Landscaping Purpose, p.365: **“Buffer landscaping consisting of natural vegetation is desired or encouraged.”**
13. **Re-instate a minimum planting area width** (Module 3, Table 21.07-5, p.47) to the specifications for Site Enhancement Landscaping (4.c., p.364). Size may be determined upon further discussion.
14. **Re-insert “if existing vegetation meets the standards...the required buffer landscaping area shall be retained in its naturally vegetated condition”** (Mod 3, p.45) for the other buffer levels, not just L4 (p.367) of site perimeter.

REFERENCES:

- Anchorage 2020: Anchorage Bowl Comprehensive Plan*. 2001. Municipality of Anchorage.
- Heraty, M. 1993. *Riparian Buffer Programs: A Guide to Developing and Implementing a Riparian Buffer Program as an Urban Stormwater Best Management Practice*. Metro. Wash. Council Gov. U.S. EPA Office of Oceans, Wetlands and Watershed. 152 pp.
- Living with Wildlife in Anchorage: A Cooperative Planning Effort*. 2000. Alaska Department of Fish and Game and co-signatories.
- Mayor’s Real Estate Task Force Report and Analysis of the Proposed Rewrite of Title 21*. January 28, 2005. Municipality of Anchorage. 77pp.
- Open Space Inventory for Anchorage* (technical report). 1999. Municipality of Anchorage.
- Schueler, T.R., and H. K. Holland, eds. 2000. *The Practice of Watershed Protection* (anthology). Center for Watershed Protection, MD.
- Streambank Restoration and Protection: Guide for Alaska*. 2005. Alaska Department of Fish and Game. Anchorage, AK.