1. 10:00 A.M. Agenda

   Documents:

   2024-03-12 Planning Commission Work Session Agenda.pdf

2. 10:00 A.M. Meeting Materials

   Documents:

   23-24 General And Auto Liability Coverage Agreement.pdf
   PC Resources 2024.Pdf
   Planning Commission Issues List.pdf
   Proposed Amendments To YMC Title 9 - December 2023.Pdf

CITY OF YACHATS
PLANNING COMMISSION WORK SESSION
Tuesday, March 12, 2024, at 10:00 am
To Be Held Via Zoom & In Person Located at:
Commons Bldg., Civic Meeting Room 1
441 Hwy 101 N., Yachats OR 97498

Join Zoom Meeting
https://us02web.zoom.us/j/87461950197

Meeting ID: 874 6195 0197

Work Session

I. Review of ongoing projects

II. Discussion of proposed amendments to YMC Title 9

III. Public hearing protocol

This meeting is open to the public and all interested persons are invited to attend the ZOOM Meetings. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall no later than one week prior to the meeting. The minutes of this meeting are the Audio Tape which will added to the packet after the meeting within 24 hours. In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541- 547-3565 or Oregon Relay 1- 800-735-2900 (TDD) two days in advance. POSTED 3/8/24 By: Neal Morphis, City Clerk

cis property/casualty trust
cisoregon.org

2023-24 General & Auto Liability Coverage

CIS TRUST GENERAL AND AUTO LIABILITY COVERAGE AGREEMENT

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CIS TRUST
GENERAL AND AUTO LIABILITY COVERAGE AGREEMENT

This is an agreement between the **Trust**, as defined herein, and the **named member** identified in the General & Auto Liability Coverage Declarations as "Named Member" for "Public Entity Liability Coverage" for the applicable coverage period. Various provisions of this agreement restrict coverage. Read the entire coverage agreement carefully to determine rights, duties, and what is and what is not covered. Words or phrases that appear in **bold-faced** type have special meaning and are defined in Sections 1, 10.B, 11.B, and 12.C.

1. DEFINITIONS

A. "**Administration**" means:

(1) Giving counsel to employees with respect to the **employee benefit programs**;

(2) Interpreting the **employee benefit programs**;

(3) Handling records in connection with **employee benefit programs**;

(4) Effecting enrollment, termination or cancellation of employees under the **employee benefits programs;**

provided all such acts are authorized by the **named member**.

B. "**Airport**" means any area of land or water that is intended for the landing and takeoff of aircraft, and includes its buildings and related facilities, if any.

C. "**Bodily Injury**" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

D. **"Claim"** means any notice or demand to the **named member** by or on behalf of a party seeking **damages** that reasonably communicates to the **named member** the party's intent to seek money **damages** from the **member.**

E. "**Covered Auto**" means any vehicle designed for land transportation, whether or not licensed for highway use, and owned or operated by the **member**.

F. **"Damages"** means all sums recoverable by law from any liability covered under this coverage agreement, including punitive damages if awarded, but not including any sums awarded for plaintiff's attorney fees, or expert fees, under any statute including but not limited to, 42 U.S. Code, 1988, in any case in which monetary damages are not sought or not awarded. Damages do not include:

(1) Costs necessary to comply with injunctions or declaratory relief.

(2) Sums recoverable for breach of contract; express or implied.

(3) Sums awarded as compensation due or accruing to the benefit of the employee while still employed by the **named member**.

(4) Sums sought or awarded for claims of unjust enrichment, money had and received or replevin.

(5) Sums due to taxing authorities, insurance programs, or retirement plans as a result of an award of damages or claim settlement.

(6) Fines or penalties assessed to the Member for non-payment of taxes, insurance contributions or retirement plan contributions.

G. **"Employee benefit programs"** shall mean group life insurance, group health insurance, profit sharing plans, pension plan, employee stock subscription plans, workers' compensation, unemployment insurance, social security, disability benefits insurance and travel, savings or vacation plans.

H. **"Fungus or fungi"** includes but is not limited to any form or type of mold, mushroom or mildew.

I. **"Hazardous properties"** means radioactive, toxic or explosive properties.

J. **"Hospital" or "nursing home"** means any facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment including but not limited to providing treatment for 1) acutely ill patients and accident victims, 2) mentally ill patients or 3) patients in special inpatient care facilities. However, in-patient care facilities incidental to correctional facilities shall not be considered a **hospital** or **nursing home.**

K. **"Member**" means the entity named on the declarations page and its officers, employees and agents including volunteers, authorized to act on behalf of the **named member**, all acting within the scope of their employment or duties whether arising out of a governmental or proprietary function. The term **member** shall also include **additional members** to the extent coverage is afforded under the definition of **additional member**.

(1) **"Named member"** means the entity named as such on the Declarations page of the coverage agreement,

(2) **"Additional member"** means any party whom a public body covered under this coverage agreement has agreed to hold harmless, indemnify or defend pursuant to a contract or other agreement lawfully entered into by such public body. However, in no event shall coverage under this coverage agreement extend to such party for any **claim** arising out of an **occurrence** after the expiration of this coverage agreement or the expiration of the contract or agreement entered into by the public body, whichever shall occur first. Further, in no event shall coverage under this coverage agreement extend to such party for any **claim**, however or whenever asserted, arising out of such party's sole negligence. Except as specified in this paragraph, such party shall have no rights under the **Trust Agreement**, Bylaws or Rules of the **Trust**. The term "additional insured" if used on a certificate of coverage, shall be understood to mean the same as **additional member**.

L. "**Nuclear Facility**" means:

(1) Any nuclear reactor;

(2) Any equipment or device designed or used for:

a. separating the isotopes of uranium or plutonium,

b. processing or utilizing **spent fuel**, or

c. handling, processing, or packaging **nuclear waste**;

(3) any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **member** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

M. "**Nuclear material**" means **source material**, **special nuclear material** or **by-product material**.

N. "**Nuclear reactor**" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

O. "**Nuclear waste**" means any waste material:

(1) containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore process primarily for its **source material** content, and

(2) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of **nuclear facility.**

P. **"Nursing home"** see **Hospital**.

Q. "**Occurrence**" means:

(1) an incident, event, act, error or omission which occurs during the coverage period: or

(2) a series of related incidents, events, acts, errors or omissions; or a continuous or repeated exposure to substantially the same general conditions, which occur during the coverage period. If the **occurrence** begins in one coverage period and ends in another, the **occurrence** shall be deemed to have taken place during the last such coverage period. Such incidents, events, acts, errors or omissions, or continuous or repeated exposures to substantially the same conditions shall be deemed to be a single **occurrence** for purposes of determining the "per occurrence" limit of liability and deductible, if any. Only the coverage and limits in effect for the last coverage period shall apply and only one "per occurrence" limit shall be available for each such multi-period **occurrence** regardless of the number of coverages under this coverage agreement which may apply to such **occurrence.**

R. "**Personal Injury**" means false arrest, detention, imprisonment, malicious prosecution, libel, slander, or publication or utterance in violation of the individual's right of privacy, wrongful entry or eviction, or invasion of the right of private occupancy.

S. "**Pollutants,**" as used in exclusion Section 4.I., means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkali, and chemicals, bacteria, organisms, and pathogens. However, **pollutants** does not include sewage which through the negligence of the **member** escapes the confines of a municipal sewage treatment system owned or operated by the **member**.

T. "**Property Damage**" means injury to or destruction of tangible property.

U. **"Source material," "special nuclear material,"** or "**by-product material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

V. "**Spent fuel**" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.

W. **"Spore(s)"** include any reproductive body produced or arising out of any **fungus or fungi.**

X. "**Trust Agreement**" means the CITY COUNTY INSURANCE SERVICES DECLARATION AND AGREEMENT OF TRUST.

Y. "**Trust**" means the CIS or CIS Trust, as described in the **Trust Agreement**.

Z. "**Waste"** as used in exclusion Section 4.I., includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

2. COVERAGES

In accordance with and subject to the General & Auto Liability Coverage Declarations applicable to the **named member** to which this Coverage Agreement applies; the City County Insurance Services Declaration and Agreement of Trust (herein "**Trust Agreement**"); the Bylaws and Rules of the **Trust**; and the terms, conditions, and limitations of this Coverage Agreement and in consideration of the contribution for which this coverage agreement is written, the **Trust** will pay on behalf of the **member** all **damages** arising out of an **occurrence**, not to exceed the Limits of Liability as set further described in Section 4. of this Coverage Agreement because of:

Coverage A: Liability arising under Oregon Revised Statutes 30.260 to 30.300; asserted pursuant to ORS 30.260 to 30.300.

Coverage B: Liability arising under 42 U.S. Code 1983; 42 U.S. Code 2000e, et seq. (Title VII of the Civil Rights Act of 1964); 29 U.S. Code 621, et seq. (Age Discrimination in Employment Act of 1967); The Americans with Disabilities Act; The Civil Rights Act of 1991; 42 U.S. Code 1981; 42 U.S. Code 3601, et seq. (The Fair Housing Act); ORS Chapter 659; ORS Chapter 659A; ORS 652.355; ORS 654.062; 29 U.S. Code Sec. 261, et seq. (Family and Medical Leave Act); or any law amendatory thereof.

Coverage C: Tort liability for **bodily injury**, **personal injury** and **property damage** for which the **member** is legally liable under the laws of any jurisdiction other than the State of Oregon and other than any United States Federal jurisdiction to which this coverage agreement applies.

Coverage D: Tort liability for the negligence of others assumed by the **named member** under contract, except as limited in the definition of the term "**member**" in Section 1. of this Coverage Agreement.

Coverage E: Liability to a **named member's** employee, prospective employee, former employee or the beneficiaries or legal representatives thereof, arising out of, and asserted pursuant to, ORS 30.260 to 30.300, and caused by an **occurrence** consisting of or based upon the **member's** negligent errors or omissions in the **administration** of the **named member's employee benefits program.**

Coverage F: Uninsured/Underinsured Motorists Coverage as set forth in Section 10. of this coverage agreement, pursuant to ORS 278.215. The Limits of Liability of such coverage with respect to a **member** shall be Per Occurrence Limit for General and Auto Liability Coverage as set forth in the General and Auto Liability Declarations. The limits of liability of such coverage with respect to a permissive user of a **covered auto**, other than a **member**, shall be the amounts set forth in ORS 806.070 that is the minimum liability limits of the Financial Responsibility Law as provided in the Oregon Vehicle Code and as set forth in Section 8. of this coverage agreement.

In accordance with and subject to the Declarations, the **Trust Agreement**, Bylaws and Rules of the **Trust**, and in consideration of the contribution for which this Coverage Agreement is written, and independent of Coverages A - F above, the **Trust** will pay:

Coverage G: Legal expenses reasonably incurred by a public official of the **named member** arising out of defense of a complaint alleging violation of ORS 244.040 or 244.120 to 244.130, subject to the terms and conditions set forth in Section 7. ETHICS LEGAL EXPENSE COVERAGE of this coverage agreement.

Coverage H: The actual or alleged accidental discharge, dispersal, release or escape of pollutants, subject to the terms, conditions, and limitations set forth in this Coverage Agreement, specifically including, without limitation, Section 11. LIMITED POLLUTION LIABILITY COVERAGE.

Coverage I: (Oregon Pay Equity Act) The **Trust** will reimburse the **named members** for reasonable legal expenses and damages connected with Oregon Pay Equity Act claims filed with the Bureau of Labor and Industries (BOLI) under ORS 659A.820 or in the Oregon Circuit Court under ORS 659A.885. Coverage does not apply to wages or back pay, or civil actions filed under ORS 652.230. The most the **Trust** will pay to or on behalf of a **named member** for any one or more claims in a single year is $50,000. The most the **Trust** will pay for all **named members** in a single year is $500,000. Each **named member** will have a $10,000 deductible per claim, or the deductible on the Declaration page whichever is higher.

The **Trust** shall have the right and duty to defend, with legal counsel selected by the **Trust**, any claim or suit against the **member** seeking **damages**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient. The duty to defend any claim or suit shall terminate, except as provided hereafter, when such claim or suit ceases to seek **damages** against the **member**. Provided, however, that the duty to defend any claim or suit shall not terminate so long as the claim or suit includes an allegation of breach of an implied contract arising out of an employment relationship with the **named member.**

3. DEDUCTIBLES

A. CONDITIONAL DEDUCTIBLE: Employment Practices

The **named member** is responsible for the first $15,000 of any settlement, or judgment, or legal defense costs paid by the **Trust** on behalf of the **member** with respect to any claims arising out of the termination or suspension of employment or suspension without pay and benefits of any employee of the **named member**. However, this deductible shall be waived if the **member** has consulted with a Pre-Loss attorney employed by the **Trust**, before such termination or suspension of employment, and has followed all reasonable advice provided to the **member** by the **Trust's** Pre-Loss attorney with respect to such termination or suspension of employment. The $15,000 deductible, or the applicable portion thereof payable by the **named member**, will be charged to the **named member** by the **Trust** when the first $15,000 of any settlement, judgment or legal defense cost is paid after settlement of the claim or payment of the judgment by the **Trust**. This conditional deductible provision does not apply to claims of "constructive discharge." If the Employment Practices deductible is charged to the same **named member** more than one time in its five most recent coverage years, the amount of the deductible charged to that **named member** will be as follows, and will be payable to the **Trust** as provided above:

Second instance:	$30,000
Third instance:	$45,000
Each instance thereafter:	$60,000.

B. AGGREGATE / RETROSPECTIVE DEDUCTIBLE

If an Aggregate/Retrospective Deductible amount is shown on the Liability Coverage Declarations page, payments made on behalf of the **member** by the **Trust** for the settlement of liability claims which are determined to have occurred during the coverage period shown on the declarations page, shall be subject to reimbursement by the **named member** to the **Trust**. The Aggregate/Retrospective Deductible limit shown is the maximum amount to be reimbursed to the **Trust** by the Member under this deductible agreement for the coverage period stated on the declarations page.

The amounts to be reimbursed to the Trust under this agreement shall be calculated using the total of:

(1) All indemnity payments made on the member's behalf, and

(2) All allocated loss adjusting expenses, including attorney's fees, incurred in the settlement of such liability claims.

C. PER OCCURRENCE DEDUCTIBLE

If a "per occurrence deductible" is shown on the Declarations page or by endorsement to this Coverage Agreement as being applicable to the covered **member**, such deductible amount shall be owed by the **named member** to CIS upon payment by CIS on the **member's** behalf of any amount paid by CIS in excess of the deductible pursuant to the terms of this Coverage Agreement. If such payment by CIS is less than the deductible amount, the **named member** shall reimburse CIS for the full amount paid on its behalf. Such deductible reimbursements are due and payable within 30 days of receipt by the **named member** of an invoice from CIS.

D. EMPLOYMENT CLAIM PARTICIPATION DEDUCTIBLE

The **named member** pays 10% of any employment practices claim, including claims arising out of the termination or suspension of employment or suspension without pay or any employment practices claim arising out of Coverage B, up to a maximum of $10,000. At the end of the coverage period after closing an employment practices claim CIS will invoice the **named member** for 10% of expenses, settlement, and judgment paid by the **Trust** to resolve the claim. Any per-occurrence, retrospective or aggregate deductible paid on the claim will be deducted from the total amount of the claim prior to the calculation of the 10% participation deductible. Any applicable Pre-Loss Deductible will be assessed in addition to the 10% participation deductible.

E. OTHER DEDUCTIBLES

Any other deductible provision as provided in a coverage part or endorsement shall apply as specified.

F. MEDICAL CARE JAIL DEDUCTIBLE

A per-occurrence deductible of $10,000 is applied to claims under the following conditions:

(1) Inmates are held in custody exceeding eight (8) hours; and

(2) Medical care was required; and

(3) The member did not have medical care readily available in the facility by a employed or contracted qualified doctor or nurse.

4. LIMITS OF LIABILITY

A. The "Per Occurrence Limit" listed in the Coverage Declarations, subject to the provisions of this LIMITS OF LIABILITY section, is the most the Trust will pay as damages on behalf of the **member** with respect to a single **occurrence** regardless of the number of:

(1) Coverages provided in Section 2. of this Coverage Agreement that apply or might apply to the **occurrence**;

(2) **Claims** asserted;

(3) Persons or organizations making **claims** arising out of or in connection with that **occurrence**; or

(4) Additional or supplemental coverages provided under this Coverage Agreement.

B. The "Annual Aggregate" listed on the Declarations Page is the most the **Trust** will pay as **damages** on behalf of the **named member** with respect to all **occurrences** that occur during the coverage period specified in the Coverage Declarations, regardless of the number of:

(1) Coverages provided in Section 2. of this Coverage Agreement that apply or might apply to the **occurrences**;

(2) **Claims** asserted;

(3) Persons or organizations making **claims** arising out of or in connection with the **occurrences**; or

(4) Additional or supplemental coverages provided under this Coverage Agreement.

C. Cost of Defense. The **Trust's** obligation to pay the cost of defending **claims** or suits to which the Coverage Agreement applies in addition to, and does not erode, the applicable limits of liability shown in the Coverage Declarations.

5. EXCLUSIONS

This coverage agreement does not apply:

A. To any liability arising out of:

(1) ownership, maintenance, operation, use, security, loading or unloading of:

a. any aircraft owned, or operated by, or rented, or loaned to **any member**; or

i. A drone is not defined as aircraft as it relates to this exclusion. A drone is defined as a Remotely Piloted Aircraft System (RPAS) or an Unmanned Aerial Vehicle (UAV) weighing under 55lbs. Coverage is subject to the drone being used for lawful purposes and meets guidelines of the Federal Aviation Administration.

b. any other aircraft operated by any person in the course of their employment by the **named member**; or

c. any non-owned aircraft.

(2) any operational, security, or maintenance activities associated in any way with the operation of an **airport**, including liability arising out of the ownership, maintenance, or use of **covered autos** used to service the aircraft and/or service or maintain **airport** runways, taxiways, and similar **airport** facilities while such vehicles are on the **airport** premises.

However, this exclusion does not apply to **named member** boards or commissions, including advisory boards, acting within the scope of their duties as such. The maximum limit of liability available under this exception, however, shall be limited to either the limit of liability provided under Coverage A of this coverage agreement or the limit of primary liability coverage maintained on behalf of the **member** for the ownership and operation of the airport, whichever is less.

B. To any **occurrence** arising out of the ownership, maintenance or use of watercraft if other liability coverage is in effect and provides coverage for the **member** for liability arising out of the **occurrence**.

C. To injury or damage to or destruction of any property owned by the **named member** or any of its departments, agencies, boards or commissions.

D. To any obligation for which **named member**, or any carrier as its insurer, may be held liable under any workers' compensation, unemployment or disability benefits law, or other similar law, including the Jones Act, general maritime law, the Federal Employers Liability Act, Federal Employee Compensation Act, the Defense Base Act, or the US Longshoremen and Harbor Workers’ Compensation Act.

E. To **bodily injury** to any employee of the **named member**, including any volunteer or inmate for whom the **named member** has elected to provide Workers' Compensation coverage under ORS 656.031 or ORS 656.041, arising out of and in the course of the employee's, volunteer's, or inmate's employment by the **named member**.

F. To any liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, or inverse condemnation, by whatever called, whether such liability accrues directly against the **member** or by virtue of any agreement entered into, by or on behalf of the **named member**. This includes but is not limited to takings and partial takings of private property resulting from the application of land use, zoning, building, subdivision or similar ordinance or regulation. This coverage agreement also does not apply to any claim or action based on, or asserted pursuant to, ORS 195.305 (“Measure 37 Claims”) for compensation or damages due to land use regulation.

G. To liability at any **hospital** or **nursing home** owned or operated by the **named member**, or to any such liability assumed by the **named member** under contract, arising out of or in connection with the care, treatment, rendering of medical professional services or provision of any associated products or devices to any person admitted on an inpatient or outpatient basis or to any person entering or brought to such **hospital** or **nursing home** with the intention that care, treatment, medical professional services or associated products and devices be provided.

H. To any **claim** against a Hospital Financing Authority created pursuant to ORS 441.525 to 441.596 arising out of the issuance of, use of proceeds from, repayment or default on financial instruments, bonds or revenue bonds.

I. To any pollution liability claims for **bodily injury, personal injury, property damage**, or cost, loss or damage arising out of contamination by **pollutants**, including expense incurred or demanded for cleaning, remediating or detoxifying contamination except as otherwise insured by Section 11., limited pollution liability coverage.
This exclusion does not apply to **bodily injury** or **property damage** arising out of heat, smoke or fumes from a hostile fire. As used in the exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Exclusion I. does not apply to:

(1) Fuel, lubricants, fluids or exhaust gases that have leaked from a **covered auto** if they are needed for or result from normal electrical hydraulic or mechanical function of an auto and leak from the part of the auto designed by its manufacturer to hold or dispose of them.

(2) Damages caused by collision, overturn, or upset of a **covered auto**.

(3) Firefighting activities, including training burns, intentional demolition or burns for purpose of limiting a fire, or the discharge of **pollutants** for the purpose of controlling a fire.

(4) **Bodily injury** or **property damage** caused by the **named member's** fire department or hazardous response team responding to a contamination caused by a third party unrelated to the **named member**.

(5) Liability otherwise covered by this agreement for **property damage** arising out of the **member's** use of pesticides, herbicides, or fungicides, provided each of the following conditions are met:

a. The **named member** indicated on the application that pesticides, herbicides, or fungicides are used.

b. The use meets all standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government pertaining to such use.

The liability of the **Trust** arising from any **occurrence** under this exception, exclusion I(5), shall not exceed $50,000.

J. To any liability arising directly or indirectly out of, resulting from, caused by or contributed to by:

(1) any **fungus, fungi,** or **spore(s)**;

(2) any solid, liquid, vapor, or gas produced by or arising out of any **fungus, fungi,** or **spore(s)**;

(3) any material, product, building component, or building structure that contains harbors, nurtures or acts as a medium for any **fungus, fungi,** or **spore(s**);

(4) any intrusion, leakage, or accumulation of water or any other liquid that contains, harbors, nurtures or acts as a medium for **fungus, fungi,** or **spore(s)**;

(5) the actual or threatened abatement, mitigation, removal or disposal of **fungus, fungi,** or **spore(s)** or any material, product, building component, or building structure that contains, harbors, nurtures or acts as a medium for any **fungus, fungi,** or **spore(s)**;

(6) any supervision, instruction, recommendations, warnings or advice given or which should have been given in connection with subparagraphs (1), (2), (3), (4), or (5) above; or

(7) any obligation of the **member** to indemnify any party in connection with subparagraphs (1), (2), (3), (4), (5), or (6) above.

Exclusion J. does not apply to:

a. the **member's** liability for removal of or damage caused by sewage which, through the negligence of the **member**, escapes the confines of a municipal sewage treatment system owned or operated by the **named member**, or

b. The **member's** liability for negligent building inspection or plan review or approval.

K. To any liability or expense arising from the handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos dust, asbestos fibers, asbestos products, and/or products containing asbestos.

L. To any liability or expense arising directly or indirectly from:

(1) the toxic pathological properties of lead, lead compounds or lead contained in any materials; or

(2) the actual or threatened abatement, mitigation, removal or disposal of lead, lead compounds or materials containing lead; or

(3) any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with parts (1) or (2) above; or

(4) any obligation of the member to indemnify any party in connection with subparagraphs (1), (2), or (3) above; or

(5) Silica.

M. To any liability or expense arising out of any nuclear incident, accident, loss, **occurrence**, **claim** made or loss discovered; or as the result of the ownership, management, manufacture, design, service, operation, storage, use, existence, handling, processing, sale, distribution, responsibility for, disposal of, or entrustment to others of **nuclear materials**. For purposes of this exclusion, the term "Entrustment to Others" shall include, but not be limited to, involvement of parties other than the **member** pursuant to contracts, licenses, leases, permits, franchises and consignments.

N. To any liability:

(1) Of any **member** under this coverage agreement who is an insured under a nuclear energy liability insurance policy issued by Nuclear Energy Liability Insurance Association, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability; or

(2) Resulting from the **hazardous properties** of **nuclear material** and with respect to which:

a. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or

b. The **member** is, or had this coverage agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, with any person or organization.

(3) Resulting from the **hazardous properties** of **nuclear material**, if:

a. the **nuclear material**:

i. is at any nuclear facility owned by, or operated by or on behalf of any **member**; or

ii. has been discharged or disposed therefrom;

b. the **nuclear material** is contained in **spent fuel** or **nuclear waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any **member**; or

c. the liability, including liability resulting from all forms of radioactive contamination of property, arising out of the furnishing by a **member** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, or its territories or possessions, or Canada, then subparagraph c. applies only to damage to property, including damage resulting from all forms of radioactive contamination of property, to or at such **nuclear facility** and any property there at.

O. To any liability, however caused, arising, directly or indirectly, out of:

(1) war, including undeclared or civil war; or

(2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

P. To liability arising out of or connected with the **administration** of an **employee benefits program,** except to the extent such coverage is provided under Coverage E, Employee Benefits Liability.

Q. With respect to Coverage E, Employee Benefits Liability, only this coverage does not apply to any dishonest, fraudulent, criminal or malicious act, libel, slander, discriminations or humiliation; or to **bodily injury** to any person, or to **property damage**, including the loss of use thereof.

R. Any **claim** for failure of performance of contract by any Insurer, including failure of any **employee benefit program.**

S. Any **claim** based upon the **member's** failure to comply with any law concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits.

T. Any **claim** based upon (1) failure of stock or bond to perform as represented by a **member**, (2) advice given by a **member** to an employee to participate or not to participate in stock subscription plan, (3) the investment or failure to invest, or misappropriation of funds.

U. Any **claim** based upon the Employee Retirement Income Security Act of 1974, Public Law 93-406, commonly referred to as the Pension Reform Act of 1974 and amendments thereto, or similar provisions of any Federal, State or Local Statutory Law of Common Law.

V. To any liability to a named member’s employee, prospective employee, former employee or the beneficiaries or legal representatives thereof, arising out of or connected to the member’s administration of PERS or legislatively imposed changes to PERS, including, but not limited to, any claim alleging negligence, breach of contract, breach of the duty of good faith and fair dealing, or liability arising under 42 USC Section 1983.

W. To the **member’s** actual or alleged failure to comply with ORS 243.303 or any other state or federal law requiring the **named member** to make health care insurance coverage available to retired officers and employees, or their spouses or children.

X. Any and all liability arising out of any operational, security, leasing, renting, maintenance, advising, land-use, or any other activities associated with railroads, railroad tracks, and railroad equipment.

This exclusion applies to all coverages under this coverage agreement: Section 2. COVERAGES, Coverage A, Coverage B, Coverage C, Coverage D, Coverage E, Coverage F, Coverage G, Coverage H, and Coverage I. A municipal trolley reported on the CIS Underwriting Exposure Questionnaire is not excluded.

However, this exclusion does not apply to the activities of member advisory boards not directly involved in the operational decisions of the railroad. It also does not apply to the **Member's** liability arising from the operation or use of vehicles designed and licensed for use on public highways that would otherwise be included as **covered autos**.

Y. To liability arising out the failure of any **member** to effect, adequately purchase or maintain any insurance, bond, self-insurance fund or employee benefit program.

Z. To liability arising out of or attributable to:

(1) the **member** gaining profit, advantage, or remuneration to which the **member** is not entitled; or

(2) the willful violation of any federal, state, or local statute, ordinance, or regulation by the governing body of the **named member** or any officer, employee, or agent of the **named member** acting with the authority and consent of the **named member**; or

(3) fines and penalties.

The actual or alleged conduct of a **member** shall not be imputed to any other **member** for the application of this exclusion.

AA. To liability or **claims** arising out of or connected to any sums due to taxing authorities, non-payment of taxes, non-payment of insurance, or non-payment of retirement plan contributions*.*

BB. Communicable Disease - Any liability, loss, damage, injury, cost, or expense of any kind whatsoever caused by, arising out of, related to, or resulting from, directly or indirectly, in whole or in any part:

(1) Any pathogen, virus, bacteria, parasite, or other microorganism; or

(2) Any action or inaction of any insured, or Party acting or failing to act on behalf of any insured, any action or order of a governmental representative, authority or agency undertaken to control, prevent, suppress, mitigate, test for, monitor, treat or remediate the actual, suspected, or anticipated presence, existence or transmission of any pathogen, virus, parasite, bacteria or other microorganism;

that actually or allegedly induces or is capable of inducing symptoms, physical distress, mental anguish, illness, or disease.

Limited Communicable Disease Coverage. Notwithstanding this exclusion, the Trust will pay, up to a per member lifetime maximum of $100,000, and subject to a pool lifetime aggregate of $5,000,000, legal costs necessarily incurred in defense of the member in claims or lawsuits against the member alleging covered claims. The Limited Communicable Disease Coverage is not stackable and cannot be used in conjunction with Section 11. LIMITED POLLUTION LIABILITY COVERAGE.

CC. Contractual Liability: This policy does not apply, nor does CIS have a duty to defend any claim or "suit" for "bodily injury," "property damage," or "personal and advertising injury" arising directly or indirectly out of the following:

(1) Breach of express or implied contract;

(2) Breach of express or implied warranty;

(3) Fraud or misrepresentation regarding the formation, terms, or performance of a contract; or

(4) Libel, slander, or defamation arising out of or within the contractual relationship.

This exclusion does not apply to the liability for damages:

a. That the insured would have in the absence of the contract or agreement; or

b. Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:

i. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

ii. Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

DD. PFAS – This insurance does not apply to any liability, loss, damage, cost, expense, fine, or penalty arising out of, resulting from, caused, or contributed by, or in any way related to PFAS, including, but not limited to:

(1) The actual, alleged, threatened, or suspected:

a. Inhalation of, ingestion of, contact with, exposure to, existence of, or presence of PFAS;

b. Design, manufacture, storage, processing, packaging, handling, testing, distribution, sale or disposal of PFAS;

c. Discharge, dispersal, seepage, migration, release, flaking, leakage, leaching, friability, release or escape of PFAS;

d. Providing or failing to provide warnings or instructions with respect to PFAS;

e. Warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of PFAS; or

f. Violation of any national, state, or local law or regulation related to PFAS.

(2) Any request, demand, order or statutory, regulatory or legal requirement of any kind

that any member of the **Member** Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, assess or remediate the effects of PFAS; or

(3) Any claim or suit by or on behalf of any governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of PFAS; or

(4) Any other injury or damage, liability, loss, costs, expense, fine or penalty arising out of or in any way related to PFAS including but not limited to punitive or exemplary damages.

(5) This exclusion applies regardless of whether the goods, products, materials, compounds, or substances that are defined as PFAS in the paragraph below are a solid, liquid or gas (including but not limited to dust, smoke, vapor, soot, or fumes).

(6) As used in this exclusion PFAS means:

a. any perfluoroalkyl or polyfluoroalkyl substances, including but not limited to: Perfluorooctane sulfonate (PFOS), Perfluorooctanoic acid (PFOA), Perfluorononanoic acid (PFNA), Perfluorodecanoic acid (PFDA), Perfluorobutane sulfonic acid (PFBS), N-Methyl-perfluorooctane sulfonamido acetic acid (Me-PFOSA-AcOH), Perfluorobutanesulfonate, Perfluorohexane sulfonic acid (PFHxS), Potassium Perfluorobutane Suflonate (PFBS), or ammonium perfluorooctanoate (APFO), GenX, including hexafluoropropylene oxide dimer acid (HFPO-DA);

b. any substance that, by whatever name known:

i. has a similar chemical formulary, formation, or structure to any substance listed in paragraph (a) above;

ii. is a derivative of or an intended replacement of any substance listed in paragraph (a) above;

iii. is an associated homologue, isomer, salt, ester, alcohol, acid, or is a related degradation or by-product, of any substance listed in paragraph (a) above;

iv. contains at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it); or

v. has been referred to by chemical structure, name or CAS Number, as a known or suspected PFAS, perfluoroalkyl, or polyfluoroalkyl chemical or substance in any foreign or United States federal, state or local statute, law, regulation, rule or written proposed rule, or governmental bulletin (including but not limited to publications of the United States Environmental Protection Agency) that had been published as of the effective date of this insurance; or

vi. any goods, products, materials, compounds, or substances that actually or allegedly consist of, contain, or are contaminated with any amount of the substances described in paragraphs (a) or (b) above.

EE. Cyber Liability - any loss, liability cost, damage, expense, fine or penalty resulting from or arising out of or related to, either directly or indirectly, in whole or in part, by an occurrence, or by the act, error or omission of any person resulting in unauthorized access, theft, alteration, corruption or disclosure of confidential, intellectual, proprietary or personal information and data including but not limited to customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion also excludes any liability for any loss, cost, damage, expense, fine or penalty, loss of use of, corruption of, inability to access, reduction in functionality, directly or indirectly caused by or contributed to or resulting from the following non-exhaustive list of events regardless of any other cause or other event contributing concurrently or in any other sequence to the loss, liability cost, damage, expense, fine or penalty:

(1) damage to or loss of data occurring on computer systems; or

(2) an unauthorized access of computer systems; or

(3) computer malware on computer systems; or

(4) human error affecting computer systems; or

(5) system failure occurring on computer systems; or

(6) a defect of computer systems; or

(7) social engineering; or

(8) cyber extortion.

This exclusion applies even if damages are claimed for notification costs, credit monitoring and repair expenses, forensic expenses, public relation expenses or any other loss, damage or expense incurred arising out of any access to or disclosure of any person's or organization's confidential, intellectual, proprietary, or personal information and data.

6. CONDITIONS

A. Duties of **Member** in the Event of a Claim or **Occurrence.**

(1) In the event of a **claim**, **occurrence**, suit, tort claim notice, or other communication or circumstance sufficient to reasonably put the **member** on notice of a covered **claim** or suit against the **member**, notice of such claim or suit shall be provided to **Trust** as soon as practicable. Such notice shall include the identity of the **member**, and also reasonably obtainable information as to the time, place, and circumstances of the **occurrence**, and the **member** shall immediately forward to the **Trust** every demand, notice, summons, or other process received by **member**.

(2) The **member** shall do nothing to prejudice the rights of **Trust** with respect to any such **claim** or **occurrence** and shall cooperate fully with **Trust** in the defense of such **claim** or **occurrence**, including providing documents and data to CIS pre-suit, allowing CIS to perform site inspections and interview staff, attending hearings and trials, and assisting in securing and providing evidence. The **member** shall not, except at its own cost, voluntarily make any payment, assume any liability or obligation.

B. Action Against the **Trust**.

As a condition precedent to action against the **Trust,** the **member** shall have fully complied with all the terms of this coverage agreement and the amount of the obligation shall have been finally determined either by judgment after actual trial or by written agreement between the **member**, the claimant and the **Trust**. No person or organization shall have the right under this coverage agreement to join the **Trust** as a party to any action against the **named member.** Bankruptcy or insolvency of the **named member** or of the covered estate shall not relieve the **Trust** of any of its obligations hereunder.

C. Subrogation.

In the event of any payment under this coverage agreement, the **Trust** shall be subrogated to all the **member's** rights to recovery thereof against any person or organization and the **member** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **member** shall do nothing to prejudice such rights.

D. Changes.

The terms of this coverage agreement shall not be waived or changed, except by an endorsement issued to form a part of this coverage agreement, signed by the **Trust's** authorized representative, and delivered to the **named member**.

E. Cancellation.

This coverage agreement may be canceled by the **named member** upon such notice as required by the **Trust** Bylaws, in which event the end of such notice period shall become the end of coverage period. The **Trust** agrees to remain on the risk subject to the termination provisions of the **Trust** Bylaws. Notice to the **named member** of any action taken pursuant to such provisions shall be sixty (60) days, except in the event of non-payment of any contribution due and owing, in which case notice shall be ten (10) days. Notice shall be in writing to the **named member** at the last address known by the **Trust** for the **named member.**

F. Non-Assignable.

A **member**’s rights, interests, and duties, either actual or expected, to defense, indemnity or payment cannot be assigned without the express written consent of the Trust. If any **member** executes a document purporting to assign the **member’s** rights to a third party, the **member** agrees to defend and indemnify the Trust in any litigation filed by the third party against the Trust. The **member** waives all defenses to the Trust enforcing this section, including fraud in the inducement and lack of capacity.

G. Coverage Period/Territory.

This coverage agreement applies to **occurrences** during the coverage period which take place anywhere, provided that resulting claims or suits are asserted within the United States of America, its territories or possessions, or Canada. Unless specifically stated otherwise, the time coverage becomes effective and terminates shall be understood to be 12:01 AM of the date so indicated.

H. Government Instrumentality.

The issuance of this coverage shall not be deemed a waiver of any statutory immunities as to any **member** nor of any statutory limits on the monetary amount of liability applicable to any **member** were this coverage agreement not in effect. The **Trust** expressly reserves any and all rights to deny liability by reason of such immunity and to assert any limitation provided by law as to amount of liability.

I. Other Coverage.

It is a condition of this coverage agreement that if, at the time of loss, there is other collectable insurance available to the **member** of any kind, this coverage shall become excess coverage and in no event contributing coverage and then only for the amount due the **member** under such forms of coverage. In no event, however, shall the liability hereunder exceed the limit of liability set forth herein.

J. No Stacking of Coverage Limits.

In the event an **occurrence** results in, or is alleged to have resulted in, injury or **damages** that continue in successive coverage years, only one "per occurrence" limit shall apply and there will be no "stacking" of coverage limits from more than one coverage year.

7. <u>ETHICS LEGAL EXPENSE COVERAGE</u>

A. The amount the **Trust** will pay shall be limited to $7,500 for any individual public official for all complaints arising in any one Fund Year.

B. The amount the **Trust** will pay shall be limited to $15,000 for all public officials of any one **named member** for all complaints arising in any one Fund Year.

C. The **Trust** shall have no obligation to pay for legal expenses under this section unless the public official notifies the **Trust** of a complaint within 30 days of first communication with the Oregon Governmental Standards and Practices Commission.

D. The **Trust** shall have no obligation to pay for legal expenses under this section unless defense counsel has been selected by the **Trust** or, if selected by the public official, approved by the **Trust**. Such approval shall not be unreasonably withheld.

E. The **Trust** shall have the right, but not the duty, to independently investigate any complaint alleging violation of ORS 244.040 or 244.120 to 244.130. As a condition precedent to any right to payment under this section, the public official shall fully and completely cooperate with such investigation. The costs, if any, of such investigation shall not reduce the payments otherwise payable under this section.

F. Payments for legal expenses shall normally be made as such costs are incurred, upon receipt by the **Trust** of adequate documentation. However, the **Trust**, in its sole discretion, shall have the right at any time to withhold payment until final resolution of a complaint. In such a case, no payment shall be made unless the public official shall have prevailed.

G. The **Trust** shall be subrogated, to the extent of any payments made under this section, to any amounts recoverable by the public official from the public body, other collectible insurance or pursuant to ORS 244.400.

8. <u>FINANCIAL RESPONSIBILITY LAW</u>

With respect to the ownership, operation, or use of **covered autos**, this coverage agreement is intended to satisfy the **named member's** self-insurance requirements under the Oregon Financial

Responsibility Law as set for as ORS 806.130(2), including coverage for persons using **covered autos** within the scope of permission granted to such person by an officer, employee, or agent of the **named member** with the authority to grant such permission. Provided, however, if such permissive user of a covered auto is not a **member**, this coverage shall apply only if there is no applicable insurance in force to comply with the Oregon Financial Responsibility Law (ORS 806.010 to 806.300) as to that person's use of the **covered auto**.

9. <u>LIMITED MEDICAL PROVISIONS AVAILABLE FOR CERTAIN AUTOS</u>

The **Trust** will advance payment for the reasonable expenses incurred by the **member, the member's** spouse, or the member's children for necessary medical treatment resulting from injury sustained while occupying a **named member's** vehicle which is a **covered auto** under this coverage agreement and which is being used within the scope of permission granted by the **named member**. In the event of payment to any person under this provision, such payment made shall be with the understanding and agreement that the **Trust** shall be entitled to reimbursement up to the full amount of the **Trust's** payments from any other medical, workers' compensation, or auto personal injury protection coverage available to that person. The maximum amount available under this provision is $10,000 per person, per occurrence.

10. <u>UNINSURED/UNDERINSURED MOTORIST COVERAGE</u>

A.

(1) Subject to the terms, conditions, and limitations of this Section 10., the **Trust** will pay all sums that the **member**, the heirs, or the legal representative of the **member** shall be legally entitled to recover as general and special damages from the owner or operator of an **uninsured vehicle** because of bodily injury sustained by the **member** caused by accident and arising out of the ownership, maintenance or use of the **uninsured vehicle**. Determination as to whether the **member**, the **member's** heirs or the **member's** legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the **member** and the **Trust**, or, in the event of disagreement, may be determined by arbitration as provided in subsection J. of this section. **Uninsured vehicle** includes **underinsured vehicle**, which is a **vehicle** with respect to which there is motor vehicle liability insurance that provides recovery in an amount that is less than the limit of liability applicable to **bodily injury** claims under this coverage agreement.

(2) No judgment against any person or organization alleged to be legally responsible for **bodily injury**, except for proceedings instituted against the **Trust** as provided in this policy, shall be conclusive, as between the **member** and the **Trust**, on the issues of liability of the person or organization or of the amount of damages to which the **member** is legally entitled.

B. ADDITIONAL DEFINITIONS

As used in this section:

(1) "**Bodily injury**" means bodily injury, sickness or disease, including death resulting there from.

(2) "**Hit-and-run vehicle**" means a vehicle that causes bodily injury to a **member** arising out of physical contact of the vehicle with the **member** or with a vehicle the **member** is occupying at the time of the accident, provided:

a. The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascertained;

b. The **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer, to the department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the **Trust** within 30 days thereafter a statement under oath that the **member** or the legal representative of the **member** has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

c. At the **Trust**'s request, the **member** or the legal representative of the **member** makes available for inspection the vehicle the **member** was occupying at the time of the accident.

(3) "**Member**," when unqualified and when applied to uninsured motorist coverage, means the **named member** as described in this Trust coverage agreement and any other person required to be designated as an "insured" under ORS 742.504 (2)(A).

(4) "**Member vehicle**," except as provided in paragraph (5) of the provision means:

a. the **vehicle** described in the most recent auto schedule on file with the **trust** or a newly acquired or substitute vehicle; or

b. a non-owned **vehicle** operated by the member provided that the actual use thereof is with the permission of the owner of the **vehicle** and the **vehicle** is not owned by nor furnished for the regular or frequent use of the **member**.

(5) "**Member vehicle**" does not include a trailer of any type unless the trailer is a described vehicle in this coverage agreement.

(6) "**Occupying**" means in or upon or entering into or alighting from.

(7) "**Phantom vehicle**" means a **vehicle** that causes bodily injury to a **member** arising out of a motor vehicle accident that is caused by a **vehicle** that has no physical contact with the **member** or the **vehicle** the **member** is occupying at the time of the accident, provided:

a. the identity of either the operator or the owner of the **phantom vehicle** cannot be ascertained;

b. the facts of the accident can be corroborated by competent evidence other than the testimony of the **member** or any person having an uninsured motorist claim resulting from the accident; and

c. the **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the **Trust** within 30 days thereafter a statement under oath that the **member** or the legal representative of the **member** has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof.

(8) "**State**" includes the District of Columbia, a territory or possession of the United States and a province of Canada.

(9) "**Stolen vehicle**" means a **member vehicle** that causes bodily injury to the **member** arising out of a motor vehicle accident if:

a. The **vehicle** is operated without the consent of the **member**;

b. The operator of the **vehicle** does not have collectible motor vehicle bodily injury liability insurance;

c. The **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer or to the equivalent department in the state where the accident occurred; and

d. The **member** or someone on behalf of the **member** cooperates with the appropriate law enforcement agency in the prosecution of the theft of the **vehicle**.

(10) "**Uninsured vehicle**," except as provided in paragraph (11) of this provision, means:

a. A **vehicle** with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the **vehicle**, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a **vehicle** is uninsured in the event the member and the **Trust**, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident.

b. A **hit-and-run vehicle**.

c. A **phantom vehicle**.

d. A **stolen vehicle**.

(11) "**Uninsured vehicle**" does not include:

a. A **member** vehicle, unless the **vehicle** is a stolen vehicle;

b. A **vehicle** that is owned or operated by a self-insured within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A **vehicle** that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;

d. A land motor **vehicle** or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a **vehicle**;

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

f. A **vehicle** owned by or furnished for the regular or frequent use of the **member.**

(12) "**Vehicle**" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

C. This coverage applies only to accidents that occur on and after the effective date of this coverage agreement, during the coverage period and within the United States of America, its territories or possessions, or Canada.

D.

(1) This coverage does not apply to bodily injury of a **member** with respect to which the **member** or the legal representative of the **member** shall, without the written consent of the **Trust**, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefore.

(2) This coverage does not apply to bodily injury to a **member** while occupying a **vehicle**, other than a **vehicle** covered by the Trust, owned by, or furnished for the regular use of, the **named member** or through being struck by the **vehicle**.

(3) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insured under any workers' compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.

(4) This coverage does not apply with respect to **underinsured motorist** benefits unless:

a. The limits of liability under any bodily injury liability insurance applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;

b. The described limits have been offered in settlement, the **Trust** has refused consent under paragraph (1) of this subsection and the **member** protects the **Trust**'s right of subrogation to the claim against the tortfeasor;

c. The **member** gives credit to the **Trust** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the **Trust** has consented under paragraph (1) of this subsection; or

d. The **member** gives credit to the **Trust** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the **Trust** has refused consent under paragraph (1) of this subsection, the **member** protects the **Trust**'s right of subrogation to the claim against the tortfeasor.

e. When seeking consent under paragraph (1) or (4) of this subsection, the **member** shall allow the **Trust** a reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The **member** shall provide promptly to the **Trust** any information that is reasonably requested by the **Trust** and that is within the custody and control of the **member**. Consent will be presumed to be given if the **Trust** does not respond within a reasonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the **Trust**'s receipt of a written request for consent, unless the **member** and the **Trust** agree otherwise.

E.

(1) As soon as practicable, the **member** or other person making claim shall give to the **Trust** written proof of **claim**, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The **member** and every other person making **claim** hereunder shall submit to examinations under oath by any person named by the **Trust** and subscribe the same, as often as may reasonably be required. Proof of **claim** shall be made upon forms furnished by the **Trust** unless the **Trust** fails to furnish the forms within 15 days after receiving notice of **claim**.

(2) Upon reasonable request of and at the expense of the **Trust**, the injured person shall submit to physical examinations by physicians selected by the **Trust** and shall, upon each request from the **Trust**, execute authorization to enable the **Trust** to obtain medical reports and copies of records.

F. If, before the **Trust** makes payment of loss hereunder, the **member** or the legal representative of the **member** institutes any legal action for **bodily injury** against any person or organization legally responsible for the use of a **vehicle** involved in the accident, a copy of the summons and complaint or other process served in connection with the legal action shall be forwarded immediately to the **Trust** by the **member** or the legal representative of the **member**.

G.

(1) The limit of liability stated in the declarations under Coverage F as applicable to "each person" is the limit of the **Trust**'s liability for all damages because of **bodily injury** sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages because of **bodily injury** sustained by two or more persons as the result of any one accident.

(2) Any payment made under this coverage to or for a **member** shall be applied in reduction of any amount that the **member** may be entitled to recover from any person who is a **member** under the bodily injury liability coverage of this policy.

(3) Any amount payable under the terms of this coverage because of **bodily injury** sustained in an accident by a person who is a **member** under this coverage shall be reduced by:

a. This coverage shall be excess over any other collateral benefits to which the injured member is entitled due to injury arising from the use of an uninsured vehicle, including, but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits.

b. Any amount payable under the terms of this coverage because of **bodily injury** sustained in an accident by a person who is a **member** under this coverage shall be reduced by the credit given to the **Trust** pursuant to subsection D. (4) c. or d. of this section.

c. The amount payable under the terms of this coverage may not be reduced by the amount of liability proceeds offered, described in subsection D. (4) b. or d. of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the **Trust**'s refusal to consent. The **member** shall cooperate so as to permit the **Trust** to proceed by subrogation or assignment to prosecute the **claim** against the uninsured motorist.

H. No action shall lie against the **Trust** unless, as a condition precedent thereto, the **member** or the legal representative of the **member** has fully complied with all the terms of this policy.

I. With respect to **bodily injury** to a **member**:

(1) While occupying a **vehicle** owned by a **named member** under this coverage, the insurance under this coverage is primary.

(2) While occupying a **vehicle** not owned by a **named member** this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess coverage shall then apply only in the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the applicable limits of liability of all primary insurance available to the occupant.

a. If a **member** is an insured under other primary or excess insurance available to the **member** that is similar to this coverage, then the **member's** damages are deemed not to exceed the higher of the applicable limits of liability of the additional primary coverage or excess insurance available to the **member**, and the **Trust** is not liable under this coverage for a greater proportion of the **member**'s damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this coverage and other primary or excess insurance available to the **member**.

b. With respect to **bodily injury** to a **member** while occupying any motor vehicle used as a public or livery conveyance, this coverage shall apply only as excess coverage over any other insurance available to the **member** that is similar to this coverage, and this coverage shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

J. If any person making **claim** hereunder and the **Trust** do not agree that the person is legally entitled to recover damages from the owner or operator of an **uninsured vehicle** because of **bodily injury** to the **member**, or do not agree as to the amount of payment that may be owing under this coverage, then, in the event the **member** and the **Trust** elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbitration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the costs to the **member** of the arbitration proceeding do not exceed $100 and that all other costs of arbitration are borne by the **Trust**. "Costs" as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. The Member and the **Trust** each agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the **member**, the arbitration shall be held:

(1) In the county and state of residence of the **member**;

(2) In the county and state where the **member**'s cause of action against the uninsured motorist arose; or

(3) At any other place mutually agreed upon by the **member** and the **Trust**.

K. In the event of payment to any person under this coverage:

(1) The **Trust** shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the **bodily injury** because of which payment is made;

(2) The person shall hold in **Trust** for the benefit of the **Trust** all rights of recovery that the person shall have against such other uninsured person or organization because of the damages that are the subject of claim made under this coverage, but only to the extent that the claim is made or paid herein;

(3) If the **member** is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the **member** shall have the election to receive from the **Trust** any payment to which the **member** would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the **member** may, with the written consent of the **Trust**, proceed with legal action against any or all persons claimed to be liable to the **member** for the injuries. If the **member** elects to receive payment from the **Trust** under this coverage, then the **member** shall hold in trust for the benefit of the **Trust** all rights of recovery the **member** shall have against any other person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent of the actual payment made by the **Trust**;

(4) The **member** shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(5) If requested in writing by the **Trust**, the **member** shall take, through any representative not in conflict in interest with the **member**, designated by the **Trust**, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of the **member**, but only to the extent of the payment made hereunder. In the event of a recovery, the **Trust** shall be reimbursed out of the recovery for expenses, costs and attorney fees incurred by the **Trust** in connection therewith; and

(6) The **member** shall execute and deliver to the **Trust** any instruments and papers as may be appropriate to secure the rights and obligations of the **member** and the **Trust** established by this provision.

L.

(1) The parties to this coverage agree that no cause of action shall accrue to the **member** under this coverage unless within two years from the date of the accident:

a. Agreement as to the amount due under the policy has been concluded;

b. The **member** or the **Trust** has formally instituted arbitration proceedings;

c. The **member** has filed an action against the **Trust**; or

d. Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the **member** has formally instituted arbitration proceedings or filed an action against the **Trust**.

(2) For purposes of this subsection:

a. "Date of settlement" means the date on which a written settlement agreement or release is signed by a **member** or, in the absence of these documents, the date on which the **member** or the attorney for the **member** receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.

b. "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment.

11. LIMITED POLLUTION LIABILITY COVERAGE

A. Subject to the provisions of this Section, and notwithstanding exclusion Section 5.I., the **Trust** will pay, up to the limits of coverage set forth in this section, the following, provided they arise out of and directly result from, a **pollution occurrence**:

(1) All sums the **member** shall be legally obligated to pay as damages because of **bodily injury** or **property damage**;

(2) Legal costs necessarily incurred in defense of the **member** in **claims** or lawsuits against the **member** alleging covered **claims**;

(3) Loss, cost, or expense arising out of the legal requirement or government direction or government request that the named **member** clean up, remove, treat, detoxify or neutralize **pollutants**; all arising out of a **pollution occurrence.**

B. ADDITIONAL DEFINITION – As used in this Coverage Part:

“Pollution Occurrence” is applicable only to the LIMITED POLLUTION LIABILITY COVERAGE section of the Coverage Agreement, and means the actual or alleged accidental discharge, dispersal, release, or escape of **pollutants** at or from the **named member’s** premises or facilities, or in connection with operations performed by the **named member**. A series of such actual or alleged incidents, or a continuous or repeated exposure to substantially the same general harmful conditions, shall be considered a single **pollution occurrence**, and if the **pollution occurrence** begins in one coverage period and ends in another, it shall be deemed to have taken place during the last such coverage period, and only one “per occurrence” limit, as set forth in the LIMITED POLLUTION LIABILITY COVERAGE section shall be available for such multi-period **pollution occurrence**.

C. This LIMITED POLLUTION LIABILITY COVERAGE does not apply to:

(1) A **pollution occurrence** from underground storage tanks or underground pipes or other component parts of underground pipe systems leading to or from underground storage tanks.

(2) Any **pollution occurrence** at a landfill owned or operated by the **member**.

(3) **Bodily injury** related to exposure to asbestos.

(4) Damage to property owned by, or in the care, custody or control of the **member**.

(5) A **pollution occurrence** at premises or facilities acquired by the **named** member on or after July 1, 2010, if the **member** knew, or with due diligence should have known, of the **pollution occurrence** at the time of the acquisition.

(6) **Claims** that are otherwise covered elsewhere in this coverage agreement.

D. Per **Member** annual limit. The most the **Trust** shall be obligated to pay under this LIMITED POLLUTION LIABILITY COVERAGE is $100,000 for any single **pollution occurrence**, or in the aggregate for any number of **pollution occurrences** for any single **member** in any coverage period.

Patrick Priest
Executive Director, CIS

Planning Commission Resources
March 2024

Oregon Planning Commissioner Handbook

Comprehensive Plan

Yachats Municipal Code

Zoning Map

Housing Needs Analysis - October 2022

Housing Implementation Plan - June 2023

Parking Management Study - October 2022

Draft Code Amendments - December 2023

Item #	Description	Assigned	Due Date	Status
1	Schedule next training session			02/23: Coordinate with Huy on next topic(s) and date
2	Complete Wetland Inventory	KG		02/23: Pending response from ODSL.
3	Continue Implementation of Yachats Parking Mgmt Plan			
4	Obtain City Council approval of updates to Title 9			02/23: Need review by DLCP
5	Amend Title 9 for Housing Implementation Plan			02/23: Determine if there will be a next round of DLCP funding. Contact Cascadia Partners to get estimate of cost of hiring them to complete task.
6	Revise/update City Comprehensive Plan			02/23: Commissioner to review existing and prioritize which section(s) to work on.
7	Update application fees	KG		02/23: Meet with Bobbie to set fees.

<u>Proposed Amendments to the Yachats Municipal Code, Title 9 – Zoning and Land Use</u>

(*December 2023 Final Draft*)

In 2022, the Planning Commission and City Planner identified problematic provisions of Title 9, Zoning and Land Use, of the Yachats Municipal Code and proposed appropriate amendments. The work began by focusing on two Code sections – 9.04.020. Purpose, and 9.04.030. Definitions. The following is the final draft of the Commission's proposed amendments approved at their December 2022 meeting, including a new section for the determination of height of buildings.

In 2023, the Planning Commission continued its work on problematic provisions of Title 9. This final draft now presents additional proposed changes to Title 9, specifically within the R-4 Residential Zone and C-1 Retail Commercial Zone, and Conditional Uses, for hotels, motels, resorts, inns, and hostels, and Off-Street Parking for hostels, as well as adding new conditional use permit standards and criteria. In addition, new site plan submittal requirements are included for Conditional Uses.

Title 9 – Zoning and Land Use

Section 9.04.020 Purpose.

<u>The following text shall substitute for the existing Purpose text:</u>

"The purpose of this title is to establish a set of zoning, subdivision, and land development regulations for the City designed to protect and promote the public health, safety, and general welfare, advance the position of Yachats as a small, coastal community, and achieve the following objectives:

1. Fulfill the goals of the City of Yachats Comprehensive Land Use Plan.

2. Ensure that land uses complement the natural beauty of Yachats' location and its environment, which has led to Yachats' long-standing reputation as "The Gem of the Oregon Coast."

3. Guide the establishment of public, commercial, professional and residential uses, including their siting, design materials, and landscaping, within reasonable variation, so that they shall enhance rather than detract from the quiet coastal ambiance of the City.

4. Ensure that sufficient vacant and redevelopable buildable land shall be zoned for residential uses to accommodate the projected increases in year-round and part-time populations and to provide a choice of housing location, type and price, to meet the needs of the Yachats community.

5. Ensure that new businesses shall be of an appropriate scale to retain and enhance the small-town, oceanside character of the Yachats community.

6. Protect residential, commercial, and public areas from the intrusion of incompatible uses, and insure preservation of adequate space for commercial, professional and other activities necessary for a healthy economy.

7. Promote safe and efficient movement of people and goods without sacrifice to the quality of Yachats' environment, and to provide for adequate off-street parking.

8. Encourage new development to use energy-efficient design, siting, and construction materials and methods.

9. Protect and enhance the City's natural, historic, and scenic resources, including the Yachats River estuary, City shorelands, and City water supply.

10. Regulate activities within geologic hazard areas of the City and limit development that may affect the integrity of steep slopes or impact fire hazards."

Section 9.04.030 Definitions.

The term "apartment" and its definition will be deleted.

The term "Porch" will be separated from the existing term "Deck/Porch" and defined separately.

The term "Lot Coverage" and its definition will be deleted, favoring instead the new term "Impervious Surface Ratio" and its definition.

The following new or revised definitions shall be added to, or substituted for, the existing definitions:

“Bed and Breakfast Facility”

“Means any single-family dwelling containing rooms for rent in accordance with Section 9.72.050 of YMC, excluding any dwelling that meets the definition of Dwelling, Vacation Rental.”

“Building Code”

“Means building, fire, safety, and other codes adopted by state, county and municipal agencies.”

“Building Coverage”

“Means the portion of the lot area that is covered by buildings. The area of the buildings shall be measured at their exterior perimeter. Buildings include dwellings, accessory structures, garages and carports.”

“Clear Vision Area”

“Means a triangle defined on two (2) sides by a minimum distance along vehicle pathways from the intersection of the curb line or, where no curb exists, the edge of the street, alley, or driveway surface edge, and on the third side by the line across the corner of the nonintersecting ends of the two (2) other sides. See the regulations of Section 9.64.010.A of this Title.”

“Deck”

“Means an unenclosed structure or platform, constructed outdoors, that may either be independent or attached to a building and is intended for the purpose of outdoor dining, lounging, and other similar accessory use.”

“Dwelling”

“Means a building or portion thereof which is occupied in whole or in part as a residence, either permanently or temporarily, by one or more families, but excluding hotels, motels, and resorts, with permanent provision for living, sleeping, eating, food preparation, and sanitation. Dwellings include both buildings constructed on-site and manufactured homes.”

“Dwelling, Accessory”

"Means an accessory structure specifically designed and permitted as an additional dwelling, which is incidental, appropriate, and subordinate to a primary dwelling on a property."

"Dwelling, Vacation Rental"

"Means a single-family dwelling, duplex, or multi-family dwelling which is rented, or held out as available for rent, either in full or in part, for periods of less than thirty (30) days, such as by the day or week, excluding any facility that meets the definition of "bed and breakfast facility." The dwelling may consist of individual units or be in a contiguous form to be considered a vacation rental dwelling; however: a) each individual unit is to be considered separately for licensing and regulation purposes in accordance with Chapter 4.08 of YMC, and b) no more than one (1) individual unit may be located in a single dwelling in the R-1 District; no more than two (2) individual units may be located in the R-2 District; and no more than five (5) individual units may be located in the R-3, R-4, and C-1 Districts. A dwelling that is listed with an agent as a vacation rental, advertised, available by referral, word of mouth, commendation or reputation are some of, but not limited to, the ways of identifying a vacation rental."

"Existing grade"

"Means the existing condition of the elevation of the ground surface at the time of permit application and which represents (1) the natural grade prior to placement of fill on the site or the excavation or removal of earth from the site, or (2) the manufactured grade following the completion of an approved grading operation including grading approved in conjunction with the subdivision of a site."

"Finished grade"

"Means the final grade of the site after all clearing and grading has been completed that conforms to an approved clearing and grading plan."

"Height of Building"

"Means the maximum vertical height of a building or structure measured from average finished grade to the highest point of a building or structure. (See Section 9.52.171 of the YMC for determining the height of a building.)"

(A new section – 9.52.171. Determining the Height of Buildings, is proposed at the end of this document that includes narrative and illustrative explanations for determining the maximum vertical height of buildings.)

“Hotel”

“Means any building used for lodging other than a motel or resort, containing six (6) or more guest rooms available for rent on a short-term [thirty (30) or fewer days], or long-term (extended stay), basis. The building has a lobby and check-in area, and is designed with interior corridors for accessing rooms without being outside. Guest rooms may include kitchen facilities, and guest amenities may include pool, gym, lounge, and accessory commercial uses such as restaurants, bars, gift shop, or day spa.”

“Hostel”

“Means budget-priced transient lodging where a traveler typically rents a bed in a shared room with communal bathrooms and access to shared kitchen facilities.”

“Impervious Surface”

“Means a surface that has been compacted or covered with a layer of material so that it prevents or is resistant to the infiltration of water, including, but not limited to, structures such as roofs, buildings, storage sheds; other solid, paved, or concrete areas such as streets, driveways, sidewalks, parking lots, patios, decks, porches, tennis or other paved courts; or athletic playfields comprised of synthetic turf materials.”

“Impervious Surface Ratio”

“Means a measure of the intensity of the use of a piece of land. It is measured by dividing the total area of all impervious surfaces within a site by the gross lot area.”

“Inn”

“See **Hotel** or **Motel**.”

“Lot line, Street Side”

“Means the side lot line at abutting street.”

“Motel”

“Means any building or group of buildings used for transient lodging other than a hotel or resort, containing six (6) or more guest rooms or units for rent on a short-term [thirty (30) or fewer days] basis. The building(s) is designed so that ingress/egress to guest rooms is from outside the building and a short distance from parked vehicles. Guest rooms may include kitchen facilities, and guest amenities may include a pool, gym, limited food and beverage services, lounge, and accessory commercial uses such as a gift shop."

"Parking Space, Accessible"

"Means an off-street parking space for handicap access to or from a vehicle, designed in accordance with any local, state or federal laws, including the federal Americans with Disabilities Act (ADA).

"Parking Space, Off-street"

"Means a parking space located outside of a public right of way, the numbers and dimensions of which are as required by Chapter 9.48 of YMC. Off-street parking spaces shall have all-weather surfaces such as gravel, pavement, tile, brick, or concrete suitable for parking a vehicle."

"Patio"

"Means a paved outdoor area adjoining a structure."

"Porch"

"Means a covered area adjoining an entrance to a building and usually having a separate roof."

"Resort"

"Means any building or group of buildings used for transient lodging other than a hotel, motel, or inn, containing six (6) or more guest rooms or units for rent on a short-term [thirty (30) or fewer days] basis, and designed primarily to accommodate vacationers, conferences, or events such as weddings. The building(s) have a lobby and a check-in area, and often occupy sufficient land area for multiple lodging options, conference facilities, guest amenities (ex. pool, tennis, gym), vehicle (including RV) parking, and accessory commercial uses, such as restaurants, bars, gift shop, day spa, and the like."

"Site Plan"

"Means a two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, of a property (or group of adjacent parcels or lots under the same ownership) that is subject to a permit application under this code."

“Transient Lodging”

“Means any facility, structure, or portion thereof occupied or intended or designed for occupancy by a guest or guests who pay rent or other consideration for dwelling, lodging, or sleeping purposes for a period of thirty (30) or fewer days.”

“Yard”

“Means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.”

“Yard, Front”

“Means an area lying between the side lot lines, the depth of which is a specified horizontal distance between the street line and a line parallel thereto on the lot.”

“Yard, Rear”

“Means an area lying between side lot lines, the depth of which is a specified horizontal distance between the rear property line and a line parallel thereto on the lot.”

“Yard, Street Side”

“Means a yard on a corner lot that is adjacent to a street between the front yard and the rear lot line measured horizontally and at right angles from the side lot line to the nearest point of a building.”

Proposed new section related to Height of Building:

Section 9.52.171. Determining the Height of Buildings.

“Calculating maximum vertical building height shall be accomplished as follows, and as illustrated below: Establish the finished grade at each building or structure primary corner. For each side of the building or structure, calculate the average finished grade. Add the average finished grades for all sides and divide by the number of sides. This will result in the average finished grade for the entire building or structure. Maximum vertical building height shall be measured from that point.

For purposes of calculating maximum vertical building height, use finished grades immediately adjacent to the building or structure's primary walls."

(SEE ATTACHED PDF)

Amending ***Chapter 9.24 R-4 Residential Zone****,* ***Section 9.24.020 Permitted Uses****, by modifying paragraph K. as follows:*

"K. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses."

Amending ***Chapter 9.24 R-4 Residential Zone****,* ***Section 9.24.030 Conditional Uses****:*

by modifying paragraph P. as follows:

"P. Motel, hotel, inn, or resort on less than 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses."

and by adding a new paragraph Q. as follows:

"Q. Hostels."

(Note to Commission and City Planner: We need to be sure that an applicant for a hotel, motel, inn, or resort cannot come in under paragraph K. of Conditional Uses.)

Amending ***Chapter 9.24 R-4 Residential Zone****,* ***Section 9.24.040 Standards****:*

by deleting paragraph A.4 in its entirety and re-lettering the remaining provisions;

by modifying paragraph G. Vehicle Access, by striking the words "…or to a motel.." from the first sentence.

Amending ***Chapter 9.28, C-1 Retail Commercial Zone, Section 9.28.020 Permitted Uses****, by modifying paragraph N. as follows:*

"N. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses."

Amending ***Chapter 9.28, C-1 Retail Commercial Zone, Section 9.28.030 Conditional Uses****:*

by modifying paragraph T. as follows:

"T. Motel, hotel, inn, or resort on less than 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.";

by modifying paragraph V.1, for formula businesses, as follows:

"1. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses."

and by adding a new paragraph U., and re-lettering thereafter, as follows:

"U. Motel, hotel, inn, or resort on a minimum of 1.0 acre, without direct access provided from U.S. Highway 101, and with or without accessory commercial uses."

and by adding a new paragraph W. as follows:

"W. Hostels."

Amending ***Chapter 9.52. Supplementary Use and Design Standards, by adding a new Section 9.52.190 Standards for Hotels, Motels, Inns, and Resorts****:*

"A. Standards for motels, hotels, inns, or resorts:

1. Ingress or egress to a motel, hotel, inn, or resort shall not be allowed from less than a thirty-five (35) foot public street right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles;
2. Motels, hotels, inns, and resorts shall not have vehicle access to or from a cul-de-sac or dead end street;
3. Parking areas associated with motels, hotels, inns, and resorts which are adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than five (5) feet in height, except where vision clearance is required;
4. Motels, hotels, inns, and resorts shall be designed to provide safe and direct access by emergency vehicles, as determined by the Yachats Rural Fire Protection District;
5. Except for security lighting for pathways, parking areas, and building doors, outdoor lighting fixtures for motels, hotels, inns, and resorts shall be extinguished every day between the hours of 11:00 p.m. to 5:00 a.m.."

Amending Chapter 9.72. ***Conditional Uses, Section 9.72.010 Authorization to grant or deny conditional use permits****, by adding a new paragraph B as follows, and re-lettering the paragraphs that follow:*

B. Prior to taking action on a conditional use permit application, the Planning Commission shall consider whether the proposed use complies with the following general standards and criteria:
   1. The proposed use conforms with the Yachats Comprehensive Plan.
   2. The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
   3. The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal mitigates difference in appearance or scale through such means as setbacks, screening, landscaping, or other design features.
   4. The transportation system can support the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.
   5. Public services for water, sanitary and storm sewer, water management, and for fire and police protection, can serve the proposed use.
   6. The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to: (a) Noise, glare, odor, litter, or hours of operation. (b) Privacy and safety issues.
   7. The proposal complies with all applicable provisions of the Yachats Municipal Code, or where the applicant has identified where the proposal does not comply, the applicant has obtained a Variance for such in accordance with Chapter 9.80 of this Code.
   8. Activities and developments within special purpose districts must comply with the regulations described in Section 9.52.050 (Geologic Hazard), Chapter 9.36 (Estuary Natural), and Section 9.54 (Flood Hazard), as applicable.

Amending ***Chapter 9.72. Conditional Use, Section 9.72.020, Procedure for Taking Action on a Conditional Use Application, to read as follows:***

A. "A property owner, contract purchaser, etc. may initiate a request for a Conditional Use by filing an application with the City Recorder.
B. The application shall consist of a completed Conditional Use application form signed by the property owner and contract purchaser or agent, if applicable, and a Basic or Detailed Site Plan, as specified below.
C. Application for approval of the following uses permitted by Conditional Use shall include the submittal of a Basic Site Plan:
   1. Home Occupation
   2. Temporary Real Estate Office

3. Bed and Breakfast Facility
4. Residential Facility
5. Private Boat Dock

D. Basic Site Plan – Two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, showing the following information:
1. Written scale, graphic scale, and north arrow.
2. Property boundaries with dimensions of each boundary.
3. Building setbacks to property lines.
4. Required off-street parking spaces and space dimensions.
5. Required yards, including streetside setback, if applicable.
6. Driveway and point(s) of ingress and egress.
7. Existing fences, walls, and hedges at property boundaries.
8. All zoning tabulations.

E. Application for approval of all other uses permitted by Conditional Use shall include submittal of a Detailed Site Plan.

F. Detailed Site Plan – Two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, showing the following information:
1. Date drafted, space(s) for revision date, with north arrow, drawn to scale of one inch equals twenty (1”=20’) feet, unless otherwise approved by the City Planner.
2. Written and graphic scale, if other than 1”=20’.
3. Total gross and net land areas of the entire site. (“Net” is minus the square footage of any land proposed for dedication to the public, not including easements.)
4. Label and show the lengths of all existing property lines of the development site.
5. Label and show the zoning designations, property boundaries, land uses, and approximate building locations of all adjacent properties.
6. Label and show the locations, widths, and names of all existing or platted adjacent public streets, alleys, sidewalks, planter strips, curbs, and other public rights-of-way, and other important features such as City boundary lines.
7. Either as part of the detailed site plan, or on a separate sheet drawn to the same scale as the site plan, existing site features shall be shown, including ground topography (contours), wooded or naturally vegetated areas, trees of 8 inches diameter of breast height (DBH) or greater, floodplains, shorelines, wetlands, riparian corridors, geologic hazard zone, and any existing buildings, roads, trails, fences, or other physical improvements, and all existing easements.
8. Label and show all existing natural drainage patterns, flow arrows showing existing and proposed drainage patterns, and existing and proposed swales, ditches, or other drainage ways.
9. Location, dimensions, use, coverage, and height of proposed buildings and proposed improvements in relation to property and street lines. Clearly indicate and label existing and proposed building elements, and their dimensions to adjacent property lines.

10. Dimensional features showing compliance with the applicable area, width, coverage, yard, vision clearance, natural resource protection standards, and other design standards as specified in this Chapter.
11. Location, dimension, and arrangements of proposed site elements including sidewalks, parking areas, site access, and interior circulation, off-street loading and unloading, trash disposal areas, and lighting for these areas.
12. Zoning tabulations based on the underlying zone or zones if split, including minimum lot area and proposed lot area (measured in square feet, or acres if exceeding one (1) acre); maximum gross floor area and proposed gross floor area, if applicable; maximum residential density and proposed residential density (measured in dwelling units per acre), if applicable; minimum yard areas and proposed yard areas; maximum building height and proposed building height, as defined and calculated in accordance with Section 9.52.171 of the Yachats Municipal Code; maximum building and impervious lot coverage and proposed building and impervious lot coverage; and minimum required parking and proposed (off-street) parking.
13. Location, dimensions, and arrangement of all areas devoted to open space, retention of existing trees and vegetation, proposed ground cover, trees and other native plantings, and recreation.
14. A copy of the last recorded subdivision plan of which the property is part.
15. Locations and designs of all on-site and off-site improvements related to access control and traffic capacity.
16. State or County Road Approach Permit, if applicable.
17. Any application for conditional use shall be accompanied by fully dimensioned design drawings, elevations, and plans for any proposed principal building or structure, or any addition to an existing principal structure. Drawings shall provide building height, materials, and colors to be used.

G. In the case where any or all of the above are unnecessary as in the case of a change of use in an existing structure, the City Planner shall determine which items in subsection (1) through (17) of this section will not be required for application. The Planning Commission may request additional items if they determine that these additional items are necessary to understand and make a decision on the application.
H. If the request for Conditional Use meets the requirements of this title, the City Recorder shall set a time for a public hearing on the request before the Planning Commission within forty (40) days from the filing thereof and shall cause notice to be given in accordance with Section 9.88.060.
I. At the conclusion of the public hearing, the Planning Commission may approve, approve with conditions, or deny the request, based upon the general and specific standards addressing the Conditional Use, pursuant to Chapter 9.88.

Amending ***Chapter 9.72. Conditional Uses, Section 9.72.050 Standards and Procedures Governing Conditional Uses****, by deleting paragraph A.*

Amending ***Chapter 9.48 Off-Street Parking and Loading, Section 9.48.010 General Requirements*** *by modifying paragraph L.3 as follows:*

"3. Motel, hotel, inn, or resort: one (1) space per guest room; hostel: one-half (1/2) space per bed."