1. 2:00 P.M. Agenda

   Documents:

   2025-04-15 Planning Commission WS And Regular Agenda.pdf

2. 2:00 P.M. Meeting Materials

   Documents:

   1-PD-PC-05 Creekside Findings And Conclusion.pdf
   Planning Commission Issues List.pdf
   2025-03-18 Planning WS And Reg Minutes Summary.pdf
   1-VAR-PC-25 502 Creekside Staff Report.pdf
   1-VAR-PC-25 Site Plan.pdf
   1-VAR-PC-25 Variance Application.pdf
   1-VAR-PC-25 Written Testimony.pdf
   502 Creekside Aerial.pdf
   Creekside Development Survey.pdf
   Cascadia Partners - Yachats Clear And Objective Review.pdf
   Cascadia Partners - Yachats DRAFT Code Concepts.pdf
   Cascadia Partners - Yachats Housing Legal Compliance Checklist.pdf
   Cascadia Partners - Yachats PMT 2 Notes.pdf
   DLCDs FAQ For FEMA Pre-Implementation Compliance Measures.pdf
   YMC Chapter 9.54 - FEMA Model Code Integration.pdf

3. Additional Documents Added After Meeting

   Documents:

   Housing Impementation.pdf

CITY OF YACHATS
PLANNING COMMISSION WORK SESSION AND REGULAR MEETING
Tuesday, April 15, 2025 at 2:00 pm
To Be Held Via Zoom and In Person at:
Commons Building, Civic Meeting Room 1
441 Highway 101 N, Yachats OR 97498

Work Session

Join Zoom Meeting
https://us02web.zoom.us/j/88930451065
Meeting ID: 889 3045 1065

I. Meeting Called to Order
II. Review of Cascadia Partners' Materials

Regular Meeting

I. Meeting Called to Order
II. Announcements and Correspondence
III. Citizens' Concerns (limited to items not on the agenda and 5 minutes per person)
IV. Public Hearings
   a. Case File #1-VAR-PC-25: 502 Creekside Variance Request
   b. FEMA PICM Model Code
V. Ongoing Business

VI. New Business
   a. Recommendations for Housing Code Advisory Committee
VII. Reports

This meeting is open to the public and all interested persons are invited to attend in person or via ZOOM. This meeting will be audio taped. The minutes of this meeting is the Audio Tape which will added to the packet after the meeting within 48 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 BY: Neal Morphis, City Clerk 4/8/25

a. Commission Chairs' Meeting
b. Planner's Report
c. Meeting Summary
d. Issues List

VIII. Other Business
a. From Commission
b. From Staff

This meeting is open to the public and all interested persons are invited to attend in person or via ZOOM. This meeting will be audio taped. The minutes of this meeting is the Audio Tape which will added to the packet after the meeting within 48 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 BY: Neal Morphis, City Clerk 4/8/25

BEFORE THE PLANNING COMMISSION
OF
YACHATS, OREGON

Request for 9-Lot Planned Unit Development **Order #1-PD-PC-05**

Applicant: Avenir Enterprises Limited Partnership

FINDINGS AND CONCLUSION

Modified Sep. 19, 2006

Nature of the Application

The request is for a planned unit development with nine (9) single family lots and three (3) open space/common areas. Access to the subject property is from an existing 50-foot wide easement off of King Street. Five lots are proposed to be accessed from the existing 50-wide easement and four lots from a new Creekside Lane which is a new cul-de-sac street off the 50-wide easement. Elk Mountain Road is to be extended north-south across the property.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision.

A. The subject property is located in the 1400 block of King Street (east of King Street) and further identified on Lincoln County Assessors Map #14-12-26BB as tax lots 600 and 700.

B. The property is zoned R-1 Residential with a Comprehensive Plan Map designation of Residential.

C. The two lots total 6.67 acres. Tax lot 600 totals 1.90 acres and tax lot 700 totals 4.77 acres.

D. There are no existing structures on the subject property.

E. Single family dwellings are located north, south, and west of the subject property. Land east of the property is undeveloped. The recently approved 15-lot Sunset Heights Subdivision and 30-lot Black Stone Subdivision are located south of the proposed Creekside Planned Unit Development.

F. Access to the subject property is from an existing 50-foot wide easement off of King Street.

G. Existing water and sewer services are available within the adjacent King Street right-of-way. Sanitary sewer service is proposed to connect to the existing King Street sewer line. Water and sewer services for the proposed development will need to be coordinated and approved by both Yachats Public Works and the Yachats Rural Fire Protection District.

H. The City's Natural Hazard map identifies the majority of the site as having slopes exceeding 30%.

   Agency Creek bisects the property, flowing from east to west.

I. The applicant submitted the land division application form, fee, preliminary plan, narrative addressing application requirements, topographic map for the western portion of the property, and additional narrative addressing PUD requirements and requests which are herein incorporated as part of the Findings and Conclusion.

J. A public meeting was held before the Yachats Planning Commission on February 15, 2005 at 7:00 p.m. in order to consider the applicant's request. Due notice of the meeting was given and all interested parties were given an opportunity to present testimony.

K. Written and oral testimony was provided. Testimony primarily addressed concerns about Agency Creek, storm drainage, and the location of Elk Mountain Road. The written testimony and minutes of the public hearing held before the Yachats Planning Commission on February 15, 2005 are hereby incorporated into the findings for City of Yachats, Case File #1-PD-PC-05.

September 2006 Request for Modification. Testimony received regarding the request to modify chief Albert Drive from a public street to a private street included two letters from property owners fronting Chief Albert Drive. Both letter were in support of the modification. The written and oral testimony and minutes of the public hearing held before the Yachats Planning Commission on September 19, 2006 are hereby incorporated into the findings for City of Yachats, Case File #1-PD-PC-05.

Relevant Yachats Municipal Code Criteria

Chapter 9.12 R-1 Residential Zone
Chapter 9.52 Supplementary Use and Design Regulations
Chapter 9.60 Planned Unit Development
Chapter 9.64 Street Construction and Design

Public Agency Comments

A. Yachats Public Works – More detail is needed in regards to water and sewer, i.e. water pump station(s); improvements needed for sustained fire flow, etc. Sewer generated by potential home sites impact existing capacity in downstream system. This needs to be addressed.

B. Yachats Rural Fire Protection District (YRFPD)-

1. YRFPD needs to be assured that adequate clearance (width) for emergency vehicle access is provided. More detail is needed, i.e. on-street parking.
2. On street parking restrictions are needed near the street intersections.

Findings

The following is a summary of the Planning Commission findings:

1. **R-1 Standards**
A planned unit development application may include modifications to lot standards when adequate access to major thoroughfares, adequate light and air circulation, recreational areas, open space and lot area per dwelling are provided. The Commission finds that modifications to the R-1 standards, as proposed, are appropriate given the proposed circulation, density and open space. Circulation will be provided via the improved 50 foot wide easement off King

Street and the new Creekside Lane. The 6.67 acre site allows a density of 37 single family dwellings. Nine (9) single family dwellings are proposed. The proposed development includes 4.50 acres of common area, approximately 67% of the site. A summary of modifications to the R-1 standards is provided below:

Lot Area: The R-1 standard requires a minimum lot area of 7,500 square feet. Lots #2, 3, 4, 6, 7, 8, and 9 have lot areas ranging between 5,015 and 6,800 square feet.

Lot Width: The R-1 standard requires a minimum lot width of 60 feet. Lots # 2, 3, and 4 have respective lot widths of 57.69', 46.72', and 35.10'.

The R-3 maximum building height standard of 30' is address below in the planned unit development findings.

2. **Hazard Areas**
The subject properties are identified on the City's Natural Hazards Map as having slopes exceeding 12%. Prior to development a geotechnical engineer shall provide a site analysis report in accordance with Yachats Municipal Code Section 9.52.050.

3. **Planned Unit Development**

Building Height. In a planned unit development no building shall exceed a height of thirty (30) feet except:

a. That the height increase can be justified on the basis of unique lot characteristics, topographical conditions or other natural features; and/or
b. That the height increase can be justified on the basis of amenities provided or concessions made by the developer for which some bonus incentive is warranted.

The Commission finds that the request for a maximum building height of 40 feet is justified due to the steep topographical conditions, natural features such as Agency Creek, the large percentage of dedicated open space, and the fact that the increased building heights will not adversely impact views towards the ocean since no residential development will occur east or uphill from the proposed development.

Minimum Size for Planned Unit Developments (PUD). A minimum of three (3) contiguous acres is required for a PUD in the R-1 zone. The subject property consists of 6.67 acres.

Density. The R-1 zone requires a minimum 7,500 square feet of land per lot. The 6.67 acre site allows a density of 37 single family dwellings. Nine (9) single family dwellings are proposed.

Common Area/Open Space. In a PUD, at least forty (40) percent of the land area will be dedicated or reserved as usable common outdoor living and open space land in residential, recreational or combination residential-commercial development, exclusive of required streets. Excluding street right-of-way, approximately 67% (4.5 acres) is proposed to be dedicated as common area.

Underground Utilities. In any development which is primarily designed for or occupied by dwellings, all electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits and similar facilities shall be placed underground by the developer unless waived by the planning commission.

4. **Conformity with the Comprehensive Plan.** The *transportation component* is a primary element of the Comprehensive Plan. The Yachats Village Circulation Plan is the transportation component of the Comprehensive Plan. The Village Circulation Plan identifies the future development of the East Side Trail through the subject property. The East Side Trail is proposed to eventually extend east from the Highway 101/Elk Mountain Road intersection near the north end of the city, south to the Highway 101/Prospect Street intersection. The pathway through the subject properties needs to be located to ensure that future trail extensions both north and south of the subject properties are feasible. This location may, or may not, be within the Elk Mountain Road right-of-way.

   The Comprehensive Plan identifies the need *for protection from natural hazards and disasters*. The subject property is in an area identified on the City's natural hazards map as having steep slopes. Development on steep slopes requires an evaluation and recommendations of a geotechnical engineer.

   The Comprehensive Plan identifies the provision of *adequate public services*, i.e. water, sewer, storm drainage, streets, and pedestrian ways. Final approval of the planned unit development shall include final engineering plans that are reviewed and approved by the Yachats Public Works Department and Yachats Rural Fire Protection District.

5. **Relation to Adjoining Street System**

   King Street will be the primary access to the newly created lots. King Street connects to Highway 101 north of the subject properties and south of the subject properties via 9th Street. King Street has an approximate paved width of 12 feet which is an inadequate width for two vehicles. The exception to this 12 foot width is from Highway 101 east to where it turns south where the existing pavement width is 20 feet (along the south side of the cemetery).

   It is city staff's understanding that several years ago the City agreed not to widen King Street, largely due to the neighboring property owners' requests to keep the narrow width so traffic speeds would be reduced. Staff identifies three possible options regarding King Street and development of the Creekside Planned Unit Development:

   (a) Do not require the developer to make any immediate or future off-site improvements to King Street;

   (b) Require the developer to widen King Street to a 20 foot width for approximately 25 lineal feet from the subject property's King Street access north to where King Street currently has a 20 foot paved width (where it turns west towards Highway 101);

   (c) Have the developer enter into an agreement not to remonstrate against a future formation of a Local Improvement District to widen King Street.

   Because the history associated with not widening King Street, and the potential to change this desire in the future and widen King Street, the Commission finds it is appropriate to have the developer enter into an agreement not to remonstrate against a future formation of a Local Improvement District to widen King Street.

   Existing 50' Road Easement (*Modified September 19, 2006*). The original condition of tentative approval regarding the existing 50' wide easement stated that "The existing 50' road easement shall be dedicated as a public street, and improved with a minimum 22 foot

wide paved surface. Street design and specifications shall be reviewed and approved by the City of Yachats and Yachats Rural Fire Protection District."

The 50' easement has been named Chief Albert Drive. In August 2006, the applicant requested a modification to the approved Creekside Planned Development. The modification is for Chief Albert Drive to be developed as a private street instead of a public street. At the time the application for the Creekside development was submitted, the only access to the property was via the existing 50' wide easement (Chief Albert Drive). Since a proposed cul-de-sac street (Creekside Lane) was going to 'feed into' Chief Albert Drive it needed to be a public street that would be constructed to public street standards. Now, there is an alternative public street access to the Creekside development via Elk Mountain Road.

Additionally, the engineer's have had difficulty designing Chief Albert Drive to public street standards due to steep slopes.

Therefore, due to a new existing public street access to the Creekside development (Elk Mountain Road) and the steep slope of Chief Albert Drive, the Planning Commission finds that is appropriate for Chief Albert Drive be a private street. The Planning Commission finds that public street access to the Creekside Planned Unit Development shall be from Elk Mountain Road and Wind Song Street. Chief Albert Drive will be a private 22-foot wide paved road that extends from King Street to Elk Mountain Road. Chief Albert Drive shall be maintained by the developer and/or homeowners association. A sanitary sewer line will be constructed within the Chief Albert Road easement as approved by the City. The City of Yachats and Yachats Rural Fire Protection District shall review and approve the final engineering design for the Chief Albert Road improvements.

Creekside Lane. The new Creekside Lane is proposed to have a 30' wide right-of-way with a 22' paved width.

Elk Mountain Road. The PUD shall provide for the continuation of the major and secondary streets existing in the adjoining subdivisions and for their proper projection when the adjoining property is not subdivided.

The proposed Elk Mountain Road identified on the applicant's site plan is a critical link in providing a new north-south road that will serve properties north of 10th Street. This proposed planned unit development, in combination with the recently approved Black Stone Subdivision (Case File #1-S-PC-03), Pruett Partitions (Case Files #2-PAR-04 and #3-PAR-04), and Sunset Heights Subdivision (Case File #1-S-PC-04) provide the opportunity for the new Elk Mountain Road to be constructed from the north end of Hanley Drive to the north end of the subject property (tax lot 600). Elk Mountain Road shall be stubbed to the northern property line of the Creekside Planned Unit Development for future connection to the north.

The alignment of Elk Mountain Road through the proposed Creekside Planned Unit Development currently does not align with proposed Elk Mountain Road through the Sunset Subdivision (adjacent on the south side). Approval of the Creekside Planned Unit Development shall be conditioned to include final engineering plans and construction of Elk Mountain Road north-to-south through the property and connecting to the planned Elk Mountain Road adjacent to the south. The City is not responsible for the design or construction of Elk Mountain Road. It shall be the responsibility of the Creekside Planned Unit Development developer to collaborate with the other property owners for the design and

construction of Elk Mountain Road. This includes collaboration with the developer of the Sunset Heights Subdivision as well as the property owner to the north to ensure that a connected Elk Mountain Road can be located, designed, and constructed to City approved standards.

6. **Easements.** Where alleys are not provided, easements of not less than five feet in width shall be provided on each side of the rear line or side line for necessary utility lines, wires, conduits, storm and sanitary sewers, gas and water. Easements of the same or greater widths may be required along boundary lines or across lots or parcels where necessary for the extension of utility lines, waterways and walkways, and to provide necessary drainage ways or channels. Easements shall be provided on the rear, sides, and fronts of properties. Additional easements, e.g. for pathways and utilities, may be required and shall be identified on the final planned unit development map.

7. **Blocks.** No block shall be longer than one thousand two hundred (1,200) feet between street lines. The existing 50' road easement from King Street to the north property line of tax lot 600 is approximately 760 lineal feet. Proposed Agency Drive is approximately 190 lineal feet.

8. **Public Access Ways and Pedestrian Ways.** The Planning Commission may require the land divider to dedicate to the public access ways ten to twenty (20) feet in width to connect to cul-de-sacs, to pass through oddly shaped or unusually long blocks, to provide for a network of public paths according to adopted plans. Developments shall provide for safe, well-marked pedestrian ways that do not conflict with vehicular traffic.

   The Comprehensive Plan/Village Circulation Plan identifies a public access way (East Side Trail) through the subject property. The final planned unit development plan shall include design and construction of the East Side Trail connection through the subject property. The alignment of the East Side Trail through the proposed Creekside Planned Unit Development shall connect/align with the East Side Trail through the Sunset Heights Subdivision (adjacent on the south side). Approval of the Creekside Planned Unit Development shall be conditioned to include final engineering plans and construction of East Side Trail north-to-south through the property and connecting to the East Side Trail adjacent to the south. The City is not responsible for the design or construction of the East Side Trail. It shall be the responsibility of the Creekside Planned Unit Development developer to collaborate with the other property owners for the design and construction of East Side Trail. This includes collaboration with the developer of the Sunset Heights Subdivision as well as the property owner to the north to ensure that a connected East Side Trail can be located, designed, and constructed to City approved standards. The pathway shall be safe, well-marked, and not conflict with vehicular traffic.

   A public pathway shall also be designed and constructed to connect the East Side Trail to the proposed Creekside Lane cul-de-sac. Public vehicular and pedestrian access shall be provided on both Creekside Lane and the 50' wide road easement.

9. **Parks and Open Space.** A conservation easement will be recorded prior to conveyance to the owners association precluding development of Tracts A, B, and C except for the trails, benches, picnic tables, and other common elements provided for in the CCRs. Tracts A, B,

and C are heavily wooded. Commercial logging and development activity shall be prohibited.

Tract B will provide continuation of a connected open space system that will stretch from the Creekside Planned Unit Development south through the Sunset Subdivision, Pruett properties, and Black Stone Subdivision. This connected open space system has been referred to as Elk Park or Elk Mountain Park. Improvements through this open space system are envisioned to be limited to a public pedestrian system (East Side Trail) and pedestrian amenities, e.g. benches, picnic tables, scenic overlooks, etc.

Also, there has been speculation that a new road could be constructed along the eastern (uphill) portions of the surrounding properties that would connect Elk Mountain Road and Horizon Hill Road. This would provide a secondary vehicular access for residents and emergency vehicles. The dedication of Tract B as open space shall not preclude the possible development of this road.

The applicant shall provide a preliminary plan for Tract B development including identification of Elk Mountain Park, pedestrian trails, and the possible eastern (uphill) road. This will require coordination with the developers/property owners of the Sunset Heights Subdivision, Pruett properties, and Black Stone Subdivision.

10. **Water.** All lots shall be served by the City's public water system. No plat of a planned unit development shall be approved unless the city has received and accepted either 1) A certification by the city water superintendent that water will be available from the nearest point of supply; or 2) A performance agreement, bond contract or other assurance that a water supply system will be installed by or on behalf of the developer to every lot or parcel depicted in the proposed planned unit development.

    Final engineering plans for water services, prepared by the applicant, shall be reviewed and approved by the Yachats Public Works Department and Yachats Rural Fire Protection District (YRFPD). The applicant/developer shall be responsible for any costs the City incurs to have an engineer, acting on behalf of the City, review the final engineering plans.

11. **Sewer.** No plat or map of a planned unit development shall be approved unless the city has received and accepted either 1) A certification by the city sewer superintendent that sewage service will be available at the nearest point of collection; or 2) A performance agreement, bond, contract or other assurance that sewage disposal lines will be installed by or on behalf of the developer to the boundary line of each and every lot or parcel depicted in the proposed planned unit development.

    Final engineering plans for sewer services, prepared by the applicant, will need to be reviewed and approved by the Yachats Public Works. The applicant/developer should be responsible for any costs the City incurs to have an engineer, acting on behalf of the City, review the final engineering plans.

Conclusions

Based on the above facts and findings, the Yachats Planning Commission finds:

A. The site under consideration is suitable for the proposed nine (9) lot planned unit development considering the conceptual design and location.

B. The proposed use and site plan are compatible with existing and projected uses on surrounding lands.

C. The use does not create a public nuisance or an unreasonable hazard to health or property because of excessive noise, smoke, odor or dust, and does not constitute an unusual fire, explosion or other physical hazard.

D. This application and conceptual plan satisfy the provisions of the Yachats Municipal Code and Comprehensive Plan.

Order

It is ORDERED by the Yachats Planning Commission that Case File #1-PD-PC-05 for the requested nine (9) lot planned unit development be and is hereby approved. Said approval is subject to the following conditions:

1. **Planned Unit Development (PUD) Map.** Within one year after the approval of the preliminary plan, a map of the PUD shall be submitted to the Planning Commission for approval. The map shall be a survey of the PUD or a photographic copy thereof. The map shall be in substantial conformity to the approved preliminary plan and conditions of approval. In addition to the information as required on the preliminary plan, the following information shall be provided:
   a. Accurate legal description of all parcels and roads;
   b. The deed dedicating to the public all common improvements, including but not limited to streets and roads, the donation of which was made a condition of approval of the preliminary plan for the P.U.D.;
   c. A copy of all protective deed restrictions;
   d. Street and drainage construction plans;
   e. The certification, performance agreement or statement regarding the availability of water and sewerage services as provided in Section 9.60.040;

2. **Tract B.** Prior to or at the time the PUD map is submitted to the Planning Commission, the developer shall provide a sketch of Tract B development identifying Elk Mountain Park, pedestrian trails, and potential roads.

3. **King Street.** The developer shall enter into an agreement with the City not to remonstrate against the future formation of a Local Improvement District to widen King Street. This agreement applies to the entire Creekside Planned Unit Development and will be described in a deed for each lot.

4. **Existing 50' Road Easement *(Modified September 19, 2006)*.** Public street access to the Creekside Planned Unit Development shall be from Elk Mountain Road and Wind Song Street. Chief Albert Drive will be a private 22-foot wide paved road that extends from King Street to Elk Mountain Road. Chief Albert Drive shall be maintained by the developer and/or homeowners association. A sanitary sewer line will be constructed within the Chief Albert Road easement as approved by the City. The City of Yachats and Yachats Rural Fire Protection District shall review and approve the final engineering design for the Chief Albert Road improvements.

5. **Creekside Lane.** Creekside Lane shall have a minimum 30 foot right-of-way with a 22 foot wide paved surface with parking only allowed on one side of the street as approved by the Yachats Rural Fire Protection District.

6. **Elk Mountain Road.** Development shall include final engineering plans and construction of Elk Mountain Road from the south end to the north end of the subject property. Elk Mountain Road shall connect to Elk Mountain Road through the Sunset Heights Subdivision to the south, and shall be stubbed to the north property line of the planned unit development for future extension.

   It is the responsibility of the Creekside Planned Unit Development developer to collaborate with the other property owners for the design and construction of Elk Mountain Road. This includes collaboration with the property owners/developers of the Sunset Heights Subdivision and property owner to the north. At the time the final planned unit development map is submitted to the Planning Commission, the developer shall provide a site plan showing the proposed Elk Mountain Road alignment and topography (slope).

7. **Pathway.** A north-south oriented public pathway shall be constructed along Elk Mountain Road or nearby vicinity through the subject properties with stub out allowing future extension to the north. The pathway shall connect to the public pathway being constructed in the Sunset Heights Subdivision to the south. The pathway shall also connect to the Creekside Lane cul-de-sac. The pedestrian pathway shall be a minimum six feet wide and ADA accessible unless topographic constraints prevent handicapped access. The pathway shall be safe, well-marked, and not conflict with vehicular traffic.

8. **Geotechnical Report.** Final constructions plans for streets, pathways, water, sewer, storm drainage, and other infrastructure shall be in accordance with recommendations of a geotechnical report. Prior to construction, the geotechnical engineer shall provide a certification to the City of Yachats certifying that the planned unit development plans are in accordance with the recommendations of the geotechnical report.

9. **Final Construction Plans.** Prior to construction, final construction plans for adequate public services including water, sewer, storm drainage, streets, and pedestrian ways shall be submitted to the City and the Yachats Rural Fire Protection District for review and approval. The applicant/developer shall be responsible for any costs the City incurs to have an engineer, acting on behalf of the City, review the final engineering plans.

10. Five-foot **easements** shall be provided on the front, rear and sides of properties. Additional easements, e.g. for pedestrian access, utilities, or emergency vehicle access, shall be identified on the final planned unit development map.

11. All **lots and parcels** shall satisfy minimum lot area, width and depth requirements as described on the Tentative Plan for Creekside Planned Unit Community dated February 15, 2005.

12. **Common areas**, as to be shown on the final planned unit development map to be reviewed and approved by the Planning Commission, shall be dedicated as open space/common area.

13. All **utilities** shall be placed underground by the developer, i.e. electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits and similar facilities.

14. Prior to construction, the applicant shall provide a **performance agreement**, bond, contract or other assurance that water service and sewage disposal lines shall be installed by or on behalf of the developer to the boundary line of each and every lot or parcel depicted in the proposed planned unit development.

This (modified) ORDER was presented to and approved by the Yachats Planning Commission on September 19, 2006.

_____ _____

Katherine Guenther, Yachats Planning Commission Vice Chair Date

PLANNING COMMISSION ISSUES LIST as of 03/18/25

Item #	Description	Assigned	Due Date	Status
1	Schedule next training session	KG		01/21/25: Completed training with Hui. Do we need another to elaborate on topics discussed? 12/17: KG to meet with Hui R. about training on commission roles, staff relations, meeting practices. 03/12: KG to talk to Hui about guidance on best practices to update Comp Plan. 02/23: Coordinate with Hui on next topic(s) and date.
2	Complete Wetland Inventory	KG		**03/18: KG has received questions from DSL regarding inventory.** 11/19: BP and KG met with DSL week of 11/11. No additional info required. No completion date given**.** 10/28: BP and KG met with DSL and Pacific Habitat to answer questions about inventory. All questions answered. 10/08: State Lands reviewing some minor discrepancies. 09/16: City Mgr. has contact in state govt and is escalating. 08/19: Mayor using state contact to escalate.05/21: KG contacted by State Lands. We are next in line for review. 04/16: KG sent email to State for update. 04/09: No update. 03/12: No update from ODSD. Link to State Lands Inventory to be added to links page. 02/23: Pending response from ODSD.
5	Amend Title 9 for Housing Implementation Plan			02/18/25: Contact changed at Cascadia. KG to forward questions to new contact**.** 01/02/25: KG to reach out to Rachel at Cascadia with final version**.**12/27: Draft questions forwarded to Yachats PM for review**.** 12/10: Creating questions for CP to review. 11/18: Had kickoff meeting. See meeting minutes. 10/15: Selected MS and MA for PMT. City conducting workforce housing survey. Will provide results**.** 10/08: Reviewed Statement of Work. Discussed various aspects of how project will proceed. Will discuss members of PMT at next meeting**.** 06/11: Cascadia Partners to start in the fall. 05/21: Will start review of Plan for new commissioner in 06/11 meeting**.** 05/14: Funding for implementaion approved by state. Waiting to see review scope of work document from Cascadia Partners. Will review plan with PC. 03/12: Waiting to see if 2024 State budget contains money to fund another round of grants. KG to check if what other communities. 02/23: Determine if there will be a next round of DLCD funding. Contact Cascadia Partners to get estimate of cost of hiring them to complete task. have made changes for HIP.

6	Revise/update City Comprehensive Plan			11/18: Identified Goal G as one to focus on. Cascadia Partners offered assistance of their urban planner. Developing questions to as them. Located proposed updates in Housing Plan appendix. 10/08: Identified Goals that may need updating. 09/17: Will start review of plan with next work session. 03/12: PC to wait on #1, #5 or #8 before proceeding. 02/23: Commissioners to review existing and prioritize which section(s) to work on.
7	Update application fees	KG		10/28: Review completed. to present new fees to City Council in Nov. 10/08: City Mgr reports continued progress on review. 09/17: City Mgr review almost complete. 06/11: Now part of general review of all city fees. 03/12: Bobbie committed to meet with KG soon. 02/23: KG to meet with Bobbi to set fees.
8	Ordinance for ADU's			11/18: Discussed with Cascadia Partners in kickoff meeting. They will emphasize this in their updates to regs. 09/17: Discussed definition of ADU. Will defer until Cascadia Partners. 08/20: Have agreement with most major policy decisions. Will continue at next meeting. 07/09: Began review of various approaches to regulation. If time permits, will continue review 07/16. 06/11: Commissioners to research documentation and laws in other cities. To discuss in 07/09 meeting. 05/14: On hold to see if can be included with HIP. Collecting information from various sources. 04/09: Present concept in public forum prior to writing ordinance. 03/12: KG to look at getting copies of Waldport ordinance as well as relevant parking ordinances.
11	Consolidate minor updates to ordinances			06/11: On hold until after completion of #4. 04/16: Minor error in Fences and Hedges standard pointed up need to identify and consolidate into one list other minor changes/corrections to ordinances. KG to retrieve existing list for review.

12	Content for city social media			**03/17 Content on ADU submitted to BP.** 01/14/25: Content reviewed by commission and submitted to BP for 02/25 newsletter. 12/10: Needs content to create article. MS to provide. 10/22: Sent email to TD asking if interested in writing for e-newsletter. 10/08: Need to identify resource on commission to provide content.
13	Include updates to Title 9 in city document			11/19: Followup to make sure that changes approved by City Council are added in writing to Title 9.
14	Create Folder for Cascadia Partners Document	KG		12/10: KG to talk to Neal about organization of documents**.** 11/19: KG to create folder on website to store all documents.
15	Update mobile home regulations			**03/26: To be included in code updates by Cascadia.** 12/10: Needs review to update to current state law.

CLOSED PLANNING COMMISSION ISSUES				
9	Add to Urban Growth Boundary			4/09: State passed legislation allowing for increase of UGB up to 50 acres with reduced requirements. Should city pursue? **With no expressed need to expand, decided not to pursue. CLOSED**
10	Credit at COG			**05/14: With state funding for HIP and money in budget from planning consultation, will not need COG. CLOSED.** 04/09: City has credit at COG for possible consultant. Could we use for HIP? Bobbi to look into this. May not be that straightforward.
3	Continue Implementation of Yachats Parking Mgmt Plan	LD		**10/08: Public Works reports that all projects in plan that can be completed have been completed. Closed.** 06/11: Continuing to make progress on various projects**.** 05/14: Public works to provide city with update. 04/16: LD to meet with Public Works tomorrow for update. 03/19: LD sent email and will meet with Public Works to discuss. 03/12: Public Works will probably implement portions of the plan at a time. LD to meet with Public Works to discuss next steps.
4	Obtain City Council approval of updates to Title 9			**11/20: Approved unanimously by City Council. Closed.** 10/26: 1st public hearing with City Council held. No major issues. Second public hearing in Nov. 10/08: On schedule to present at next City Council meeting on 10/23**.** 09/12: Update from KG that with delay of review by DLCD and internal issues may not make City Council agenda until Nov. 06/11: Reviewed and approved changes to building height calculation. KG to send update to DLCD with approved changes. 5/21: Final draft approved by commission. KG to advise DLCD of changes. 05/14: At DLCD for review. Completed review of draft with PC today. Final review 05/21. Postponed public meeting to 07/16**.** 04/09:Waiting on marked up version. Review in 05/14 Work Session. Present in public meeting 06/18. 03/12: PC members to review and familiarize themselves with content. Need review schedule added to application. KG to put out marked up version. 02/23: Need review by DLCD.

CIY OF YACHATS
PLANNING WORK SESSION & REGULAR COMMISSION

MEETING SUMMARY MINUTES
City Hall, 441 Hwy 101 N, OR 97498
Tuesday, March 18, 2025

WORK SESSION

1. **Planning Work Session Commission Meeting 2:00 pm**
2. **Call to Order by Tod Davies**
3. **Roll Call**

Committee Members	P/A
Marc Sakamoto, Chair	**P**
Tod Davies, Vice Chair	**P**
Craig Hogan	**P**
Loren Dickinson	**P**
Mary Aebi	**P**
Jolene Gosselin	**A**

Staff Members	
Bobbi Price, City Manager	Kimmie Jackson, City Recorder
Neal Morphis, City Infrastructure Clerk	

Audience
9

1. **City Manager Bobbi Price led the discussion on the roles and responsibilities of the City Council, Staff, and Commissions.** The timeline for the City Council Goal setting was outlined, including the need for the Planning Commission to identify their goals in November for submission during the Council's goal-setting session and an adjustment to the administrative policy to

schedule goal setting for the Planning Commission in November instead of January. The rest of the discussion focused on fostering collaboration to achieve city planning goals.

2. **The Vice Chair announced her resignation and the need to appoint another member.**

Motion:	The motion was made to appoint Mary Aebi as vice chair			
Moved:	Davies			
Seconded:	N/A			
Ayes:	Hogan, Dickinson, Davies, Aebi, and Sakamoto	Nays: 0	Absent: 1- Gosselin	Abstained: 0
Passed:	5/1			

Adjourned Planning Commission Work Session 2:56 pm

REGULAR MEETING

1. **The meeting was called to order by Chair Marc Sakamoto**
2. **Roll Call: attendance did not change.**
3. **Announcements / Correspondence**
4. **Citizens' Concerns (5-Minute Limit)**
   a. None
4. **Ongoing Business**
   a. None
5. **New Business**
   a. Discussion of YMC Section 9.88.010.Consequences for non-compliance with Title 9.

      FEMA model code and what this means for the City Council. Planner Guenther points out that these updates will complicate the permit process. The Council may temporarily pause development until the new model code is finalized. There are concerns about the model code's effect on properties in floodplains. If development destroys any habitat, developers must create new habitats to offset that loss.

The group generally agrees that the new regulations present challenges. However, they may be necessary to protect floodplains and ensure compliance with federal aid requirements. Overall, the discussion reflects a careful approach to dealing with the new regulations while considering the city's needs.

6. **Reports**
   a. Meeting Summary (Information only)
   b. Planners Report - Link

      Planner Guenther stated that significant progress is being made on the local wetlands inventory. A retired wetland specialist from the Department of State Lands (DSL) has been contracted to help finalize the inventory, which provided feedback, raising questions and comments regarding specific wetlands, including clarifications on city limits and properties previously flagged for potential wetland status. He also identified properties by their tax map numbers that may not have been adequately studied; they need to be classified as "unknown" wetlands to ensure proper permitting when development permits are submitted. There is uncertainty about whether to attempt additional fieldwork on unexplored properties or simply mark them as unexplored, impacting how development permits are processed.

      Ongoing efforts are underway to revise the fee schedule related to planning applications.
   c. Fire Dept - No report

7. **Adjourn City Council Meeting 4:15 pm**

Minutes prepared by Kimmie Jackson, City Recorder

CASE FILE: 1-VAR-PC-25
DATE FILED: March 11, 2025
DATE APPLICATION DEEMED COMPLETE: March 14, 2025
HEARING DATE: April 15, 2025
PREVIOUS ACTION: Case File #1-PD-PC-05

STAFF REPORT

Variance Application

APPLICANT: Dan Hill and Nick Paino (Arbor South Architecture) for Joseph Uhan (Property Owner)

A. REPORT OF FACTS

1. **Property Location:** The subject property is located at 502 Creekside Lane and is described on Lincoln County Assessor's Map 14-12-26-BB as Tax Lot 6700.
2. **Applicant's Request:** The applicant is requesting a variance to reduce a street side yard setback. The Elk Mountain Road frontage is considered a street side yard. In the R-1 Residential Zone, a street side yard is required to be a minimum of 20 feet. The applicant is proposing to reduce this setback to 12 feet.
3. **Zoning:** Residential Zone R-1
4. **Plan Designation:** Residential (PUD)
5. **Lot Size and Dimensions:** The subject property is 0.18 acres, or 7885 square feet, with approximate dimensions of 75 x 100 feet.
6. **Existing Structures:** None
7. **Topography:** The subject property is extremely steep with a roughly 35% grade from north to south.
8. **Surrounding Land Use:** Properties immediately adjacent include undeveloped R-1 lots in the Creekside PUD and 4.21 acres of Creekside Common Area (or, dedicated open space). The Windsong subdivision is to the south on Elk Mountain Road and Yachats Memorial Park is north.
9. **Utilities:** Water and sanitary sewer – City of Yachats. Electric – Central Lincoln PUD.
10. **Development Constraints:** Steep slopes.

B. EVALUATION OF REQUEST

1. **Applicant's Proposal:**
   The applicant submitted the required variance application form and fee, a narrative addressing the relevant criteria and a detailed site plan.

2. **Relevant Yachats Municipal Code (YMC) Criteria:**

Yachats Municipal Code Section 9.12.040 Standards R-1 Residential Zone
Except as provided in Chapters 9.44, 9.48, 9.52 and 9.72, in an R-1 zone the following standards shall apply:

A. Lot Size and Dimensions. The minimum lot size and dimensions in an R-1 zone shall be as follows:

1. The minimum lot area shall be 7,500 square feet when the lot is served by both a public water supply and public sewage system. **(Not applicable)**
2. The minimum lot area shall be 20,000 square feet when a lot is served by a public water supply system, but cannot be practically served by a public sewage disposal system. **(Not applicable)**
3. The minimum lot width at the front building line shall be 60 feet for an interior lot and 65 feet for a corner lot when a lot is served by both a public water supply and sewage disposal system. **(Not applicable)**
4. The minimum lot width at the front building line shall be 70 feet for an interior lot and 75 feet for a corner lot when a lot is served by a public water supply system, but not by a public sewage disposal system. **(Not applicable)**
5. The minimum lot depth shall be 80 feet. **(Not applicable)**
6. Landfill of dirt and rock only. **(Not applicable)**
7. Hazard areas: **(Not applicable)**
   a. Hill-side building sites, see Chapters 9.44 through 9.52;
   b. Flood-prone areas, see Chapter 9.54.
8. Undersize lots, see Chapter 9.76. **(Not applicable)**

B. Yards. The minimum yard requirements in the R-1 zone shall be as follows:

1. Front yard shall be a minimum of 20 feet.
2. Each side yard shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater. Corner side yards shall not be used for clothes lines, incinerators, permanent storage of trailers, boats and recreational vehicles nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.
3. The street side yard shall be a minimum of 20 feet.
4. The rear yard shall be a minimum of 10 feet, except that on a corner lot it shall be a minimum of either five feet or one foot for each three feet of building height, whichever requirement is the greater.

5. All patio structures and swimming pools shall be a minimum of five feet from any side or rear property line. **(Not applicable)**
6. No structure shall be located closer than 60 feet from the center line of any state highway, nor 45 feet from the center line of any collector or arterial street. **(Not applicable)**
7. A fence, wall, or sight-obscuring fence may be established and maintained immediately adjacent to an abutting property line provided it is no more than six feet in height (except where the clear-vision area would be impaired as defined in YMC Section 9.64.010), or no more than eight feet in height when permitted by conditional use in accordance with Chapter 9.80 of the YMC. When such a fence, wall, or sight-obscuring fence is placed on top of a retaining wall, the combined height of the wall and fence shall not exceed eight feet. **(Not applicable)**

C. Building Height. No building in the R-1 zone shall exceed a height of 30 feet from finished grade or from natural grade, see Chapter 9.52.180. **(Not applicable)**

D. Lot Coverage. Structures, including, but not limited to buildings, porches and decks shall not occupy more than 30% of the total lot area. **(Not applicable)**

E. Off-Street Parking. Refer to Chapter 9.48 – Off-Street Parking and Loading for parking requirements. **(Not applicable)**

F. General Criteria. The vehicle and pedestrian access to the site can be safely and efficiently provided and the necessary utility systems and public facilities are available with sufficient supply and distribution capacity. If not provided by the City, it shall be the responsibility of the developer to insure these standards are met. **(Not applicable)**

Yachats Municipal Code Section 9.52.160 General exceptions of yard requirements.

The following exceptions to the yard requirement for a lot in any zone:

A. The required front or rear yard for a dwelling need not exceed the existing or probable average depth of the nearest front or rear yards of dwellings on all lots within 100 feet on both sides of the proposed dwelling. **(Not applicable)**

B. When an attached or detached garage is to be built on a lot having an average elevation at least 10 feet higher (or lower) than street level, the front of the garage may be located five feet from the front property line or at the point where ground elevation is five feet higher (or lower) than the street level, whichever is greater. The garage and driveway shall be constructed in such a manner as to minimize traffic hazards resulting from backing onto an adjacent street.

Yachats Municipal Code Chapter 9.80 Variances

Section 9.80.010. Authorization to grant or deny variances.

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

Section 9.80.020. Circumstances for granting a variance.
A variance may be granted only in the event that all of the following circumstances exist:

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;

B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

D. The variance requested is the minimum variance which would alleviate the hardship;

E. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance.

Section 9.80.030. Variance procedure.
The following procedures shall be followed in applying for action on a variance:

A. A property owner may initiate a request for a variance by filing an application with the City Recorder, using forms prescribed pursuant to Section 9.88.040. The application shall be accompanied by a site plan drawn to scale showing the condition to be varied and the dimensions and arrangement of the proposed development. The City Council or Planning Commission may request other drawings or material essential to understanding of the variance.

B. If the request for a variance meets all the requirements of this title, the City Recorder shall set a time for a public hearing before the Planning Commission on the request within 40 days from the filing thereof and shall cause notice to be given in accordance with 9.88.060.

C. At the conclusion of the public hearing the Planning Commission may approve or deny the request, based on findings which address applicable variance criteria, pursuant to Chapter

9.88.

Section 9.80.040. Time limit on a variance.
Authorization of a variance shall be void after one year unless substantial construction pursuant thereto has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year, on request.

3. **Public Testimony Received:** At the time this staff report was prepared, the City had received one letter in support of the request from Layne Morrill of the Creekside Association.

4. **Public Agency Comment:**

Fire Chief Petrick **(**Yachats Rural Fire Department) agrees that the topography will determine the visibility at this intersection and has no objection to a reduced setback.

Dave Buckwald (Yachats Public Works Lead) has no problem with the reduced setback as long as it doesn't interfere with the 5-foot utility easement adjacent to the west property line.

C. STAFF ANALYSIS

1. Street Side Yard Setback Requirements
The required street side yard setback in all residential zones in Yachats is 20 feet. The primary intent of having increased side yard setback requirements adjacent to a street is to provide a clear-vision area. In this case, the topography rather than the setback will determine the clear-vision area. The elevation of the build site at the point of the reduced setback is 8-10 feet above the level of the roadway.

2. Street Front Yard Setback Requirements
YMC Section 9.52.160 (B) (General exceptions of yard requirements) allows for a reduction in street front yard setbacks to as little as 5 feet regardless of the height of the structure. Specifically, this section of the YMC allows the front yard setback for the front a garage to be reduced to as little as 5 feet on steep slopes. The applicant's request is to reduce the side yard setback for the side of the garage to 8 feet due to steep slopes. An argument could be made that the same standard should apply to both front and side street setbacks.

3. Flexibility of the Planned Unit Development

YMC Section 9.60.020 (F) General requirements (PUD) states that "Yards, setbacks, lot area, lot coverage and similar dimensional requirements may be modified upon application to and approval by the Planning Commission, consistent with the design objectives of the proposed development". This flexibility is intended to be applied at the time of the PUD application approval. In this case, the primary goal of the reduced setback is to minimize excavation,

erosion and disturbance of Agency Creek. Had a reduced setback been proposed at the time of the PUD application, it would have been within the Planning Commission's authority to grant it.

4. Circumstances for Granting a Variance

A variance may be granted only in the event that five circumstances exist. It is appropriate for the Planning Commission to consider each circumstance individually. Each circumstance for granting a variance is identified below and followed by staff analysis.

YMC Section 9.80.020 says:

A variance may be granted only in the event that all of the following circumstances exist:

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;

   Applicant's Response: The severity of the sloped topography poses environmental and excavation challenges for this site. In order to limit the excavation, we intend to build parallel to the grade lines and aim to build on the flatter portion of the site - near Creekside Lane. As the orientation of the building wants to run parallel to the existing grade, this pushes a portion of our garage within the 20' side yard setback. The building location and orientation, in tandem, push the construction away from the creek alongside the southern property border. By building higher on the lot, we also capitalize on the ocean view the upper property offers. In order to limit excavation, avoid conflicts with the creek, and accomplish the design goals of the client, we request a 8' variance or non-conforming use alongside Mountain Road.

B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

   Applicant's Response: The 20' setbacks impose a great restriction on the site and severely limit the areas to construct a dwelling. In order to avoid conflicts with the creek, minimize site excavation, and maximize the views, we would like to build the house on the northern half of the property and parallel with the natural grades of the site. Aside from the corner/20' side yard setback, we believe these same conditions and challenges occur on the other lots in the cul-de-sac and are not unique to our property.

C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

   Applicant's Response: The variance will not impede the corner lot visibility as the topography already disrupts the visibility continuity along the corner of Creekside Lane

and Mountain Road. The proposed location of the dwelling will not disrupt the creek, development common areas, drainage culverts, or any utilities for the neighborhood. Furthermore, this house will be the first in this HOA development and the first in this cul-de-sac. The variance would not directly impact any surrounding neighbors until if/when the remaining cul-de-sac lots are sold, developed, and built-upon. If that development were to occur, we believe *the topography already impedes the visibility continuity - therefore the dwelling would not disrupt the visibility more than the existing topography.*

D. The variance requested is the minimum variance which would alleviate the hardship;

Applicant's Response: The 12' setback is the minimum variance to address the desired view angle on the property and to set the building outside the eastern 5' side yard setback requirement.

E. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance.

Applicant's Response: The hardship arises from the very steep topography, corner lot condition, adjacent creek, and visibility goals of the site.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

1. Development shall be in accordance with R-1 standards except for the approved variance that allows a minimum 12-foot street side yard adjacent to the Elk Mountain Road right-of-way.

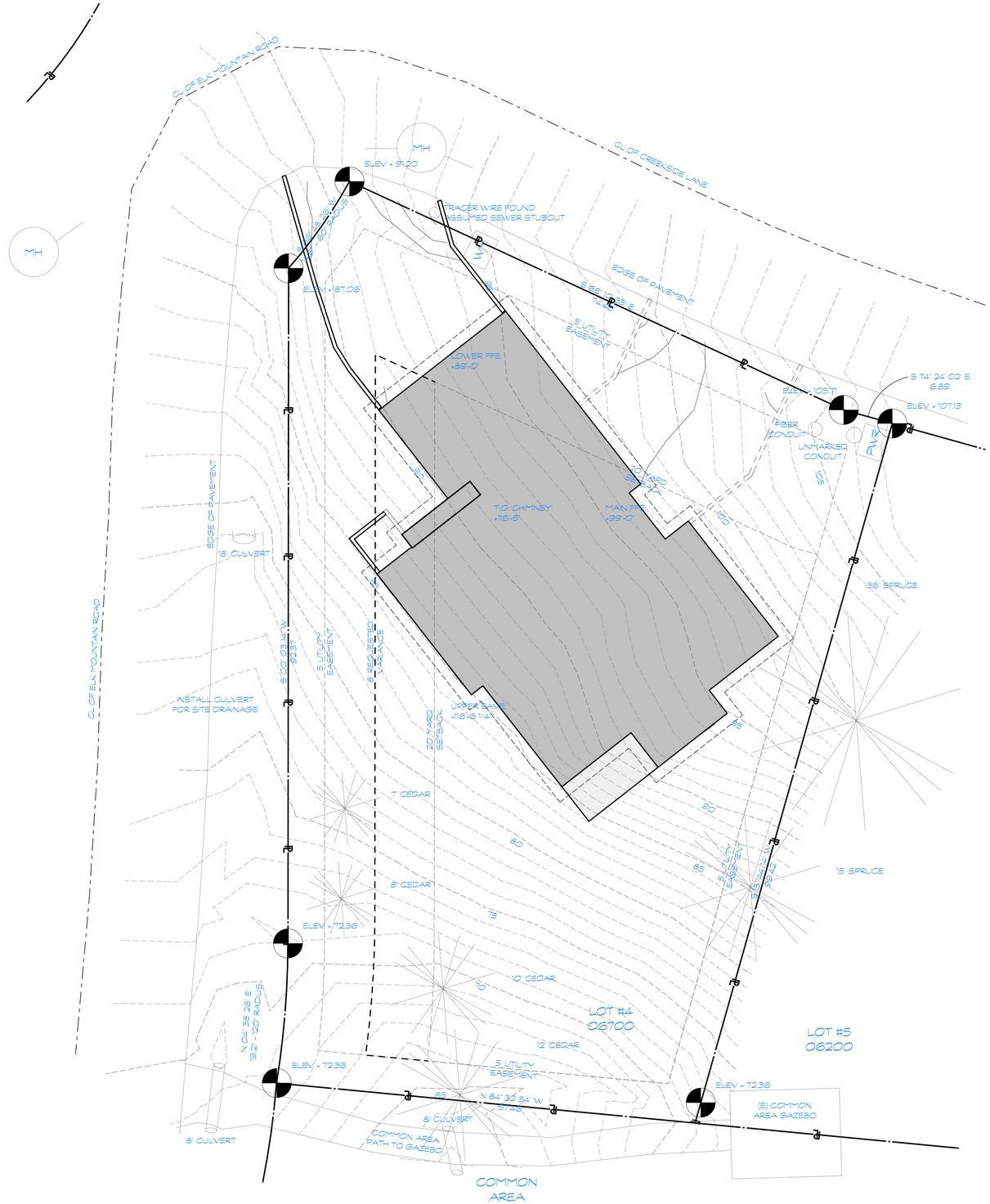
2. Authorization of this variance shall be void after one year unless substantial construction pursuant thereto has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year, on request.

Submitted by,

Katherine Guenther
City Planner

Enclosures: 502 Creekside Variance Application
502 Creekside Site Plan
502 Creekside Aerial

Creekside PUD Survey
Creekside PUD Findings and Conclusion (Case File #1-PD-PC-05)



1 ARCHITECTURAL SITE PLAN
AS-001 SCALE: 1/8" = 1'-0"

Arbor South Architecture

380 Lincoln Street
Eugene, Oregon 97401

Phone: 541-344-3332

arborsouth.com

PROJECT

UHAN COASTAL RETREAT

502 CREEKSIDE LANE
YACHATS, OREGON

INDEX

ARCHITECTURAL SITE PLAN

JOB NO.

2418

DATE

11 March 2025

DRAWN BY

####

CHECKED BY

####

REVISION

MEMBERS OF THE AMERICAN INSTITUTE OF ARCHITECTS

SHEET NO

AS-001

© Arbor South Architecture, P.C.
JOE UHAN - 2418

Land Use Application

City of Yachats
441 Hwy 101 N
PO Box 345
Yachats OR 97498
(541) 547-3565

Fee: $250
Date Received: 3/14/25 KLG

☐ Conditional Use $250 ☐ Nonconforming Use $250 ☒ Variance $250
☐ Zone Change $500 ☐ Comprehensive Plan Change $500
☐ Urban Growth Boundary Change $1000
(Actual expenses in excess of the application fee will be billed.)

Applicant: Dan Hill and Nick Paino Phone: (541)-344-3332

Address: 502 Creekside Lane

City: Yachats State: OR Zip: 97498

Relationship to property: Agent of Owner
(Owner,Contract Purchaser,etc.)

Legal Description: Creekside PUD, Lot 4, DOC202405242 Current Zone: R-1

Lot Dimensions: 74.46' x 99.42' Area: 0.18 Acres Flood Zone: No

Natural Hazard: No Topography: 35' Grade change from corner to corner

Directions to Property: From Pacific Coast Highway, turn onto King Street. Turn left onto Chief Albert Drive. Continue until corner of Elk Mountain Road and Creekside Lane

Previous Planning Actions on Property: PUD history not available

Reason for Request: Refer to pages 3-4

Existing Structures on Property: None

Proposed Use and Structures: Single family dwelling with attached garage

Current Utilities and Providers: Power - Central Lincoln, TV/Com - Charter Communications or Spectrum or Viasat

Anticipated Date of Development: Late summer 2025

Supplemental Required Information

Attachments to Application (check all that apply)

- [x] Plot Plan of subject property showing all property lines
- [x] Existing and proposed structures and their location in relationship to property lines
- [x] Total floor area, use and height of all existing and proposed uses
- [ ] Operating characteristics of all proposed commercial use
- [ ] Location, extent, arrangement, and proposed improvements of all off-street parking and loading facilities.
- [ ] Location of access to adjacent arterial or collector
- [ ] State or County Road Approach Permit
- [x] Narrative which address applicable ordinance standards (required for all land use actions)
- [ ] Other:_____

I have read the above application and hereby certify all information contained therein to be true and complete to the best of my ability. I understand that this application will not be processed until all required information is submitted to the City.

_____
Signature of Applicant

Joseph M. Uhan (Mar 25, 2025 10:17 PDT)
_____
Signature of Property Owner (if other than applicant)

Arbor South Architecture

380 Lincoln Street,
Eugene, Oregon 97401

541.344.3332
info@arborsouth.com

05 March 2025

VARIANCE REQUEST PER CODE SECTION 9.80 VARIANCES TO CERTAIN STANDARDS OF CITY OF YACHATS MUNICIPAL CODE

APPLICANT
Dan Hill and Nick Paino
ARBOR SOUTH ARCHITECTURE, PC
380 Lincoln Street
Eugene, Oregon 97401

OWNER
Joe Uhan
145 W Heising Dr
Sisters, Oregon 97559

PROPERTY
502 Creekside Road
Yachats, Oregon 97498

VARIANCES REQUESTED
Code Section 9.12.040 B.3 - Residential Zone Standards, Yards

SPECIFICS

The property is located at the southeast corner of Creekside Lane and Elk Mountain Road. It is approximately 75 feet by 100 feet containing just over 7,880 sq ft. The property is zoned R-1, low-density residential, and falls under Chapter 9.12 adopted by the City of Yachats Municipal Code in March of 2024.

The standards enacted for R-1 zoned properties aim to:
"provide a quality environment for low density, urban, single-family residential uses and other compatible land uses determined desirable and/or necessary."

Due to this property's significant slope, adjacency to a natural creek, and consideration for future adjacent lots' views, the only avenue for relief is the variance process.

Arbor South Architecture

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Eugene, Oregon 97401

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AUTHORIZATION AND CIRCUMSTANCES FOR GRANTING A VARIANCE

9.80.010 Authorization to grant or deny variances

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interest of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

9.80.020 Circumstances for granting a variance

A. Exceptional or or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;

B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

D. The variance requested is the minimum variance which would alleviate the hardship;

E. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance.

STANDARDS AND REQUESTED VARIANCES

9.12.040 B.3

"B. Yards. The minimum yard requirements in the R-1 zone shall be as follows:
3. The street side yard shall be a minimum of 20 feet"

We request an 8 foot variance to the 20 foot side yard setback in Section 9.12.040 to keep the new residence away from the natural creek, minimize site excavation, maintain appropriate view corridors for future neighbors, and maintain an ocean view for the property owner.

Arbor South Architecture

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SUPPORTING CIRCUMSTANCES

A. Exceptional or or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;

The severity of the sloped topography poses environmental and excavation challenges for this site. In order to limit the excavation, we intend to build parallel to the grade lines and aim to build on the flatter portion of the site - near Creekside Lane. As the orientation of the building wants to run parallel to the existing grade, this pushes a portion of our garage within the 20' side yard setback. The building location and orientation, in tandem, push the construction away from the creek alongside the southern property border. By building higher on the lot, we also capitalize on the ocean view the upper property offers. In order to limit excavation, avoid conflicts with the creek, and accomplish the design goals of the client, we request a 8' variance or non-conforming use alongside Mountain Road.

B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

The 20' setbacks impose a great restriction on the site and severely limit the areas to construct a dwelling. In order to avoid conflicts with the creek, minimize site excavation, and maximize the views, we would like to build the house on the northern half of the property and parallel with the natural grades of the site. Aside from the corner/20' side yard setback, we believe these same conditions and challenges occur on the other lots in the cul-de-sac and are not unique to our property.

C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

The variance will not impede the corner lot visibility as the topography already disrupts the visibility continuity along the corner of Creekside Lane and Mountain Road. The proposed location of the dwelling will not disrupt the creek, development common areas, drainage culverts, or any utilities for the neighborhood. Furthermore, this house will be the first in this HOA development and the first in this cul-de-sac. The variance would not directly impact any surrounding neighbors until if/when the remaining cul-de-sac lots are sold, developed, and built-upon. If that development were to occur, we believe the topography already impedes the visibility continuity - therefore the dwelling would not disrupt the visibility more than the existing topography.

D. The variance requested is the minimum variance which would alleviate the hardship;

The 12' setback is the minimum variance to address the desired view angle on the property and to set the building outside the eastern 5' side yard setback requirement.

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E. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance.
The hardship arises from the very steep topography, corner lot condition, adjacent creek, and visibility goals of the site.

NARRATIVE

The portion of this Standard that we are requesting a variance is the "minimum of 20 feet". It is our understanding that the intent of these setbacks includes, but is not limited to, providing visibility across a corner lot for both pedestrian and vehicular traffic, create a natural landscaped area to encourage slower vehicular traffic, and create a consistent aesthetic.

The front and side yard setback requirements pose a large challenge for our site. We are battling a very steep topography - nearly a 35' runoff across a .18 acre lot. We would like to avoid erosion and site disturbance for the creek just south of this property, limit the overall site excavation, maintain the potential views for future neighbors, and capture as much of the southwest ocean view as possible. We intend to limit the excavation by cutting into the flattest part of the site and designing a simple and efficient building form. This leads us to believe the best location to build on the property would be as close to the northern Creekside Lane as possible. The added benefits of building close to Creekside is to avoid negative effects from erosion to the creek and provide an ocean view for the property.

If we follow the 20' front and street side setbacks, this increases the amount of excavation needed by pushing the building into a steeper part of the site, disturbs the natural land near the creek, greatly reduces the view by needing to build roughly 5' lower on the grade(s), and requires a longer driveway which requires more hardscaping, less green-space, and less grade to naturally filter the stormwater. Our application for an exemption or variance aims to allow us to build closer to the front and street side yard setbacks to accomplish our goals and lessen both the fiscal and environmental impacts that 20' setbacks would impose on our steep lot.

In the Yachats Zoning Code, there is one applicable exception for yard requirements in Section 9.52.160:
B) When an attached garage is to be built on a lot having an average elevation at least 10' higher or lower than street level, the front of the garage may be located 5' from the front property line or at the point where ground elevation is 5' higher or lower than the street level.

The average elevation of the street frontage is 83'-0". We propose the lower level finish floor to be 89'-0", which is greater than 5' above the average street level. This allows the front of the garage to be located 5' from the front property line. The northernmost corner of the garage is shown roughly 7'-1" away from the front property line.

Arbor South Architecture

380 Lincoln Street,
Eugene, Oregon 97401

541.344.3332
info@arborsouth.com

In addition to the 20' setbacks, we have anywhere from 3' to 12' of space between the edge of pavement to our property line per our surveyor. The space between the pavement and property lines is naturally landscaped, some of which is a culvert ditch for stormwater runoff. We believe this area is pertinent to the variance ruling because both pedestrian and vehicular traffic is unlikely to occur in these areas. They also help accomplish the visibility concerns of a corner lot.

SUMMARY

The side yard setback requirement poses a large challenge for our site. We are battling a very steep topography - nearly a 35' runoff across a .18 acre lot. We would like to avoid potential erosion runoff and site disturbance for the creek just south of this property, limit the overall site excavation, maintain the potential views for future neighbors, and capture as much of the southwest ocean view as possible. We intend to limit the excavation by cutting into the flattest part of the site and designing a simple and efficient building form. This leads us to believe the best location to build on the property would be as close to the northern Creekside Lane as possible. The added benefits of building close to Creekside is to avoid negative effects from erosion to the creek and provide an ocean view for the property.

If we follow the 20' front and street side setbacks, this would push the house into a steeper portion of the lot. This would increase the amount of excavation by roughly 8,700 cubic feet of grade, pushes the house roughly 5 feet closer to the creek which introduces potential erosion problems which would disturb the natural land near the creek, greatly reduces the view by needing to build roughly 5' lower on the grade(s), and requires roughly 200 square feet more hardscaping at the driveway, less green-space, and less grade to naturally filter the stormwater. Our application for an exemption or variance will allow us to build closer to the street side yard setbacks to accomplish our goals and lessen both the fiscal and environmental impacts that 20' setbacks would impose on our steep lot.

Based on the above data, we respectfully request the variance proposed be approved by the Planning Commission. There are numerous conditions related to this specific parcel that warrant the variances and that are not self-imposed by the applicants.

We appreciate a positive consideration and response.

Sincerely,

Dan Hill
Architect, Senior Principal

Nick Paino
Architectural Associate

From: **Layne Morrill** klaynemorrill@gmail.com
Subject: Creekside Lot 4
Date: February 11, 2025 at 8:37 AM
To: Yachats City Planner Planner@yachatsmail.org, Katherine guenther [redacted]
Cc: Nick Paino nick@arborsouth.com, Dan Hill dan@arborsouth.com

Hi Katherine:

I have been working with Dan Hill and Nick Paino of Arbor South Architecture in Eugene on their design for a home on Lot 4.

I have reviewed their schematic plans, which I understand they have provided to you. The design is well done and makes the best use of this irregularly shaped and sloped lot. By siting the home close to Creekside Lane, there will be no soil disturbance near the Creek. Open space will be preserved between the building and the common area.

The Creekside Association supports this design and will also support any land-use solution that may be necessary to make it happen.

Please give me a call at your earliest convenience.

Thanks.

Layne Morrill
CREEKSIDE ASSOCIATION
[redacted]

502 Creekside Aerial

Legend

Printed on 4/8/2025 **Tax Lot Data For Assessment Purposes Only**

Lincoln County Government Use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users should review the primary information sources to ascertain their usability.

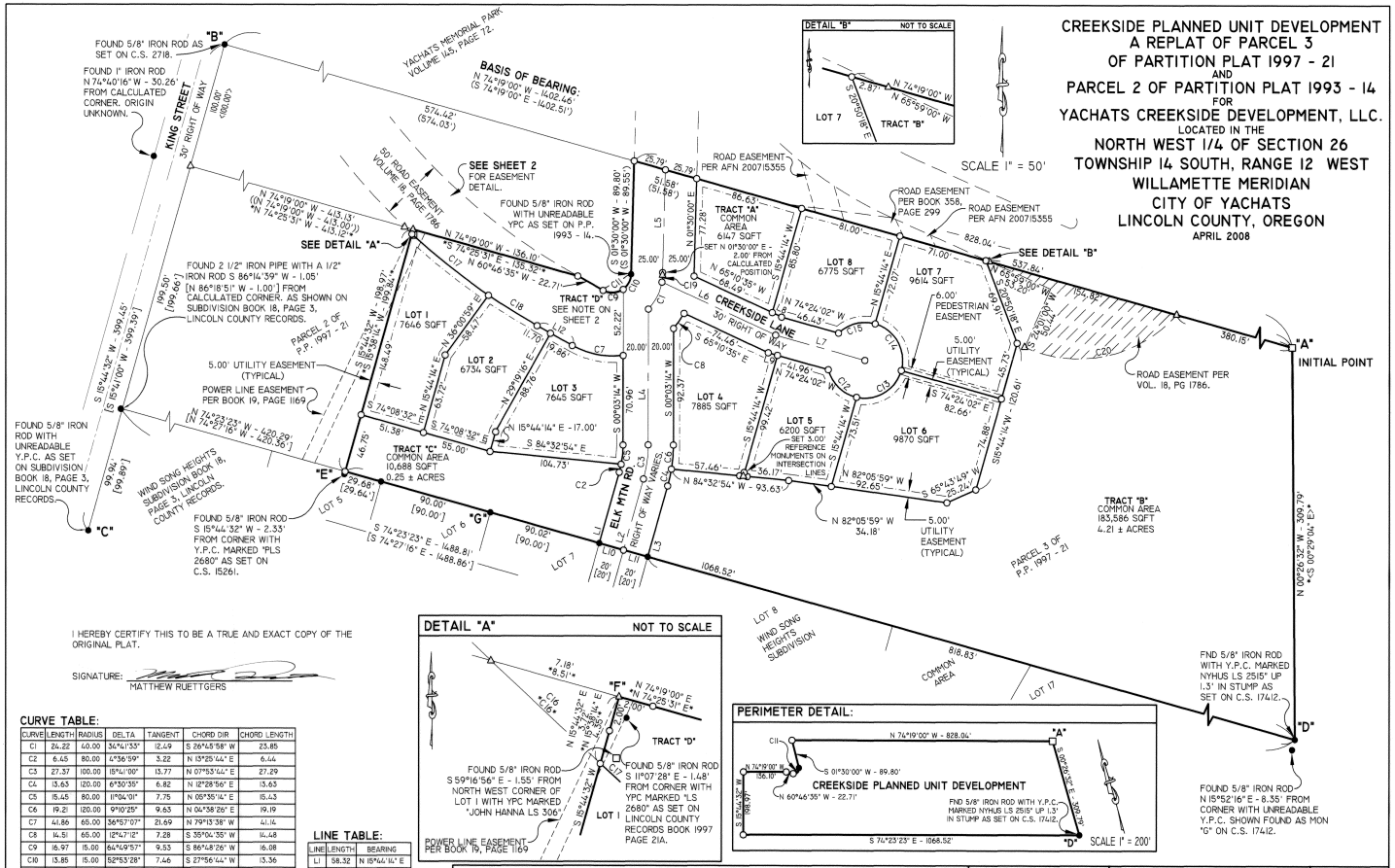
N

Lincoln County OREGON ESTABLISHED 1893

BOOK 18 PAGE 32

CREEKSIDE PLANNED UNIT DEVELOPMENT
A REPLAT OF PARCEL 3 OF PARTITION PLAT 1997 - 21
AND
PARCEL 2 OF PARTITION PLAT 1993 - 14
FOR
YACHATS CREEKSIDE DEVELOPMENT, LLC.
LOCATED IN THE
NORTH WEST 1/4 OF SECTION 26
TOWNSHIP 14 SOUTH, RANGE 12 WEST
WILLAMETTE MERIDIAN
CITY OF YACHATS
LINCOLN COUNTY, OREGON
APRIL 2008

SCALE 1" = 50'



DETAIL "B" NOT TO SCALE

DETAIL "A" NOT TO SCALE

PERIMETER DETAIL:

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

SIGNATURE: _____
MATTHEW RUETTGERS

CURVE TABLE:

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD DIR	CHORD LENGTH
C1	24.22	60.00	34°41'33"	12.49	S 26°45'58" W	23.85
C2	6.45	80.00	4°36'59"	3.22	N 13°25'44" E	6.44
C3	27.37	100.00	15°41'00"	13.77	N 07°53'44" E	27.29
C4	13.63	120.00	6°30'35"	6.82	N 12°28'56" E	13.63
C5	15.45	80.00	11°06'01"	7.75	N 05°35'14" E	15.43
C6	19.21	120.00	9°10'25"	9.63	N 04°38'26" E	19.19
C7	41.86	65.00	36°57'07"	21.69	N 79°13'38" W	41.14
C8	14.51	65.00	12°47'12"	7.28	S 35°00'35" W	14.48
C9	16.97	15.00	64°49'57"	9.53	S 86°48'26" W	16.08
C10	13.85	15.00	52°53'28"	7.46	S 27°56'44" W	13.36
C11	30.82	15.00	117°43'25"	24.83	S 60°21'42" W	25.68
C12	32.89	30.00	62°48'48"	18.32	S 45°48'27" E	31.27
C13	45.65	30.00	87°11'12"	28.56	N 59°11'33" E	41.37
C14	47.05	30.00	89°51'44"	29.93	N 29°19'54" W	42.38
C15	31.49	30.00	60°08'16"	17.37	S 75°40'06" W	30.06
C16	8.07	525.00	0°52'49"	4.05	S 46°49'48" E	8.09
C16	9.55	525.00	1°02'34"	4.92	S 47°20'22" E	9.55
C17	77.75	525.00	8°29'06"	38.95	S 51°30'50" E	77.68
C18	46.00	525.00	5°01'12"	23.10	S 58°16'59" E	45.98
C19	5.53	60.00	7°55'17"	2.77	S 08°27'36" W	5.52
C20	132.31	105.00	72°11'57"	76.57	S 77°55'45" W	123.73

LINE TABLE:

LINE	LENGTH	BEARING
L1	58.32	N 15°44'14" E
L2	58.28	N 15°44'14" E
L3	58.24	N 15°44'14" E
L4	107.56	N 00°03'14" E
L5	83.48	N 01°30'00" E
L6	99.54	S 65°10'35" E
L7	73.62	S 74°24'02" E
L8	8.67	S 65°10'35" E
L9	6.89	S 74°24'02" E
L10	20.00	N 74°23'23" W
L11	20.00	N 74°23'23" W
L12	31.56	S 60°46'35" E

LEGEND:

- ● FOUND 5/8" IRON ROD WITH YPC MARKED "HGE INC" AS SET ON WIND SONG HEIGHTS SUBDIVISION, BOOK 18 PG 3 LINCOLN COUNTY RECORDS, UNLESS OTHERWISE NOTED.
- □ FOUND 5/8" IRON ROD MARKED "JOHN HANNA LS 305" AS SET ON PARTITION PLAT 1993 -14 LINCOLN COUNTY RECORDS, OREGON. UNLESS OTHERWISE NOTED.
- ○ SET 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "77369LS".
- △ CALCULATED POINT
- [ ] RECORD DATA PER SUBDIVISION BOOK 18, PAGE 3, LINCOLN COUNTY RECORDS.
- ( ) RECORD DATA PER PARTITION PLAT 1993 -14 OF LINCOLN COUNTY RECORDS.
- < > RECORD DATA PER C.S. 7596 OF LINCOLN COUNTY RECORDS.
- * * RECORD DATA PER BOOK 1997, PAGE 21A OF LINCOLN COUNTY RECORDS.
- (( )) RECORD DATA PER C.S. 15261
- *< >* RECORD DATA PER C.S. 17412
- Y.P.C. YELLOW PLASTIC CAP
- P.P. PARTITION PLAT
- "A" MONUMENT LETTER

6-6-2008
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JANUARY 10, 2006 MATTHEW ANTHONY RUETTGERS 77369LS
RENEWAL 12/31/2008

Smith, Smith, Martin & Ruettgers, LLC
30009 Pacific Highway East, Unit 9-0
Fife, Washington 98424
Phone (253) 926-3400
Fax (253) 926-3402
S²MR

CLIENT: YACHATS CREEKSIDE DEVELOPMENT, LLC. ONE EAST CAMELBACK RD. SUITE 340 PHOENIX, AZ. 85012

DRAWN: J. FRAUMENI | FIELD: J. PRIEST | CALC'D: M. RUETTGERS | CHECKED: M. RUETTGERS

PROJECT: 08-002
DRAWING NO.: 08-002P.DWG
FIELD DATE: 9/2007
SCALE: 1"=50'
PAGE OF 1 2

CREEKSIDE PLANNED UNIT DEVELOPMENT
A REPLAT OF PARCEL 3 OF PARTITION PLAT 1997 - 21 AND PARCEL 2 OF PARTITION PLAT 1993 - 14
FOR
YACHATS CREEKSIDE DEVELOPMENT, LLC.
LOCATED IN THE
NORTH WEST 1/4 OF SECTION 26
TOWNSHIP 14 SOUTH, RANGE 12 WEST
WILLAMETTE MERIDIAN
CITY OF YACHATS
LINCOLN COUNTY, OREGON
APRIL 2008

NARRATIVE:

PURPOSE:
THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE INTO LOTS, TRACTS, EASEMENTS, AND RIGHTS OF WAYS THAT PROPERTY DESCRIBED IN DOCUMENT NUMBER 200605422 LINCOLN COUNTY RECORDS.

BASIS OF BEARINGS:
THE BASIS OF BEARINGS USED FOR THIS SURVEY WAS NORTH 74°19'00" WEST BETWEEN MONUMENTS "A" AND "B" AS SHOWN ON PARTITION PLAT NO. 1993 - 14 OF LINCOLN COUNTY RECORDS.

BOUNDARY RESOLUTION:
THE BOUNDARY FOR THIS PLANNED UNIT DEVELOPMENT WAS DETERMINED BY HOLDING FOUND MONUMENTS AS SHOWN ON PARTITION PLAT 1993 - 14, COUNTY SURVEY 17412, AND VOLUME 18 PAGE 3 OF LINCOLN COUNTY RECORDS, OREGON AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH LINE OF THE BOUNDARY WAS DETERMINED BY HOLDING THE BEARING BETWEEN MONUMENTS "A" AND "B".

THE WEST LINE WAS DETERMINED BY HOLDING FOUND MONUMENTS "B" AND "C" AND HOLDING MONUMENT "E" FOR ITS EAST/ WEST POSITION, A PARALLEL BEARING ALONG WITH RECORD INFORMATION FROM PARTITION PLAT 1993-14 WAS THEN UTILIZED FOR THE SOUTH LINE OF PARCEL 1, PARTITION PLAT 1993-14 TO CONTROL CALCULATED POINT "F".

THE SOUTH LINE WAS DETERMINED BY HOLDING FOUND MONUMENTS "D" AND "G" AND PROLONGATING TO THE POINT OF INTERSECTION OF THE EAST LINE OF KING STREET.

THE EAST LINE WAS DETERMINED BY HOLDING FOUND MONUMENTS "A" AND "D".

RECORDER'S STATEMENT:
STATE OF OREGON
COUNTY OF LINCOLN } S.S.

I DANA W. JENKINS, LINCOLN COUNTY CLERK, HEREBY CERTIFY THAT THE SUBDIVISION PLAT WAS RECEIVED AND DULY RECORDED BY ME IN THE LINCOLN COUNTY RECORD BOOK OF PLATS AS PLAT NO. BK 18 PG 32,32A, ON THIS 25TH DAY OF JUNE, 2008 AT 9:31 O'CLOCK AM, TARGET SHEET RECORDED IN DOCUMENT NUMBER 2008-07681.

BY: 06/25/2008
LINCOLN COUNTY CLERK.

SURVEY CERTIFICATION:
I, MATTHEW RUETTGERS, REGISTERED LAND SURVEYOR IN THE STATE OF OREGON, DO HEREBY CERTIFY AND SAY THAT

DURING THE MONTH OF APRIL 2008, I DID ACCURATELY SURVEY, SUBDIVIDE AND PLAT INTO LOTS, TRACTS, AND RIGHTS OF WAY THE LANDS REPRESENTED ON THE ATTACHED PLAT OF CREEKSIDE THE BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 2, PARTITION PLAT 1993-14, RECORDS OF LINCOLN COUNTY, OREGON, BEING MARKED BY A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "JOHN HANNA LS 305"; THENCE NORTH 74°19'00" WEST ON THE NORTH LINE OF SAID PARCEL 2, 828.04 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 01°30'00" WEST 89.80 FEET ON THE WEST LINE OF SAID PARCEL 2; THENCE 30.82 FEET ON THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS SOUTH 60°21'42" WEST, SAID ARC PASSING THROUGH THE SOUTHWEST CORNER OF SAID PARCEL 2 AND CONTINUING ON THE NORTH LINE OF PARCEL 3 OF PARTITION PLAT 1997-21, RECORDS OF LINCOLN COUNTY; THENCE CONTINUING ON SAID NORTH LINE NORTH 60°46'35" WEST 22.71 FEET; THENCE CONTINUING ON SAID NORTH LINE NORTH 74°19'00" WEST 136.10 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 15°44'32" WEST 198.97 FEET ON THE WEST LINE OF SAID PARCEL 3, TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 74°23'23" EAST 1068.52 FEET ON THE SOUTH LINE OF SAID PARCEL 3, TO THE SOUTHEAST CORNER THEREOF; THENCE NORTH 00°26'32" WEST 309.79 FEET ON THE EAST LINE OF SAID PARCEL 3 AND THE EAST LINE OF SAID PARCEL 2 TO THE TRUE POINT OF BEGINNING.

NOTES:
1. THIS PLAT IS SUBJECT TO CONDITIONS OF APPROVAL PER CITY PLANNING CASE FILE NUMBER (01-PD-PC-05)
2. TRACT "D" IS SUBJECT TO THE CONDITIONS OF A 50.00 FOOT ROAD EASEMENT RECORDED AS VOLUME 18, PAGE 1786.
3. PLAT SUBJECT TO CONDITIONS CONTAINED IN WARRENTY DEED RECORDED SEPTEMBER 26, 1944 IN BOOK 100, PAGE 442.
4. PLAT SUBJECT TO CONDITIONS CONTAINED IN WARRENTY DEED RECORDED JANUARY 26, 1948 IN BOOK 123, PAGE 405.
5. PLAT SUBJECT TO CONDITIONS CONTIANED IN REAL ESTATE CONTRACT RECORDED APRIL 16, 1951 IN BOOK 144, PAGE 434.
6. PLAT SUBJECT TO EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF ELECTRIC POWER LINES CONTAINED IN EASEMENT RECORDED MAY 28, 1970 IN BOOK 18, PAGE 1846. DUE TO AMBIGUOUS CALLS CONTAINED IN THE DESCRIPTION THE EXACT LOCATION OF THE EASEMENT COULD NOT BE DETERMINED.

DECLARATION:
KNOW ALL PERSONS BY THESE PRESENTS THAT YACHATS CREEKSIDE DEVELOPMENT, LLC. IS THE RECORD OWNER OF AND YACHATS CREEKSIDE, LLC, IS A CREDITOR SECURED BY, THE LANDS REPRESENTED ON THIS PLAT AND MORE PARTICULARLY DESCRIBED IN THE SURVEYOR'S CERTIFICATE AND HAVE CAUSED THE SAME TO BE SURVEYED AND SUBDIVIDED INTO LOTS, TRACTS, EASEMENTS, AND RIGHTS OF WAYS AS SHOWN. THE STREETS CREEKSIDE LANE AND ELK MOUNTAIN ROAD, AS SHOWN, ARE HEREBY DEDICATED, CONVEYED AND SET APART TO THE USE OF THE PUBLIC FOREVER WITHOUT RESERVATION OR RESTRICTION WHATEVER.

K. LAYNE MORRILL (PRESIDENT OF CHESTNUT MANAGEMENT COMPANY MANAGER OF YACHATS CREEKSIDE DEVELOPMENT, LLC. AND OF YACHATS CREEKSIDE, LLC) — DATE: 6.9.08

COLUMBIA COMMUNITY BANK (J.S. ARGANBRIGHT) — DATE: 6.12.08

ACKNOWLEDGMENT:
STATE OF ARIZONA
COUNTY OF MARICOPA } S.S.

THIS IS TO CERTIFY THAT ON THIS 9TH DAY OF, June 2008, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED K. LAYNE MORRILL, PRESIDENT OF CHESTNUT MANAGEMENT COMPANY AND SOLE MANAGER OF YACHATS CREEKSIDE DEVELOPMENT, LLC. WHO BEING FIRST DULY SWORN DID SAY THAT HE IS THE PERSON NAMED IN THE FOREGOING INSTRUMENT AND HAS EXECUTED SAID INSTRUMENT AND DOES HEREBY ACKNOWLEDGE SAID INSTRUMENT TO BE OF HIS OWN FREE ACT AND DEED.

NOTARY PUBLIC FOR ~~OREGON~~ Arizona — Debra L. Hitchens (PRINTED NAME)

MY COMMISSION EXPIRES 10/29/2010 — COMMISSION # 177309

ACKNOWLEDGMENT:
STATE OF ARIZONA
COUNTY OF MARICOPA } S.S.

THIS IS TO CERTIFY THAT ON THIS 12 DAY OF, June 2008, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED J.S. ARGANBRIGHT, FOR COLUMBIA COMMUNITY BANK. WHO BEING FIRST DULY SWORN DID SAY THAT HE IS THE PERSON NAMED IN THE FOREGOING INSTRUMENT AND HAS EXECUTED SAID INSTRUMENT AND DOES HEREBY ACKNOWLEDGE SAID INSTRUMENT TO BE OF HIS OWN FREE ACT AND DEED.

NOTARY PUBLIC FOR OREGON — Kari Erwert (PRINTED NAME)

MY COMMISSION EXPIRES August 18, 2010 — COMMISSION # 409099

APPROVALS:

CITY OF YACHATS:
PLANNING CASE FILE NUMBER (1-PD-PC-05)

CITY OF YACHATS, DIRECTOR OF PLANNING — DATE 6.10.08

LINCOLN COUNTY:
I HEREBY CERTIFY THAT ALL TAXES ON THE WITHIN DESCRIBED PROPERTY ARE PAID AS OF THIS 30 DAY OF June, 2008.

LINCOLN COUNTY TAX COLLECTOR — DATE 6-25-08

LINCOLN COUNTY TAX ASSESSOR — DATE 6-25-08

LINCOLN COUNTY SURVEYOR Deputy — DATE 6-13-08

LINCOLN COUNTY COMMISSIONER CHAIRPERSON — DATE 6/24/08

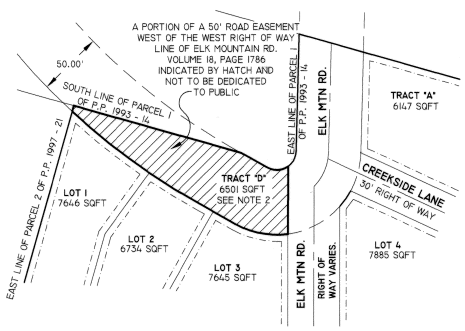
LINCOLN COUNTY COMMISSIONER — DATE 6-25-08

LINCOLN COUNTY COMMISSIONER — DATE 6-24-08

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

SIGNATURE: MATTHEW RUETTGERS

EASEMENT DETAIL:



SCALE 1" = 50'

LEGEND:
- ● FOUND 5/8" IRON ROD WITH YPC MARKED "HGE INC" AS SET ON WIND SONG HEIGHTS SUBDIVISION, BOOK 18 PG 3 LINCOLN COUNTY SURVEY RECORDS, OREGON UNLESS OTHERWISE NOTED.
- □ FOUND 5/8" IRON ROD MARKED "JOHN HANNA LS 305" AS SET ON PARTITION PLAT 1993 -14 LINCOLN COUNTY RECORDS, OREGON. UNLESS OTHERWISE NOTED.
- ○ SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "77369 LS" SET FLUSH.
- △ CALCULATED POINT
- [ ] RECORD DATA PER SUBDIVISION BOOK 18, PAGE 3, LINCOLN COUNTY SURVEY RECORDS.
- ( ) RECORD DATA PER PARTITION PLAT 1993 -14 OF LINCOLN COUNTY RECORDS.
- < > RECORD DATA PER C.S. 7596 OF LINCOLN COUNTY RECORDS.
- * * RECORD DATA PER BOOK 1997, PAGE 21A OF LINCOLN COUNTY RECORDS.
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- Y.P.C. YELLOW PLASTIC CAP
- P.P. PARTITION PLAT
- "A" MONUMENT LETTER

6-6-2008
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JANUARY 10, 2006 MATTHEW ANTHONY RUETTGERS 77369LS
RENEWAL 12/31/2008

Smith, Smith, Martin & Ruettgers, LLC
3009 Pacific Highway East, Unit 9-0
Fife, Washington 98424
Phone (253) 926-3400
Fax (253) 926-3402
S²MR

CLIENT: YACHATS CREEKSIDE DEVELOPMENT, LLC. ONE EAST CAMELBACK RD. SUITE 340 PHOENIX, AZ. 85012

PROJECT:	08-002
DRAWING No.:	08-002P.DWG
FIELD DATE:	9/2007
SCALE:	1"=50'
DRAWN: J. FRAUMENI	FIELD: J. PRIEST
CALC'D: M. RUETTGERS	CHECKED: M. RUETTGERS
PAGE OF	2 2

Yachats Development Code
Clear & Objective Review

Code of Ordinances	General Findings
Titles 1-6	
Title 1. General Provisions	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 2. Administration and Personnel	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 3. Revenue and Finance	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 4. Business Licenses and Regulations	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 5. Health and Safety	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 6. Vehicles and Traffic	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Title 7. Streets, Sidewalks, and Public Places ORS197A.400 as currently written is not clear whether clear and objective standards should apply to Transportation and Utility Standards. However, HB 2138, pending legislation, if approved would extend requirements for clear and objective standards to tran sportation and utilities. Therefore the consultant team has identified relevant sections within those development standards for City consideration.	
7.04 Standard Specifications	No conflicts with clear and objective standards were identified.
7.06 Street Excavation	No conflicts with clear and objective standards were identified.
7.08 Street Names and Building Numbers	No conflicts with clear and objective standards were identified.
7.12 Street Openings	No conflicts with clear and objective standards were identified.
7.14 Street Vacations	While this section of the code is not out of compliance with clear and objective standards, an addition of approval criteria would provide additional clarity to applicants seeking a street vacation.
Chapter 7.16 Driveways & Culverts	Code could be modified to further specify when, how, or under what conditions the Public Works Director may deem that culvert is necessary under the driveway in 7.16.030 to meet clear and objective standards.
Chapter 7.20 Public Rights -of-Way	No conflicts with clear and objective standards were identified.
Chapter 7.24 Parades and Processions	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.

Title 8. Public Services ORS197A.400 as currently written is not clear whether clear and objective standards should apply to Transportation and Utility Standards. However, HB 2138, pending legislation, if approved would extend requirements for clear and objective standards to tran sportation and utilities. Therefore the consultant team has identified relevant sections within those development standards for City consideration.	
8.04 Water Service System	No conflicts with clear and objective standards were identified.
8.08 Sewer Service System	Requirements for building sewer permits in 8.08.070(B) could be modified to meet clear and objective standards. May be possible to reference existing application submittal requirements in a different code section.
8.12 Cross-Connections	No conflicts with clear and objective standards were identified.
~~8.16~~ Underground Utilities	No conflicts with clear and objective standards were identified.
8.20 System Development Charges	No conflicts with clear and objective standards were identified.
8.22 Water Shortage Emergency Regulations	This section of the code does not regulate the development of needed housing; therefore clear and objective standards do not apply.
Title 9. Zoning and Land Use	
Chapter 9.04 General Provisions and Definitions	No conflicts with clear and objective standards were identified.
Chapter 9.08 Use Zones Designated	No conflicts with clear and objective standards were identified.
Chapter 9.12 R-1 Residential Zone	• Accessory building and uses language is not clear and objective, if it applies to an accessory residential use like an ADU. • Unit type/ quantity allowances for factory built dwellings in 9.12.020(H) are not clear and objective • Some of the restrictions on single-family manufactured homes in 9.12.020(I) are not clear and objective • Calculation of lot coverage could be made more clear • General criteria in 9.12.040(F) is not clear and objective
Chapter 9.16 R-2 Residential Zone	• Accessory building and uses language is not clear and objective, if it applies to an accessory residential use like an ADU. • Unit type/ quantity allowances for factory built dwellings in 9.16.020(K) are not clear and objective • Some of the restrictions on single-family manufactured homes in 9.16.020(L) are not clear and objective • Calculation of lot coverage could be made more clear in 9.16.040(D) • General criteria in 9.16.040(F) is not clear and objective
Chapter 9.20 R -3 Residential Zone	• Accessory building and uses language is not clear and objective, if it applies to an accessory residential use like an ADU. • Unit type/ quantity allowances for factory built dwellings in 9.20.020(J) are not clear and objective

	● Some of the restrictions on single-family manufactured homes in 9.20.020(N) are not clear and objective ● Manufactured dwelling parks and subdivisions cannot be required to obtain a conditional use permit in 9.20.030(M). ● Calculation of lot coverage could be made more clear ● General criteria in 9.20.040(H) is not clear and objective
Chapter 9.24 R-4 Residential Zone	● Accessory building and uses language is not clear and objective, if it applies to an accessory residential use. ● Unit type/quantity allowances for factory built dwellings in 9.24.020(J) are not clear and objective ● Some of the restrictions on single-family manufactured homes in 9.24.020(O) are not clear and objective ● Manufactured dwelling parks and subdivisions cannot be required to obtain a conditional use permit. ● Calculation of lot coverage could be made more clear ● Could clarify financial responsibility requirements for utilities in 9.24.040(H)
Chapter 9.28 C-1 Retail Commercial Zone	● Mixed use developments that include residential units cannot be required to obtain a conditional use permit because the approval criteria for a conditional use are not clear and objective. Alternative means of allowing for mixed use developments should be considered. ● General criteria in 9.28.030(I) is not clear and objective
Chapter 9.32 S-P State Park Zone	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Chapter 9.36 EN Estuary Natural Zone	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Chapter 9.40 P-F Public Facilities Zone	This section of the code does not apply to residential uses; therefore clear and objective standards do not apply.
Chapter 9.42 Lighting	No conflicts with clear and objective standards were identified.
Chapter 9.44 Signs	No conflicts with clear and objective standards were identified.
Chapter 9.48 Off-Street Parking and Loading	Parking requirements in 9.48.010(L) for dwellings with five or more units could be modified to meet clear and objective standards.
Chapter 9.52 Supplementary Use and Design Regulation	● Erosion Control Measure conditions in 9.52.050(H) are not clear and objective. ● Exemptions to Additional River Protection Standards in 9.52.070(D)(3) are not clear and objective
Chapter 9.54 Flood Damage Prevention Regulations	Some flood hazard reduction provisions of 9.54.050 are not clear and objective.
Chapter 9.56 Approval and General Requirements of Partitions and Subdivisions	● Several of the minimum requirements and standards for partitions and subdivisions in 9.56.020(A-F) are not clear and objective.

	● Park and Open Space requirements in 9.56.030(C) are not clear and objective. ● Pedestrian way requirements in 9.56.030(O) are not clear and objective.
Chapter 9.58 Standards and Procedures for Property Line Adjustments	No conflicts with clear and objective standards were identified.
Chapter 9.60 Planned Unit Development	This is an alternative approval track and not required to have clear and objective standards.
Chapter 9.62 Townhouse Planned Unit Development	This is an alternative approval track and not required to have clear and objective standards.
Chapter 9.64 Street Construction & Design	Several design standards for streets (9.64.010) are not clear and objective. This includes intersection design (C), cul-de-sacs (D), and topography (I).
Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks, and Recreational Vehicles	Several standards for manufactured dwelling parks (9.68.030) are not clear and objective, including pedestrian walkways, landscaping, setback conditions, and screening.
Chapter 9.72 Conditional Uses	The allowance for the Planning Commission to impose additional requirements on manufactured dwellings, manufactured dwelling parks and multifamily is not clear and objective (9.72.010.B).
Chapter 9.76 Nonconforming Lots and Uses	No conflicts with clear and objective standards were identified.
Chapter 9.80 Variances	This is an alternative approval track and not required to have clear and objective standards.
Chapter 9.84 Amendments	This is an alternative approval track and not required to have clear and objective standards.
Chapter 9.88 Administration and Enforcement	No conflicts with clear and objective standards were identified.

Draft Code Concepts

- Guided by recently completed Housing Needs Analysis and Housing Implementation Plan.
- High-level summaries of potential code amendments that address housing production, choices, and affordability.

The code concepts will will also provide opportunities to:

- Identify code amendments needed for compliance with State rules.
- Replace or remove code provisions that may discourage housing production through unreasonable cost or delay.
- Encourage a diversity of housing options and units that may be more affordable.
- Improve design outcomes of residential development.
- Simplify, streamline, or clarify code provisions.

Legal Compliance

Code audit has identified amendments needed for compliance with state rules and statutes.

State Statute	Requirement	Finding
ORS 197.660 to 197.670	Residential Homes and Facilities	Complies
ORS 197.522	Requirement to Approve Needed Housing	Codification not required
ORS 227.175	Reduced Density or Height as Condition of Approval	Codification not required
ORS 197.480	Manufactured Home Parks	Partially complies
ORS 92.835-845	Manufactured Home Park Subdivisions	Partially complies
ORS 197.195 and 197.015	Limited Land Use Decisions	Does not comply
ORS 90.112	Occupancy Limit Based on Familial Relationship	Does not comply
ORS 197.478	Manufactured Homes	Does not comply
ORS 197.493	Occupancy of Recreational Vehicles (RV)	Does not comply
ORS 197A.430	Single Room Occupancies (SRO)	Does not comply
ORS 227.178	Opting-In to Amended Housing Regulations	Codification recommended
ORS 197A.445	Affordable Housing: General Siting Allowances	Codification recommended
ORS 197A.460	Affordable Housing: Redevelopment of Commercial Land	Codification recommended
ORS 197A.445	Affordable Housing: Density and Height Bonus	Codification recommended

Clear and Objective Standards

Code audit has identified amendments needed to provide "clear and objective" standards for housing development.

Code of Ordinances	Finding
Chapters 9.12-9.14 Residential Zones	• Accessory building and uses language is not clear and objective, if it applies to an accessory residential use like an ADU. • Unit type/quantity allowances for factory built dwellings in 9.20.020(J) are not clear and objective. • Some of the restrictions on single-family manufactured homes in 9.20.020(N) are not clear and objective. • Manufactured dwelling parks and subdivisions cannot be required to obtain a conditional use permit in 9.20.030(M). • Calculation of lot coverage could be made more clear • General criteria in 9.20.040(H) is not clear and objective.
Chapter 9.28 C-1 Retail Commercial Zone	• Mixed use developments that include residential units cannot be required to obtain a conditional use permit because the approval criteria for a conditional use are not clear and objective. Alternative means of allowing for mixed use developments should be considered. • General criteria in 9.28.030(I) is not clear and objective
Chapter 9.56 Approval and General Requirements of Partitions and Subdivisions	• Several of the minimum requirements and standards for partitions and subdivisions in 9.56.020(A-F) are not clear and objective. • Park and Open Space requirements in 9.56.030(C) are not clear and objective. • Pedestrian way requirements in 9.56.030(O) are not clear and objective.
Chapter 9.68 Manufactured Dwellings, Manufactured Dwelling Parks, and Recreational Vehicles	• Several standards for manufactured dwelling parks (9.68.030) are not clear and objective, including pedestrian walkways, landscaping, setback conditions, and screening.
Chapter 9.72 Conditional Uses	• The allowance for the Planning Commission to impose additional requirements on manufactured dwellings, manufactured dwelling parks and multifamily is not clear and objective (9.72.010.B).

Barriers to Housing Production

What are the code barriers that prevent housing from being built in Yachats?

Which code concepts offer solutions to these barriers?

Barrier/Issue	Code Concept
Use regulations that are too restrictive in residential zones	1 Allow ADUs; 2 Middle Housing
Density that is too low	3 Adjust min. density and lot size; 2 Middle Housing; 6 Rezone land in R1 zone
Overall minimum lot area that is too high	3 Adjust min. density and lot size; 2 Middle Housing
Lot coverage and setbacks that are too restrictive	4 Reduce setbacks and increase lot coverage; 2 Middle Housing
Use regulations that are too restrictive in commercial zones	5 Reform regulations for residential uses in commercial zone
Incentives for affordable units that are missing or ineffective	7 Affordable housing incentives

Code Concepts

WHAT ARE SOME WAYS TO MEET HOUSING PRODUCTION GOALS THROUGH CODE CHANGES?

Code Concept	1 Allow Accessory Dwelling Units	2 Allow middle housing types as outright permitted uses	3 Adjust density and minimum lot size standards to encourage development of multiple unit housing
What is the key idea?	Allow at least one ADU for each single-unit dwelling and allow the ADU to be interior to the house (such as a basement), an attached addition, or a detached structure.	The code should include definitions and allowances for triplexes, quadplexes, and cottage clusters in zones allowing residential uses. Yachats currently only permits duplexes, and townhouses with a Planned Unit Development, but only in R2, R3, and R4 zones. Triplexes and quadplexes are permitted in the R3 and R4 zones as multi-family. Cottage are clusters not defined or permitted anywhere.	Residential density standards (units per acre) and minimum lot sizes in higher intensity residential zones should be calibrated to encourage development of multiple unit housing. This could include adding minimum density requirements, increasing maximum density allowances, and/or reducing minimum lot sizes.
How will it help meet housing needs?	ADUs allow homeowners to add a unit on their property without demolishing the existing house. They are a proven way to incrementally add to local housing supply with very little impact to neighboring properties or community character. They can create opportunities to generate rental income for homeowners, multigenerational living, or caring for elderly family members.	There is a range of housing types, often called middle housing, that can fit in with neighborhoods of single-family homes but provide different housing options. These include duplexes, triplexes, quadplexes, townhouses, and cottage clusters. These homes are often smaller and can be more affordable than a detached single-unit house. They are also typically less expensive to build than larger multi-unit buildings, allowing for more attainable rent and sales prices.	4 out of 5 homes built in Yachats since the year 2000 have been detached single unit dwellings, and all of the housing built in the R4 zone since 2000 has been detached single unit housing. Establishing a minimum density standard in higher intensity zones would preserve buildable land for needed townhouses, plexes and multi-unit housing. Increasing maximum density allowances, and/or reducing minimum lot sizes can create additional opportunities for middle housing development.
What would the new/updated code regulations look like?	• Allow at least 1 interior, attached, or detached ADU for each detached single unit dwelling • Do not require for ADU to match design of primary dwelling • Do not require additional setbacks beyond base zone standards • Allow for smaller rear setbacks of 5-10 feet • Do not require owner occupancy of either the primary or accessory dwelling • Do not require additional parking for the ADU (unless used as an STR) • Do not require for public improvements for the ADU	• The code should include definitions and allowances for triplexes, quadplexes, and cottage clusters in zones allowing residential uses. • Allowing detached forms of plexes is also recommended. • In addition, the code should be amended to include an expedited middle housing land division process, enabling units to be sold or owned individually.	• There are no maximum density standards for the R1, R2 and C1 zones. The maximum density standard for the R3 and R4 zones is 12 units/acre. This density is far below that of a typical middle housing or multi-family development. Townhomes, triplexes/quadplexes, cottage clusters, and 2-3 story walkup apartment buildings would routinely exceed this density level. • The city could also consider restricting development of detached single unit housing in higher density zones. • ADUs are not typically included in minimum density calculations but could be included to meet minimum density requirements.

Code Concepts

WHAT ARE SOME WAYS TO MEET HOUSING PRODUCTION GOALS THROUGH CODE CHANGES?

Code Concept	4 Reduce setbacks and increase lot coverage to remove barriers to housing	5 Reform approach to regulating residential in the C1 zone	6 Rezone land in R1 to a higher density zone	7 Provide incentives for affordable housing
What is the key idea?	Large setback requirements and low lot coverage allowances can make infill projects infeasible on existing lots and discourage compact housing types and development.	The C1 zone allows any use which would be permitted outright in any residential zone but only allows mixed-use development as a conditional use.	The majority of the city's buildable residential land (over 60 percent) is located in the R1 zone. The Housing Needs Analysis indicates surplus of capacity of land for detached single unit housing and a potential deficit of land for townhomes, plexes and multi-unit housing. Strategically rezoning areas of the R1 zone to one of the city's higher density residential zones is a way to facilitate additional capacity for development of townhomes, plexes and multi-unit housing.	State law requires special allowances for locating affordable housing and providing height and density bonuses to affordable housing projects.
How will it help meet housing needs?	Reducing setbacks and increasing lot coverage enables buildable land to be used more efficiently and increases the capacity for needed housing, especially when maximum heights are as low as they are in Yachats (typically 2 stories/30 feet for all zones).	Allowing a "clear and objective" pathway for residential use as a component of mixed-use projects is required by State law. However, allowing residential uses outright is in conflict with the policy goal of promoting mixed-use and commercial development.	If other code concepts such as reduced minimum lot sizes and required minimum density are implemented, strategically rezoning areas of the R1 zone to one of the city's higher density residential zones is a way to facilitate additional capacity for development of townhomes, plexes and multi-unit housing.	Clarifying allowances in code and providing additional incentives is an effective way to encourage development of income-restricted affordable housing.
What would the new/updated code regulations look like?	• Minimum lot sizes should be aligned with existing lot sizes in order to encourage infill and redevelopment. • Recommended changes to minimum lot sizes, setbacks and lot coverage to make middle and multiple unit housing more feasible to develop in Yachats were included in the Housing Implementation Plan.	• Consider allowing mixed-use development outright and prohibiting some or all other types of residential uses. • Adopt a minimum density standard for any project that includes residential. • Set a minimum threshold for what qualifies as a mixed use project. recommend something like x% of the ground floor space or minimum square footage.	Many areas within the R1 zone are impacted by Covenants, Conditions and Restrictions (CC&Rs) that would not allow development of multiple-unit housing even if the underlying zoning was changed. Because of this, the project team conducted an analysis that considered CC&Rs, buildable land and environmental constraints in the R1 zone to identify areas for potential rezoning.	• Oregon state law requires special allowances for locating affordable housing on land owned by a public body, religious non-profit, or affordable housing non-profit, and on land zoned for commercial uses. • There are also allowances for density and height bonuses to affordable housing projects located in areas zoned for residential uses. • Though not required, it is a good practice to include these allowances in code • The City could also provide a parking reduction in addition to the density and height bonuses. • The City could allow for greater density and height bonuses that required by law and state which can be evaluated by consultant.

Housing-Related Statutes and Legislation
Audit of Yachats Land Development Code
DLCD ORS Webpage

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
Requirement to Approve Needed Housing If an application is inconsistent with the comprehensive plan and land use regulations, the local government shall allow applicants to offer an amendment or to propose conditions of approval. If the applicant amends the proposal, the city may extend the 120-day time limit for a final decision. ORS 197.522 Amended by HB 3222 (2015)	Relevant sections: § 9.88.090 Final action on application for permit or zone change request. "The applicant shall be given an opportunity to submit the additional information. The application shall be deemed complete upon receipt of the additional information required" "The City shall take final action on an application for a permit or zone change request, including resolution of all local appeals, within 120 days after the application is deemed complete. This 120 day period may be extended for a reasonable period of time at the request of the applicant."	**Codification N/A** Does not require codification in the YMC at this time but is an important requirement to note for the City's reference.
Reduced Density or Height as Condition of Approval Approval or denial of permits must be based on clear and objective standards outlined in the development ordinance and cities may not condition reductions in density or height for housing, except to resolve a health, safety, or habitability issue or to comply with a statewide land use planning goal. ORS 227.175 Amended by HB 2003 (2019)	9.72.010 Authorization to grant or deny conditional use permits 9.60.030 Procedure for proposing P.U.D 9.62.040 Procedure for proposing Townhouse P.U.D. All sections above contain references to "limiting the height of buildings" as a condition that may be imposed. It is not clear that these conditions can only pertain to resolving a health, safety, or habitability issue or to comply with a statewide land use planning goal.	**Codification N/A** **Recommendation:** For Type III and IV decisions consider specifying that the conditions may not include reductions in density or height for housing, except to resolve a health, safety, or habitability issue or to comply with a statewide land use planning goal.
Opting-In to Amended Housing Regulations An applicant may "opt in" to new standards adopted by a city after the applicant submitted an application. This enables an applicant to apply a city's new development standards and criteria if they choose to, without having to withdraw and resubmit their application. ORS 227.178 Amended by SB 1537 (2024)	YMC contains no provisions that enable an application to "opt in" to new standards adapted after the application was submitted.	**Codification Recommended** **Recommendation:** Codify this allowance directly. Consider modeling from the City of Bend.

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
Limited Land Use Decisions A city must apply a limited land use decision procedure (usually called "Type II" or "Adminstrative") to tentative subdivision or partitions, site design review, replats, property line adjustments, and the extension/alteration/expansion of a non-conforming use. ORS 197.195 and 197.015 Amended by SB 1537 (2024)	Relevant sections: § 9.56.010 Approval of partitions and subdivisions. § 9.58 Standards and Procedures for Property Line Adjustments § 9.76 Nonconforming Lots and Uses Type I decisions are made by Planner, without public notice or hearing. Type II decisions are made by Planner, with public notice and opportunity for appeal. Type III decisions are made by a Planning Commission with public notice, hearing, and opportunity for appeal. -Preliminary (tentative) subdivisions: Planning Commission decision with notice and public hearing (equivalent to Type III) -Preliminary (tentative) partitions: Planning Commission decision with notice and public hearing (equivalent to Type III) -Site Design Review: Not defined. A multi-family project that does not include a subdivision is assumed to be approved directly through a building permit. -Replats: Planning Commission decision with notice and public hearing (equivalent to Type III) -Property line adjustments: Planner decision with notice (equivalent to Type II) -Extension/alteration/expansion of non-conforming use: no procedure outlined	**Does Not Comply** **Recommendation:** Apply a Type II or Type I procedure to tentative subdivisions and partitions, replats, and the extension/alteration/expansion of non-conforming use.
Occupancy Limit Based on Familial Relationship City may not enforce a maximum occupancy limit for any residential dwelling unit if the restriction is based on the familial or nonfamilial relationships among any occupants. ORS 90.112 Amended by HB 2583 (2021)	YMC defines family as "an individual or two or more persons related by blood, marriage, adoption or legal guardianship, living together as one housekeeping unit using one kitchen, and providing meals or lodging to not more than two additional persons; or a group of not more than three unrelated persons, living together as one housekeeping unit using one kitchen." (9.04.030 Definitions) The definition imposes an occupancy limit of 3 people if they are unrelated, with no occupancy limit for related persons. Other terms that use the term family: -Family day care provider -Dwelling unit; Dwelling; Apartment house; Dwelling, Multifamily; Dwelling, Single-family; Dwelling, Two-Family	**Does Not Comply** **Recommendation:** Consider amending the definition of family so as to not place occupancy limits differentially based on family relationships. Alternatively, consider replacing the term family with "household". Occupancy limits for households may still be enforced so long as they do not vary based on familial relationships. Consider replacing terms for dwellings that are defined by quantity of units as measured by families (single-family, multifamily) with terms that refer to dwellings or units (single-dwelling, multi-dwelling).

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
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Manufactured Homes Cities must allow manufactured homes in single-family residential zones. ● Exceptions allowed for historic districts or land adjacent to historic landmarks. ● May not apply design or development standards that would not apply to single-family dwelling, except: ○ Protective measure under statewide goal ○ Thermal envelope performance standard ORS 197.478 Amended by HB 4064 (2022)	The City definition of "manufactured dwelling" is functionally similar to the ORS definition for "manufactured home". City definition of manufactured dwelling: "Manufactured dwelling" means: 1. A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962; 2. A mobile home, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962 and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction; 3. A manufactured home, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with Federal manufactured housing construction and safety standards and regulations in effect at the time of construction. "Manufactured dwelling" does not mean any building or structure subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer. **ORS definition of Manufactured home**: except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has	**Does Not Comply** **Recommendation:** Update definition of "manufactured home" to match state definition. Remove additional development and design standards that apply to manufactured homes that do not apply to single-family dwellings.

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
	sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. (b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract. Relevant code sections: *§ 9.12.020 R-1 Permitted uses* *§ 9.16.020 R-2 Permitted uses* *§ 9.20.020 R-3 Permitted uses* *§ 9.24.020 R-4 Permitted uses* *§ 9.68.010 General provisions* R-1, R-2, R-3, R-4 allow for manufactured homes. However, additional requirements around development and design standards apply. Specifically, these standards need to change or be removed: ● "The manufactured home shall be multi-sectional and enclose a space of not less than 1,000 square feet. A manufactured home shall not be considered multi-sectional (double-wide or larger) by virtue of having a tip-out section." ● "The manufactured home shall have a pitched roof not less than a nominal three feet in height for each 12 feet in width." ● There are a number of general provisions included in Chapter 9.68.010(C)-(H) that do not apply to single-unit dwellings that will need to be removed.	
Manufactured Home Parks Cities must allow manufactured home parks on enough land sufficient to meet the need as identified in an adopted Housing Needs/Capacity Analysis, in zones with density of 6-12 units per acre The projection of need must be based on both population projections/demographics and to accommodate the potential	**Requirement**: Cities must allow manufactured home parks on enough land sufficient to meet the need as identified in an adopted Housing Needs/Capacity Analysis, in zones with density of 6-12 units per acre **Finding**: Manufactured dwelling parks are permitted in the R-3 (max density 12 dwelling u/acre) and R-4 (max density 12 units/acre) zones. The 2022 HNA projects that Yachats needs 271 housing units over the	**Partially Complies** **Recommendation:** Allow manufactured dwelling parks as an outright permitted use, with special use standards as currently required, in R-3 and R-4 zones. Reduce minimum lot size for manufactured dwelling subdivision to 1 acre. Add prefabricated dwellings and update the ORS reference in

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
displacement of residents of current manufactured home parks. Cities may apply clear and objective standards to manufactured home parks and may require a hearing prior to approval, but clear and objective standards must be the sole issue reviewed at the hearing. Cities must allow siting of prefabricated structures (“tiny homes”, etc. that do not meet definition of manufactured home) in manufactured home parks. *ORS 197.480* Amended by HB 4064 (2022) Cities cannot apply a minimum lot size greater than one (1) acre to manufactured home parks. ORS 197.478(5)	next 20 years, including 11 units of manufactured housing. There are 24buildable acres in the R-3 and R-4 zones, indicating adequate availability of land for manufactured housing at an assumed density of 6 units/acre. The HNA projects a surplus capacity of 21 units of manufactured housing, which aligns with the availability of land for manufactured dwellings and dwelling parks. **Requirement**: Cities may apply clear and objective standards to manufactured home parks and may require a hearing prior to approval, but clear and objective standards must be the sole issue reviewed at the hearing. **Finding:** The city requires a conditional use permit and provides discretion to the Planning Commission to impose additional requirements on manufactured dwellings, manufactured dwelling parks and multifamily (9.72.010.B). This is not clear and objective. Additionally, several standards for manufactured dwelling parks (9.68.030) are not clear and objective, including pedestrian walkways, landscaping, setback conditions, and screening. **Requirement:** Cities must allow siting of prefabricated structures (“tiny homes”, etc. that do not meet definition of manufactured home) in manufactured home parks. **Finding:** Definitions for “manufactured dwelling park” are effectively the same between the City definition and ORS definition, but Yachats doesn’t include prefabricated structures in its definition. City - "Manufactured dwelling park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of the facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for	the definition of “manufactured dwelling park.” i

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
	occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the City under an ordinance adopted pursuant to ORS 92.010 to 92.190. **ORS - Manufactured Dwelling Park:** means any place where four or more manufactured dwellings or prefabricated structures, as defined in ORS 455.010, that are relocatable and more than eight and one-half feet wide, are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. (b) "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192. **Requirement**: Cities cannot apply a minimum lot size greater than one (1) acre to manufactured home parks. **Finding**: Doesn't comply: "A manufactured dwelling subdivision shall not be less than five acres of contiguous land, unless the Planning Commission finds that a particular parcel of less than five acres is suitable for a manufactured dwelling subdivision by virtue of its unique character, topography, landscape features, or by virtue of its qualifying as a special problem area."	
Manufactured Home Park Subdivisions Cities must approve subdivisions for manufactured home parks established prior to July 2nd, 2001 that meet following requirements: ● Park complies with local code standards or is an approved nonconforming use. ● No changes to the site plan or increasing number of lots.	For manufactured home parks established prior to July 2nd, 2001 that meet following requirements: ● Park complies with local code standards or is an approved nonconforming use. ● No changes to the site plan or increasing number of lots. ● Lots continue to be used for manufactured homes. ● Property owner signs a waiver of right of remonstrance to	**Partially Complies** **Recommendation:** Remove additional requirements in § YMC 9.68.040 for parks established prior to July 2nd, 2001 meeting the specified requirements.

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
• Lots continue to be used for manufactured homes. • Property owner signs a waiver of right of remonstrance to formation of Local Improvement District (LID). Cities cannot apply new conditions of approval outside those conditions applied to original manufactured home park application. Tenants must be notified of subdivision application and must be offered the right to purchase their lot. ORS 92.835-845 Amended by HB 3245 (2003)	formation of Local Improvement District (LID). Cities cannot apply new conditions of approval outside those conditions applied to original manufactured home park application. § YMC 9.68.040 contains several provisions for manufactured dwelling subdivisions that fall outside of these conditions of approval, including the requirement for Planning Commission approval, and design standards and development regulations that may fall outside of the conditions applied to the original application. There is no exception carved out for parks established prior to July 2nd, 2001 meeting the specified requirements.	
Occupancy of Recreational Vehicles (RV) Cities must allow RVs to be occupied as a residential dwelling, with no time limit, in RV parks and manufactured home parks, if lawfully connected to water and electrical supply systems and a sewage disposal system. If a manufactured home or single family home was made uninhabitable due to damages from a natural disaster, then RV may be occupied without connection to utilities while rebuilding occurs. ORS 197.493 Established by HB 2247 (2005)	**Requirement**: Cities must allow RVs to be occupied as a residential dwelling, with no time limit, in RV parks and manufactured home parks, if lawfully connected to water and electrical supply systems and a sewage disposal system. **Finding**: Current code does not allow for RVs to be occupied as a residential dwelling. This provision should be added to § 9.68.060 Recreational vehicles. **Requirement**: If a manufactured home or single family home was made uninhabitable due to damages from a natural disaster, then RV may be occupied without connection to utilities while rebuilding occurs. **Finding**: This provision should be added to § 9.68.070 Disaster emergency housing provision	**Does Not Comply** **Recommendation:** These provisions should be added to § 9.68.060 and § 9.68.070.
Single Room Occupancies (SRO) SRO means a development with no fewer than four attached units that are independently rented and lockable and provide living and sleeping space for the exclusive use of an occupant, but require that the occupant share sanitary or food preparation facilities with other units in the occupancy. Cities must allow SROs in zones that allow either single-family	SROs are not defined within the City's code and are not permitted uses in zones that allow either single-family dwellings or multi-family dwellings.	**Does Not Comply** **Recommendation:** Define and allow for SROs as required by 197A.430 in the R-1, R-2, R-3, R-4 and C-1 zones. Codify allowed densities by zone in compliance with statutory requirements.

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
dwellings or multi-family dwellings. In single-family zones, cities must allow up to six (6) SRO units on each lot or parcel. In multi-family zones, cities must allow the number of units consistent with the density standards that would apply to a multi-family dwelling (5 or more units). ORS 197A.430 Amended by HB 3395 (2023)		
Residential Homes and Facilities Residential home means a residential treatment or training home, a residential facility, or an adult foster home, that provides residential care for five (5) or fewer individuals who need not be related. Residential homes must be: ● Allowed in any residential or commercial zone where a single-family dwelling is allowed. ● Not subject to any standard that is more restrictive than standards applied to single-family dwelling. Residential facility means a residential care, residential training or residential treatment facility, that provides residential care for six to fifteen (6-15) individuals who need not be related. Residential facilities must be: ● A permitted use in any residential or commercial zone where a multi-family dwelling is a permitted use. ● A conditional use in any residential or commercial zone where a multi-family dwelling is a conditional use. ORS 197.660 to 197.670	**Residential Home Findings**: ● Definition of "residential home" is functionally the same as the ORS definition ● Permitted use in all city zones (R-1, R-2, R-3, R-4, and C-1) ● No additional development or design standards listed for residential homes **Residential Facility Findings**: ● Definition of "residential facility" is functionally the same as the ORS definition ● Permitted in all zones that allow multi-family dwellings (R-3, R-4, and C-1) ● Conditional use in R-2 even though multi-family dwellings are neither a permitted or conditional use	**Complies**
Affordable Housing: General Siting Allowances Cities must allow affordable housing outright, with no zone change or conditional use permit required, if it is located on a site that meets any one of three criteria: ● Owned by a public body, religious non-profit, affordable housing non-profit.	YMC contains no specific allowances for affordable housing.	**Codification Recommended** **Recommendation:** Define affordable housing. Update YMC to codify allowance of affordable housing on sites owned by a public body, religious non-profit, affordable housing non-profit or zoned for commercial uses, religious

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation

• Zoned for commercial uses, religious assembly, or as public lands. If land is zoned for industrial uses, additional limitations apply.
• Conversion of an existing commercial building from a commercial use to affordable housing. Additional limitations:
  ○ City must exempt development from SDC charges or reduce SDC charges.
  ○ Must limit parking requirements to the lesser of spaces required for existing commercial use or spaces required in residential zones.
Lands are exempt if they are not served by urban services, on steep slopes, floodplains, or protected due to natural hazards/resources.
 	
Affordable housing means:
• All units are affordable to families with incomes of 80% or less of AMI.
• Average of all units affordable to families with incomes of 60% or less of AMI
• Manufactured dwelling park affordable to households with incomes of 120% or less of AMI.
 	
ORS 197A.445(1-8)
Amended 2021, 2022, 2023
		assembly, or as public lands without a zone change. Include additional codification of commercial conversions to affordable housing per ORS 197A.445.

Affordable Housing: Redevelopment of Commercial Land Cities must allow affordable housing on land zoned for commercial uses (not industrial). Qualifying affordable housing projects must meet one of two criteria: • All units are affordable to families with incomes of 60% or less of AMI. • Mixed use development with ground floor commercial and units affordable to families with moderate income (80-120% of AMI). City may only apply standards of the residential zone that are most	YMC contains no specific allowances for affordable housing.	**Codification Recommended** **Recommendation:** Define affordable housing**.** Update the C-1 zone to allow affordable housing development. The City may limit affordable housing development to redevelopment sites and exclude it from being developed on vacant land.

<table>
<tr><th>Summary of State Statute/Rule</th><th>Audit Findings</th><th>Analysis and Recommendation</th></tr>
<tr><td>comparable in density to the commercial zone.

Exemptions:
● Vacant land
● Land added to the UGB in the last 15 years.
● Lands not served by urban services, on steep slopes, floodplains, or protected due to natural hazards/resources.

197A.460
Amended by HB 3395 (2023)</td><td></td><td></td></tr>
<tr><td>Affordable Housing: Density and Height Bonus
Cities must provide a density and height bonus for affordable housing projects that is at least as follows:

<table><tr><th>Existing Density</th><th>Density Bonus</th><th>Height Bonus</th></tr><tr><td>16 units/acre or less</td><td>200%</td><td>+12 feet</td></tr><tr><td>17-45 units/acre</td><td>150%</td><td>+24 feet</td></tr><tr><td>46 units/acre or more</td><td>125%</td><td>+36 feet</td></tr></table>
Density bonus does not apply to properties not zoned for residential uses.

City may reduce density or height bonus to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

Affordable housing means:
● 100% of units affordable to families with incomes of 80 percent or less of AMI.
● Average of all units affordable to families with incomes of 60 percent or less of AMI
● Manufactured dwelling park affordable to households with incomes of 120 percent or less of AMI.</td><td>YMC contains no specific allowances for affordable housing.</td><td>Codification Recommended

Recommendation: Amend code to provide density and height bonuses for affordable housing.</td></tr>
</table>

Summary of State Statute/Rule	Audit Findings	Analysis and Recommendation
ORS 197A.445(9-10) Amended by SB 8 (2021)		

CASCADIA PARTNERS

MEETING NOTES

MEETING: **PMT #2**

PROJECT: Yachats Code Update

DATE: March 26, 2025

ATTENDEES: Rachel Cotton, Sara Goldstein, Bobbi Price, Katherine Guenther, Marc Sakamoto, Mary Aebi, Hui Rodomsky

Agenda Item	Big points, decisions	Action Item
Code Concepts and Background	**Legal compliance checklist** - Rachel will send legal compliance spreadsheet but recommends that this remain an internal reference document - There are a number of areas where the code will need to be amended to come into compliance with state rules and statutes. **Clear and objective scan for residential development** - Examples of things we flagged: requirements for manufactured homes, conditional uses - Code concepts and amendments will recommend changes **General code barriers identified by HIP and code audit:** - Use regulations that are too restrictive in residential zones - Density that is too low - Overall minimum lot area that is too high - Lot coverage and setbacks that are too restrictive - Use regulations that are too restrictive in commercial zones - Incentives for affordable housing missing or ineffective Draft code concepts have been developed in response to these barriers. **Draft Code Concepts** 1. *Allow ADUs*	● Rachel will send legal compliance and clear and objective scan spreadsheets to PMT team.

	2. *Allow MMH as outright permitted uses* 3. *Adjust density and minimum lot sizes to encourage development of multiple use housing.* - Mark: common objections to increasing density are typically: increased traffic, scale of appearance of the buildings vs. character of the community. Will we supply any suggestions on how to address these concerns? - Rachel: We'll first identify what concepts are moving forward, and identify related recommendations, for instance, allowing detached middle housing, limiting FAR, and adopting design standards. - A recent 4 unit townhome built in Yachats has resulted in community outcry due to its appearance. This is the first thing Yachats will think about. - Getting from code concept to code change is a process. What do we want to allow → how do we want to allow it (design standards). - Katherine: this is a good segway into clear and objective standards: not liking something due to appearance is not clear and objective. 4. *Reduce setbacks and increase lot coverage to remove barriers to housing (no changes to height restrictions)* 5. *Reform approach to regulating residential in the C1 zone.* 6. *Rezone R1 to a higher density zone - long term potentially, has to do with private property.* 7. *Provide incentives for affordable housing* **General Reactions** - Mark: no red flags - City: looks great, clear and easy to understand, easy to portray and communicate to the community - Katherine: requiring garages in the back instead of the front would have made a huge difference for townhouses. This is a concrete example we could give about clear and objective standards. - Katherine: will need to redefine "family", "single family" etc. in the code for legal compliance	
Project Schedule	**Advisory committee** - No dates yet, can shoot for the third week of April - virtual - How many members targeting? → 4-6 (flexible though)	• Rachel Cotton will send CP availability for third week of April, Rachel + 1 other CP staff

	- Agenda: 90 minute meeting to orient everyone to the project and the work, and to work through the concepts and gather feedback. - City: can we send these slides to the AC ahead of the meeting? → Yes Next PMT - May - Early June Joint PC/CC worksession - End of June	virtually. Will work with Bobbi on scheduling.
Next Steps	Katherine to share meeting slides and orient Planning Commission	

OREGON
Department of Land Conservation & Development

Frequently Asked Questions about Pre-Implementation Compliance Measures

October 4, 2024

Disclaimer: This FAQ is general guidance based on the information available to DLCD staff at this time. It is not a DLCD decision. It is not legal advice for any specific situation. Cities and counties should consult their legal counsel for advice on specific decisions.

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What are "Pre-Implementation Compliance Measures"?

In July 2024, the Federal Emergency Management Agency (FEMA) sent a letter to cities and counties in Oregon instructing them to make short term changes to how the city or county regulates development

in flood hazard areas. FEMA describes these short-term actions as "pre-implementation" because they are occurring before FEMA fully implements long-term changes to the National Flood Insurance Program (NFIP) to comply with the Endangered Species Act.

What led up to PICM?

In 2009, environmental advocacy organizations sued the Federal Emergency Management Agency (FEMA) alleging that FEMA violated the Endangered Species Act by not consulting with National Marine Fisheries Services (NMFS) about how the National Flood Insurance Program (NFIP) could jeopardize threatened species. FEMA resolved the lawsuit by formally consulting with NMFS to review the impact of the NFIP. In April 2016, NMFS issued its Biological Opinion (BiOp) that concludes that the NFIP in Oregon jeopardizes the survival of several threatened species, including salmon, sturgeon, eulachon, and orcas. The BiOp contained a reasonable and prudent alternative (RPA) with recommendations from NMFS to FEMA on how to avoid jeopardizing the threatened species. In October 2021, FEMA issued a draft implementation plan on how to reduce the negative impacts of the NFIP on threatened species.

In 2023, FEMA started reviewing the draft implementation plan using a National Environmental Policy Act (NEPA) process, which is still underway. Under the NEPA process FEMA will analyze whether there are additional alternatives or changes to the 2021 draft implementation plan to consider.

In September 2023, environmental advocacy organizations filed a lawsuit alleging that FEMA has been too slow to implement the BiOp. Plaintiffs included the Center for Biological Diversity, the Northwest Environmental Defense Center, Willamette Riverkeeper, and The Conservation Angler. See also coverage in the Oregonian.

In July 2024, FEMA announced a new program of pre-implementation compliance measures (PICM or short-term measures) for the BiOp, separate from the NEPA full implementation (long-term measures) process. FEMA hosted four PICM webinars in July and August, and is planning additional outreach to assist NFIP communities in the fall of 2024. Some of the PICM pathways are included in the 2016 BiOp under RPA, element 2.

FEMA now has two separate, but similar processes: NEPA evaluation of the full implementation plan, and interim action through PICM. FEMA's webpage "Endangered Species Act Integration in Oregon" contains information about both processes, but does not clearly distinguish between the two processes.

What is the role of the Oregon Department of Land Conservation and Development in PICM?

FEMA and the state provide funds to the Oregon Department of Land Conservation and Development (DLCD) for staff to help cities and counties participate in the NFIP. DLCD floodplain staff do not set program policies and cannot make decisions on behalf of FEMA. As FEMA provides more information about what they are requiring through PICM, DLCD floodplain staff will try to explain the program to cities and counties.

While the floodplain staff at DLCD have a coordinating role communicating with FEMA, cities and counties are always free to communicate directly with FEMA staff. In this role, DLCD staff provided feedback on the full implementation plan (long-term measures) through the NEPA process. DLCD staff provided information about how the land use planning system in Oregon would affect the full implementation plan. DLCD did not have an opportunity to play a similar role while FEMA developed PICM.

On September 26, 2024, Governor Tina Kotek sent a letter to FEMA expressing concerns about PICM, similar to concerns raised in a letter from members of congress in August. DLCD will work with FEMA to address the governor's concerns.

What does a city or county need to do now?

FEMA is requiring cities and counties to select one of three PICM short-term paths by December 1, 2024:

- Pathway 1: Adopt the PICM model floodplain management ordinance that considers impacts to fish habitat and requires mitigation to a no net loss standard.
- Pathway 2: Review individual development proposals and require permit-by-permit habitat mitigation to achieve no net loss using "Floodplain Habitat Assessment and Mitigation" guidance from FEMA.
- Pathway 3: Prohibit all new development in the floodplain.

FEMA is also requiring cities and counties to gather additional data on local floodplain permitting starting January 31, 2025, and submit an annual report to FEMA starting January 2026.

If a city or county does not choose a PICM path by December 1, 2024, then FEMA expects the city or county to use Pathway 2 for permit-by-permit habitat assessment and mitigation.

Once local planning staff review the FEMA documents (PICM model ordinance and habitat assessment guidance), planning staff may want to discuss the PICM paths with other internal local staff, and their local legal counsel. A starting point could be to determine how much developable land is within the Special Floodplain Hazard Area (SFHA). With that data to inform local decision making, staff might want to report to decision makers and the public explaining the situation and may find this FAQ useful as background. An informational work-session could be helpful to explore options for what may or may not work at the local level. DLCD staff (regional representatives and flood hazards staff) are available for technical assistance; however, many questions will need to go to FEMA. Use the dedicated email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

Does Pathway 3 "Prohibit floodplain development" require a moratorium?

No. A city or county has at least two options for prohibiting development in the special flood hazard area: temporary moratorium or permanent rezoning.

Option A: Temporary Moratorium

ORS 197.520 to 197.540 defines a process for a city or county to declare a moratorium to temporarily prevent all development in a specific area. Typically, a city or county would declare a moratorium where there are insufficient public facilities, which would not apply in this case. ORS 197.520(3) allows a different type of moratorium if a city or county demonstrates there is a compelling need based on the findings below:

For urban or urbanizable land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or county are not unreasonably restricted by the adoption of the moratorium;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the city or county has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and
- That the city or county proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

For rural land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and
- That the city or county proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

Moratoriums are legally complicated. This description is only a summary of the law. A city or county should consult carefully with their legal counsel to determine whether and how a moratorium would work in their specific situation, and to review the applicable timelines for which a moratorium may be in place and circumstances for extending a moratorium.

Option B: Permanent Rezoning

A city or county could permanently rezone the land within the special flood hazard area to a zone that would not permit development. This would not be appropriate for all cities and counties, but could be appropriate if the area in the SFHA is relatively small, unlikely to develop, or publicly owned.

Is a "Measure 56 Notice" required for PICM short-term options?

Most likely yes, but cities and counties should consult with their legal counsel on how the notification requirements apply in the specific local circumstances.

Background on Measure 56 Notices

Cities and counties in Oregon are required to send a notice to landowners before "rezoning" property. This requirement was originally enacted through Ballot Measure 56 in 1998, and is codified in Oregon Revised Statutes (ORS) 227.186 for cities and ORS 215.503 for counties. The requirement uses a broad definition of rezoning that includes any change that "limits or prohibits land uses previously allowed." DLCD maintains a webpage on the landowner notification requirement.

Pathway 1 – Model ordinance

Cities and counties staff should carefully review current zoning and development regulations for property within the SFHA. If properties are zoned for open space or conservation, then the PICM model ordinance might not further limit uses.

If properties are zoned for residential, commercial or industrial use, the PICM model ordinance would likely limit those uses, and the Measure 56 notification requirement could apply. Most local floodplain codes require owners to obtain a permit for development in the floodplain. Permit processing varies for each city or county. Oregon's model floodplain Ordinance (version 2020) meets minimum NFIP standards. However, the updated PICM model ordinance contains new standards in section 6.0 (highlighted in yellow) which could limit currently allowed uses, in which case the Measure 56 notification requirement would apply.

Pathway 2 – Permit-by-permit habitat assessment and mitigation

Cities and counties should carefully review any existing requirements for habitat mitigation. Most cities and counties do not require mitigation for habitat impacts, so the city or county would be adopting a new ordinance to require assessment and mitigation for development in flood hazard areas. These new development regulations would most likely limit currently allowed uses, and thus the Measure 56 notification requirement would apply.

Pathway 3 – Prohibit floodplain development

If a city or county declares a temporary moratorium under ORS 197.520 to 197.540, then the Measure 56 notification requirements would likely apply because a moratorium would limit or prohibit uses that would otherwise be allowed.

If a city or county rezones land or amends development regulations to permanently prohibit development within the SFHA, then the city or county should carefully review the previous zoning and allowed uses for each parcel. If some properties were previously zoned for open space or conservation, then the prohibition on development is not likely to be a limitation on future use. If some properties are zoned for residential, commercial or industrial use, then the prohibition on development would limit those uses, and thus the Measure 56 notification requirement would apply.

A city or county may not want to completely prohibit all development in the floodplain and may want to think about explicitly adding in activities exempt from the no net loss standards as listed in section 6.3 of the PICM Model Ordinance. Some of the exempt activities include normal maintenance of structures, street repairs, habitat restoration activities, routine agricultural practices, and normal maintenance of above ground utilities and would still require a local floodplain development permit. However, if a city or county wishes to include activities beyond those listed in section 6.3, then the city or county will likely need to adopt the model ordinance or require permit-by-permit habitat mitigation for the uses that are still allowed. It may be simpler to choose pathway 1 (model ordinance) or pathway 2 (permit-by-permit) instead. Cities and counties should communicate with FEMA about any exemptions.

Will the state waive legislative adoption requirements?

Each city or county has its own requirements for adopting an ordinance. The state has no authority to waive those requirements.

ORS 197.610 through 197.625 requires cities and counties to submit notice to DLCD 35 days before the first hearing to adopt a change to a comprehensive plan or a land use regulation. The statute does not authorize DLCD to waive this requirement. If it is not possible to send the notice 35 days prior to the hearing, cities and counties should send the notice as soon as possible. The notice can include a draft ordinance that will be revised before adoption. If a city or county does not provide notice 35 days prior to the hearing, this does not invalidate the ordinance. A party that did not appear before the local government in the proceedings would be allowed to appeal the ordinance.

DLCD has no authority to waive the required Measure 56 notification to landowners that is described above.

What if a city or county cannot complete the ordinance process by December 1, 2024?

Start the process of evaluating the PICM pathways as soon as possible. Keep FEMA informed via their PICM inbox FEMA-R10-MIT-PICM@fema.dhs.gov regarding your PICM path and progress.

Send questions to FEMA early in the process to give them time to respond, and document when replies are received.

Communicate often to FEMA to update them on your status and expected adoption date.

Is the model ordinance clear & objective?

Background on Clear and Objective Standards

Oregon Revised Statutes 197A.400 requires cities and counties to:

> "adopt and apply only clear and objective standards, conditions and procedures *regulating the development of housing*, including needed housing, on land within an urban growth boundary." [emphasis added.]

The legislature amended this statute to include areas within unincorporated communities and rural residential zones. The amendment takes effect on July 1, 2025.

Reviewing Model Ordinances

DLCD plans to review the existing Oregon Model Flood Hazard Ordinance to identify standards for residential development that may not be clear and objective. Over the past year, DLCD also reviewed an early draft of the model ordinance in the NEPA process for the full implementation of the BiOp. DLCD identified several aspects of that early draft model ordinance that may not be clear and objective and suggested that FEMA revise those aspects. DLCD has not yet determined whether the PICM Model Ordinance has only clear and objective standards.

What is changing for cities and counties for letters of map revision based on fill?

FEMA has temporarily suspended processing of applications for letters of map revision based on fill (LOMR-F) and conditional letters of map revision based on fill (CLOMR-F) as of **August 1, 2024**. FEMA is doing this to remove any perceived incentive to using fill and to avoid potentially negative effects on habitat for threatened species.

FEMA is not prohibiting fill in the SFHA, rather they are suspending the opportunity for owners or developers to revise floodplain maps to be released from mandatory flood insurance. Therefore, if fill is used for structure elevation and there is a federally backed mortgage on the property, flood insurance will still be required. Cities and counties should continue to enforce their existing floodplain ordinance on regulations regarding placement of fill in flood hazard areas.

If an applicant asks for a community acknowledgement form (CAF) for a CLOMR-F or LOMR-F for a project not covered in the exceptions below, it would be wise to contact FEMA before signing.

Exceptions for L/CLOMR-F processing:

- Projects that are undergoing Section 7 consultation via an alternative federal nexus
- LOMR-Fs for already processed CLOMR-Fs
- CLOMRs required for habitat restoration projects

What are the Measure 49 implications to the PICM pathways?

Measure 49 could apply in some situations, but it is unlikely that a city or county would have to pay compensation to a landowner. Cities and counties should consult with their legal counsel to analyze their specific situation.

Background:

Ballot Measure 49 was approved by Oregon voters in 2007. Its initial impact was on property owners who acquired their property before land use regulations were established in the 1970's and 1980's. In many cases, those owners were permitted to build up to three houses, even though the current zoning would not allow new houses.

Measure 49 also applies to future changes in land use regulations. Those provisions are codified in ORS 195.300 to 195.336. If a state or local government enacts a land use regulation that restricts a residential use and reduces the fair market value of a property, then the owner can apply for just compensation. The compensation can be monetary, or a waiver to allow the owner to use the property without applying the new land use regulation. This requirement does not apply if the new regulation is for the protection of public health and safety.

Pathway 1 – Model ordinance

If a property owner applied for just compensation as a result of a city or county adopting the PICM model ordinance, the city or county would process the claim as provided in ORS 195.300 through 314. This includes evaluating the claim to determine whether it is valid, and then deciding whether to waive the regulation or pay monetary compensation.

First, determine whether the claimant owned the property before the city or county adopted the new regulations in the model ordinance.

Next determine whether the new regulations restrict the use of the property for single-family dwellings. The statute does not include a specific definition of "restrict" in this context. If the new ordinance has the effect of completely prohibiting residential use, then it clearly restricts the use. If the new ordinance allows single-family dwellings, but places design standards or conditions of development, these likely do not restrict the use.

Next, determine whether the regulations "restrict or prohibit activities for the protection of public health and safety" as provided in ORS 195.305(3)(b). Many aspects of regulating floodplains are based on safety; however, some of the regulations in the PICM model ordinance are based on improving fish habitat. This could result in complicated analysis to determine whether the habitat requirements restrict development beyond the restriction already created by regulations based on safety.

Next, review the property appraisals submitted by the claimant to determine whether the property value was actually reduced. Property in a flood hazard area may already have a low value. The property may still have value for agricultural use which would offset the loss due to the regulation.

If a property owner has a valid claim, then the city or county would decide to pay monetary compensation or to waive some regulations. The city or county is not required to waive all regulations, only "to the extent necessary to offset the reduction in the fair market value of the property" ORS 195.310(6)(b). The city or county could still apply regulations based on safety, and could still apply regulations that existed prior to adopting the PICM model ordinance.

Pathway 2 – Permit-by-permit habitat assessment and mitigation

The results would be similar to pathway 1. In most cases the habitat mitigation requirement would not prevent development, and the owner would likely not be entitled to just compensation. If the habitat mitigation requirements did prevent development, then the owner could apply for just compensation. The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Pathway 3 – Prohibit floodplain development

A temporary moratorium would likely not lead to a claim for just compensation because it is not a new land use regulation. Also, a temporary moratorium is unlikely to significantly affect fair market value because potential buyers know that the moratorium will end.

Rezoning to prohibit all development within the SFHA would likely be a basis for a claim for just compensation, especially for a property entirely within the SFHA. If a property includes area inside and outside the SFHA, and the owner could still develop the same number of dwellings in a different location, then the owner would likely not be able to make a claim for just compensation.

The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Where can I find additional information or ask questions about PICM?

FEMA has a webpage for Endangered Species Act Integration in Oregon. Email questions to the PICM email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

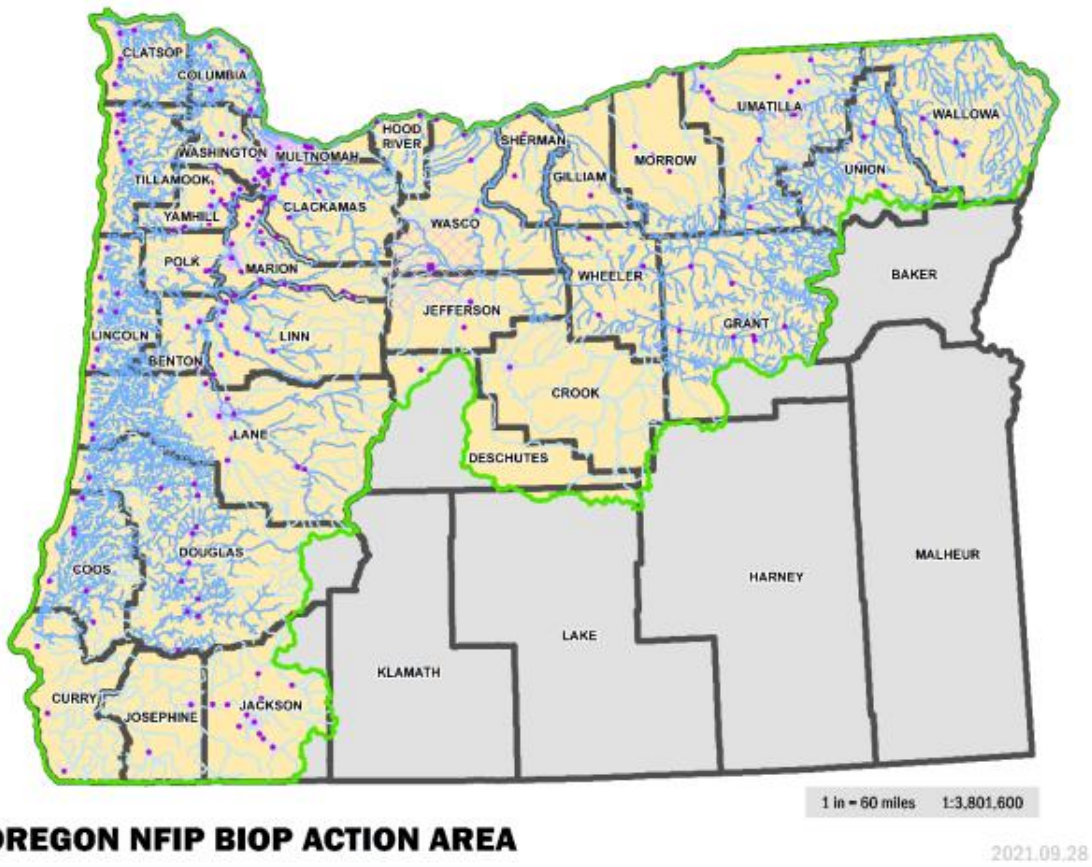
While DLCD staff are not responsible for PICM implementation, we are available to offer technical assistance. Email or call Oregon's NFIP Coordinator at DLCD, Deanna Wright, deanna.wright@dlcd.oregon.gov, 971-718-7473.

What if a city or county received a PICM letter in error, or did not receive a PICM letter?

Staff may contact FEMA's PICM inbox at: FEMA-R10-MIT-PICM@fema.dhs.gov to receive the letter, or you may contact DLCD staff. FEMA staff sent the email announcements to the city or county floodplain staff and the letter was mailed to each individual city or county chief elected officer. If you believe your community is outside of the BiOp action area (map instructions below), but you received a PICM letter, please contact FEMA PICM inbox for verification.

What area does the BiOp cover?

Below is a snapshot image of the Oregon NFIP BiOp Action Area:



OREGON NFIP BIOP ACTION AREA

The BiOp is applicable in Special Flood Hazard Areas (SFHA) within the mapped salmon recovery domains for Oregon communities that participate in the NFIP. The BiOp covers approximately 90 percent of participating Oregon NFIP communities but does not apply to five counties.

NOAA Fisheries GIS mapping application tool

FEMA has published directions on how to determine if a proposed development or project area is within the BiOp area.

CHAPTER 9.54
FLOOD DAMAGE PREVENTION REGULATIONS

§ 9.54.010. Statutory authority, findings of fact, purpose, and methods.

A. Statutory Authorization. The State of Oregon has in ORS 197.175 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Yachats does ordain as follows:

B. Findings of Fact.

1. The flood hazard areas of City of Yachats preserve the natural and beneficial values served by floodplains but are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

C. Statement of Purpose. It is the purpose of this chapter to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in special flood hazard areas by provisions designed to:

1. Protect human life and health;

2. Minimize expenditure of public money for costly flood control projects;

3. Preserve natural and beneficial floodplain functions;

4. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

5. Minimize prolonged business interruptions;

6. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in special flood hazard areas;

7. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;

8. Notify potential buyers that the property is in a special flood hazard area;

9. Notify those who occupy special flood hazard areas that they assume responsibility for their actions;

10. Participate in and maintain eligibility for flood insurance and disaster relief.

D. Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter includes methods and provisions for:

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1. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

4. Controlling filling, grading, dredging, and other development which may increase flood damage;

5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

6. Employing a standard of "no net loss" of natural and beneficial floodplain functions.

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009; Ord. 361 § 1, 2019)

§ 9.54.020. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage.

"Appeal": A ~~means a~~ request for a review of the interpretation of any provision of this chapter or a request for a variance.

"Area of shallow flooding": A ~~means a~~ designated Zone AO, AH, AR/AO or AR/AH ~~or VO~~ on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard": The ~~means the~~ land in the floodplain within a community subject to a 1 ~~one~~ -percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zones A, AO, AH, A1-30, AE, A99, AR, V, ~~VO,~~ V1-30 and VE. "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard".

"Base flood": The ~~means the~~ flood having a one -percent chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)": The ~~means the~~ elevation to which floodwater is anticipated to rise during the base flood.

"Basement": Any ~~means any~~ area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall": A ~~means a~~ wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Coastal high hazard area": An ~~means an~~ area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

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"Development": Any ~~means any~~ man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Fill”: Placement of any materials such as soil, gravel, crushed stone, or other materials that change the elevation of the floodplain. The placement of fill is considered “development.”

“Fish Accessible Space”: The volumetric space available to fish to access.

“Fish Egress-able Space”: The volumetric space available to fish to exit or leave from.

"Flood" or "flooding" ~~means~~:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:

   a. The overflow of inland or tidal waters.

   b. The unusual and rapid accumulation or runoff of surface waters from any source.

   c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.

"Flood elevation study": An ~~means an~~ examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Insurance Rate Map (FIRM)" : The ~~means the~~ official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS). See "Flood elevation study."

"Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodway": The ~~means the~~ channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "regulatory floodway."

"Functionally dependent use": A ~~means a~~ use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, ~~and~~ but does not include long term storage or related

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manufacturing facilities.

"Green Infrastructure": Use of natural or human-made hydrologic features to manage water and provide environmental and community benefits. Green infrastructure uses management approaches and technologies that use, enhance, and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse. At a large scale, it is an interconnected network of green space that conserves natural systems and provides assorted benefits to human populations. At a local scale, it manages stormwater by infiltrating it into the ground where it is generated using vegetation or porous surfaces, or by capturing it for later reuse. Green infrastructure practices can be used to achieve no net loss of pervious surface by creating infiltration of stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface.

"Habitat Restoration Activities": Activities with the sole purpose of restoring habitats that have only temporary impacts and long-term benefits to habitat. Such projects cannot include ancillary structures such as a storage shed for maintenance equipment, must demonstrate that no rise in the BFE would occur as a result of the project and obtain a CLOMR and LOMR, and have obtained any other required permits (e.g., CWA Section 404 permit).

"Hazard Trees": Standing dead, dying, or diseased trees or ones with a structural defect that makes it likely to fail in whole or in part and that present a potential hazard to a structure or as defined by the community.

"Highest adjacent grade": The ~~means the~~ highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure": Any ~~means any~~ structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

    a. By an approved state program as determined by the Secretary of the Interior; or

    b. Directly by the Secretary of the Interior in states without approved programs.

"Hydraulically Equivalent Elevation": A location (e.g., a site where no net loss standards are implemented) that is approximately equivalent to another (e.g., the impacted site) relative to the same 100-year water surface elevation contour or base flood elevation. This may be estimated based on a point that is along the same approximate line perpendicular to the direction of flow.

"Hydrologically Connected": The interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

"Impervious Surface": A surface that cannot be penetrated by water and thereby prevents infiltration and increases the amount and rate of surface water runoff, leading to erosion of stream banks,

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degradation of habitat, and increased sediment loads in streams. Such surfaces can accumulate large amounts of pollutants that are then “flushed” into local water bodies during storms and can also interfere with recharge of groundwater and the base flows to water bodies.

“Low Impact Development”: An approach to land development (or redevelopment) that works with nature to manage stormwater as close to its source as possible. It employs principles such as preserving and recreating natural landscape features and minimizing effective imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Low Impact Development refers to designing and implementing practices that can be employed at the site level to control stormwater and help replicate the predevelopment hydrology of the site. Low impact development helps achieve no net loss of pervious surface by infiltrating stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface. LID is a subset of green infrastructure.

"Lowest floor": The ~~means the~~ lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

"Manufactured dwelling": A ~~means a~~ structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle" and is synonymous with "manufactured home".

"Manufactured dwelling park or subdivision": A ~~means a~~ parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

“Mean Higher-High Water”: The average of the higher-high water height of each tidal day observed over the National Tidal Datum Epoch.

"Mean sea level": For ~~means for~~ purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

"New construction": For ~~means for~~ floodplain management purposes, “new construction” means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by City of Yachats and includes any subsequent improvements to such structures.

“No Net Loss”: A standard where adverse impacts must be avoided or offset through adherence to certain requirements so that there is no net change in the function Model Ordinance Language National Flood Insurance Program Page 3-7 NFIP-ESA Integration in Oregon Draft Model Ordinance from the existing condition when a development application is submitted to the state, tribal, or local jurisdiction. The floodplain functions of floodplain storage, water quality, and vegetation must be maintained.

“Offsite”: Mitigation occurring outside of the project area.

“Onsite”: Mitigation occurring within the project area.

“Ordinary High Water Mark”: The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

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"Qualified Professional": Appropriate subject matter expert that is defined by the community.

"Reach": A section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. It can also be the length of a stream or river (with varying conditions) between major tributaries or two stream gages, or a length of river for which the characteristics are well described by readings at a single stream gage.

"Recreational vehicle": A ~~means a~~ vehicle which is:

1. Built on a single chassis;
2. ~~Four hundred~~ 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Riparian": Of, adjacent to, or living on, the bank of a river, lake, pond, or other water body.

"Riparian Buffer Zone (RBZ)": The outer boundary of the riparian buffer zone is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water line of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or 170 feet inland from the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Where the RBZ is larger than the special flood hazard area, the no net loss standards shall only apply to the area within the special flood hazard area.

"Riparian Buffer Zone Fringe": The area outside of the RBZ and floodway but still within the SFHA.

"Silviculture": The art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands.

"Special flood hazard area" See "area of special flood hazard" for this definition.

"Start of construction": Includes ~~includes~~ substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure": For ~~means for~~ floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.

"Substantial damage": Damage ~~means damage~~ of any origin sustained by a structure whereby the

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cost of restoring the structure to its before damaged condition would equal or exceed 50 percent ~~%~~ of the market value of the structure before the damage occurred.

"Substantial improvement": Any ~~means any~~ reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent ~~%~~ of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Undeveloped Space": The volume of flood capacity and fish-accessible/egress-able habitat from the existing ground to the Base Flood Elevation that is undeveloped. Any form of development including, but not limited to, the addition of fill, structures, concrete Model Ordinance Language National Flood Insurance Program Page 3-9 NFIP-ESA Integration in Oregon Draft Model Ordinance structures (vaults or tanks), pilings, levees and dikes, or any other development that reduces flood storage volume and fish accessible/egress-able habitat must achieve no net loss.

"Variance": A ~~means a~~ grant of relief by City of Yachats from the terms of a flood plain management regulation.

"Violation": The ~~means the~~ failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.
(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009; Ord. 361 § 1, 2019)

§ 9.54.030. General provisions.

A. Lands to Which This Chapter Applies. This chapter shall apply to all special flood hazard areas within the jurisdiction of the City of Yachats.

B. Basis for Establishing the Special Flood Hazard Areas.
The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for "Flood Insurance Study for Lincoln County, Oregon and Incorporated Areas", dated September 28th, 2019 with accompanying Flood Insurance Rate Maps (FIRMs) 41041C0803E, 41041c0811E, and 41041C0815E are hereby adopted by reference and declared to be a part of this chapter. The FIS and FIRM panels are on file at City of Yachats Office, 501 ~~441~~ N. Highway 101, Yachats, Oregon.

C. Coordination with State of Oregon Specialty Codes. Pursuant to the requirement established in ORS 455 that the City of Yachats administers and enforces the State of Oregon Specialty Codes, the City of Yachats does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this chapter is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

D. Compliance and Penalties for Noncompliance.

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1. Compliance. All development within special flood hazard areas is subject to the terms of this chapter and required to comply with its provisions and all other applicable regulations.

2. Penalties for noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a class A infraction under Yachats Municipal Code Sections 1.12.010 through 1.12.150.

E. Abrogation and Severability.

1. Abrogation. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where the ordinance codified in this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

2. Severability. This chapter and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this chapter.

F. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

G. Warning and Disclaimer of Liability.

1. Warning. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

2. Disclaimer of Liability. The ordinance codified in this chapter shall not create liability on the part of the City of Yachats, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009; Ord. 361 § 1, 2019)

§ 9.54.040. Administration.

A. Designation of the Floodplain Administrator. The City Manager, or the City Manager's designee, is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

B. Duties and Responsibilities of the Floodplain Administrator. Duties of the Floodplain

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Administrator, or their designee, shall include, but not be limited to:

1. Permit review. Review all development permits to ~~determine that~~:

   a. ~~The~~ Determine that the permit requirements of this chapter have been satisfied.

   b. ~~All~~ Determine that all other required local, State, and Federal permits have been obtained and approved.

   c. ~~Review all development permits to determine~~ Determine if the proposed development is located in a floodway. If located in the floodway assure that the floodway provisions of this chapter in Section 9.54.050(B)(4) are met; and

   d. ~~Review all development permits to determine~~ Determine if the proposed development is located in an area where Base Flood Elevation (BFE) data is available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data is not available then ensure compliance with the provisions of Section 9.54.050(A)(7); and

   e. Provide to Building Officials the Base Flood Elevation (BFE) applicable to any building requiring a development permit.

   f. ~~Review all development permit applications to determine~~Determine if the proposed development qualifies as a substantial improvement as defined in Section 9.54.020.

   g. ~~Review all development permits to determine~~Determine if the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Section 9.54.050(A)(1).

   h. ~~Review all development permits to determine~~Determine if the proposed development activity includes the placement of fill or excavation.

   i. Determine whether the proposed development activity complies with the no net loss standards in Section 6.0.

2. Information to be obtained and maintained. The following information shall be obtained and maintained and shall be made available for public inspection as needed:

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a. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where Base Flood Elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with Section 9.54.050(A)(7).

b. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Sections 9.54.050(B)(4), 9.54.050(C)(1)(f), and 9.54.040(B)(1)(b) are adhered to.

c. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

d. Where base flood elevation data are utilized, obtain as-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

e. Maintain all Elevation Certificates (EC) submitted to the City of Yachats.

f. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this chapter and where Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with Section 9.54.050(A)(7).

g. Maintain all floodproofing certificates required under this chapter.

h. Record and maintain all variance actions, including justification for their issuance;

i. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Section 9.54.050(B)(4).

j. Record and maintain all substantial improvement and substantial damage calculations and determinations as required under Section 9.54.040(B)(4).

k. Documentation of how no net loss standards have been met (see Section 6.0)

l. Maintain for public inspection all records pertaining to the provisions of this chapter.

3. Requirement to notify other entities and submit new technical data.

a. Community boundary alterations. The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard

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Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

b. Watercourse alterations. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate State and Federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

   i. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

   ii. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

   The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under Section 9.54.040(B)(3)(c). Ensure compliance with all applicable requirements in Sections 9.54.040(B)(3)(c) and 9.54.050(A)(1).

c. Requirement to submit new technical data. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Subsection 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

   The Floodplain Administrator shall require a Conditional Letter of Map Revision (CLOMR) prior to the issuance of a floodplain development permit for:

   i. Proposed floodway encroachments that increase the base flood elevation; and

   ii. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

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An applicant shall notify FEMA within six months of project completion when an applicant has obtained a Conditional Letter of Map Revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a Letter of Map Revision (LOMR).

The property owner shall be responsible for preparing all technical data to support the CLMR/LOMR application and paying any processing or application fees associated with the CLMR/LOMR.

The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form which is part of the CLMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable State and Federal laws.

4. Substantial improvement and substantial damage assessments and determinations. Conduct Substantial Improvement (SI) (as defined in Section 9.54.020) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with Section 9.54.040(B)(2). Conduct Substantial Damage (SD) (as defined in Section 9.54.020) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in Section 9.54.030(B)) are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

C. Establishment of Development Permit.

1. Floodplain development permit required. A development permit shall be obtained before construction or development begins within any area horizontally within the special flood hazard area established in Section 9.54.030(B). The development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in Section 9.54.020, including fill and other development activities.

2. Application for a development permit may be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically the following information is required:

a. In riverine flood zones, the proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Section 9.54.040(B)(2).

b. In coastal flood zones (V zones and coastal A zones), the proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such

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structures contain a basement;

c. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.

d. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any nonresidential structure meet the floodproofing criteria for nonresidential structures in Section 9.54.050(B)(3)(c).

e. Description of the extent to which any watercourse will be altered or relocated.

f. Base flood elevation data for subdivision proposals or other development when required per Sections 9.54.040(B)(1) and 9.54.050(A)(6).

g. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.

h. The amount and location of any fill or excavation activities proposed.

D. Variance Procedure. The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by Federal statute according to actuarial risk and will not be modified by the granting of a variance.

1. Conditions for variances.

a. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of Section 9.54.040(D)(1)(c) and (e), and Section 9.54.040(D)(2). As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.

b. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

c. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

e. Variances may be issued by a community for new construction and substantial

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improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Section 9.54.040.(D)(1)(b) through (d) are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

f. Variances shall not be issued unless it is demonstrated that the development will not result in net loss of the following proxies for the three floodplain functions in the SFHA: undeveloped space; pervious surface; or trees 6 inches dbh or greater (see Section 6.0 and associated options in Table 1).

2. Variance notification. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with Section 9.54.040(B)(2).

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009; Ord. 361 § 1, 2019)

§ 9.54.050. Provisions for flood hazard reduction.

A. General Standards. In all special flood hazard areas, the no net loss standards (see Section 6.0) and the following standards shall be adhered to:

1. Alteration of watercourses. Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained. Require that maintenance is provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Require compliance with Sections 9.54.040(B)(3)(b) and 9.54.040(B)(3)(c).

2. Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

b. All manufactured dwellings shall be anchored per Section 9.54.050(B)(3)(d).

3. Construction materials and methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

4. Utilities and equipment.

a. Water supply, sanitary sewer, and on-site waste disposal systems.

i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

ii. New and replacement sanitary sewage systems shall be designed to minimize

or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

iii. On-Site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

b. Electrical, mechanical, plumbing, and other equipment. Electrical, heating, ventilating, airconditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at or above the base flood level or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall:

i. If replaced as part of a substantial improvement shall meet all the requirements of this section.

ii. Not be mounted on or penetrate through breakaway walls.

5. Tanks.

a. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

b. Above-ground tanks shall be installed at or above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

c. In coastal flood zones (V Zones or coastal A Zones) when elevated on platforms, the platforms shall be cantilevered from or knee braced to the building or shall be supported on foundations that conform to the requirements of the State of Oregon Specialty Code.

6. Subdivision proposals and other proposed developments.

a. All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall include within such proposals, base flood elevation data.

b. All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) shall:

i. Be consistent with the need to minimize flood damage.

ii. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

iii. Have adequate drainage provided to reduce exposure to flood hazards.

iv. Comply with no net loss standards in section 6.0.

7. Use of other base flood data. When base flood elevation data has not been provided in accordance with Section 9.54.030(B) the local floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, in order to administer Section 9.54.050. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of Section 9.54.050(A)(6).

   Base flood elevations shall be determined for development proposals that are five acres or more in size or are 50 lots or more, whichever is lesser in any A zone that does not have an established base flood elevation. Where elevation data is not available either through the flood insurance study or from another authoritative source listed above, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. Development proposal located within a riverine unnumbered A zone shall be reasonable safe from flooding. Structures shall be elevated at a minimum of two feet above the highest adjacent grade. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

8. Structures located in multiple or partial flood zones.

   a. When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.

   b. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

9. Critical facilities. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above the Base Flood Elevation (BFE) or to the height of the 500 year flood, whichever is higher. Access to and from the critical facility shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

B. Specific standards for riverine (including all non-coastal) flood zones. These specific standards shall apply to all new construction and substantial improvements in addition to the general standards contained in Section 9.54.050(A) of this chapter and the no net loss standards (see Section 6.0).

1. Flood openings. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the base flood elevation, including crawl spaces shall:

   a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exist of floodwaters;

   b. Be used solely for parking, storage, or building access;

c. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

i. A minimum of two openings,

ii. The total net area of non-engineered openings shall be not less than one square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls.

iii. The bottom of all openings shall be no higher than one foot above grade.

iv. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.

v. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

2. Garages.

a. Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) in riverine flood zones, if the following requirements are met:

i. If located within a floodway the proposed garage must comply with the requirements of Section 9.54.050(B)(4).

ii. The floors are at or above grade on not less than one side;

iii. The garage is used solely for parking, building access, and/or storage;

iv. The garage is constructed with flood openings in compliance with Section 9.54.050(B)(1) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.

v. The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage;

vi. The garage is constructed in compliance with the standards in Section 9.54.050(A); and

vii. The garage is constructed with electrical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

b. Detached garages must be constructed in compliance with the standards for appurtenant structures in Section 9.54.050(B)(3)(f) or nonresidential structures in Section 9.54.050(B)(3)(c) depending on the square footage of the garage.

3. For riverine (non-coastal) special flood hazard areas with base flood elevations. In addition to the general standards listed in Section 9.54.050(A) the following specific

standards shall apply in riverine (non-coastal) special flood hazard areas with Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

a. Before regulatory floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's Flood Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community and will not result in the net loss of flood storage volume. When determined that structural elevation is not possible and where the placement of fill cannot meet the above standard, impacts to undeveloped space must adhere to the no net loss standards in section 6.1.C.

b. Residential construction.

i. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated a minimum of two feet above the Base Flood Elevation (BFE).

ii. Enclosed areas below the lowest floor shall comply with the flood opening requirements in Section 9.54.050(B)(1).

c. Nonresidential construction.

i. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall:

(1) Have the lowest floor, including basement elevated at a minimum of two feet above the Base Flood Elevation (BFE) or, together with attendant utility and sanitary facilities;

(2) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(3) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Floodplain Administrator as set forth Section 9.54.040(B)(2).

ii. Nonresidential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor in Section 9.54.050(B)(1).

iii. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be

rated as one foot below.

~~iv. Applicants shall supply a maintenance plan for the entire structure to include, but not limited to: exterior envelop of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components, as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.~~

~~v. Applicants shall supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.~~

d. Manufactured dwellings.

i. New or substantially improved manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 9.54.050(B)(1);

ii. The bottom of the longitudinal chassis frame beam shall be at or above base flood elevation;

iii. New or substantially improved manufactured dwellings shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques), and;

iv. Electrical crossover connections shall be a minimum of 12 inches above Base Flood Elevation (BFE).

e. Recreational vehicles. Recreational vehicles placed on sites are required to:

i. Be on the site for fewer than 180 consecutive days,

ii. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

iii. Meet the requirements of Section 9.54.050(B)(3)(d), including the anchoring and elevation requirements for manufactured dwellings.

f. Appurtenant (accessory) structures. Relief from elevation or floodproofing requirements for residential and nonresidential structures in riverine (non-coastal) flood zones may be granted for appurtenant structures that meet the following requirements:

i. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Section 9.54.050(B)(4).

ii. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;

iii. In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as non-residential are limited in size to 120 square feet;

iv. The portions of the appurtenant structure located below the base flood elevation must be built using flood resistant materials;

v. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;

vi. The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Section 9.54.050(B)(1);

vii. Appurtenant structures shall be located and constructed to have low damage potential;

viii. Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed incompliance with Section 9.54.050(A)(5).

ix. Appurtenant structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

4. Floodways. Located within the special flood hazard areas established in Section 9.54.030(B) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

a. Encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway, are prohibited unless:

i. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; or

ii. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided

that conditional approval has been obtained by the Federal Insurance Administrator through the Conditional Letter of Map Revision (CLOMR) application process, all requirements established under 44 CFR 65.12 are fulfilled, and the encroachment(s) comply with the no net loss standards in section 6.0.

~~A Conditional Letter of Map Revision (CLOMR) that indicates a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations and that is applied for and approved by the Federal Insurance Administrator provided that the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, Section 65.12 are fulfilled.~~

b. If the requirements of Section 9.54.050(B)(4)(a) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Section 9.54.050.

5. Standards for shallow flooding areas. Shallow flooding areas appear on FIRMs as AO zones with depth designations or as AH zones with base flood elevations. For AO zones the base flood depths range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow.

For both AO and AH zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

a. Standards for AH Zones. Development within AH Zones must comply with the standards in Sections 9.54.050(A), 9.54.050(B) and 9.54.050(B)(5)(a).

b. Standards for AO Zones. In AO zones, the following provisions apply in addition to the requirement in Section 9.54.050(B)(5)(a):

i. New construction and substantial improvement of residential structures and manufactured dwellings within AO zones shall have the lowest floor, including the basement, elevated above the highest grade adjacent to the building, at minimum or above the depth number specified on the Flood Insurance Rate Maps (FIRM) (at least two feet if no depth number is specified). For manufactured dwellings the lowest floor is considered to be the bottom of the longitudinal chassis frame beam.

ii. New construction and substantial improvements of nonresidential structures within AO zones shall either:

1. Have the lowest floor (including basement) elevated above the highest adjacent grade of

the building site, at minimum or above the depth number specified on the Flood Insurance Rate Maps (FIRMS) (at least two feet if no depth number is specified); or

2. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the depth number specified on the FIRM or a minimum of two feet above the highest adjacent grade if no depth number is specified, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as stated in Section 9.54.050(B)(3)(a)(4).

iii. Recreational vehicles placed on sites within AO Zones on the community's Flood Insurance Rate Maps (FIRM) shall either:

1. Be on the site for fewer than 180 consecutive days, and

2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

3. Meet the requirements of Sections 9.54.050(A) and 9.54.050(B) above, including the elevation and anchoring requirements for manufactured dwellings.

iv. In AO zones, new and substantially improved appurtenant structures must comply with the standards in Section 9.54.050(B)(3)(f).

v. In AO zones, enclosed areas beneath elevated structures shall comply with the requirements in Section 9.54.050(B)(1).

C. Specific standards for coastal high hazard flood zones. Located within special flood hazard areas established in Section 9.54.030(B) are coastal high hazard areas, designated as Zones V1-V30, VE, V, or coastal A zones as identified on the FIRMs as the area between the Limit of Moderate Wave Action (LiMWA) and the Zone V boundary. These areas have special

flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions of this chapter and the State of Oregon Specialty Codes, the following provisions shall apply in addition to the general standards provisions in Section 9.54.050(A).

1. Development standards.

   a. All new construction and substantial improvements in Zones V1-V30 and VE, V, and coastal A zones (where base flood elevation data is available) shall be elevated on pilings and columns such that:

      i. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated a minimum of one foot above the base flood level; and

      ii. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those specified by the State of Oregon Specialty Codes;

   b. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this section.

   c. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures and whether or not such structures contain a basement. The local floodplain administrator shall maintain a record of all such information in accordance with Section 9.54.040(B)(2).

   d. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

      For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

      i. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

      ii. If breakaway walls are utilized, such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

      iii. Walls intended to break away under flood loads shall have flood openings that

meet or exceed the criteria for flood openings in Section 9.54.050(B)(1).

e. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum water loading values to be used in this determination shall be those associated with the base flood. Maximum wind loading values used shall be those specified by the State of Oregon Specialty Codes.

f. Prohibit the use of fill for structural support of buildings.

g. All new construction shall be located landward of the reach of mean high tide.

h. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

i. All structures, including, but not limited to, residential structures, nonresidential structures, appurtenant structures, and attached garages shall comply with all the requirements of Section 9.54.050(C)(1). Floodproofing of non-residential structures is prohibited.

2. Manufactured dwelling standards for coastal high hazard zones. All manufactured dwellings to be placed or substantially improved within coastal high hazard areas (Zones V, V1-30, VE, or Coastal A) shall meet the following requirements:

a. Comply with all of the standards within Section 9.54.050(C);

b. The bottom of the longitudinal chassis frame beam shall be elevated to a minimum of one foot above the Base Flood Elevation (BFE); and

c. Electrical crossover connections shall be a minimum of 12 inches above the BFE.

3. Recreational vehicle standards for coastal high hazard zones. Recreational vehicles within coastal high hazard areas (Zones V, V1-30, VE, or Coastal A) shall either:

a. Be on the site for fewer than 180 consecutive days, and

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 9.54.040 and the requirements for manufactured homes in Section 9.54.050(C)(1)(a).

4. Tank standards for coastal high hazard zones. Tanks shall meet the requirements of Section 9.54.050(A)(5) and Section 6.0.

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009; Ord. 361 § 1, 2019)

~~§ 9.54.060. Variances.~~

~~A. General Conditions. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, or to~~

~~economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.~~

~~1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items Section 9.54.060(A)(4)(a) through (k) below have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.~~

~~2. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.~~

~~3. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood proofing than watertight or dry-flood proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 9.54.060(A)(1) and otherwise complies with Section 9.54.050(A)(1) and (2) of General Standards.~~

~~4. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base floodelevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~

~~5. In evaluating requests for variances from the requirements of this ordinance, the Planning Commission and City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of these code sections, and~~

~~a. The danger that materials may be swept onto other lands to the injury of others;~~

~~b. The danger to life and property due to flooding or erosion damage;~~

~~c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;~~

~~d. The importance of the services provided by the proposed facility to the community;~~

~~e. The necessity to the facility of a waterfront location, where applicable;~~

~~f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;~~

~~g. The compatibility of the proposed use with existing and anticipated development;~~

~~h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;~~

~~i. The safety of access to the property in times of flood for ordinary and emergency vehicles;~~

~~j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and.~~

~~k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer,~~

gas, electrical, and water systems, and streets and bridges.

B. Circumstances for Granting a Variance. Variances shall be issued only upon all of the following conditions being met:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws, ordinances or codes; and

4. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5. Procedure for Variance Applications.A request for a variance from the requirements of these code sections shall be made by filing an application with the City Recorder. The application shall be accompanied by a site plan drawn to scale showing the condition to be varied and the dimensions and arrangement of the proposed development. The City Council or Planning Commission may request other drawings or material essential to an understanding of the requested variance.

6. The City Recorder shall set a time for a public hearing before the Planning Commission on the request within 40 days of the filing thereof and shall cause notice to be given in accordance with subsection (C)(7) of this section.

7. At the conclusion of the public hearing the Planning Commission may recommend to the City Council the approval or denial of the request.

8. Upon receiving the recommendation of the Planning Commission, the City Recorder shall set a time for a public hearing before the City Council within 40 days from the date of receiving the Planning Commission's recommendation and shall cause notice to be given in accordance with subsection (C)(7) of this section.

9. At the conclusion of the public hearing, the City Council may approve or deny the request for a variance. In granting a variance, the City Council may attach such conditions as it deems necessary to further the purpose of these code sections.

10. An applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11. Notice of Public Hearing. Each notice of a public hearing shall be published in a newspaper of general circulation in the County at least 10 days prior to the date of the hearing. In addition, at least 10 days prior to the date of the hearing, notices shall be posted in three public and conspicuous places within 250 feet of the exterior boundary of the property for which the application is made.

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009)

§ 9.54.060. Standards for Protection of SFHA Floodplain Functions.

The standards described below apply to all special flood hazard areas as defined in Section 9.54.020.

A. No Net Loss Standards

1. No net loss of the three proxies for the floodplain functions mentioned in Section 1 is required for development in the special flood hazard area that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects to floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any development authorization, the applicant shall:

   a. Demonstrate a legal right by the project proponent to implement the proposed activities to achieve no net loss (e.g., property owner agreement);

   b. Demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;

   c. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.

2. Compliance with no net loss for undeveloped space or impervious surface is preferred to occur prior to the loss of habitat function but, at a minimum, shall occur concurrent with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.

3. No net loss must be provided within, in order of preference: 1) the lot or parcel that floodplain functions were removed from, 2) the same reach of the waterbody where the development is proposed, or 3) the special flood hazard area within the same hydrologically connected area as the proposed development. Table 1 presents the no net loss ratios, which increase based on the preferences listed above.

4. Undeveloped Space:

   1. Development proposals shall not reduce the fish-accessible and egress-able undeveloped space within the special flood hazard area.

   2. A development proposal with an activity that would impact undeveloped space shall achieve no net loss of fish-accessible and egress-able space.

   3. Lost undeveloped space must be replaced with fish-accessible and egress-able compensatory volume based on the ratio in Table 1 and at the same flood level at which

the development causes an impact (i.e., plus or minus 1 foot of the hydraulically equivalent elevation).

a. Hydraulically equivalent sites must be found within either the equivalent 1-foot elevations or the same flood elevation bands of the development proposal. The flood elevation bands are identified as follows:

(1) Ordinary High Water Mark to 10-year,

(2) 10-year to 25-year,

(3) 25-year to 50-year,

(4) And 50-year to 100-year

b. Hydrologically connected to the waterbody that is the flooding source;

c. Designed so that there is no increase in velocity; and

d. Designed to fill and drain in a manner that minimizes anadromous fish stranding to the greatest extent possible.

B. Impervious Surfaces

Impervious surface mitigation shall be mitigated through any of the following options:

1. Development proposals shall not result in a net increase in impervious surface area within the SFHA, or
2. Use low impact development or green infrastructure to infiltrate and treat stormwater produced by the new impervious surface, as documented by a qualified professional, or
3. If prior methods are not feasible and documented by a qualified professional stormwater retention is required to ensure no increase in peak volume or flow and to maximize infiltration, and treatment is required to minimize pollutant loading. See section 6.2.C for stormwater retention specifications.

C. Trees

1. Development proposals shall result in no net loss of trees 6-inches dbh or greater within the special flood hazard area. This requirement does not apply to silviculture where there is no development.

a. Trees of or exceeding 6-inches dbh that are removed from the RBZ, Floodway, or RBZ-fringe must be replaced at the ratios in Table 1.

b. Replacement trees must be native species that would occur naturally in the Level III ecoregion of the impact area.

§ 9.54.070. Penalties.

A. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of these code sections and other applicable regulations.

B. Any violation of Sections 9.54.010 to 9.54.070 shall constitute a class A infraction under Yachats Municipal Code Sections 1.12.010 through 1.12.150. A person violating a provision of these code sections shall be deemed guilty of a separate infraction for each day during which the violation continues.

C. Procedure for adjudicating violations of these code sections shall be as provided in Yachats Municipal Code Section 1.12.010 through 1.12.150, entitled "Civil Infractions."

(Add, 05/12/2003; Ord. 233, 2009; Ord. 287, 2009)

Date: April 15, 2025

To: Yachats Planning Commission

CC: Bobbi Price, City Manager

Katherine Guenther, City Planner

Re: Housing Implementation Work – support and recommendation

From: Jacqueline Danos, resident

When looking at how the City of Yachts has developed, one of the first things to notice is the zoning and how single-family homes have been allowed "by-right" everywhere. This has caused the city to lose almost all the properties zoned for higher density as well as valuable commercial properties. This has also created a false notion that every area in Yachats is a low-density residential area. The only way to correct this situation is by allowing, even mandating, the changes recommended by Cascadia Partners.

A. One of the main barriers to increasing the housing options in Yachats is the current density allowances. Per page 10 of the final Housing Implementation Plan the following strategies had strong support from the community.

> *Of the four sets of strategies included in the HIP (Regulatory Strategies, Financial Incentives, Land Based Strategies, Public Project & Resources), meeting attendees showed the strongest support for prioritizing Regulatory Strategies for implementation.*
>
> *Of the Regulatory Strategies included in the HIP, meeting attendees voted to prioritize the following strategies:*
> *o Define and allow a wider range of housing types.*
> *o Establish a minimum density standard in R-3, R-4, and C-1 zones.*
> *o Reduce minimum lot size per unit.*
> *o Maintain limits on short-term rentals*

I support these changes and would add that some areas currently zoned R-1 should be re-zoned to higher density. This would allow for a gentle increase in density without causing great changes to the small coastal village aesthetic.

Some examples of where an upzoning from R-1 to higher density zone might be beneficial:

- The east side of Highway 101 between Marine Drive and the Cemetery is currently zoned R-1 while the area south of that from Marine Drive to 7th Street is zoned R-3. I would suggest rezoning the north section to at least R-2, if not R-3.

- The west side of Highway 101 from Marine Drive to 7th Street is split between C-1 along 101 and R-1 along Driftwood. Rezoning the area along Driftwood to R-2.
- On the east side of highway 101 from Hill Drive to Greenhill is zoned R-2 surrounded by R-1 north and south and directly across Highway 101 is zoned R-4. I would recommend that area be reviewed for a change to a higher density such as R-2 in that area.
- On the west side of Highway 101 between the Coho Development and Reeves Circle is zoned R-1. This is sandwiched between to R-4 zoned areas. A higher density zone such as R-2 or R-3 would be compatible with the current zoning.

B. ADU development:

As stated in the Final Housing Implementation Plan ADUs can offer a way forward to increased housing availability and affordability through a gentle increase in density.

- At issue in Yachats, and many other communities are developments with Covenants, Conditions & Restrictions (CC&R). Without the homeowners authorizing changes to these CC&Rs even if the city allows ADUs in all zones the city will not see much benefit. There are even some old developments, such as where I live, that do not have active HOAs, yet they continue to be governed by these existing CC&Rs.

Because of this issue, and the costs involved in building an ADU, I have a recommendation to put forth for investigation by Cascadia Partners and the City.

- Using a Tax Increment Financing (TIF) program. From the book "Escaping the Housing Trap" I found the following information, quoted in part:
  "For a local government committed to rapidly adding new housing city fronts the cash for the renovations in the form of a loan. Since the city can borrow money at favorable rates, those savings can be passed on. The loan is then repaid through the added tax receipts from the second unit, a micro form of a Tax Increment Financing (TIF) project. A lump sum payment for any remaining balance can be due upon the sale of the house"
- TIF are set up based on a geographic area within a city. If Yachats could make this system available in areas that are not covered by any CC&Rs restricting ADUs it could help get the development of small incremental housing started.
- My personal thoughts along this line of thinking are a program where a housing owner who wants to develop their home into a duplex, or add an ADU, but the costs are too steep can apply for a similar loan program to the TIF but the repayment of the loan is added to the property tax. This way if the home is sold the loan repayment remains with the house and is continued to be paid annually through the property tax system by the new owner.
- A benefit to the city however these developments can be created is a higher property tax valuation. The renovation into a duplex or the addition of an ADU has increased the value of the property which becomes a higher property tax payment to the city.

3. Community Engagement

Implementation of the HIP will impact many existing and future residents of Yachats. The HIP was developed with input from a variety of community members and stakeholders. This engagement process included three meetings with a Project Management Team (PMT), a virtual public meeting with community members and three work sessions with the Planning Commission and City Council.

Project Management Team

The HIP Project Management Team consisted of city staff, elected officials, planning commissioners, a local employer, and local housing developers. The Team represented the following roles:

1. Katherine Guenther, Yachats City Planner
2. Jacqueline Danos and John Theilacker, Yachats Planning Commission
3. Mary Ellen O'Shaughnessey, Yachats City Council
4. Drew Roslund, Local Employer
5. Bob Barrett, Faith Based Community
6. Layne Morrill, Local Housing Developer

Three meetings were held with the PMT. They were focused on providing an overview of the Housing Implementation Plan, discussing and receiving feedback on the draft strategies and actions proposed for inclusion in the plan, and providing feedback on the draft and final plan contents.

The Project Management Team's input was important in shaping the strategies that were included in the HIP.

Community Meeting

One virtual community meeting was held during the project to receive feedback from the community on the draft housing implementation strategies.

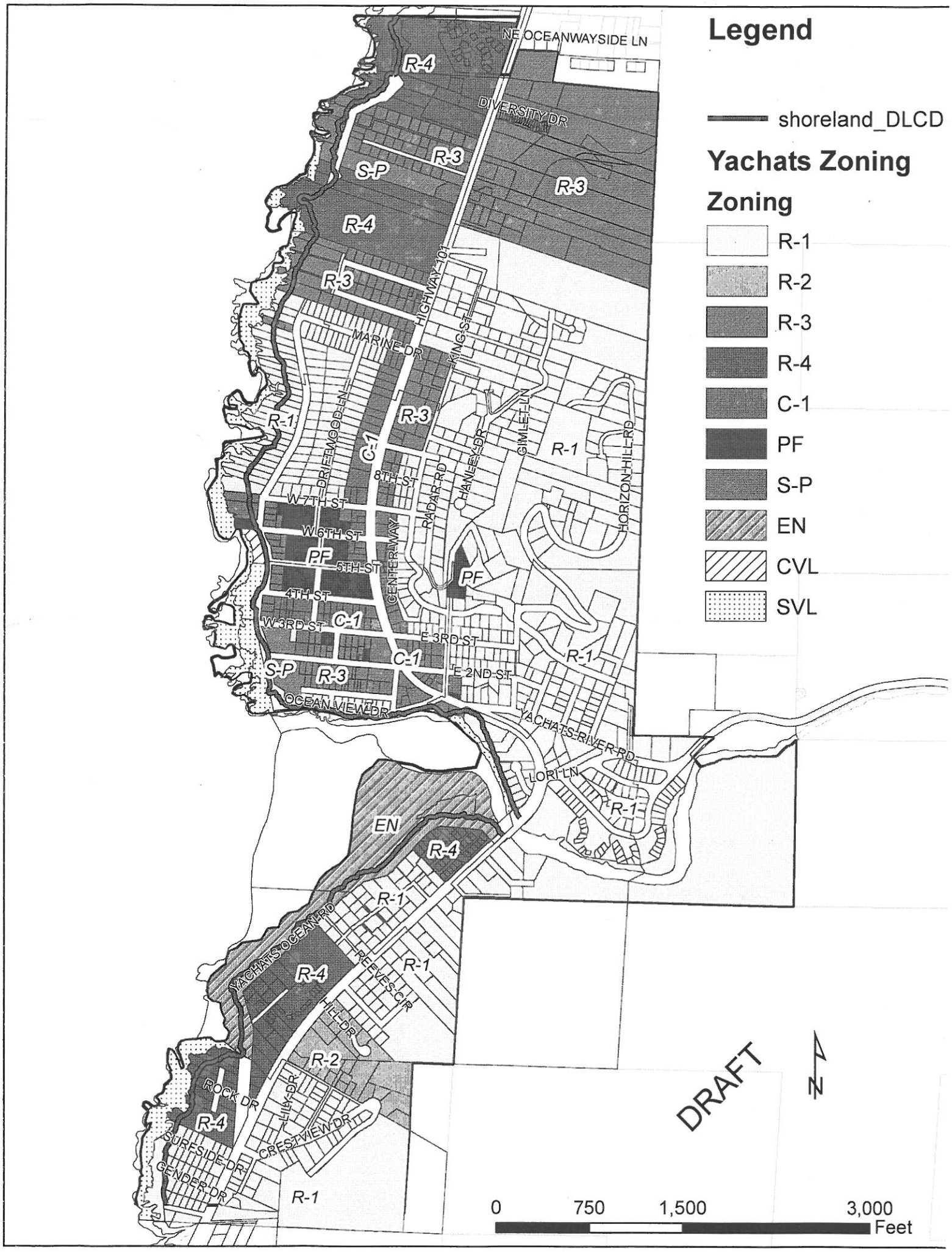
Twenty-eight (28) community members attended the community meeting. A recording of the meeting has been shared with the City. A summary of polling results from the meeting is included below:

- Of the four sets of strategies included in the HIP (Regulatory Strategies, Financial Incentives, Land Based Strategies, Public Project & Resources), meeting attendees showed the strongest support for prioritizing Regulatory Strategies for implementation.
- Of the Regulatory Strategies included in the HIP, meeting attendees voted to prioritize the following strategies:
    - Define and allow a wider range of housing types.
    - Establish a minimum density standard in R-3, R-4, and C-1 zones.
    - Reduce minimum lot size per unit.
    - Maintain limits on short-term rentals.
- Strategic parking reductions and rezoning land in the R-1 zone received no votes for prioritization from meeting attendees.

Responding to Community Feedback

Input from housing stakeholders, the Project Management Team, and public shaped the HIP in a number of ways. At the outset of the project, feedback from the Housing Needs Analysis work helped the consultant team to focus on the types of strategies that might be most effective in meeting Yachats's housing needs and would be supported by the community. The general themes of this initial input included:

- Broad support for encouraging smaller and more affordable housing options such as duplexes, cottage homes and townhomes.
- Broad support for increasing the supply of land where higher density housing types


Legend
shoreland_DLCD
Yachats Zoning
Zoning
R-1
R-2
R-3
R-4
C-1
PF
S-P
EN
CVL
SVL
NE OCEANWAYSIDE LN
DIVERSITY DR
HIGHWAY 101
MARINE DR
KING ST
DRIFTWOOD LN
8TH ST
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5TH ST
4TH ST
W 3RD ST
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CENTERWAY
RADAR RD
HANLEY DR
GIMLET LN
HORIZON HILL RD
OCEAN VIEW DR
YACHATS RIVER RD
LORI LN
YACHATS OCEAN RD
REEVES CR
HILL DR
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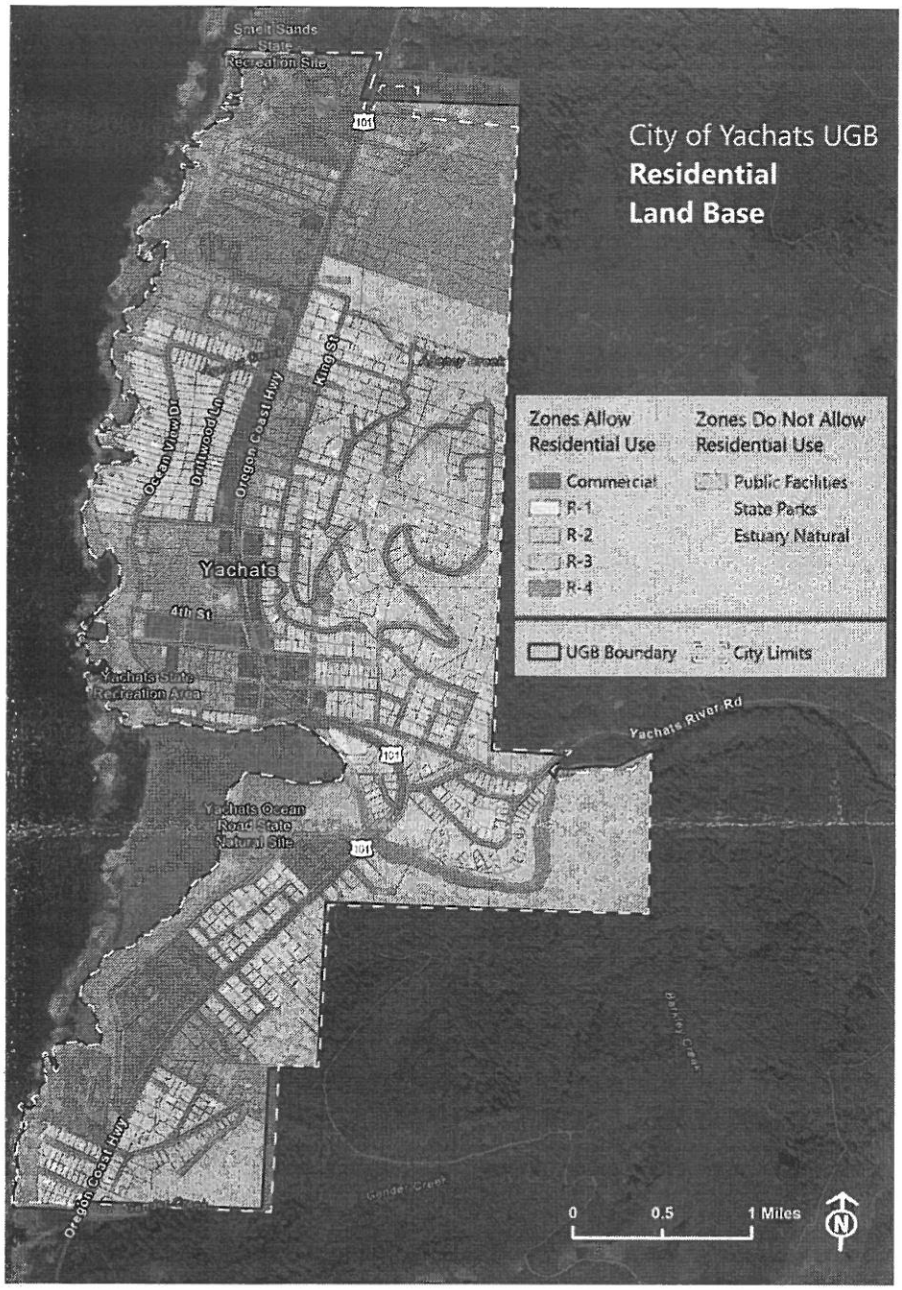
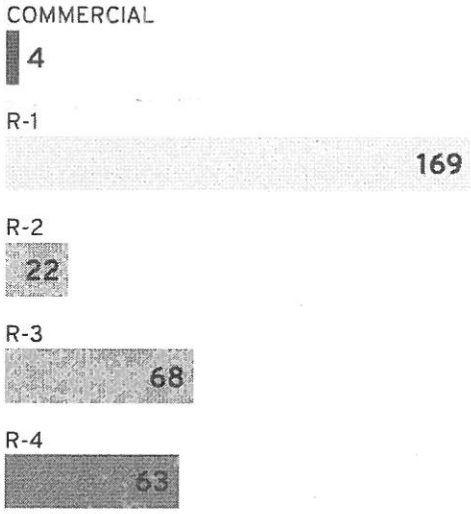


Map 3. Residential Land Base Map

Unit Capacity by Zone

A projected mix of housing types to be built in each zone was estimated using development trends in Yachats since the year 2000 as well as the overall mix of housing in the city. A baseline estimate of at least 60% single family detached housing was projected for each zone. A higher percentage of other housing types was projected in zones that allow higher density housing (R-2, R-3, R-4 and C).

Given the projections for unit capacity by zone detailed on the graph below, there is a potential deficit of land for townhomes/plexes and multi-family housing in Yachats.



For more information, please see Appendix C for the Residential Land Needs Analysis memo.