

January 10, 2012

**To: Planning Commission**

**From: Larry Lewis, City Planner**

**Re: Draft Text Amendment:  
Protection of Ocean, River, Streams, Wetlands, and Riparian Areas**

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A January 2012 draft amendment for Protection of Ocean, River, Streams, Wetlands, and Riparian Areas is attached. Primary changes to the December 2011 draft are identified below.

1. Section C. Procedure for Development Applications is divided into two sections:
  - C. Procedure for Development Applications
  - D. Procedure for Riparian Zone Vegetation Removal or Pruning
2. Section F. Ocean Protection Standards is modified as shown in ***bold italic underlined text*** and ~~strikethrough text~~.
3. Section G. Riparian Corridor Protection Standards, subsection 3 now includes a provision that allows filling, grading, excavating, or draining a wetland are if mitigation is provided.
4. Subsection H. is now titled ***Additional*** River Protection Standards.
5. The previous draft had a section titled 'Wetland Protection Standards'. This section has been eliminated because it was redundant with 'Riparian Corridor Protection Standards that applies to the river, streams, wetlands, and riparian areas.
6. A new Section N. Mitigation Standards is included that allows for mitigation when a riparian zone is proposed to be impacted.

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**Section 9.52.070 Protection of Ocean, River, Streams, Wetlands, and Riparian Areas**

- A. Purpose: The purpose of this Section is to provide procedures necessary to secure the desirable attributes of the city from depletion by recognizing the value of the ocean, river, streams, wetlands, and riparian vegetation for fish and wildlife habitat, maintenance of water quality and quantity, alleviation of flooding hazards, storm water control, recreation and aesthetics, and to provide for open space. Protection of the natural drainage ways as an integral part of the City environment in accordance with the 2011 Yachats Local Wetlands and Riparian Inventory (LWI) is also important in order to manage stormwater drainage, minimize maintenance costs, and protect properties adjacent to drainage ways.
- B. Application: The provisions of Section 9.52.070 shall apply to ocean and river shorelands, and to the streams, significant wetlands, and riparian areas identified in the LWI. The provisions of Section 9.52.070 shall also apply to existing streams, significant wetlands, and riparian areas that are not yet identified in the LWI. The provisions of Section 9.52.070 are to be applied in conjunction with the provisions of the underlying zone and are also subject to the applicable provisions of Chapters 9.52, 9.54, 9.76, 9.80, 9.84, and 9.88. Where the provisions of Section 9.52.070 and the underlying zone conflict, the more restrictive regulations shall apply. Forestry activities subject to the riparian regulations of the Oregon Forest Practices Act are exempt from regulation under Section 9.52.070. Forestry activities not subject to the riparian regulations of the Oregon Forest Practices Act are subject to regulation under Section 9.52.070.
- C. Procedure for Development Applications: Except for permit requirements for riparian zone vegetation removal or pruning as described in **Section D below**, applicants requesting approval for any development permit in an area which contains a designated resource identified in Section 9.52.070(D) below, shall submit, along with any application, a detailed site plan and written statement demonstrating how the proposed activities will conform to each of the applicable standards of Section 9.52.070. The **City Planner Planning Commission** shall review **and approve** the application ~~in a public hearing and~~ **if it is** determined **d** if **that** all of the applicable criteria are met.
- D. Procedure for Riparian Zone Vegetation Removal or Pruning:** An executed Permit for Riparian Zone Vegetation Removal or Pruning is required before any person undertakes removal or pruning in a riparian zone. The City Planner, Public Works Director, or Code Enforcement Officer shall approve or disapprove the Permit. Failure to complete the application form and secure an executed permit in advance is a violation of City Code. A copy of an approved permit shall be in the possession of any person performing work thereunder for review by any person. Also, a copy shall be published in the Yachats Document Library.
- E. Definitions:
1. Drainage Ways: The streams, channels, springs, lakes, reservoirs, ponding areas, and wetlands indicated in the LWI and the Yachats Storm Water Master Plan maps of existing facilities.

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2. Fish Habitat: Those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.
3. Ocean Shoreland: Those areas west of the Yachats River Bridge adjacent to the ocean, bay and river.
4. Riparian Area: The area adjacent to a river or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.
5. Riparian Corridor: Includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.
6. Riparian Corridor Boundary: An imaginary line that lies 50 feet inland (or upland), measured on the horizontal, from the top of the bank of an inland stream, or where no bank is discernible, that lies 50 feet inland from the outer edge of non-aquatic vegetation.

Where a wetland or pond is contiguous to a stream, the riparian area shall be measured 50' inland (or upland) from the upland edge of the wetland or pond. Where a wetland or pond is not contiguous to a stream, the riparian area shall be measured 25' inland (or upland) from the upland edge of the wetland or pond.

7. River Shoreland: Those areas adjacent to the Yachats River from the Yachats River Bridge upstream to the east city limit boundary.
  8. Stream: A channel, such as a river or creek, that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.
  9. Water Area: The area between the banks of a lake, pond, river, or perennial or fish-bearing intermittent stream, excluding man-made farm ponds.
  10. Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- F. Ocean Protection Standards: ***Prior to development*** ~~On~~ shorelands along the ocean, west of the Yachats River Bridge, ***a site specific geotechnical report shall be submitted to the City in accordance with Section 9.52.050.*** ~~s~~***Setbacks*** shall be ***a minimum*** twenty-five (25) feet from the top of the bank or ***greater if recommended by an Oregon certified engineering geologist.*** ~~that arrived at by using formulae elucidated in the RNKR study (RNKR Associates, 1978; copies are on file at City Hall) and outlined in Appendix D, whichever is greater. Any deviation from this setback must be accompanied by a recommendation from a State of Oregon registered professional geologist or geotechnical engineer and approved by the City.~~

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- G. Riparian Corridor Protection Standards: The provisions of this subsection apply to the river, streams, wetlands, and riparian areas.
1. The actual location of the river, streams, wetlands, and riparian areas, shall be delineated in the field by a person qualified to do such a delineation, following procedures accepted by the State of Oregon. A report and map shall be submitted to the City which documents the boundaries of the resource and its buffer.
  2. The outer boundaries of the riparian corridor shall be clearly marked in the field, and such markings shall remain visible for inspection until all development on the site is complete.
  3. No filling, grading, excavating, or draining is permitted in a wetland area unless such is performed for restoration purposes **or in accordance with Section N. Mitigation Standards**. Valid permits from the US Army Corps of Engineers and from the Oregon Department of State Lands, or written proof of exemption from these permit programs must be obtained and presented to the City prior to any such work.
  4. The flow from springs, drainages, streams, and other features providing the water necessary to maintain wetland's hydrology, shall not be diminished or substantially increased.
  5. Within the riparian corridor boundary, no grading shall occur, no impermeable surfaces or structures shall be placed, and no vegetation shall be removed or destroyed, except that the following are allowed, provided they are designed and constructed to minimize intrusion into the riparian area:
    - a. Removal of riparian vegetation necessary for a use that requires direct access to the water.
    - b. Placement of utilities, drainage facilities, and irrigation pumps.
    - c. Replacement or enlargement of existing structures with structures in the same location that do not disturb additional riparian surface area.
    - d. The placement of walking paths and road crossings.
    - e. Removal of non-native noxious and invasive vegetation and replacement with native plant species.
    - f. Fish and habitat restoration activities approved by Oregon Department of Fish and Wildlife.
    - g. Removal of vegetation necessary for the development of water related and water dependent uses.
  6. Development activities shall not change the natural drainage or substantially increase the water flow.
  7. Development activities shall not create erosion into the stream, wetland, pond, or riparian area.

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- H. **Additional River Protection Standards:** On shorelands along the Yachats River, from the Yachats River Bridge upstream to the east city limit boundary, in order to provide for wildlife habitat and riverbank stabilization, a fifty (50) foot riparian buffer shall be maintained. The riparian buffer is an area that extends inland (or upland), measured on the horizontal, from the top of the bank of the Yachats River or where no bank is discernible, that extends inland from the outer edge of non-aquatic vegetation. Within the first thirty (30) feet, vegetation may be pruned or removed because of storm damage, plant health, disease, damage to existing structures or demonstrated safety endangerment. If vegetation is removed it must be replaced with similar riparian zone plants native to Oregon, as soon as practical. Individual property owners whose property is within the fifty (50) foot riparian buffer are allowed to trim existing plants within ten (10) feet of a building if it is all within their property line. New native riparian plants may be planted within the riparian buffer. Otherwise within the first thirty (30) feet, the existing native riparian vegetation shall remain undisturbed; in the last twenty (20) feet slight vegetative alteration is allowed provided the overstory is retained. Minor pedestrian access paths leading to (but not parallel to) the Yachats River shall be allowed as long as the overstory is not disturbed. Noxious weeds and invasive plants shall be exempt from this restriction. See Yachats Municipal Code Section 5.08.110. No structure shall be placed within the riparian buffer. Where a permitted use of a lot existing prior to the establishment of this amended ordinance would be precluded by strict adherence to these requirements, the applicant may ask the Planning Commission for an exception to these standards if the applicant meets the following conditions:
1. Adherence to requirements would result in a building footprint less than the norm of the neighboring properties;
  2. Disruption of the riparian area has been minimized;
  3. That options such as maximizing variance setbacks on the sides of the property away from the aesthetic resource or other design methods to minimize impact have been exercised or are not feasible.
- I. **Drainage Way Protection Standards:** To prevent new development from significantly increasing the amount or flow rate of surface water runoff destined for the drainage way, any new development or redevelopment proposed on land containing or adjoining a drainage way shall:
1. Avoid filling in, disturbing, or changing the location of the natural drainage way.
  2. Avoid placing impervious surfaces within 15 feet of the drainage way.
  3. Not “hardline” **Avoid** roof and perimeter drains **from draining directly** into the drainage way, but provide for water infiltration or run-off on site before allowing it to enter the natural drainage way.
  4. For subdivisions, include an engineered storm water plan that provides for on-site storm water detention and treatment.

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

J. Exceptions to the above standards are vegetation removal for structural shoreland stabilization subject to the shoreline stabilization standards in Section 9.52.100, and vegetation removal for bridge maintenance, replacement or repair.

K. Hardship Variances:

1. Applicability: This section applies to lots existing prior to November 9, 1978.
2. Where a minimum building footprint of less than 800 square feet would result from application of the rules of this section, reduction or removal of the restrictions under this section can be granted to allow the building of a structure within such a building footprint through the variance procedure. Applicants for variance from this section should demonstrate, in addition to the criteria found in the variance ordinance (Chapter 9.80), that intrusion into the required riparian corridor, wetland, or drainage way protection areas has been minimized by maximizing setback variances on property line boundaries away from these resources.

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

1. The boundary of the property with proximity to the resource area shall be marked between surveyed property markers with a visible string or tape.
2. The applicant shall contact the City Planner and request a site visit.
3. The City Planner shall inspect the property and, if the resource is not on the subject property, issue the applicant a note stating the resource is not on the subject property and the property is exempt from the provisions of this section.
4. When the extent of the resource area cannot be determined by the City, the applicant shall seek prompt assistance from a natural resource agency in making that determination, or provide a written report from a properly-qualified specialist describing the boundaries of the resource area in relationship to the property boundaries.

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

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

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2. When mitigation for impacts to a riparian zone is proposed, a mitigation plan prepared by a qualified professional shall be submitted to the City. The mitigation plan shall meet the following criteria:
  - a. Mitigation for impacts to a riparian zone shall require a minimum mitigation area ratio of 1:1;
  - b. The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to the impact, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced;
  - c. Mitigation shall occur on-site and as close to the impact area as possible. If this is not feasible, mitigation shall occur within the same drainage basin as the impact.
  - d. All vegetation planted within the mitigation area shall be native to the region. Species to be planted in the mitigation area shall replace those impacted by the development activity;
  - e. Trees shall be planted at a density of not less than 5 per 1000 square feet. Shrubs shall be planted at a density of not less than 10 per 1000 square feet.