



Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: September 27, 2021

SUBJECT: A request for a recommendation to the Vail Town Council for a Prescribed Regulation Amendment pursuant to Section 12-3-7 Amendment, Vail Town Code to amend Section 12-14-17 Setback From Watercourse and add a new Section 12-21-17 Riparian Protection and Waterbody Setback Regulations, Vail Town Code, to change the waterbody setbacks, and setting forth details in regard thereto. (PEC21-0043)

Applicant: Town of Vail, represented by Peter Wadden
Planner: Greg Roy

I. SUMMARY

The applicant, Town of Vail, represented by Peter Wadden, is requesting a recommendation of approval to the Vail Town Council for a prescribed regulation amendment pursuant to Section 12-3-7 Amendment, Vail Town Code to amend Section 12-14-17 Setback From Watercourse and add a new Section 12-21-17 Riparian Protection and Waterbody Setback Regulations, to change the waterbody setbacks.

Based upon Staff's review of the criteria outlined in Section VII of this memorandum and the evidence and testimony presented, the Community Development Department recommends **a recommendation of approval** of this application subject to the findings noted in Section VIII of this memorandum.

II. DESCRIPTION OF REQUEST

The applicant requests a recommendation of approval to the Vail Town Council for a prescribed regulation amendment pursuant to Section 12-3-7 Amendment, Vail Town Code to amend Section 12-14-17 Setback From Watercourse and add a new Section 12-21-17 Riparian Protection and Waterbody Setback Regulations, to change the waterbody setbacks, and setting forth details in regard thereto. (PEC21-0043)

Based on these recommendations from the Town's Comprehensive Plan and with the intention of protecting crucial riparian habitat the proposed changes would establish a new stream setback and change where the setback is measured from. The new setback would be measured from the "Ordinary High Water Mark" (OHWM), which would be defined in the code as follows.

"The Ordinary High Water Mark is the average 2 year flood line on Gore Creek and its named tributaries which can be established by survey using elevation data available from the Community Development Department."

The OHWM is primarily along what would be commonly called the "bank" of the creek or watercourse. While centerline of the creek may change on a daily or weekly basis, the OHWM varies on a longer timescale due to bank erosion and changes to the stream channel. It is a more static baseline from which to measure the setback and has become the industry standard in the decades since Vail's setback ordinance was adopted.

A setback measurement based on OHWM is also more equitable among properties adjacent to reaches of stream of varying width. The effective setback from the watercourse based on the centerline is wholly dependent on how wide the watercourse is in that location. If the watercourse is one hundred feet (100') wide in one location the setback would permit building up to the bank of the watercourse. Comparatively if the watercourse is fifty feet (50') wide, the effective setback from the bank would be twenty-five feet (25'). As the goal is protect the watercourse, the best way to achieve that goal is to have a consistent setback from the bank of the watercourse, which can be distinguished by the average two-year flood line.

The proposed language also includes the addition of a "Riparian Zone". This 10-foot wide portion of the setback would be a protected area to remain as native vegetation and natural materials. The Gore Creek Strategic Plan identifies "loss of riparian and streamside vegetation" as one of the three main causes of declining water quality in Gore Creek. The proposed riparian setback seeks to reverse this trend by establishing a contiguous corridor of healthy, native vegetation along Gore Creek and its tributaries.

The proposed code change would remove the section on the setbacks from the watercourse from the Supplemental Regulations in Section 14 and the new setback language would be inserted in Section 21 on Hazards to be consistent with the location of the floodplain regulations.

III. BACKGROUND

Ordinance No. 19, Series of 1976 created the streambank setback regulations in place today. They required a minimum setback of thirty feet (30') from the center of the established creek or stream channel and fifty feet (50') from the centerline of Gore Creek.

The Gore Creek Strategic Plan, adopted by Vail Town Council in 2016, identifies loss of riparian (streamside) vegetation as one of the three main causes of declining water quality in Gore Creek. The Plan recommends Town of Vail “update stream setback, riparian zone, vegetative buffer zone and other water quality objective definitions and maps (Title 12 Review and Amendments).”

IV. PROPOSED TEXT AMENDMENT LANGUAGE

The applicant proposes the following language to be added to Title 12:

The proposed amendments are as follows (text to be deleted is in ~~strike through~~, text that is to be added is **bold**. Sections of text that are not amended have been omitted.):

~~12-14-17: SETBACK FROM WATERCOURSE:~~

~~Minimum setback from a creek or stream shall be not less than thirty feet (30') from the center of the established creek or stream channel as defined by the town comprehensive plan base maps; provided, however, that the setback from Gore Creek shall be fifty feet (50'). Natural creek or stream channels may not be rechanneled or changed. (Ord. 29(2005) § 33: Ord. 19(1976) § 15: Ord. 8(1973) § 17.800)~~

12-14-18-7: BED AND BREAKFAST OPERATIONS:

12-14-19-8: SATELLITE DISH ANTENNAS:

12-14-20-19: COMMERCIAL CORE CONSTRUCTION:

12-14-24-0: OUTDOOR DISPLAY OF GOODS:

Proposed new code language

12-21-17: Riparian Protection and Waterbody Setback Regulations

A. Purpose: The purpose of this chapter is to protect the health and resiliency of Gore Creek by; increasing the area of riparian habitat along Gore Creek and its tributaries; encouraging the use of native vegetation in landscaping on private property; discouraging the use of water and chemical-intensive landscaping practices; and providing clear, measurable, equitable building setbacks along all waterways.

B. Definitions: To be included in 12-21-32

- **ORDINARY HIGH WATER MARK (OHWM): The Ordinary High Water Mark is the average 2 year flood line on Gore Creek and its named tributaries which can be established by survey using elevation data available from the Community Development Department.**
- **RIPARIAN ZONE The buffer of undisturbed native vegetation that extends from the Ordinary High Water Mark 10 linear feet inland.**

C. Applicability: This chapter shall apply to all properties located in whole or in part within twenty five feet (25') of the ordinary high water mark of Gore Creek or any of its named tributaries.

D. Restrictions within the Riparian Zone

1. **No work, including, but not limited to, mowing, landscaping, grading, or disturbance, within the Riparian Zone shall be permitted with the following exceptions, subject to Design Review Board approval:**
 - a. **Removal and management of State of Colorado listed noxious weeds.**
 - b. **Property owners may maintain up to a 4-foot wide creek access path. The path shall consist of permeable materials (such as native soils, sand, gravel, or flagstone set in gravel). No pavement, concrete or other non-permeable construction shall be used.**
 - c. **Public right-of-way such as roads, bridges, recreation trails and public parks shall not be subject to the restrictions of the Riparian Zone.**
 - d. **Utility infrastructure within utility easements shall not be subject to the restrictions of the Riparian Zone.**
 - e. **Erosion control measures and stream grade control structures that conform with best management practices in bank stabilization.**
2. **Removal of vegetation shall be allowed within the Riparian Zone if done for the purposes of fire mitigation with documented Fire Department approval.**
3. **Building setbacks shall be 25 linear feet from the OHWM.**
4. **Encroachments into the building setback shall be permitted as per Section 14-10-4.**

E. Nonconformities: Existing features or structures constructed legally prior to the adoption of this chapter are subject to Section 12-18.

F. Appeals: See 12-21-14b Right of Appeal.

V. ROLES OF REVIEWING BODIES

Order of Review:

Generally, text amendment applications will be reviewed by the Planning and Environmental Commission and the Commission will forward a recommendation to the Town Council. The Town Council will then review the text amendment application and

make the final decision.

Planning and Environmental Commission:

The Planning and Environmental Commission is responsible for the review of a text amendment application, pursuant to Section 12-3-7, Amendment, Vail Town Code, and forwarding of a recommendation to the Town Council.

Town Council:

The Town Council is responsible for final approval, approval with modifications, or denial of a text amendment application, pursuant to Section 12-3-7, Amendment, Vail Town Code.

Staff:

The Town Staff facilitates the application review process. Staff reviews the submitted application materials for completeness and general compliance with the appropriate requirements of the Town Code. Staff also provides the Planning and Environmental Commission a memorandum containing a description and background of the application; an evaluation of the application in regard to the criteria and findings outlined by the Town Code; and a recommendation of approval, approval with modifications, or denial.

VI. APPLICABLE PLANNING DOCUMENTS

Staff believes that following provisions of the Vail Town Code and Vail Land Use Plan are relevant to the review of this proposal:

Vail Comprehensive Plan

Land Use and Development Goal #1

- *1.2: The quality of the environment including air, water and other natural resources should be protected as the Town grows.*

Vail 2020 Strategic Plan

- *Goal #5: Maintain Gore Creek watershed as a Gold Medal fishery, while working to maintain tributaries that meet and/or exceed aquatic life standards set by the state of Colorado.*

Gore Creek Strategic Plan Recommended Actions

- *B2. Updated Title 12 and Stream setback map with additional buffer boundaries, as proposed by this Plan, to achieve objectives of preserving vegetation.*
- *B3. Update stream setback, riparian zone, vegetative buffer zone and other water*

quality objective definitions in Title 9, 12, 13, ad 14 of Town Code to improve consistency and better conform to GAP objectives and recommendations. Currently, the stream setback official map and definition do not articulate what practices are prohibited within the stream setback.

VII. CRITERIA FOR REVIEW

1. The extent to which the text amendment furthers the general and specific purposes of the zoning regulations; and

The general purposes of the zoning regulations are for “*promoting the health, safety, morals, and general welfare of the town, and to promote the coordinated and harmonious development of the town in a manner that will conserve and enhance its natural environment and its established character as a resort and residential community of high quality*”. This text amendment is intended to enhance the protection of Gore Creek as part of the town’s natural environment. The current setbacks are measured from the centerline of the creek, but depending on the width of the creek the streambank may or may not be protected. As the preservation streambank, and its native vegetation, is one of the three main ways to improve the water quality, it is wholly important to make sure the regulations ensure that protection. Having the setback measured from the OHWM or the “streambank”, will ensure that the native vegetation along the river is being equally preserved along it’s shores.

Staff finds that the proposed text amendment conforms to this criterion.

2. The extent to which the text amendment would better implement and better achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and

The proposed text amendment will furthers the Town’s environmental goals in the comprehensive plan. This amendment was specifically recommended in the Gore Creek Strategic Plan as a way to further protect the creek. It also meets the goal of protecting the environment and water quality set forth in the Land Use Plan. The equal protection of the streambank is imperative to preserving and enhancing the water quality throughout the town. By changing the base of the setback measurement from the centerline to the OHWM, the sensitive area of Gore Creek and it’s tributaries will be consistently protected. Adding the riparian buffer ensures that the sensitive area adjacent to the water is preserved to the greatest extent possible. This allow for the natural filtration of water and other processes to take place before reaching the creek.

Staff finds that the proposed text amendment conforms to this criterion.

3. The text amendment demonstrates how conditions have substantially changed since the adoption of the subject regulation and how the existing regulation is no longer appropriate or is inapplicable; and

The current regulations were set with the best information at the time. Since then, new studies and best management practices have evolved and improved. The existing setbacks have no regulation on what can happen inside of the setback. It is now recognized that the area between the development and the creek is vitally important to the health and function of the creek. The proposed code change incorporates the best practices out there today to establish an acceptable setback that protects Gore Creek and it's water quality. The research that went into the Gore Creek Strategic plan looked at comparable studies and the suggested setbacks to maintain creek health. Those suggested buffer of anywhere from 30-330 feet along the creek. The proposed is a modest setback to balance the character of Vail with the protection of its natural resources.

Staff finds that the proposed text amendment conforms to this criterion.

4. The extent to which the text amendment provides a harmonious, convenient, workable relationship among land use regulations consistent with municipal development objectives; and

One of the decision making factors going into the proposed setback was the relation to the other setbacks throughout the town and picking one that would be harmonious with other sections of Town Code. The proposed setback was one of several studied options that rose to the top as the most practical into existing regulations. When working with Section 14 on design regulations and allowed encroachments into setbacks, the 25-foot setback allowed for the encroachments allowed in that section with plenty of room too keep a protected riparian zone up to the creeks.

Staff finds that the proposed text amendment conforms to this criterion.

5. Such other factors and criteria the Planning and Environmental Commission and/or council deem applicable to the proposed text amendments

Staff will provide additional information as needed should the PEC and/or council determine other factors or criteria applicable to the proposed text amendments.

VIII. STAFF RECOMMENDATION

The Community Development Department recommends that the Planning and Environmental Commission forward a **recommendation of approval** for the prescribed regulation amendment to the Vail Town Council. This recommendation is based upon the review of the criteria outlined in Section VII of this memorandum and the evidence and

testimony presented.

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed prescribed regulation amendment, the Community Development Department recommends the Commission pass the following **motion**:

"The Planning and Environmental Commission forwards a recommendation of approval to the Vail Town Council for a prescribed regulation amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Section 12-14-17 Setback From Watercourse and add a new Section 12-21-17 Riparian Protection and Waterbody Setback Regulations, Vail Town Code, to change the waterbody setbacks, and setting forth details in regard thereto. (PEC21-0043)"

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed prescribed regulation amendment, the Community Development Department recommends the Commission makes the following **findings**:

"Based upon a review of Section VII of the September 27, 2021 staff memorandum to the Planning and Environmental Commission, and the evidence and testimony presented, the Planning and Environmental Commission finds:

- 1. That the amendment is consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail Comprehensive Plan and is compatible with the development objectives of the Town; and*
- 2. That the amendment furthers the general and specific purposes of the Zoning Regulations outlined in Section 12-1-2, Purpose, Vail Town Code; and*
- 3. That the amendment promotes the health, safety, morals, and general welfare of the Town and promotes the coordinated and harmonious development of the Town in a manner that conserves and enhances its natural environment and its established character as a resort and residential community of the highest quality."*

IX. ATTACHMENTS

- A. Applicant Narrative, 9-27-2021
- B. Comparison of Stream Setback Options 25' Map
- C. Comparison of Stream Setback Options 10' Map
- D. Public Outreach Responses
- E. Stream Corridor-Attorney Memo