

The proposed revision of "Shoreland Setbacks" has two serious problems: (1) It lacks clarity - and (2) it is in basic contradiction to the Comprehensive Plan of the City of Yachats. #1 is definitely a problem, but it is not a fatal flaw. #2, however, is fatal. City regulations cannot be written which contradict the city's own Comprehensive Plan. If this re-write of 9.52.070 is adopted by the City - and if it is appealed to the Oregon Land Use Board of Appeals (LUBA), it will not survive the legal challenge.

The following is **State of Oregon law**:

"Waters of the State include all natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonviable. **Natural waterways are defined as waterways created naturally by geological and hydrological processes, and waterways that would be natural but for human-caused disturbance (e.g. channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands).** (ORS 196.800-196.990, 1995)

Members of the Planning Commission do not have the power to decide what is a creek and what is a "drainage way" - as they have done in the proposed "Setback" regulations.

Agency Creek has become a "drainage way". Gregory Creek is not mentioned nor "designated" - and thus becomes a "drainage way". In fact, every natural waterway within the City (except the Yachats River) becomes a "drainage way" unless it is "designated" a creek by the Planning Commission. But, as noted in the LWI and in the USGS Hydrology map, there are several unnamed streams in Yachats. There are at 3 named creeks: Gender Creek, Agency Creek, and Gregory Creek. All intersect the Shoreland. And all (named or not) deserve special protection for this reason - the special protection described in detail in the City of Yachats Comprehensive Plan. **There is only one Planning Commission "designated" stream in all of Yachats:** Gender Creek. Gender Creek is given 25 ft. setbacks. A couple of weeks ago Gender Creek had floodwater flowing approximately 80 ft. outside of the channel...(video of this is available).

"Drainage Ways", as I understand it, receive only 10 ft setbacks (measured "on-center"). "On-center" appears to be a carpentry term - it is not appropriate for this application, and it is unclear. How do you measure accurately from the center of a creek? Measurements regarding waterways should always begin from some point on a bank (dry land), and not actually in the water - for obvious reasons.

Streams flowing into the Yachats River also receive special protection under the City of Yachats Comprehensive Plan.

Yachats can change its Comprehensive Plan. But as long as it has this one, it cannot pass regulations which are in contradiction to it - as it is poised to do here.

This "designation" power which the Planning Commission has taken upon itself appears to fall under the heading of being "arbitrary and capricious." Why does one creek deserve "designation" and not others? The reasons given are not convincing.

**RECENT HISTORY: GREGORY CREEK**

Very recently a mudslide occurred near Green Hill/Crestview which apparently has damaged two houses. The arrested mudflow now sits ominously behind 112 Green Hill Drive. Just next to this same house - perhaps not more than 5 feet away - flows Gregory Creek - a creek which drains off storm water and ends at the Pacific Ocean (West of 101 and in the Shorelands) Please note that Gregory Creek is on USGS and National Hydrology maps and in the USGS and NHD database.

Gregory Creek is mentioned nowhere in the "Shoreland Setbacks" revision - against all reason. Here is a creek that demonstrably has the power to promote damaging mud flows and/or landslides - but it is invisible.

Creeks coming down steep slopes contribute to soil saturation - and this leads to mudslides/landslides. It is the duty of the local government to provide adequate setbacks so that lives and property are not placed in jeopardy - per State of Oregon laws regarding known Natural Hazards.

Gregory Creek in its steep slope situation is a textbook example of why wide setbacks are needed to provide at least some margin of protection to residents.

### ***RECENT HISTORY: GENDER CREEK***

Gender Creek flooded a few weeks ago because of debris obstruction. The creek flowed down Gender Drive - and the floodwater exceeded the 25 ft setbacks called for in this new revised "Shoreland Setback" regulation **by more than 50 ft**. Under the current rules, 50 ft setbacks are in place - and they should be kept. Clear evidence now exists that 25' setbacks are simply inadequate.

Gender Creek has flooded in 1997, 2009, and 2015. This latest flood happened in spite of ODOT culvert work done several years ago. Debris obstruction of creeks in the Yachats area is common - it will happen again and again. And the result will be floods, mud flows, landslides. Adequate setbacks can save lives and property. The setbacks proposed today fall far short of this.

It is my hope that the City Council rejects this revision of 9.52.070 and leaves the current regulations in place.

Sandy Rutherford  
23 Windy Way  
Yachats, OR 97498