



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: October 01, 2015

Jurisdiction: City of Yachats

Local file no.: None

DLCD file no.: 001-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 09/29/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 42 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 001-14 {22543}
Received: 9/29/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 3](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Yachats

Local file no.: N/A

Date of adoption: 9/10/15

Date sent: 9/29/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11/4/14

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Definitions were altered or deleted. References to 'designated streams' were deleted. Oregon DSt and U.S. ACDE permitting requirements are referenced. Access road on s. side of river is permitted. Yachats River setback maintained at 50'.

Local contact (name and title): Larry Lewis, City Planner

Phone: 541-547-3565

E-mail: larry@maliyachatsoregon.org

Street address: PO Box 345

City: Yachats, OR

Zip: 97498

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|--------------|----|--------|------------------------------------------------|
| Change from: | to | acres. | A goal exception was required for this change. |
| Change from: | to | acres. | A goal exception was required for this change. |
| Change from: | to | acres. | A goal exception was required for this change. |
| Change from: | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use - Acres:	Non-resource - Acres:
Forest - Acres:	Marginal Lands - Acres:
Rural Residential - Acres:	Natural Resource/Coastal/Open Space - Acres:
Rural Commercial or Industrial - Acres:	Other: - Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use - Acres:	Non-resource - Acres:
Forest - Acres:	Marginal Lands - Acres:
Rural Residential - Acres:	Natural Resource/Coastal/Open Space - Acres:
Rural Commercial or Industrial - Acres:	Other: - Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Yachats Zoning & Land Use Code Section 9.52.070

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: Oregon Dept. of Land Conservation & Development, Oregon Dept. of State Lands, Oregon Dept. of Fish & Wildlife, City of Yachats.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The Planning Commission continues to work on potential setback regulations to some non-fish bearing streams

**CITY OF YACHATS
ORDINANCE NO. 338**

**AN ORDINANCE AMENDING THE YACHATS MUNICIPAL CODE SECTION
9.52.070 -- SHORELAND SETBACKS**

WHEREAS, the Yachats Planning Commission held a public hearing on January 20, 2015 to consider amendments to the current Yachats Municipal Code Section 9.52.070 Shoreland Setbacks; and

WHEREAS, the Planning Commission continued the public hearing to February 17, 2015, March 17, 2015, April 21, 2015, May 19, 2015, June 9, 2015 and July 21, 2015 to accept additional testimony and consider further modifications to the wording; and

WHEREAS, at the July 21, 2015 meeting the Planning Commission closed the public hearing and forwarded the proposed amendments to the City Council for adoption; and

WHEREAS, City Council held a public hearing on September 10, 2015 and voted to adopt the proposed amendment;

Now therefore, the City of Yachats ordains the Yachats Municipal Code Section 9.52.70 shall be amended to read as follows:

A. Purpose. The purpose of this section is to provide procedures necessary to secure the desirable attributes of the city from depletion by recognizing the value of the ocean, river, streams, wetlands, and riparian vegetation for fish and wildlife habitat, maintenance of water quality and quantity, alleviation of flooding hazards, storm water control, recreation and aesthetics, and to provide for open space. Protection of the natural drainage ways as an integral part of the City environment in accordance with the 2011 Yachats Local Wetlands and Riparian Inventory (LWI) is also important in order to manage stormwater drainage, minimize maintenance costs, and protect properties adjacent to drainage ways.

B. Definitions:

“Drainage Ways.” The streams, channels, springs, lakes, reservoirs, ponding areas, and wetlands indicated in the LWI.

“Fish Habitat.” Those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

“Ocean Shoreland.” Those areas west of the Yachats River Bridge adjacent to the ocean, bay and river.

“Riparian or Wetland Corridor.” The area that lies within a line inland (or upland), measured on the horizontal from the top of the bank of a river or stream, or from a significant wetland.

~~“Riparian Area.” The area adjacent to a river or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.~~

~~“Riparian Corridor.” Includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.~~

———**“Riparian Corridor Boundary.”** An imaginary line that lies 50 feet inland (or upland), measured on the horizontal, from the top of the bank of an inland stream, or where no bank is discernible, that lies 50 feet inland from the outer edge of non-aquatic vegetation. Where a wetland or pond is contiguous to a stream, the riparian area shall be measured 50 feet inland (or upland) from the upland edge of the wetland or pond. Where a wetland or pond is not contiguous to a stream, the riparian area shall be measured 25 feet inland (or upland) from the upland edge of the wetland or pond.

“River Shoreland.” Those areas adjacent to the Yachats River from the Yachats River Bridge upstream to the east city limit boundary.

“Stream.” A channel, such as a river or creek, that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

“Stream, Fish Bearing.” A fish-bearing stream as identified by the Oregon Department of Fish & Wildlife (ODF&W) which presently include only Yachats River and the Yachats River Tributaries; and any other streams hereafter so identified by ODF&W. **“Stream, Fish Bearing.”** A stream identified in the LWI as having an intact fish habitat function, i.e. Yachats River, Yachats River Tributaries, and a small unnamed creek at the very north end of Yachats.

———**“Stream, Perennial.”** A stream that has continuous flow in parts of its streambed all year round during years of normal rainfall.

———**“Water Area.”** The area between the banks of a lake, pond, river, or perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

“Wetland.” An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

“Wetland, Significant.” A wetland one-half acre or greater in size that met one or more mandatory criteria as identified in the LWI, i.e. wetlands labeled VC-4, VC-12, LY-19, and LY-25.

C. Application and Permits.

1. Application. The provisions of Section 9.52.070 shall apply to ocean and river shorelands, and to fish bearing streams, ~~perennial streams~~, significant wetlands, and associated riparian areas identified in the LWI. The provisions of Section 9.52.070 shall also apply to existing fish bearing ~~and perennial streams~~, significant wetlands, and associated riparian areas that are not yet identified in the LWI. Subsection D.4 shall apply to ~~non fish bearing and non-perennial~~ all remaining drainage ways.

Development proposed in any wetland identified in the LWI, and wetlands not yet identified in the LWI, shall adhere to Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers Removal-Fill Law and other provisions. DSL currently requires a permit for any project removing, filling or altering 50 cubic yards or greater in a wetland. A DSL permit is required for removal or fill of any amount of material in a stream designated as essential salmon habitat or state scenic waterways.

The provisions of Section 9.52.070 are to be applied in conjunction with the provisions of the underlying zone and are also subject to the applicable provisions of Chapters 9.52, 9.54, 9.76, 9.80, 9.84, and 9.88. Where the provisions of Section 9.52.070 and the underlying zone conflict, the more restrictive regulations shall apply. Forestry activities subject to the riparian regulations of the Oregon Forest Practices Act are exempt from regulation under Section 9.52.070. Forestry

activities not subject to the riparian regulations of the Oregon Forest Practices Act are subject to regulation under Section 9.52.070.

2. Procedure for Development Applications. Except for permit requirements for riparian zone vegetation removal or pruning as described in Section 3 below, applicants requesting approval for any development permit in an area which contains a designated resource identified in Section 9.52.070(DC.1) ~~below~~, shall submit, along with any application, a detailed site plan and written statement demonstrating how the proposed activities will conform to each of the applicable standards of Section 9.52.070. The City Planner shall review and approve the application if it is determined that all of the applicable criteria are met.

3. Procedure for Riparian Zone Vegetation Removal or Pruning. An executed Permit for Riparian Zone Vegetation Removal or Pruning is required before any person undertakes removal or pruning in a riparian zone. The City Planner, Public Works Director, or Code Enforcement Officer shall approve or disapprove the Permit. Failure to complete the application form and secure an executed permit in advance is a violation of City Code. A copy of an approved permit shall be in the possession of any person performing work thereunder for review by any person. Also, a copy shall be published in the Yachats Document Library.

D. Protection Standards.

1. Ocean Protection Standards. Prior to development on ocean shoreland a site specific geotechnical report shall be submitted to the City in accordance with Section 9.52.050. Setbacks shall be a minimum twenty-five (25) feet from the top of the bank or greater if recommended by an Oregon certified engineering geologist.

2. Riparian Corridor Protection Standards. The riparian corridor for fish bearing streams, i.e. the Yachats River and tributaries of the Yachats River shall be 50 feet. The riparian corridor for a significant wetland shall be 25 feet. See Section 3 below for additional Yachats River Protection Standards. ~~Riparian Corridor Protection Standards. The provisions of this subsection apply to the river, fish-bearing and perennial streams, significant wetlands, and associated riparian areas.~~

a. The riparian corridor shall be delineated in the field by a person qualified to do such a delineation, following procedures accepted by the State of Oregon. A report and map which documents the boundaries shall be submitted to the City. ~~The actual location of the river, streams, wetlands, and riparian areas, shall be delineated in the field by a person qualified to do such a delineation, following procedures accepted by the State of Oregon. A report and map shall be submitted to the City which documents the boundaries of the resource and its buffer.~~

b. The outer boundaries of the riparian corridor shall be clearly marked in the field, and such markings shall remain visible for inspection until all development on the site is complete.

c. No filling, grading, excavating, or draining is permitted in a significant wetland unless such is performed for restoration purposes or in accordance with E(4) Mitigation Standards. Valid permits from the US Army Corps of Engineers and from the Oregon Department of State Lands, or written proof of exemption from these permit programs must be obtained and presented to the City prior to any such work. ~~No filling, grading, excavating, or draining is permitted in a wetland area unless such is performed for restoration purposes or in accordance with Section N. Mitigation Standards. Valid permits from the US Army Corps of Engineers and from the Oregon Department of State Lands, or written proof of exemption from these permit programs must be obtained and presented to the City prior to any such work.~~

d. The flow from springs, drainages, streams, and other features providing the water necessary to maintain wetland's hydrology, shall not be diminished or substantially increased.

e. Within the riparian corridor, no filling, grading, excavating or draining is permitted. No impermeable surfaces or structures shall be placed, no non-native vegetation shall be planted, and no vegetation shall be removed or destroyed, except that the following are allowed: ~~Within the riparian corridor boundary, no grading shall occur, no impermeable surfaces or structures shall be placed, no non-native vegetation shall be planted, and no vegetation shall be removed or destroyed, except that the following are allowed, provided they are designed and constructed to minimize intrusion into the riparian area:~~

- 1) Removal of non-native noxious and invasive vegetation. See Section 5.08.110.
- 2) Fish and habitat restoration activities approved by Oregon Department of Fish and Wildlife.
- 3) Construction of an access road is permitted within the 50 foot riparian setback as necessary to allow development of property within the city limits on the south side of the Yachats River east of the Highway 101 bridge.

4) Any other exception approved by the Planning Commission through the Conditional Use process.

f. Development activities shall not change the natural drainage or increase the water flow.

g. Development activities shall not cause erosion in the riparian corridor.

~~1) Removal of riparian vegetation necessary for a use that requires direct access to the water.~~

~~2) Placement of utilities, drainage facilities, and irrigation pumps.~~

~~3) Replacement or enlargement of existing structures with structures in the same location that do not disturb additional riparian surface area.~~

~~4) The placement of walking paths and road crossings.~~

~~5) Removal of non-native noxious and invasive vegetation and replacement with native plant species.~~

~~6) Fish and habitat restoration activities approved by Oregon Department of Fish and Wildlife.~~

~~7) Removal of vegetation necessary for the development of water related and water dependent uses.~~

f. Development activities shall not change the natural drainage or substantially increase the water flow.

g. Development activities shall not create erosion into the stream, wetland, pond, or riparian area.

3.

Additional River Protection Standards. The "safe harbor" method requires a 50 foot setback from all fish-bearing streams with average annual stream flow less than 1,000 cubic feet per second. The Yachats River has an average annual stream flow less than 1,000 cubic feet per second therefore a fifty (50) foot riparian corridor shall be maintained. Within the first thirty (30) feet, vegetation may be pruned or removed because of storm damage, plant health, disease, damage to existing structures or demonstrated safety endangerment. If vegetation is removed it must be replaced with similar riparian plants native to Oregon, as soon as practical. Individual property owners whose property is within the fifty (50) foot riparian corridor are allowed to trim existing plants within ten (10) feet of a building if it is all within their property line. New native riparian

plants may be planted within the riparian corridor. Otherwise within the first thirty (30) feet, the existing native riparian vegetation shall remain undisturbed; in the last twenty (20) feet slight vegetative alteration is allowed provided the overstory is retained. Minor pedestrian access paths leading to (but not parallel to) the Yachats River shall be allowed as long as the overstory is not disturbed. See Yachats Municipal Code Section 5.08.110. No other development shall be allowed within the riparian corridor. Noxious weeds and invasive plants shall be exempt from this restriction. Where a permitted use of a lot existing prior to the establishment of this amended ordinance would be precluded by strict adherence to these requirements, the applicant may ask the Planning Commission for an exception to these standards if the applicant meets the following conditions:

~~Additional River Protection Standards. On river shoreland, in order to provide for wildlife habitat and riverbank stabilization, a fifty (50) foot riparian buffer shall be maintained. The riparian buffer is an area that extends inland (or upland), measured on the horizontal, from the top of the bank of the Yachats River or where no bank is discernible, that extends inland from the outer edge of non-aquatic vegetation. Within the first thirty (30) feet, vegetation may be pruned or removed because of storm damage, plant health, disease, damage to existing structures or demonstrated safety endangerment. If vegetation is removed it must be replaced with similar riparian zone plants native to Oregon, as soon as practical. Individual property owners whose property is within the fifty (50) foot riparian buffer are allowed to trim existing plants within ten (10) feet of a building if it is all within their property line. New native riparian plants may be planted within the riparian buffer. Otherwise within the first thirty (30) feet, the existing native riparian vegetation shall remain undisturbed; in the last twenty (20) feet slight vegetative alteration is allowed provided the overstory is retained. Minor pedestrian access paths leading to (but not parallel to) the Yachats River shall be allowed as long as the overstory is not disturbed. Noxious weeds and invasive plants shall be exempt from this restriction. See Yachats Municipal Code Section 5.08.110. No structure shall be placed within the riparian buffer. Where a permitted use of a lot existing prior to the establishment of this amended ordinance would be precluded by strict adherence to these requirements, the applicant may ask the Planning Commission for an exception to these standards if the applicant meets the following conditions:~~

a. Adherence to requirements would result in a building footprint less than the norm of the neighboring properties;

b. Disruption of the riparian corridor would be minimized e.g. seeking setback variances on the sides of the property away from the river shoreland or other design methods to minimize impact.~~Disruption of the riparian area has been minimized;~~

c. ~~That options such as maximizing variance setbacks on the sides of the property away from the aesthetic resource or other design methods to minimize impact have been exercised or are not feasible.~~

4.

Remaining Drainage Way Protection Standards. To prevent new development from significantly increasing the amount or flow rate of surface water runoff destined for the drainage way, any new development or redevelopment proposed on land containing or adjoining a drainage way shall adhere to the following:

a. No drainage way shall be altered; i.e., filled, culverted, re-routed, or disturbed without prior approval by the City of Yachats.

b. A drainage easement 10-foot on-center shall be maintained.

c. For subdivisions and planned unit developments, include an engineered storm water plan that provides for on-site storm water detention and primary treatment that screens and separates gross pollutants (sedimentation, floatables, oil and grease).

~~Non-Fish Bearing and Non-Perennial Drainage-Way Protection Standards. To prevent new development from significantly increasing the amount or flow rate of surface water runoff destined for the drainage way, any new development or redevelopment proposed on land containing or adjoining a drainage way shall:~~

~~a. No drainage way shall be altered; i.e., filled, culverted, re-routed, or disturbed without prior approval by the City of Yachats.~~

~~b. A drainage easement 10 foot on-center shall be maintained.~~

~~c. For subdivisions and planned unit developments, include an engineered storm water plan that provides for on-site storm water detention and primary treatment that screens and separates gross pollutants (sedimentation, floatables, oil and grease).~~

5. This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and any other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Exceptions and Variations.

1. Exceptions to the above standards are:

a. Vegetation removal for structural shoreland stabilization subject to the shoreline stabilization standards in Section 9.52.100.

b. Vegetation removal for bridge maintenance, replacement or repair.

2. Hardship Variance.

a. Applicability. This section applies to lots existing prior to November 9, 1978.

b. Where a minimum building footprint of less than 800 square feet would result from application of the rules of this section, reduction or removal of the restrictions under this section can be granted to allow the building of a structure within such a building footprint through the variance procedure. Applicants for variance from this section should demonstrate, in addition to the criteria found in the variance ordinance (Chapter 9.80), that intrusion into the required riparian corridor, wetland, or drainage way protection areas has been minimized by maximizing setback variances on property line boundaries away from these resources.

3. Map Error. If the resource is not located on a subject property, although the inventory map indicates it to be, the applicant for a building permit shall follow the following procedure:

a. The boundary of the property with proximity to the resource area shall be marked between surveyed property markers with a visible string or tape.

b. The applicant shall contact the City Planner and request a site visit.

c. The City Planner shall inspect the property and, if the resource is not on the subject property, issue the applicant a note stating the resource is not on the subject property and the property is exempt from the provisions of this section.

d. When the extent of the resource area cannot be determined by the City, the applicant shall seek prompt assistance from a natural resource agency in making that determination, or provide a written report from a properly-qualified specialist describing the boundaries of the resource area in relationship to the property boundaries.

4. Mitigation Standards. When impacts within a riparian area are approved, mitigation will be required in accordance with the following standards:

a. When mitigation for impacts to a riparian zone is proposed, the mitigation plan shall comply with all Oregon Department of State Lands and U.S. Army Corps of Engineers wetland regulations. The City may approve a development but shall not issue a building permit until all applicable State and Federal wetland permit approvals have been granted and copies of those approvals have been submitted to the City.

b. When mitigation for impacts to a riparian zone is proposed, a mitigation plan prepared by a qualified professional shall be submitted to the City. The mitigation plan shall meet the following criteria:

1) Mitigation for impacts to a riparian zone shall require a minimum mitigation area ratio of 1:1;

2) The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to the impact, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced;

3) Mitigation shall occur on-site and as close to the impact area as possible. If this is not feasible, mitigation shall occur within the same drainage basin as the impact.

4) All vegetation planted within the mitigation area shall be native to the region. Species to be planted in the mitigation area shall replace those impacted by the development activity;

5) Trees shall be planted at a density of not less than 5 per 1000 square feet. Shrubs shall be planted at a density of not less than 10 per 1000 square feet. (Ord. 315, Replaced Section, 08/09/2012; Ord. 285, Amended, 11/18/2009; Ord. 281, Amended, 12/17/2008)

Passed and adopted by the City Council of the City of Yachats on this 10th day of September 2015.

Ayes: 5 Nays: 0 Abstentions: 0 Absent 0

Approved by the Mayor this 10th day of September 2015.



Ronald L. Brean, Mayor

Attest:



Nancy Batchelder, City Recorder