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**CITY OF YACHATS
ORDINANCE NO. 340**

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

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

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

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

WHEREAS, City Council held a public hearing on September 10, 2015 and voted to adopt Ordinance No. 338 as recommended by the Planning Commission; and

WHEREAS, City Council voted on October 8, 2015 to rescind Ordinance No. 338 and refer the amendment to the Planning Commission for further work; and

WHEREAS, the Planning Commission continued the Public Hearings on the amendment at their meetings on October 20, 2015 and November 17, 2015 and forwarded the proposed amendments to the City Council for adoption; and

WHEREAS, the City Council held a public hearing on January 14, 2016 and voted to adopt Ordinance No. 340 as recommended by the Planning Commission;

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

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

The Planning Commission identified 1) appropriate setbacks for the Yachats River and tributaries, 2) streams that should be subject to the 25 foot buffer, 3) streams that should be maintained in accordance with prior land use approvals, and 4) drainage ways that should be subject to standards that maintain their storm water conveyance and storage function.

1 **Yachats River and Tributaries**

2 The Planning Commission determined that it is appropriate to apply the “safe harbor” method to
3 establish setbacks from the Yachats River and tributaries. The river and tributaries are fish-
4 bearing streams with an average annual stream flow that is less than 1,000 cubic feet per second.
5 Per the “safe harbor” methodology, a 50-foot setback shall be established from the top of a bank
6 for fish-bearing streams with an average annual stream flow that is less than 1,000 cubic feet.

7 **Gender Creek**

8 The Planning Commission determined that Gender Creek is worthy of a 25 foot setback buffer in
9 order to 1) protect a natural resource and conserve open space, 2) reduce risks to people and
10 property from flooding and, 3) to conserve and protect coastal shoreland resources.

11 **Statewide Goal 5** calls for the protection of natural resources and conservation of open
12 space. Gender Creek is an open channel that extends from the hillside located east of the Oregon
13 Coast Highway to the ocean. The only exception to this open channel is the culvert which
14 crosses under the highway.

15 Although not considered a fish-bearing stream, Gender Creek does provide habitat and a corridor
16 for wildlife. Protection will help to maintain the beneficial effects of the stream as a natural
17 habitat and corridor for wildlife.

18 Additionally, Gender Creek is valued by nearby residents and property owners for its open space
19 and aesthetic aspects.

20 **Statewide Goal 7** calls for reducing risks to people and property from natural hazards,
21 including flooding. Properties adjacent to Gender Creek have a history of flooding. Gender
22 Creek is essential to surface water management in the southernmost section of Yachats because
23 the stream conveys storm water and helps control flooding. In consideration of the carrying
24 capacity of water in this drainage basin, measures are needed to ensure that the carrying capacity
25 of the stream is not reduced. Maintaining a buffer area adjacent to the stream will help maintain
26 this carrying capacity. It is critical that Gender Creek accommodate storm water runoff and
27 therefore helps to protect people and properties from damage caused by flooding.

28 **Statewide Goal 17** calls for the conservation and protection of coastal shoreland
29 resources and benefits. The coastal shoreland area includes lands west of the Oregon Coast
30 Highway which includes the western section of Gender Creek. As a stream that flows directly
31 into the ocean, it is important to recognize the stream’s value for protection and maintenance of
32 water quality. Methods are needed to minimize man-induced sedimentation of coastal
33 shorelands and water quality in coastal waters. The bank along Gender Creek is susceptible to
34 environmental degradation problems, e.g. erosion and water quality impacts. Methods are
35 needed to prevent and remedy degradation problems along Gender Creek. Therefore,
36 development restrictions adjacent to the stream, including building setbacks and application of
37 development standards, will help preserve and restore the natural features of this coastal
38 waterway.

39 **Unnamed Stream at North End of City**

40 The Planning Commission determined that a 25 foot setback would not be beneficial along the
41 unnamed stream at the north end of the city due to existing and proposed development that
42 provide stream protection measures. The stream runs through the Overleaf Village Planned
43 Development (PD) west of Hwy 101. Development of the Overleaf Village PD included
44 restoration of the stream and maintenance standards that continue to protect and enhance the
45 stream corridor.

1 East of Hwy 101, the stream runs through the northern portion of the proposed Fisterra Planned
2 Development. The preliminary plan approval of Fisterra includes designation of the stream and
3 its associated corridor as open space to be maintained in its natural condition.
4 The unnamed stream shall be preserved and maintained as approved in the Overleaf Village and
5 Fisterra Planned Developments. In the event the Fisterra PD preliminary plan approval expires
6 prior to development, a minimum 25 foot setback would be required for that portion of the
7 stream located east of Hwy 101.

8 Agency Creek

9 Agency Creek consists of a combination of open channels, culverted sections, and underground
10 sections. Development has occurred along the edges of the creek as well as over Agency Creek.
11 Imposing greater setbacks on the limited number of undeveloped properties along the creek
12 could cause significant hardship to development and be out of character with existing
13 development. Agency Creek does not have a history of flooding as seen in other parts of
14 Yachats. The Planning Commission determined that Agency Creek is a drainage way and
15 therefore, subject to the Drainage Way Protection Standards. A 10-foot on-center drainage
16 easement shall be maintained along with other standards identified in the Yachats Zoning and
17 Land Use Code Section 9.52.070.D.4.

18 Streams and Creeks That Intersect the Shoreland

19 Any other streams and creeks that intersect the shoreland, shall be in accordance with Yachats
20 Comprehensive Plan Goal A. Protection of Natural Resources, Policy 13.

21 Other Drainage Ways

22 Other drainage ways are identified in the Yachats Local Inventory. The Planning Commission
23 determined these other drainage ways should continue to be subject to the Drainage Way
24 Protection Standards identified in the Yachats Zoning and Land Use Code Section 9.52.070.

25 B. Definitions:

26 "Drainage Ways."

27 Drainages identified in the LWI, Storm Water Master Plan, and other drainages not yet identified
28 in the LWI or Storm Water Master Plan, except for fish-bearing streams and designated streams.
29 ~~The streams, channels, springs, lakes, reservoirs, ponding areas, and wetlands indicated in the~~
30 ~~LWI.~~

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

33 "Ocean Shoreland." Those areas west of the Yachats River Bridge adjacent to the ocean,
34 bay and river.

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

37 ~~"Riparian Corridor." Includes the water areas, fish habitat, adjacent riparian areas, and~~
38 ~~wetlands within the riparian area boundary.~~

39 ~~"Riparian Corridor Boundary." An imaginary line that lies 50 feet inland (or upland),~~
40 ~~measured on the horizontal, from the top of the bank of an inland stream, or where no bank is~~
41 ~~discernible, that lies 50 feet inland from the outer edge of non-aquatic vegetation. Where a~~
42 ~~wetland or pond is contiguous to a stream, the riparian area shall be measured 50 feet inland (or~~
43 ~~upland) from the upland edge of the wetland or pond. Where a wetland or pond is not contiguous~~
44 ~~to a stream, the riparian area shall be measured 25 feet inland (or upland) from the upland edge~~
45 ~~of the wetland or pond.~~

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

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

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

9 “Stream, Designated.” A stream identified on the Designated Streams Map.

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

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

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

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

22 “Wetland, Significant.” A wetland one-half acre or greater in size that met one or more
23 mandatory criteria as identified in the LWI, i.e. wetlands labeled VC-4, VC-12, LY-19, and LY-
24 25.

25 C. Application and Permits.

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

32
33 Development proposed in any wetland identified in the LWI, and wetlands not yet identified in
34 the LWI, shall adhere to Oregon Department of State Lands (DSL) and U.S. Army Corps of
35 Engineers Removal-Fill Law and other provisions. DSL currently requires a permit for any
36 project removing, filling or altering 50 cubic yards or greater in a wetland. A DSL permit is
37 required for removal or fill of any amount of material in a stream designated as essential salmon
38 habitat or state scenic waterways.

39
40 The provisions of Section 9.52.070 are to be applied in conjunction with the provisions of the
41 underlying zone and are also subject to the applicable provisions of Chapters 9.52, 9.54, 9.76,
42 9.80, 9.84, and 9.88. Where the provisions of Section 9.52.070 and the underlying zone conflict,
43 the more restrictive regulations shall apply. Forestry activities subject to the riparian regulations
44 of the Oregon Forest Practices Act are exempt from regulation under Section 9.52.070. Forestry
45 activities not subject to the riparian regulations of the Oregon Forest Practices Act are subject to
46 regulation under Section 9.52.070.

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

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

16 D. Protection Standards.

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

21 2. Riparian Corridor Protection Standards. The riparian corridor for fish bearing
22 | streams shall be 50 feet on either side of the stream. The riparian corridor for non-fish bearing
23 | streams identified on the Designated Streams Map shall be 25 feet on either side of the stream.
24 | The riparian corridor for a significant wetland shall be 25 feet around the wetland. See Section 3
25 | below for additional Yachats River Protection Standards. ~~The provisions of this subsection~~
26 | apply to the river, fish bearing and perennial streams, significant wetlands, and associated
27 | riparian areas.

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

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

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

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

43 e. Within the riparian corridor boundary, no filling, grading, ~~excavating or draining~~
44 | is permitted.~~shall occur, no~~ No impermeable surfaces or structures shall be placed, no non-native
45 | vegetation shall be planted, and no vegetation shall be removed or destroyed, except that the

1 following are allowed, ~~provided they are designed and constructed to minimize intrusion into the~~
2 ~~riparian area:~~

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

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

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

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

9 ~~5) Removal of non-native noxious and invasive vegetation and replacement with~~
10 ~~native plant species. See Section 5.08.110.~~

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

13 3) Construction of an access road is permitted within the 50 foot riparian setback as
14 necessary to allow development of property within the city limits on the south side of the
15 Yachats River east of the Highway 101 bridge.

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

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

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

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

24 3. Additional River Protection Standards. The “safe harbor” method requires a 50
25 foot setback from all fish-bearing streams with average annual stream flow less than 1,000 cubic
26 feet per second. The Yachats River has an average annual stream flow less than 1,000 cubic feet
27 per second therefore a ~~On river shoreland, in order to provide for wildlife habitat and riverbank~~
28 stabilization, a fifty (50) foot riparian ~~buffer~~ corridor shall be maintained. ~~The riparian buffer is~~
29 ~~an area that extends inland (or upland), measured on the horizontal, from the top of the bank of~~
30 ~~the Yachats River or where no bank is discernible, that extends inland from the outer edge of~~
31 ~~non-aquatic vegetation.~~ Within the first thirty (30) feet, vegetation may be pruned or removed
32 because of storm damage, plant health, disease, damage to existing structures or demonstrated
33 safety endangerment. If vegetation is removed it must be replaced with similar riparian ~~zone~~
34 plants native to Oregon, as soon as practical. Individual property owners whose property is
35 within the fifty (50) foot riparian buffer are allowed to trim existing plants within ten (10) feet of
36 a building if it is all within their property line. New native riparian plants may be planted within
37 the riparian buffer. Otherwise within the first thirty (30) feet, the existing native riparian
38 vegetation shall remain undisturbed; in the last twenty (20) feet slight vegetative alteration is
39 allowed provided the overstory is retained. Minor pedestrian access paths leading to (but not
40 parallel to) the Yachats River shall be allowed as long as the overstory is not disturbed. ~~Noxious~~
41 ~~weeds and invasive plants shall be exempt from this restriction.~~ See Yachats Municipal Code
42 Section 5.08.110. No ~~structure~~ other development shall be ~~placed~~ allowed within the riparian
43 ~~buffer~~ corridor. Noxious weeds and invasive plants shall be exempt from this restriction. Where a
44 permitted use of a lot existing prior to the establishment of this amended ordinance would be
45

1 precluded by strict adherence to these requirements, the applicant may ask the Planning
2 Commission for an exception to these standards if the applicant meets the following conditions:

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

5 b. Disruption of the riparian ~~area has been~~ corridor would be -minimized; e.g.
6 seeking

7 ~~e. — That options such as maximizing variance~~ setbacks variances on the sides of the
8 property away from the ~~aesthetic resource~~ river shoreland ~~or other design methods to minimize~~
9 ~~impact have been exercised or are not feasible.~~

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

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

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

17 c. For subdivisions and planned unit developments, include an engineered storm
18 water plan that provides for ~~no~~ on-site storm water detention and primary treatment that screens
19 and separates gross pollutants (sedimentation, floatables, oil and grease).

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

24 E. Exceptions and Variations.

25 1. Exceptions to the above standards are:

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

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

29 2. Hardship Variances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 5) Trees shall be planted at a density of not less than 5 per 1000 square feet. Shrubs
27 shall be planted at a density of not less than 10 per 1000 square feet.

28
29 **Passed and adopted** by the City Council of the City of Yachats on this _____ day of
30 _____.

31
32 Ayes: _____ Nays: _____ Abstentions: _____ Absent: _____

33
34 **Approved** by the Mayor this ____ day of _____.

35
36 Attest:

37
38 _____
39 Ronald L Brean, Mayor

38 _____
39 Nancy Batchelder, City Recorder