PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, August 26, 2024 - 7:00 PM
Council Chambers, 169 SW Coast Hwy, Newport, Oregon 97365

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or e.glover@newportoregon.gov.

All meetings are live-streamed at https://newportoregon.gov, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day.
To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

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1. CALL TO ORDER AND ROLL CALL

Commission Members: Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, and John Updike.

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of June 24, 2024.
Draft PC Work Session Minutes 06-24-2024
06-24-24 PC Work Session Meeting Video Link

2.B Approval of the Planning Commission Regular Session Meeting Minutes of June 24, 2024.
Draft PC Reg Session Minutes 06-24-2024
06-24-24 PC Regular Session Meeting Video Link

2.C Approval of the Planning Commission Work Session Meeting Minutes of July 8, 2024.
Draft PC Work Session Minutes 07-08-2024
07-08-24 PC Work Session Meeting Video Link

2.D Approval of the Planning Commission Work Session Meeting Minutes of July 22, 2024.
Draft PC Work Session Minutes 07-22-2024
07-22-24 PC Work Session Meeting Video Link

3. CITIZENS/PUBLIC COMMENT

A Public Comment form is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after submitting a form. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

5. PUBLIC HEARINGS

5.A File 1-CP-24 / 1-Z-24: Amendments to the Comprehensive Plan and Zoning Code to Implement the Updated Yaquina Bay Estuary Management Plan.
Staff Memorandum
Attachment A - Revised Yaquina Bay and Estuary Section of the Newport Comprehensive Plan
Attachment B - Yaquina Bay and Estuary Zoning Ordinance Amendments
Attachment C - Updated Estuary Zoning Map
Attachment D - Redline and Comments on Revised Comprehensive Plan Section form DLCD

Attachment E - Redline and Comments on Zoning Amendments from DLCD and Gil Sylvia
Attachment F - Comments from Annie Merrill, YBEMP Coalition, dated 8/22/24
Attachment G - Comments from Samantha Lynch, US Army Corps of Engineers, dated 7/26/24
Attachment H - Comments from Annie Merrill, Oregon Shores Conservation Coalition, 7/18/24
Attachment I - Comments from Annie Merrill, Oregon Shores Conservation Coalition, 5/13/24
Attachment J - Comments from Port of Newport, dated 8/22/24
Attachment K - Comments from Port of Newport, dated 7/22/24
Attachment L -Comments from Port of Newport, dated 6/24/24
Attachment M - Comments from Gil Sylvia, Port of Newport Commission, dated 6/24/24
Attachment N - Comments from Gil Sylvia, Port of Newport Commission, dated 3/25/24
Attachment O - Comments from Mark Arnold, dated 8/23/24
Attachment P - Comments from Mark Arnold, dated 7/22/24
Attachment Q - Comments from Mark Arnold, dated 7/18/24
Attachment R - Comments from Mark Arnold, dated 6/20/24
Attachment S - Comments from Mark Arnold, dated 4/19/24
Attachment T - Comments from Mark Arnold, dated 3/11/24
Attachment U - Comments from Mark Arnold, dated 1/02/24
Attachment V - Minutes from 7/22/24, 6/24/24, 5/13/24, and 3/25/24 Commission Work Sessions
Attachment W - Statewide Planning Goal 16
Attachment X - Public Hearing Notice

5.B File 3-Z-22: Amendments to Implement Adjustment Provisions Contained in the Governor's Housing Bill (SB1537).
Memorandum
Draft Ordinance No. 2222
SB 1537– City Code Amendment Comparison
5.22.24 Memo from Attorney Carrie Connelly, Local Government Law Group
6.10.24 Planning Commission Minutes
SB 1537 (enrolled)
Public Hearing Notice

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

City of Newport
Draft Planning Commission Work Session Minutes
June 24, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:15 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman (absent, excused)	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Beth Young, Community Development Dept.
Commissioner Gary East	
Commissioner Braulio Escobar	PUBLIC MEMBERS PRESENT
Commissioner John Updike	Meg Reed, DLCD
Citizen Advisory Member Dustin Capri	Aaron Bretz, Port of Newport
Citizen Advisory Member Greg Sutton (absent)	Gil Sylvia, Port of Newport Commission
	Kent Doughty (by video)
	Kelly Chang (by video)
	Mark Arnold

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
SECOND REVIEW OF AMENDMENTS TO IMPLEMENT THE UPDATED YAQUINA BAY ESTUARY MANAGEMENT PLAN. a. Staff report	Mr. Tokos provided an overview of the amendments to implement the updated Yaquina Bay Estuary Management Plan. Commission discussed policy document amendments that included maps that weren't included in the draft document; management units; nonwater-related uses; descriptive language additions; management objectives; and cobble/pebble dynamic revetment
b. Commission feedback	Commission feedback included thoughts on changing the document so "Hatfield" was used as the official name throughout; recognizing shellfish beds and the rearing, nursery, and spawning areas near the vicinity of dredging; and being consistent with terminology. Gil Sylvia, Port of Newport Commission, reviewed the public comments he submitted for the Port Commission and what was important for them in the Plan. He acknowledged that the Port was owners of tidelands located in Unit 10, Sally's Bend. They had

	future plans for the property that included aquaculture, and the Plan would help guide the development of their property. Aaron Bretz, Port of Newport, reported that any Port dredging project had to meet requirements that were set up through a joint permit through the Army Corp. He thought the wording on definitions was really important in the Plan, and expressed concerns on adding more protections to areas that could limit the Port from doing projects. Mark Arnold acknowledged the public comments he submitted on the draft Plan. He felt that Management Units 9 and 10 were different than a lot of the other activities,. Arnold wanted to see alterations on the Plan to include commercial aquaculture, active restoration projects, and diversity of activities in large natural areas. He expressed concerns that the resource maps were outdated and incorrect in the Plan. Tokos reviewed the updates to NMC Chapter 14.01.020 that included definitions; estuary development uses; new language for exempt uses; general standards additions for minimizing adverse impacts and significant adverse impacts; public access to estuaries; special standards; changes to conditional use standards by zone; and procedural requirements.
RFP FOR WATER SYSTEM MASTER PLAN.	None.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____
Sherri Marineau, Executive Assistant

06-24-2024 - Planning Commission Work Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1290?view_id=2&redirect=true

City of Newport
Draft Planning Commission Regular Session Minutes
June 24, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
Time Start: 7:15 P.M. **Time End:** 7:24 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman (absent, excused)	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East	
Commissioner Braulio Escobar	
Commissioner John Updike	

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
APPROVAL OF THE MINUTES a. Meeting minutes of Work Session Meeting on June 10, 2024 b. Meeting minutes of Regular Session Meeting on June 10, 2024	Motion by Hanselman, seconded by East, to approve the work session meeting minutes of June 10, 2024 with minor corrections. Motion carried unanimously in a voice vote. Motion by Hanselman, seconded by East, to approve the regular session meeting minutes of June 10, 2024 2024 with minor corrections. Motion carried unanimously in a voice vote.
CITIZEN/PUBLIC COMMENT	None.
ACTION ITEMS **Initiate the Legislative Process to Amend the City's Comprehensive Plan and Zoning Code to Implement the Updated Yaquina Bay Estuary Management Plan.**	Escobar thought it would be helpful to review the public comments received before the Commission initiated the legislative process. Updike thought there was enough time to initiate the legislative process before the public hearing. They could review this within the 35 day notice to DLCD. The Commission was in general agreement to initiate with another Work Session meeting Motion by Updike, seconded by Hanselman, to Initiate the legislative process to amend the City's Comprehensive Plan and Zoning Code to implement the updated Yaquina Bay Estuary Management Plan. Motion carried unanimously in a voice vote.

DIRECTORS COMMENTS	Tokos reported that new City Manager, Nina Vetter had started at the city in a temporary compacity.

Submitted by: _____

Sherri Marineau, Executive Assistant

06-24-2024 - Planning Commission Regular Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1291?view_id=2&redirect=true

City of Newport
Draft Planning Commission Work Session Minutes
July 8, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:05 P.M. **Time End:** 7:20 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Chris Beatty, City Engineer
Commissioner Gary East	John Fuller, Communication Specialist
Commissioner Braulio Escobar (absent, excused)	
Commissioner John Updike	**PUBLIC MEMBERS PRESENT**
Citizen Advisory Member Dustin Capri (absent, excused)	
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
SCOPE OF WORK FOR WATER SYSTEM MASTER PLAN. a. Staff report b. Commission discussion and feedback	Mr. Tokos and City Engineer, Chris Beatty both discussed the scope of work and fielded questions about the Water System Master Plan project. The Commission discussions included clarification on who the senior systems administrator was; an explanation of the Newport Supply project; the timeline for completion of the Plan; definition of the water service area and anticipated service boundary; water service for properties in the South Beach annexation area; how water source rights were supplemented and balanced with storage rights; the Mid-Coast Water Conservation Consortium; how the Capital Improvement Plan would be laid out by year, and what the escalated costs would be; an overview of the project process; and how the budget for the airport scope of work was included in the Plan. Tokos asked for feedback on the Plan. Berman noted a typo on Task 1.4 that needed to be changed from “Task 2” to “Task 1”. He asked for clarification on the water service area definition and anticipated service

	boundary. Berman noted that Task 6.4(9) and Task 7.3 both had sentences that were incomplete. Branigan suggested adding considerations for tapping into wells or emergency water supplies in the Plan. Hanselman wanted to see the projections for housing and population go beyond the five years in the Plan. Tokos suggested the consultants provide policy direction on the Plan, and to address fire lines and hydrants. Updike questioned if the 20 year Capital Improvement Plan was broken down by year and included escalated costs. Berman thought Task 8 should include a component in the seismic evaluation to include the impact and mitigation of tsunami inundation. He questioned how the consultants estimated water losses, and thought they should include how the losses were estimated in the Plan. Updike suggested Task 10.1 include a bullet item to require the consultants to do a best practice review, and make recommendations applicable to Newport's system.
CITY CENTER REVITALIZATION PLAN - PUBLIC INVOLVEMENT PLAN & WEB CONTENT. a. Staff report b. Commission feedback	Mr. Tokos reviewed the proposed content for the webpage that would be launched for the City Center Revitalization Plan project, and the Public Involvement Plan for community outreach. The Commission provided feedback and minor edits to the document that included changing the included maps to a higher resolution; defining what "disparity" was and determining how it was measured; clarification on the census information; updates to the maps to better understand the information each represented; and making sure public outreach postings were included at the library.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____

Sherri Marineau, Executive Assistant

07-08-2024 - Planning Commission Work Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1297?view_id=2&redirect=true

City of Newport
Draft Planning Commission Work Session Minutes
July 22, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:26 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Beth Young, Community Development Dept.
Commissioner Gary East	
Commissioner Braulio Escobar (by video)	PUBLIC MEMBERS PRESENT
Commissioner John Updike	Meg Reed, DLCD (by video)
Citizen Advisory Member Dustin Capri (absent, excused)	Annie Merrill, OR Shores Conservation Coalition (by video)
Citizen Advisory Member Greg Sutton (absent)	Aaron Bretz, Port of Newport
	Gil Sylvia, Port of Newport Commission
	Mark Arnold

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
CONTINUED DISCUSSION ON COMPREHENSIVE PLAN AND ZONING ORDINANCE AMENDMENTS TO IMPLEMENT THE UPDATED YAQUINA BAY ESTUARY MANAGEMENT PLAN. a. Staff report b. Commission feedback	Mr. Tokos provided an overview of the amendments to implement the updated Yaquina Bay Estuary Management Plan. He reviewed the additional comments received from the Oregon Shores Conservation Coalition, the Port of Newport, and Mark Arnold. Commission gave their thoughts on the estuary boundary map colors; retaining Management Unit 10 and the turn basins in the document; mining and mineral extractions; moving the maps of the management units next to the text; and general edits to text of document. Hanselman requested the deadline for public comment to be submitted be at least two business days before the meeting instead of hours before.

	Tokos reminded that the Commission wouldn't be making decisions at work session meetings, and hard to make a deadline for public hearings due to the public needing to be able to provide testimony at the hearings. Tokos suggested the discussion be carried into another work session meeting to talk about setting a submission schedule. Commissioners requested that the changes are noted for both the items that are incorporated from the public comments, and items that weren't added. Annie Merrill with the Oregon Shores Conservation Coalition thought that the phrase "to the extent practical" was added unnecessarily throughout the document, and would make it difficult to enforce the standards within the zoning code. They thought recommended that "to the extent practical" should be minimized, eliminated where it wasn't necessary, or further defined for better implementation outcomes in the document. Merrill thought it was important to provide clarity on what a resource capability test was, how it was applied, and why it was needed. They supported changes the exemption language to permitted outright uses for greater clarity. Gil Sylvia with the Port Commission gave his thoughts on the turning basin issues. He requested flexibility in the concept for a working bay and for the language to not be overly constrained. Mark Arnold, Newport spoke about his concerns on the private ownership of tidelands. Berman wanted the Urban Growth Boundary added to the map, and a reference to sea levels rising.
UPDATED SCHEDULE FOR SOUTH BEACH ISLAND ANNEXATION PROJECT.	Mr. Tokos provided an update on the South Beach island annexation project. He reported that the scheduled had to be rescheduled to meet the timeline, and engaging local government law groups. The Seal Rock Water District debt had been paid by property owners along with paying city water service. This needed a final accounting to make sure it the debt was paid. The Commission discussed what the annexation meant to the current short-term rental licenses in the County, and what system development rebates would be available for properties connecting to city services.

PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____
Sherri Marineau, Executive Assistant

07-22-2024 - Planning Commission Work Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1304?view_id=2&redirect=true

Case Files: 1-CP-24/1-Z-24
Date Filed: June 24, 2024
Hearing Date: August 26, 2024/Planning Commission

PLANNING STAFF MEMORANDUM
FILE No. 1-CP-24 – 1-Z-24

I. Applicant: City of Newport. (Initiated by motion of the Newport Planning Commission at its June 24, 2024 regular meeting).

II. Request: A package of amendments to the Newport Comprehensive Plan, Zoning Ordinance, and Zoning Maps that implement the latest version of the Yaquina Bay Estuary Management Plan ("Plan"), dated August 2023. This is the first update to the Plan, with the original document having been prepared in 1980.

The proposed amendments to the Newport Comprehensive Plan are limited to the "Yaquina Bay and Estuary Section" of "The Bay Area" element of the document. The entire element has been redrafted to include updated information related to the descriptions, classifications, resource capabilities, management objectives, and special policies for each of the twelve (12) estuary management units that fall within the Newport urban growth boundary. The 12 management units are known collectively as the "Newport sub-area," which is one of seven subareas in the updated Plan. Amendments to the Zoning Ordinance, codified in Title XIV of the Newport Municipal Code, similarly implement the updated estuary management plan. This impacts Chapters 14.01, 14.02, 14.03, 14.04, 14.04, 14.13, 14.34 and 14.52. The zoning map amendments apply to the in-water development, conservation and natural estuary management units, with the changes being largely a refinement of the existing boundaries.

III. Planning Commission Review and Recommendation: The Planning Commission reviews proposed amendments to the comprehensive plan map, zoning map, and land use regulations and provides a recommendation to the City Council. It may conduct multiple public hearings before making a recommendation. After the Commission provides a recommendation, the City Council will hold one or more public hearings before making a final decision on the amendments.

IV. Findings Required: The Newport Comprehensive Plan Chapter entitled "Administration of the Plan" (pg. 287-289) allows comprehensive plan amendments of this nature if findings can be made that there is (a) a significant change in one or more conclusions; or (b) a public need for the change; or (c) a significant change in community attitudes or priorities; or (d) a demonstrated conflict with another plan goal or policy that has a higher priority; or (e) a change in a statute or statewide agency plan. Revisions must comply with applicable Statewide Planning Goals. Mapping errors may also be corrected. NMC 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community.

V. Planning Staff Memorandum Attachments:

Attachment "A"	Revised Yaquina Bay and Estuary Section of the Newport Comprehensive Plan
Attachment "B"	Yaquina Bay and Estuary Zoning Ordinance Amendments
Attachment "C"	Updated Estuary Zoning Map
Attachment "D"	Redline and Comments on Revised Comprehensive Plan Section form DLCD
Attachment "E"	Redline and Comments on Zoning Amendments from DLCD and Gil Sylvia
Attachment "F"	Comments from Annie Merrill, YBEMP Coalition, dated 8/22/24
Attachment "G"	Comments from Samantha Lynch, US Army Corps of Engineers, dated 7/26/24
Attachment "H"	Comments from Annie Merrill, Oregon Shores Conservation Coalition, 7/18/24
Attachment "I"	Comments from Annie Merrill, Oregon Shores Conservation Coalition, 5/13/24
Attachment "J"	Comments from Port of Newport, dated 8/22/24

Attachment "K"	Comments from Port of Newport, dated 7/22/24
Attachment "L"	Comments from Port of Newport, dated 6/24/24
Attachment "M"	Comments from Gil Sylvia, Port of Newport Commission, dated 6/24/24
Attachment "N"	Comments from Gil Sylvia, Port of Newport Commission, dated 3/25/24
Attachment "O"	Comments from Mark Arnold, dated 8/23/24
Attachment "P"	Comments from Mark Arnold, dated 7/22/24
Attachment "Q"	Comments from Mark Arnold, dated 7/18/24
Attachment "R"	Comments from Mark Arnold, dated 6/20/24
Attachment "S"	Comments from Mark Arnold, dated 4/19/24
Attachment "T"	Comments from Mark Arnold, dated 3/11/24
Attachment "U"	Comments from Mark Arnold, dated 1/02/24
Attachment "V"	Minutes from 7/22/24, 6/24/24, 5/13/24, and 3/25/24 Commission Work Sessions
Attachment "W"	Statewide Planning Goal 16
Attachment "X"	Public Hearing Notice

VI. Notification: Notification for the proposed amendment included notification to the Department of Land Conservation & Development (DLCD) in accordance with the DLCD requirements on July 18, 2024. Notice of the Planning Commission hearing was published in the Lincoln Leader on August 14, 2024 (Attachment "X").

VII. Comments: Comments have been provided by Annie Merrill, with the Oregon Shores Conservation Coalition, the Port of Newport, Gil Sylvia (Port Commissioner), and Mark Arnold. They are listed in chronological order in the packet. Those comments received at or prior to the last Planning Commission work session were considered and either addressed or not in the latest draft set of Comprehensive Plan and Zoning Ordinance Amendments (Attachments "A" and "B"). These latest drafts were shared with the parties, and each has provided a set of comments for the Commission's consideration (See Attachments "F," "J," and "O"). Staff will review and be prepared to respond to the comments at the hearing. Comments from the Oregon Shores Conservation Coalition now also include the Coast Range Association, Bird Alliance of Oregon, and Audubon Society of Lincoln City.

VIII. Discussion of Request: With respect to the Newport Comprehensive Plan amendments, the revised Yaquina Bay and Estuary Section" of the document includes updated descriptions of major committed uses and information on existing and potential conflicts, to reflect current conditions within the estuary. Climate vulnerabilities were not considered in 1980; whereas, the updated Plan addresses them by framing the issue in a policy context and outlining how such vulnerabilities should be addressed with new development.

The classification structure for management units within the estuary is the same as that which was established with the 1980 Plan. Each management unit is classified as natural, conservation, or development. Natural units are the most restrictive in terms of use as they are intended to preserve and protect significant wildlife habitat. Conservation units allow a slightly broader range of uses, while still retaining an emphasis on protecting and enhancing natural and renewable estuarine resources. Significant habitat areas tend to be smaller, or of less biological importance in conservation areas. Development units are the most permissive, and most of the estuary in-water development and navigable channels reside within these areas. The most significant change to management units within the Newport sub-area where to Management Unit 1. That management unit, which is currently classified for conservation, is situated along the north jetty. With this update, the management unit is being split into a Unit 1 and Units 1a. The north jetty and nearby lands that be maintained to protect the navigation channel will remain in Unit 1 under a development classification. Subtidal and intertidal areas between the north jetty and navigation channel outside of areas where maintenance work would occur are being placed in Unit 1a under a natural classification.

Over the course of several work sessions, the Planning Commission considered testimony from affected stakeholders and revisions were made in response to their feedback. There was significant discussion involving Management Unit 9 and 10, which are classified as natural, and the descriptive information for both areas has been refined. Revisions made to the Comprehensive Plan update since the Planning Commission's last work session are shown in redline. Boundary descriptions and special policies for management units west of the Yaquina Bay Bridge have been revised to address feedback from the Army Corps of Engineers. The changes are designed to ensure that the Army Corps has sufficient area and policy support to undertake necessary maintenance to existing navigation system in that area.

With respect to the Zoning Ordinance amendments, staff analysis is included in the body of the document explaining the nature of the amendments. A substantial number of new definitions have been added to the code to clarify how the estuary development standards are to be applied. Further, the amended code groups estuary management units under new zoning districts that align with their classifications (i.e. Estuary Conservation, Estuary Development, and Estuary Natural). Permissible uses in each zoning district are organized in a table, which aligns with how the City has organized its zoning use provisions for other parts of the City. A new outright permitted use section is being added for a listed set of minor alterations that do not warrant formal review. For uses that require review, the code includes a set of general standards that are broadly applicable, along with special standards that apply to specific activities. Applicants undertaking development in the estuary that requires a land use review will perform impact assessments, and it is under this new section in the code that climate vulnerabilities are to be addressed. The draft amendments also include standards for conditional uses that focus on ensuring the proposed activity is consistent with the resource capabilities of the affected area. Lastly, a section in the amended estuarine chapter is dedicated to addressing how dredge disposal materials are to be handled.

Commission members should note, that the proposed definition for "Significant Adverse Impact" has been deleted. Any City definition of the term would not be binding on state and federal permitting authorities. Eliminating the definition gives local decision-makers flexibility to interpret the term based upon the body of evidence and provides the applicant the opportunity to both make their case and to seek alignment in how all of the permitting authorities view the term. The Department of Land Conservation and Development and Port of Newport have expressed that they are comfortable with this change. The Oregon Shores Conservation Coalition would still like to see the term defined, and has offered language to that effect. Also, Commissioners will note that references to "the extent practical," added at the Port's request, has been removed. The Department of Land Conservation and Development has advised that such language is an impermissible constraint on policy language that is taken directly from Statewide Planning Goal 16 (Attachment "W"). The Port of Newport would like the language to be added back. Staff expects that both parties will be attending the hearing, and this topic may warrant further discussion amongst the Commission.

IX. Conclusion and Recommendation: The Planning Commission should review the proposed amendments and make a recommendation to the City Council. As this is a legislative process, the Commission may recommend changes to the amendments if the Commission chooses to do so. If the Commission provides a favorable recommendation, then an ordinance will be prepared with the requisite findings for the City Council's consideration. The Council may also make changes to the proposal prior to, or concurrent with, the adoption of an implementing ordinance.

Derrick I. Tokos AICP
Community Development Director
City of Newport

August 23, 2024

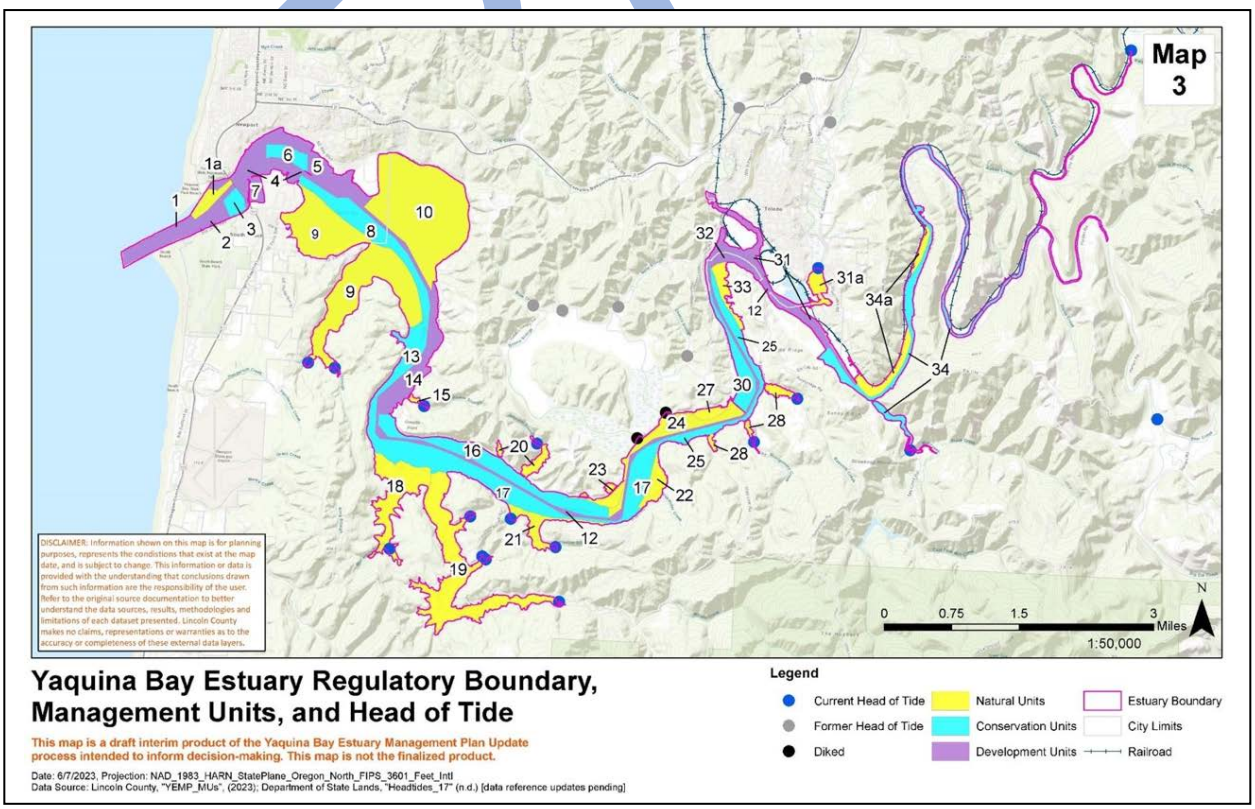
YAQUINA BAY AND ESTUARY SECTION

Introduction:

The purpose of Statewide Planning Goal 16: Estuarine Resources and all estuary management plans is "to recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries." Yaquina Bay is one of three estuaries on the Oregon coast designated a deep-draft development estuary with a deep-water navigation channel and turning basin federally authorized by the United States Army Corps of Engineers.

The Lincoln County Estuary Management Plan is a special area management plan that governs estuarine resource conservation and development decisions in all the estuaries within Lincoln County, including Yaquina Bay. The City of Newport incorporates the relevant policy provisions of that plan here in its Comprehensive Plan and the applicable implementing measures are placed in its Municipal Code. Alterations and uses within estuarine areas are regulated. The boundary of the estuary is estuarine waters, tidelands, tidal marshes and submerged lands up to the line of Mean Higher High Water (MHHW) or the line of non-aquatic vegetation, whichever is further landward. The jurisdictional extent of the estuary extends upstream to the head of tide. (See Figure 1. Yaquina Bay Regulatory Extent and Head of Tide Map). Adjoining shorelands are subject to separate, coordinated land use regulations.

Figure 1. Regulatory Boundary, Estuary Management Unit Classifications, & Head of Tide



Yaquina Bay provides habitat and ecosystem services that benefit and support the local economy and community. Ecosystem services are positive benefits that ecological systems, habitats, or wildlife provide to humans. Yaquina Bay's estuary provides ecosystem services to nearby residents and the City of Newport that include mitigation of the impacts of flooding due to storm surges, improvements in water quality through vegetation and substrate filtration, and improvements in air quality through plant photosynthesis and respiration. The cultural significance of this area as well as opportunities for recreation are also considered important ecosystem services. In addition, much of the local economy is built upon productive seafood and fish harvesting and processing such as Dungeness crab which require eelgrass and other estuarine habitats for their lifecycle. The sequestration and storage of carbon by the estuary's subtidal and intertidal plants benefits residents of the State of Oregon and beyond by helping attenuate carbon dioxide contributions to climate change and its projected impacts. There are many ecosystem services Yaquina Bay provides to people in addition to the examples provided here.

Resource Inventories:

Inventories have been conducted to provide information necessary for designating estuary management units and their associated uses and policies. These inventories provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of development potential.

Inventories include maps and sourced spatial data on the following resources and information: ecological estuarine data using the Coastal Marine and Ecological Classification Standard (CMECS), port facilities and tide gates, current estuary planning extent, historical estuarine boundaries and vegetation, head of tide, sea level rise projections, landward migration zone projections, and restoration sites. The information contained in the management unit descriptions and resource capability assessments is based on factual base material drawn from these comprehensive resource inventories. The rationale for permitted use decisions and management classifications is contained in these brief factual base summaries; for detailed resource information and a bibliography of documents included in the inventory, the Yaquina Bay Estuary Goal 16 Resource Inventory Bibliography, dated July 15, 2024, should be consulted.

Climate Change Vulnerabilities:

Climate change considerations were assessed and integrated into the estuary management plan for Yaquina Bay. As proposed alterations in the estuary have the potential to be in place for decades, impacts from climate change can jeopardize their continued use and potentially lead to negative outcomes that could threaten the unique environmental, economic, and social values of Yaquina Bay. The following are projected climate change impacts for the Yaquina Bay:

- Sea Level Rise: Global sea level rise is projected to increase Yaquina Bay's Mean Higher High Water mark by a range of 0.8 to 6.1ft by 2100.[1] There is a lot of uncertainty due to the unknowns around greenhouse gas emissions into the future. After 2000 years of relative stability, average global sea levels have risen about 8 inches in the last 100 years.[2]

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[1] Sweet, W.V., et al. 2022. Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines. NOAA Technical Report. National Oceanic and Atmospheric Administration, National Ocean Service, Silver Spring, MD.

[2] U.S. Global Change Research Program. 2009. Global climate change impacts in the United States: a state of knowledge report. New York: Cambridge University Press.

- Estuary Acidification: More acidic estuary waters are likely, as open ocean waters are projected to be acidic enough to dissolve the biogenic carbonate shells of shellfish by 2100.[3] As the ocean absorbs CO2, its pH is lowered and becomes more acidic. "Since 1750, the pH of seawater has dropped significantly (about 0.1 globally). That means water is about 1 ¼ times more acidic today."[4]
- Heat and Drought: Warmer summers with more extreme heat days and periods of drought are anticipated. The average annual temperature in Oregon increased by 2.2 degrees Fahrenheit from 1895 to 2019.[1] Projected average daily temperatures for the City of Newport and the broader Yaquina Bay region are expected to be 3-4 degrees higher by 2050 (NOAA Climate Explorer 2022).
- Precipitation: More rain in fewer and bigger storms instead of snow during winter months at higher elevations are anticipated. Despite an expected overall increase in winter precipitation, the past 50 years have documented a 60% or greater reduction in snow water recorded annually on April 1st for Columbia River tributaries.[5]

These climate change impacts are expected to create secondary effects such as increased risk to and prevalence of forest fires, bay and riverine flooding, loss of protected habitats and species, loss and landward migration of coastal habitats, loss of fisheries habitat relied upon by the local fishing economy, loss of eelgrass and other macrophytes due to heat waves , stress on endangered fish, destabilizing infrastructure in and on the Bay, erosion and accretion changes, sediment and nutrient loading, and many more. Potential cumulative impacts of alterations and development activities were considered and integrated into the policies and requirements of the Estuary Management Plan for Yaquina Bay.

Estuary Management Sub-Areas:

Due to the size and complexity of the Yaquina Bay estuary system, an additional tier of policy has been established at the sub-area level. The sub-area policies are intended to provide general planning guidance at a geographic scale between the overall management policies and the individual management unit level.

For this purpose, the estuary has been divided into seven sub-areas, each representing a common set of natural and anthropogenic features. (See Figure 2. Yaquina Bay Sub-Areas) These sub-areas provide a basis for describing in broad terms how different reaches of the estuary presently function and are used, and to identify considerations in planning for future use and conservation. Each sub-area is described in terms of its existing character, its major committed uses, and its existing and potential conflicts. Policies are established for each sub-area for the purpose of guiding the establishment of management unit designations and specific implementation measures.

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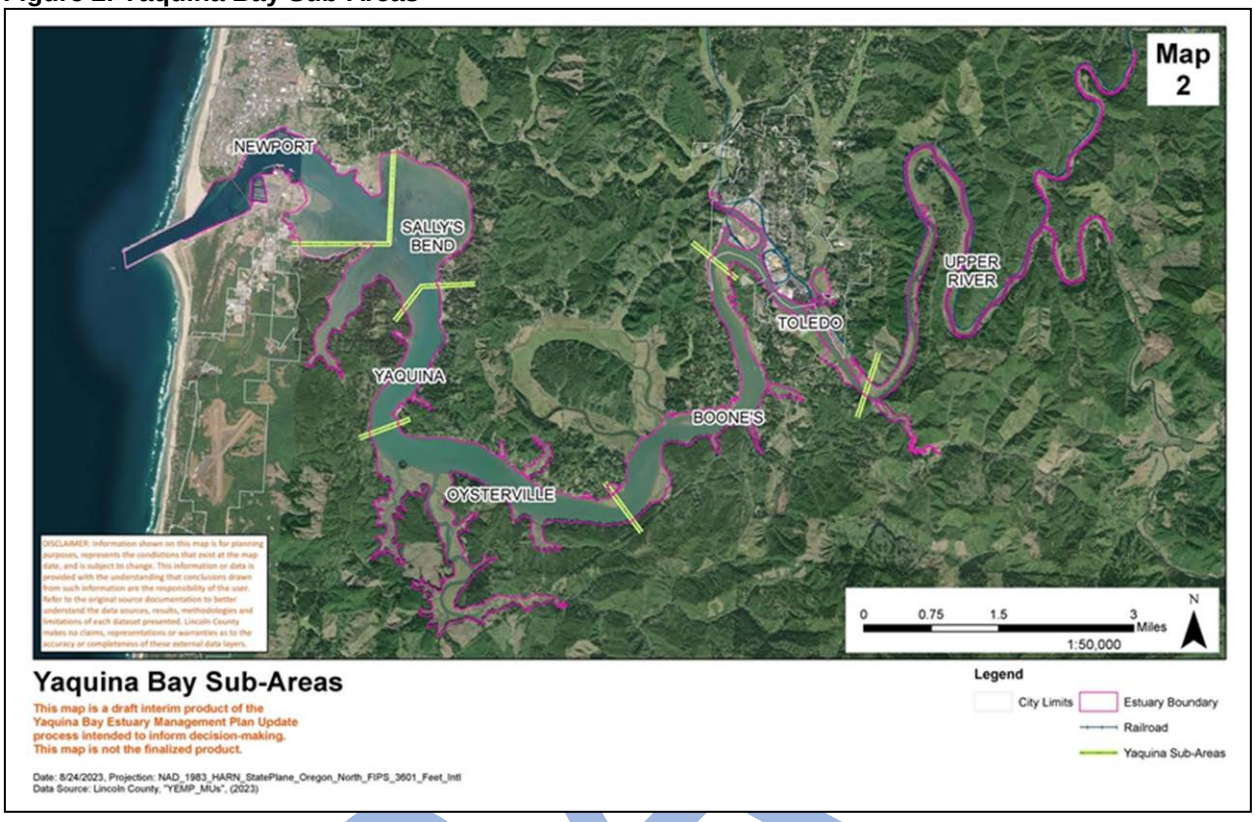
[3] Feely et al. 2008. Barton, A, B. Hales, G. G. Waldbusser, C. Langdon, R.A. Feely. 2012. The Pacific oyster, Crassostrea gigas, shows negative correlation to naturally elevated carbon dioxide levels: Implications for near-term ocean acidification effects. Limnology and Oceanography, 57(3): 698-710.

[4] Feely, R. A, C. L Sabine, J. M Hernandez-Ayon, D. Ianson, and B. Hales. 2008. Evidence for upwelling of corrosive "acidified" water onto the continental shelf. Science 320, no. 5882: 1490.

[5] Oregon Department of Fish and Wildlife: The Oregon Conservation Strategy Fact Sheet Climate Change and Oregon's Estuaries (~~YEAR~~2012)

[6] Front. Mar. Sci., 01 April 2022. Differential Responses of Eelgrass and Macroalgae in Pacific Northwest Estuaries Following an Unprecedented NE Pacific Ocean Marine Heatwave. Sec. Coastal Ocean Processes Volume 9 - 2022. https://doi.org/10.3389/fmars.2022.838967

Figure 2. Yaquina Bay Sub-Areas



Sub-area policies are intended to serve as general guidance for overall spatial planning; they are not applicable approval criteria for individual project or permit reviews. The criteria applicable to individual land use decisions for estuarine development proposals are as set forth in pertinent implementing land use regulations. The Newport sub-area is the only sub-area that is within the Newport Urban Growth Boundary.

Newport Sub-Area:

The size and complexity of the Yaquina Bay estuary required the bay to be divided into seven sub-areas, each representing a common set of natural and human-related features. Sub-areas provide a basis for describing how different areas of the estuary presently function and how they should be planned to function in the future. Each sub-area is described in terms of its existing character; its major committed uses; its existing and potential conflicts; and its climate vulnerabilities. The City of Newport contains the Newport sub-area of Yaquina Bay, which is a high intensity use area. It is the hub of commercial fishing, deep water shipping and research, and tourist related commercial activities on Yaquina Bay. Adjacent shorelands are urban in character and the shoreline is mostly continuously altered throughout the sub-area. Aquatic area alterations within the sub-area are extensive. Major alterations include dredging, jetties and other navigation improvements, intertidal fills, and numerous in-water structures, including docks, piers, wharfs, and breakwaters. As a fully serviced urban area near the harbor entrance and with shoreland access to the deep-water navigation channel, the Newport sub-area represents the most important portion of the estuary for water dependent development.

Important natural resources within the sub-area include eelgrass and algal beds, shellfish beds and fish spawning and nursery areas. Eelgrass and associated habitat is extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. Additionally, it is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act.

> Major Committed Uses. The sub-area contains a mix of water dependent, water related, and non-water related uses. Industrial uses are concentrated at McLean Point (Northwest Natural's liquid natural gas tank and the Port of Newport's International Terminal) and along the Newport bayfront. A recreational marina and a number of non-water related, tourist-oriented commercial uses also occur along the Newport bayfront. Major uses in the South Beach area include the Oregon State University (OSU) Hatfield Marine Science Center, the South Beach Marina recreational complex, the NOAA Marine Operations Center - Pacific facility and the Oregon Coast Aquarium. Many entities residing in the South Beach area provide experiential educational opportunities for tens of thousands of students and families every year. The sub-area takes in the major components of the authorized Corps of Engineers navigation project, including the jetties, the main navigation channel and turning basin, the boat basins, and related navigation improvements. Recreational use in the sub-area, including sport fishing, crabbing, clamming, diving, and boating, is heavy. In some years, a limited commercial herring fishery occurs within the sub-area.

> Existing and Potential Conflicts. Several conflicts exist within the sub-area. Conflicts have developed between tourist-oriented commercial uses and water dependent commercial and industrial uses along the Newport bayfront. These conflicts involve both competition for available space as well as use conflicts (e.g., traffic, parking, etc.) between established users. As demand accelerates for both types of uses, conflicts may worsen. In the past, competition between recreational and commercial vessels for moorage has been a problem; however, the opening in 1980 of approximately 500 moorage spaces designed to accommodate recreational vessels at the South Beach Marina has largely alleviated this conflict. The maintenance and redevelopment of water dependent uses in the sub-area will necessitate development in aquatic areas, posing a potential conflict with the protection of natural resources in some portions of the sub-area.

> Climate Vulnerabilities. The following list contains potential vulnerabilities to climate change that this sub-area of the estuary may experience over the coming years. These vulnerabilities shall be considered during reviews of proposed activities or uses in this sub-area as applicable:

- Increased shoreline erosion due to changes in sediment transport or deposition patterns or increased intensity of storm surges;
- Increased frequency and extent of storm surge flooding due to sea level rise risking the integrity and hindering the use of critical infrastructure;

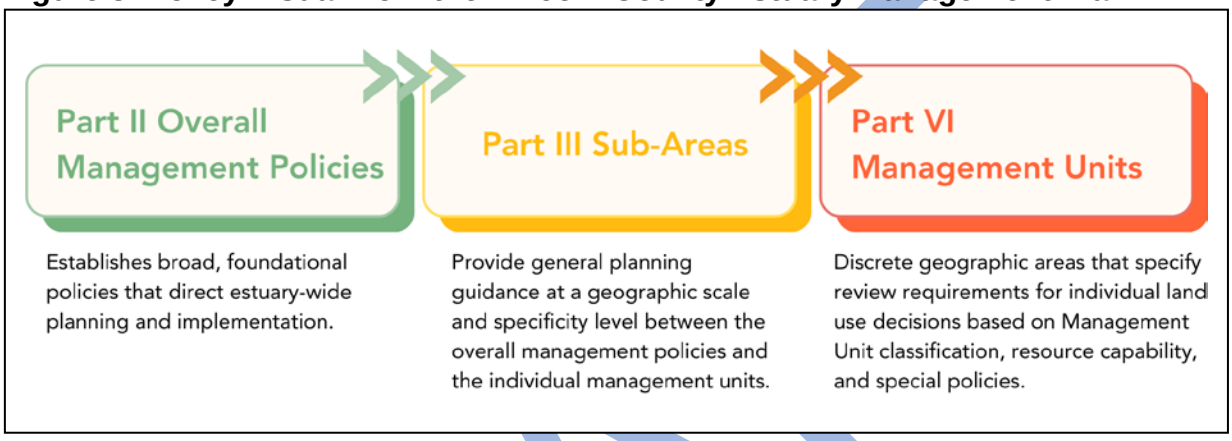
- Increased risk of jetty or breakwater failures due to sea level rise and storm surge;
- Increased risk of loss of structural integrity to underground or submerged infrastructure due to higher water tables from sea level rise;
- Increased risk of sea level rise submerging port, marina, and other moorage infrastructure;
- Increased risk of structural failure of boat ramp and recreation facilities due to sea level rise and storm surge;
- Increased frequency and extent of storm surge flooding due to sea level rise of bay-adjacent industrial and waste treatment sites increasing risk of structural damage and pollution events;
- Increased risk of toxic leaks from erosion and destabilization of submerged sewer, natural gas and other pipes and utility lines due to changes in sediment transport and deposition patterns;
- Aquaculture and recreational shellfish losses due to ocean acidification and dissolution of oyster shells;
- Loss of suitable habitat conditions for eelgrass, Sitka spruce swamps, or other critical species and habitats due to sea level rise, warming waters, or increased downstream sedimentation;
- Extended use of salt marshes, eelgrass beds, tidal channels and other cool water refugia habitats for juvenile salmonids and forage fish such as herring, anchovies, and smelt due to warmer upriver temperatures in the mid-summer to early fall;
- Increased use of productive estuary habitats by marine birds during periods of low food abundance in the ocean, which are associated with marine heat waves and climate-driven changes in ocean processes;
- Increased use of Yaquina Bay habitats by migratory birds as other regional habitats become unsuitable for climate-related reasons (i.e. climate-related shifts in breeding, migration, and overwintering ranges);
- Increased risk to current dredging regime or location of navigation channels as erosion and accretion patterns change due to sea level rise and storm surge.

Estuary Policy Framework and Coordination:

The Lincoln County Estuary Management Plan provides an overall, integrated management scheme for Yaquina Bay. Elements of the Estuary Management Plan that the City of Newport incorporates into its Comprehensive Plan are those that apply inside the Newport Urban Growth Boundary. Proposed amendments to this section and its implementing provisions should be coordinated with Lincoln County, the Port of Newport, and other stakeholders to promote a common understanding and consistent application of the Estuary Management Plan.

This section contains comprehensive provisions for guiding estuarine development and conservation activities, from broad overall policies to site specific implementing measures. The planning and decision-making framework for Yaquina Bay within the City of Newport is contained within a concept of descending levels of policies: Overall Management Policies to Sub-Area Policies to individual Management Units. Each level of policy and the size of the area to which those provisions apply is smaller and more specific than the preceding level, ending with site specific guidelines at the management unit scale.

Figure 3. Policy Visual from the Lincoln County Estuary Management Plan.



Individuals or entities seeking to alter or use the estuary should consult the specific management unit(s) encompassing the site and the applicable estuary zoning requirements in the Newport Municipal Code.

Newport Sub-Area Estuary Management Units:

A management unit is a discrete geographic area defined by biophysical characteristics and features within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited. This is the most specific policy level and is designed to provide specific implementing provisions for individual project proposals. Each unit is given a management classification of Natural, Conservation, or Development (defined below). These classifications are based on the resource characteristics of the units as determined through an analysis of resource inventory information. The classification carries with it a general description of intent and a Management Objective. Each management unit objective is implemented by its applicable Estuary Zoning District in the Municipal Code, which specifies uses and activities that are permitted or conditionally permitted within the unit. Many management units also contain a set of Special Policies that relate specifically to that individual unit.

The management unit classification system consists of three management classifications: Natural, Conservation and Development. The classifications are defined below in terms of the general attributes and characteristics of geographic areas falling into each category. The management objective and permissible uses and alterations for each classification are also specified.

Natural Management Units

Natural Management Units are those areas that are needed to ensure the protection of significant fish and wildlife habitats; of continued biological productivity within the estuary; and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, tidal swamps, and seagrass and algal beds.

Management Objective: To preserve, protect and where appropriate enhance these areas for the resource and support values and functions they provide.

The following uses are permitted in Natural Management Units:

a. undeveloped low-intensity water-dependent recreation;
b. research and educational observation;
c. navigational aids, such as beacons and buoys;
d. protection of habitat, nutrient, fish, wildlife and aesthetic resources;
e. passive restoration measures;
f. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;
g. riprap for protection of uses existing as of October 7, 1977;
h. riprap for protection of unique natural resources, historical and archeological values; and public facilities; and
i. bridge crossings.

Where consistent with the resource capabilities of the area and the purpose of this management unit, the following uses may be allowed:

a. aquaculture which does not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;
b. communication facilities;
c. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;
d. boat ramps for public use where no dredging or fill for navigational access is needed;
e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation;
f. installation of tidegates in existing functional dikes;
g. temporary alterations;
h. bridge crossing support structures and dredging necessary for their installation.

In Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant, or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.

Conservation Management Units

Conservation Management Units shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary except for the purpose of restoration. These areas shall be managed to conserve their natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, water quality, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in Natural Units above, and recreational or commercial oyster and clam beds not included in Natural Units above. Areas that are partially altered and adjacent to existing development of moderate intensity that do not possess the resource characteristics of natural or development units shall also be included in this classification.

While the general purpose and intent of the conservation classification are as described above, uses permitted in specific areas subject to this classification may be adjusted by special policies applicable to individual management units to accommodate needs for natural resource preservation.

Management Objective: To conserve, protect and where appropriate enhance renewable estuarine resources for long term uses and to manage for uses that do not substantially degrade the natural or recreational resources or require major alterations of the estuary.

Permissible uses in conservation areas shall be all those allowed in Natural Units above except temporary alterations. Where consistent with the resource capabilities of the area and the purposes of this management unit, the following additional uses may be allowed:

a. high-intensity water-dependent recreation, including boat ramps, marinas and new dredging for boat ramps and marinas;
b. minor navigational improvements;
c. mining and mineral extraction, including dredging necessary for mineral extraction;
d. other water-dependent uses requiring occupation of water surface area by means other than dredge or fill;
e. aquaculture requiring dredge or fill or other alteration of the estuary;
f. active restoration for purposes other than those listed in 1(d);
g. temporary alterations.

In a Conservation Management Unit, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner that conserves long-term renewable resources, natural biologic productivity and aesthetic values and aquaculture.

Development Management Units

Development Management Units shall be designated to provide for navigation and other identified needs for public, commercial, or industrial water dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification.

Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, sub-tidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary.

While the general purpose and intent of the development classification are as described above, uses permitted in specific areas subject to this clarification may be adjusted by special policies applicable to individual management units to accommodate needs for natural resource preservation.

Management Objective: To provide for water dependent and water related development. Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

The following uses may also be permissible in development management units:

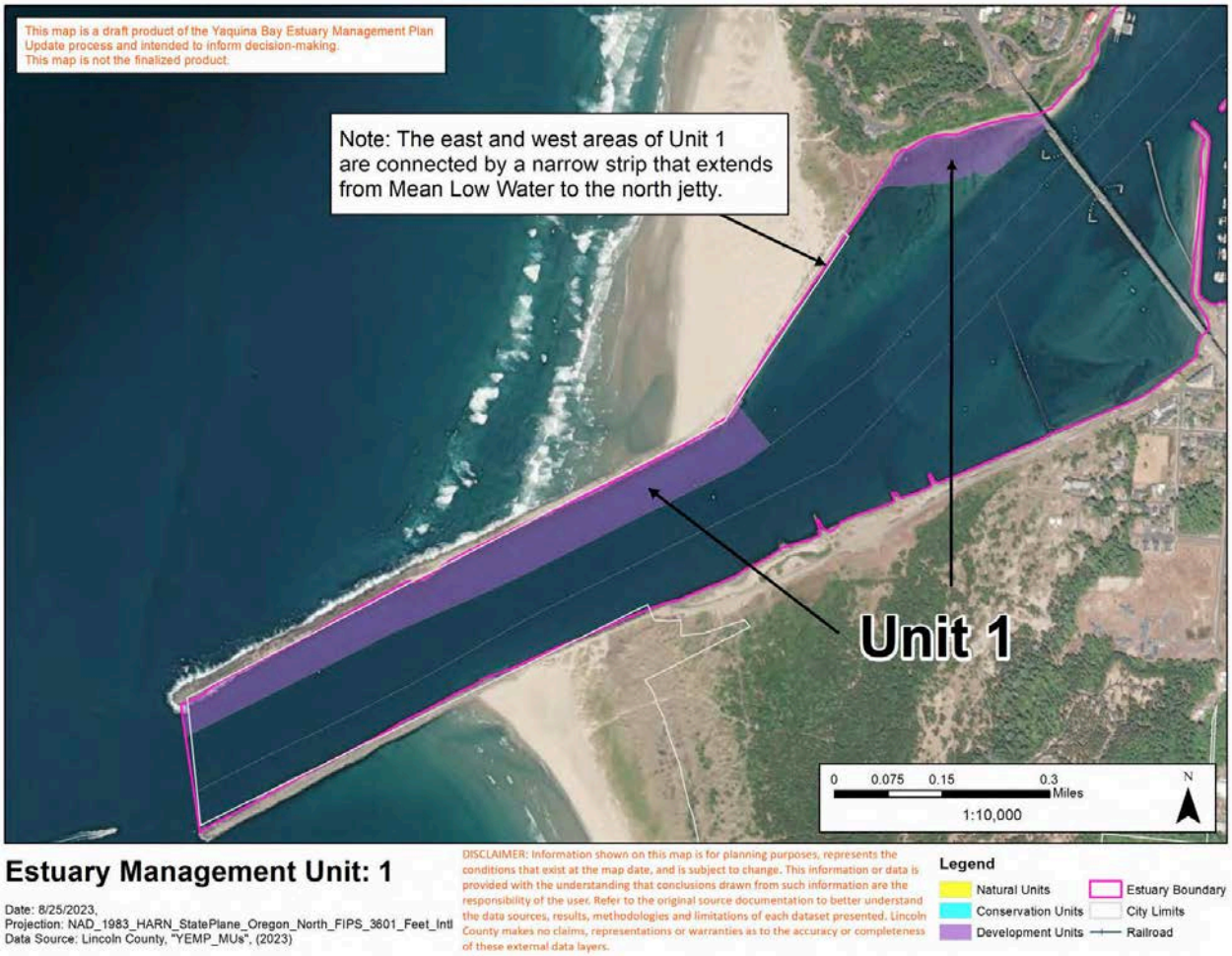
a. dredge or fill, as allowed elsewhere in the plan;
b. navigation and water-dependent commercial enterprises and activities;
c. water transport channels where dredging may be necessary;
d. flow-lane disposal of dredged material monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units;
e. water storage areas where needed for products used in or resulting from industry, commerce and recreation;
f. marinas.
g. Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and non-dependent, non-related uses not requiring dredge or fill; mining and mineral extraction; and activities identified in Natural and Conservation above, shall also be appropriate.

The overall classification scheme for management units is described above. Each individual management unit within the Newport Sub-Area is given a number and a more detailed and specific description. Each management unit description includes:

- the management classification (natural, conservation or development) of the unit and a summary rationale for the classification;
- a description of the spatial boundaries of the unit;
- a summary of the natural resource characteristics of the unit;
- a description of major uses and alterations present in the unit;
- a management objective which provides an overall statement of priorities for management of the unit;
- permitted uses within the unit, both those that are deemed consistent with the resource capability of the unit, and those uses that will require case-by-case resource capability determinations;
- special policies specific to the unit which serve to clarify, or in some cases further limit, the nature and extent of permitted uses.

It is important to note that the text descriptions are the regulating boundary of the management units. Maps and GIS data layers used by the City are a representation of those boundaries. In case of any doubt, the text descriptions should be used to resolve any boundary confusion. Each individual management unit within the City of Newport is described below.

Management Unit 1



> Description: Management Unit 1 consists of the area between the navigation channel and the north jetty, west of the west boundary of the Highway 101 right-of-way, excepting the area described as Management Unit 1A (see description for Management Unit 1A). Natural resources of importance include shellfish beds, fish spawning and nursery areas, and wildlife habitat. Of special importance are areas used by ling cod for spawning. Primary uses in the area are medium and shallow draft navigation and recreation (angling, boating, diving and surfing). Alterations include the north jetty, riprapped shoreline east of the jetty, navigation aids, and piling dolphins at the base of the bridge columns. (See maps for location of resources and uses)

> Classification: Development. This unit has been classified as Development in order to provide for maintenance and repair of the north jetty, a navigation improvement that may

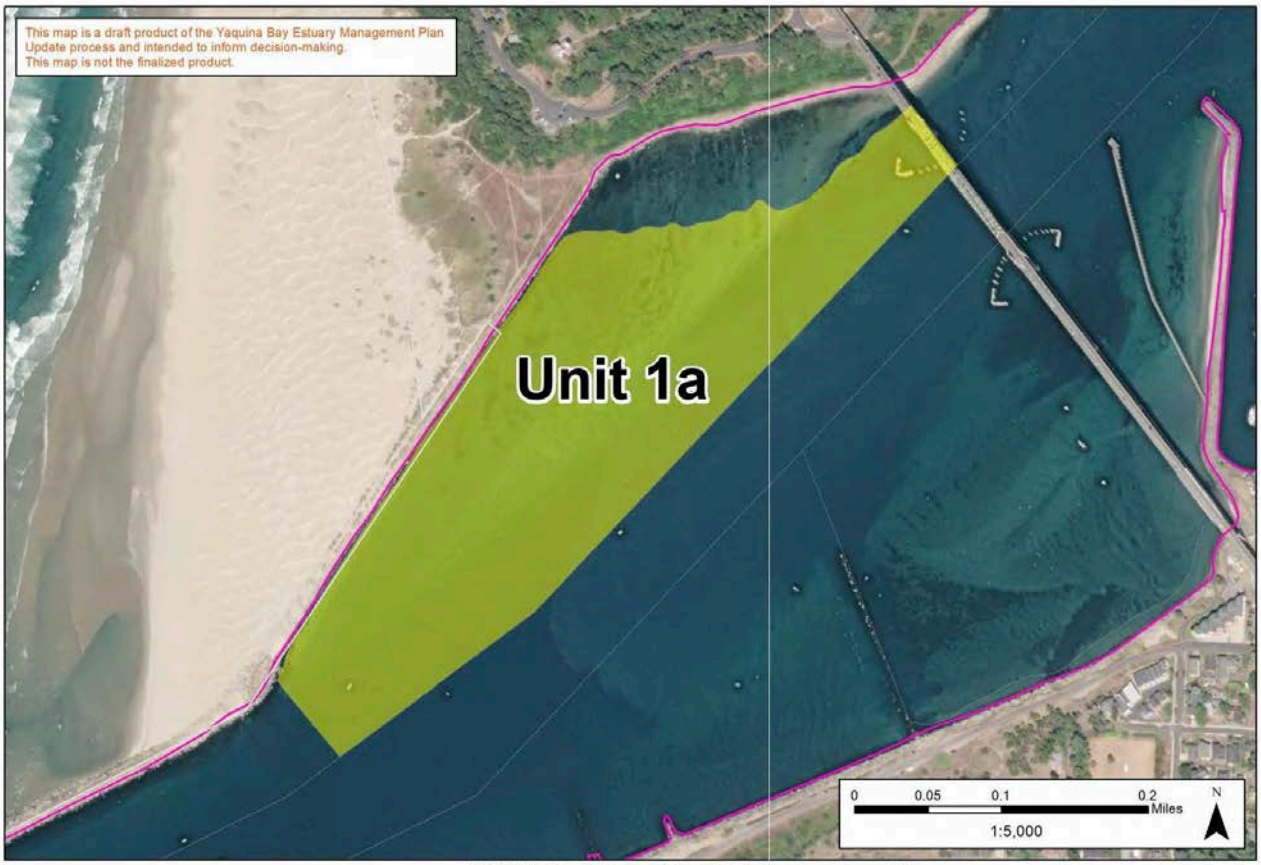
require periodic major alterations. Other than providing for alterations necessary to maintain navigation, management of Unit 1 should conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: As a development management unit, permissible uses in Management Unit 1 are not subject to the resource capability test.

> Management Objective: Management Unit 1 shall be managed to provide for maintenance and repair of the north jetty as necessary to maintain the functionality of the deep-water channel. Otherwise, this unit shall be managed to conserve shellfish beds, fish spawning and nursery areas, and other natural resources.

> Special Policies: Major alterations in Management Unit 1 shall be limited to jetty and other navigation improvements necessary to maintain the authorized federal navigation channel. However, uses should minimize disturbance of important natural resources identified in this unit, to the extent practical.

Management Unit 1a



Estuary Management Unit: 1a

Date: 8/24/2023,
Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: Lincoln County, "YEMP_MUs", (2023)

DISCLAIMER: Information shown on this map is for planning purposes, represents the conditions that exist at the map date, and is subject to change. This information or data is provided with the understanding that conclusions drawn from such information are the responsibility of the user. Refer to the original source documentation to better understand the data sources, results, methodologies and limitations of each dataset presented. Lincoln County makes no claims, representations or warranties as to the accuracy or completeness of these external data layers.

Legend

- Natural Units
- Conservation Units
- Development Units
- Estuary Boundary
- City Limits
- Railroad

> Description: Management Unit 1A consists of the intertidal and subtidal area west of the west boundary of the Highway 101 right-of-way (Yaquina Bay Bridge), lying between the navigation channel and the north shore. Along the north jetty, Unit 1A extends up to 50 lineal feet waterward from the base of the north jetty. Unit 1A is bounded on the west by MLLW, and on the east by the Highway 101 right-of-way. Natural resources of importance include shellfish beds, fish spawning and nursery areas, and wildlife habitat. Of special importance is a major algal bed. Primary uses in the area are medium and shallow draft navigation and recreation (angling, boating, diving and surfing). Alterations include the riprapped shoreline east of the jetty, navigation aids, and piling dolphins at the base of the bridge column.

> Classification: Natural. This unit has been classified as Natural in order to protect the natural resources of the unit and limit alterations to low intensity activities similar to those now existing in the unit.

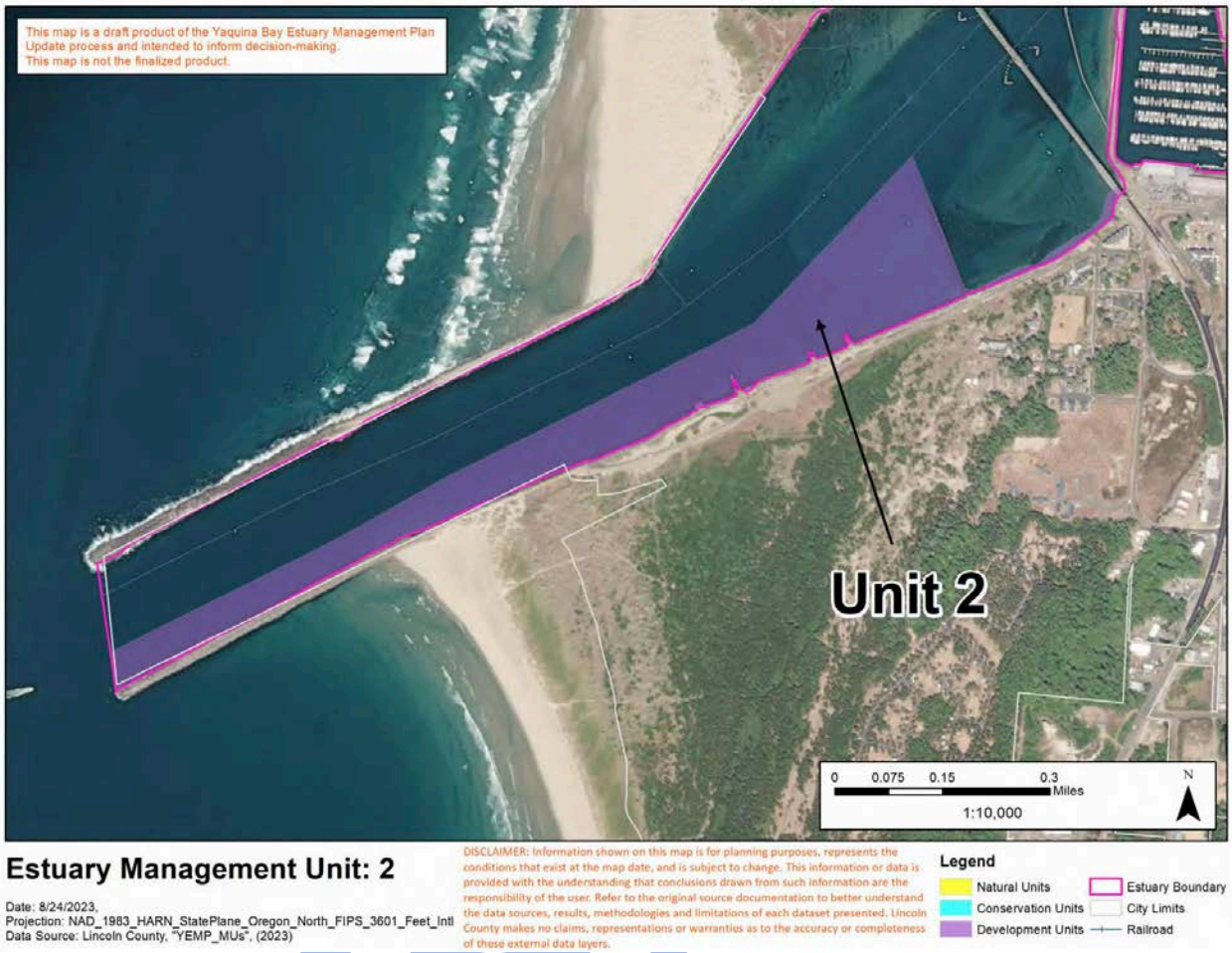
> Resource Capability: The major algal bed in this unit is a sensitive habitat area of special value. Other habitats, while of major importance, are less susceptible to disturbance from minor alterations. Low intensity alterations such as pilings, dolphins and riprap have occurred in this area in the past without significant damage to resource values. Similar activities of this nature in conjunction with the uses contemplated in Unit 1a will constitute minor alterations consistent with the resource capabilities of the area.

> Management Objective: Management Unit 1a shall be managed to preserve natural resources.

> Special Policies: The algal bed within Management Unit 1A as defined by the Oregon Department of Fish and Wildlife Habitat Classification Map shall be preserved.

Activities for construction and maintenance of the jetties and other improvements that are part of the federally authorized navigation project may occur within Management Unit 1a. Such activities may be permitted consistent with the requirements for temporary alterations.

Management Unit 2



> Description: Management Unit 2 contains the area between the south jetty and the navigation channel, extending from the channel entrance east to a line 50 feet east of the base of the spur jetty. From the spur jetty east to the Yaquina Bay Bridge, Unit 2 includes the aquatic area between the south jetty and Mean Low Water (MLW). Natural resources of importance include shellfish beds, algal beds, eelgrass beds, fish spawning and nursery areas and waterfowl habitat. Major uses in the unit are shallow draft navigation and recreational activities, including fishing, diving and boating. Alterations in the area include the south jetty, the spur jetty and groins, and navigation aids.

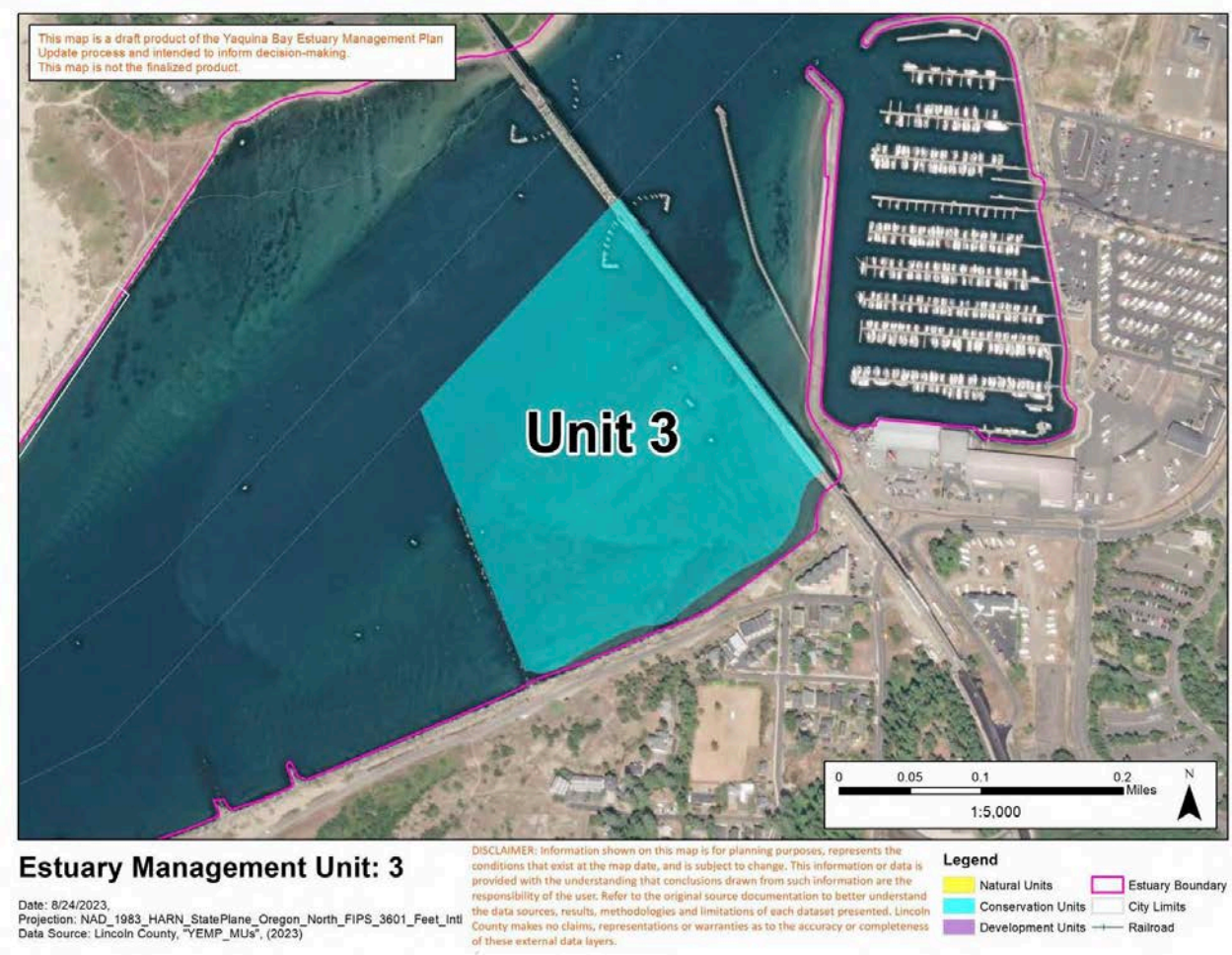
> Classification: Development: This unit has been classified as Development in order to provide for the maintenance and reconstruction of navigation improvements, including the south jetty and the spur jetty and groins, which may require major alterations.

> Resource Capability: As a development management unit, permissible uses in Management Unit 2 are not subject to the resource capability test. However, uses should minimize disturbance of important natural resources identified in this unit to the extent practical.

> Management Objective: Management Unit 2 shall be managed to provide for the maintenance and repair of the south jetty and associated navigation improvements. Major alterations shall be limited to those necessary to provide for these uses. Otherwise, this unit shall be managed to conserve shellfish beds, algal beds, fish spawning and nursery areas and other natural resources.

> Special Policies: Major alterations in Management Unit 2 shall be limited to jetty, groin and other navigation improvements necessary to maintain the functionality of the authorized federal navigation channel. However, uses should minimize disturbance of important natural resources identified in this unit to the extent practical.

Management Unit 3



> Description: Management Unit 3 consists of the area between the navigation channel and MLW along the south shore, from a line 50 feet east of the base of the spur jetty, east to the west boundary of the Highway 101 right-of-way. The area has several important natural resources, including tideflats, eelgrass beds, significant shellfish beds, important fish spawning and nursery areas, and important waterfowl habitat. Major uses within the unit are shallow draft navigation and recreation (clam digging, fishing, boating). Some minor commercial shellfish harvest takes place in the unit. Alterations include navigation aids, dolphins, and riprapped shorelines.

> Classification: Conservation: This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

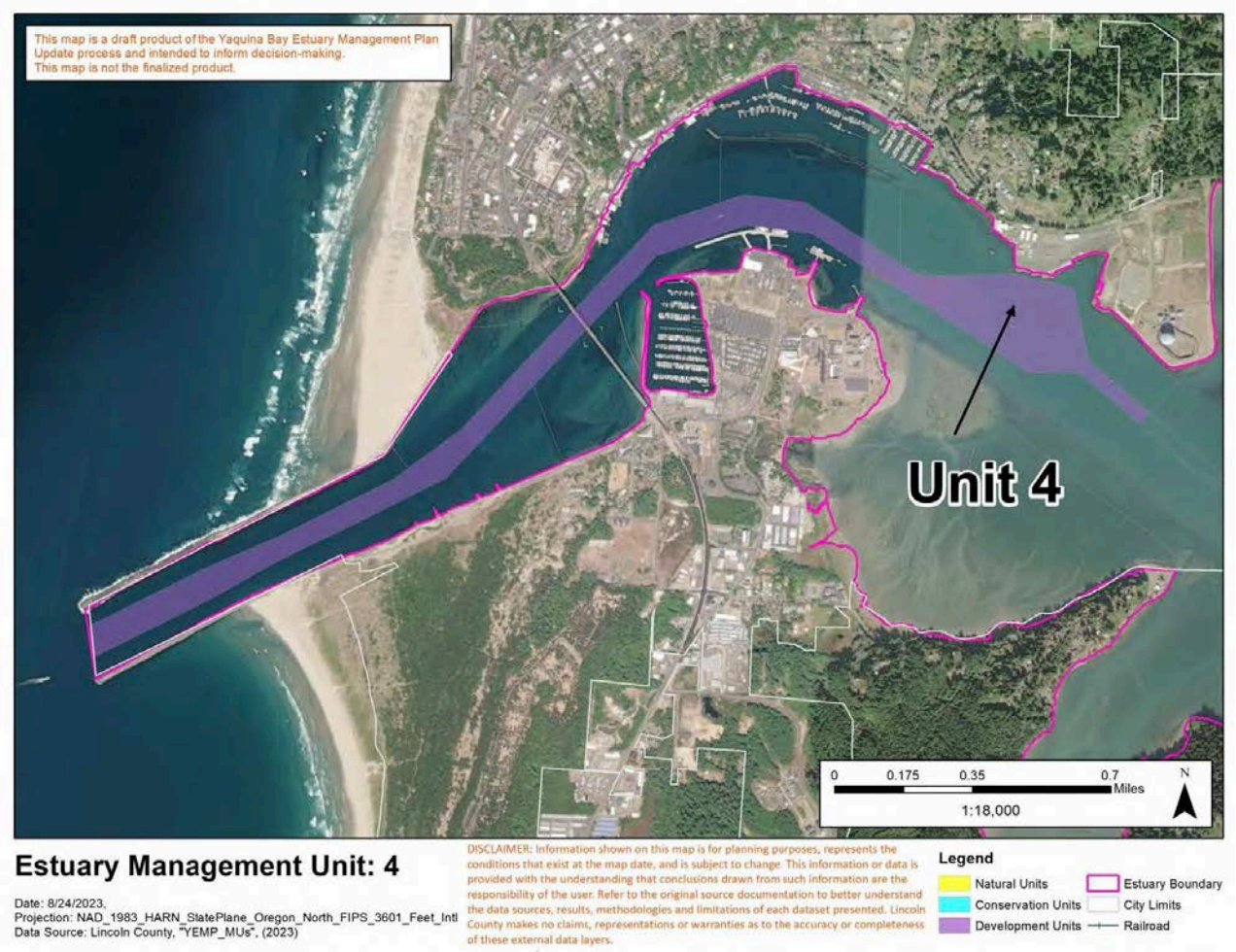
> Resource Capability: Management Unit 3 has significant intertidal area, and important shellfish beds. Existing alterations are minor in nature. Further minor structural alterations such as pilings and dolphins would be consistent with the existing character and resource capability of the area.

> Management Objective: Management Unit 3 shall be managed to conserve natural resources of importance.

> Special Policies: Major clam beds are located within Management Unit 3. These clam beds shall be protected.

Activities for construction and maintenance of the jetties and other improvements that are part of the federally authorized navigation project may occur within Management Unit 3. Such activities may be permitted consistent with the requirements for temporary alterations.

Management Unit 4



> Description: Management Unit 4 is the Corps of Engineers authorized deep-water federal navigation channel, up to and including the turning basin at McLean Point. This unit includes the 40-foot-deep, 400-foot-wide entrance channel; the 30-foot-deep, 300-foot-wide bay channel, and the turning basin. Natural resources within the unit include fish spawning and nursery areas, and important shellfish beds. Major uses within the unit include navigation (shallow, medium and deep draft), recreation (fishing, crabbing, and boating) and some limited commercial harvest. Alterations include pilings, navigation aids, submerged crossings and the Yaquina Bay bridge crossing. Of special importance is the maintenance dredging of the federally authorized navigation channel and turning basin. Management Unit 4 is an area of diverse marine influenced habitats, including some major shellfish beds.

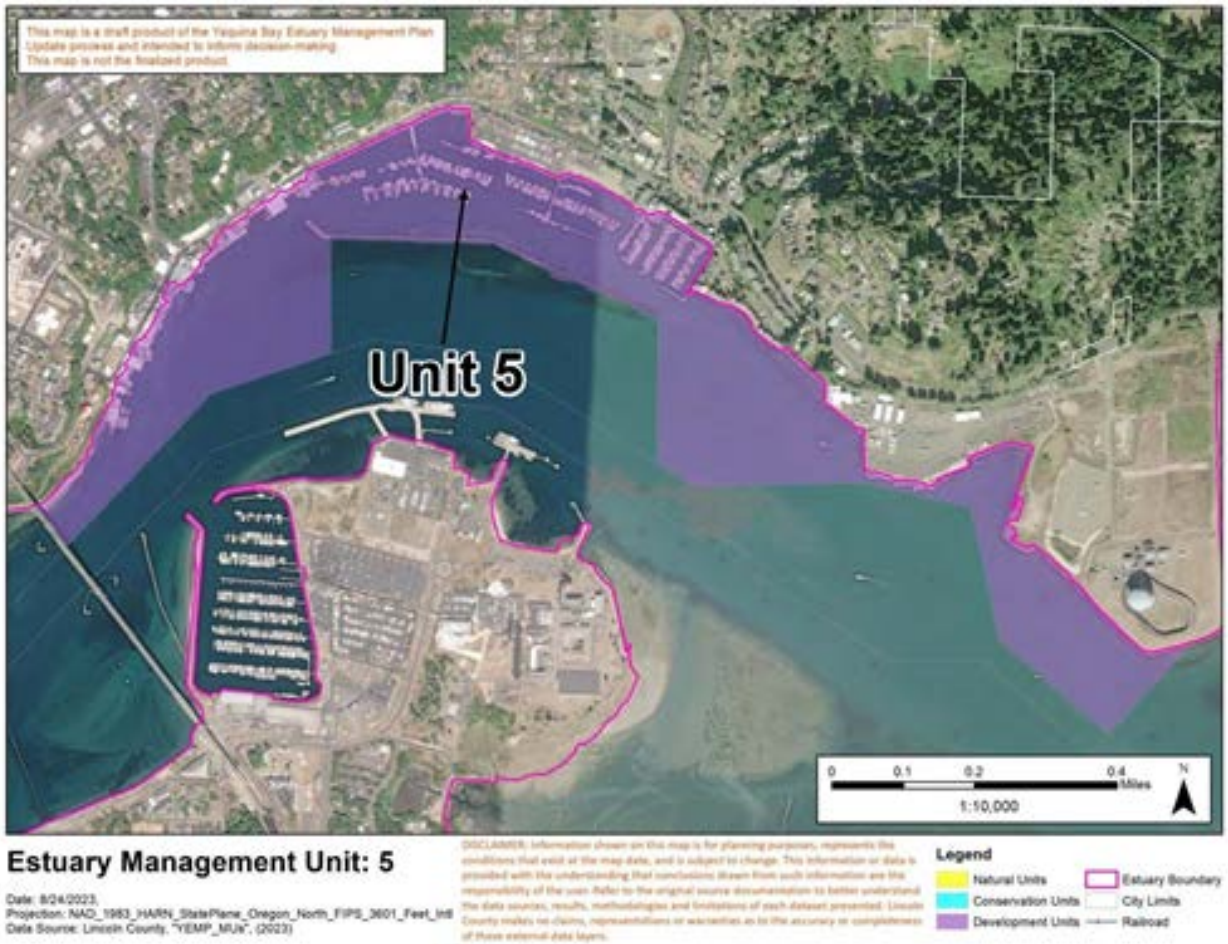
> Classification: Development. This unit has been classified as development, to provide for the dredging and other alterations required to maintain the deep-water navigation channel and turning basin.

> Resource Capability: As a development management unit, authorized uses are not subject to resource capability requirements. The area is periodically dredged for maintenance of the federally authorized navigation channel and turning basin, and resources present are subject to this regular disturbance.

> Management Objective: Management Unit 4 shall be managed to protect and maintain the authorized navigation channel and turning basin for deep-draft navigation.

> Special Policies: Adverse impacts of dredging operations within Management Unit 4 on existing shellfish beds shall be minimized to the extent practical. Port facilities may extend into the deep water channel subject to approval by federal and state agencies that maintain jurisdiction, in part, to ensure that new development does not impede navigation.

Management Unit 5



> Description: Management Unit 5 consists of the area between the north shore of the bay and the navigation channel, from the west boundary of the Highway 101 right-of-way east to McLean Point. A portion of the west boundary of Management Unit 5 extends beyond the Highway 101 right of way to include a 50-foot radius around the fender dolphins that protect the west side of the Yaquina Bay bridge support structures. It includes the Port of Newport commercial moorage basins (Port Docks 3, 5 and 7, and the north marina breakwater), the developed waterfront in the Newport urban area, and the Port of Newport's international terminal facilities at McLean Point. Natural resources of importance include tideflats, eelgrass and shellfish beds, and fish spawning and nursery areas. This portion of the estuary is used intensively for shallow and medium draft navigation, moorage of small and large boats, and for recreation. Other significant uses include the Port of Newport's international terminal operation, research activities, the U.S. Coast Guard Station, seafood processing plants and infrastructure, and mixed-use development along the historic Newport bayfront. The shoreline and aquatic areas are extensively altered with riprap, bulkheads, piers and wharves, the north marina breakwater, pilings, floating docks, periodic maintenance dredging and other activities.

> Classification: Development. This unit is classified as development to provide for the port's development needs in support of navigation, commercial fishing and other water dependent and mixed uses along the urban waterfront.

> Resource Capability: Management Unit 5 is the most extensively altered area in the estuary. Maintenance and redevelopment of existing facilities in this area, along with new development, will result in further alterations, including major dredging and construction activities. As a development management unit, these authorized uses within Management Unit 5 are not subject to resource capability requirements.

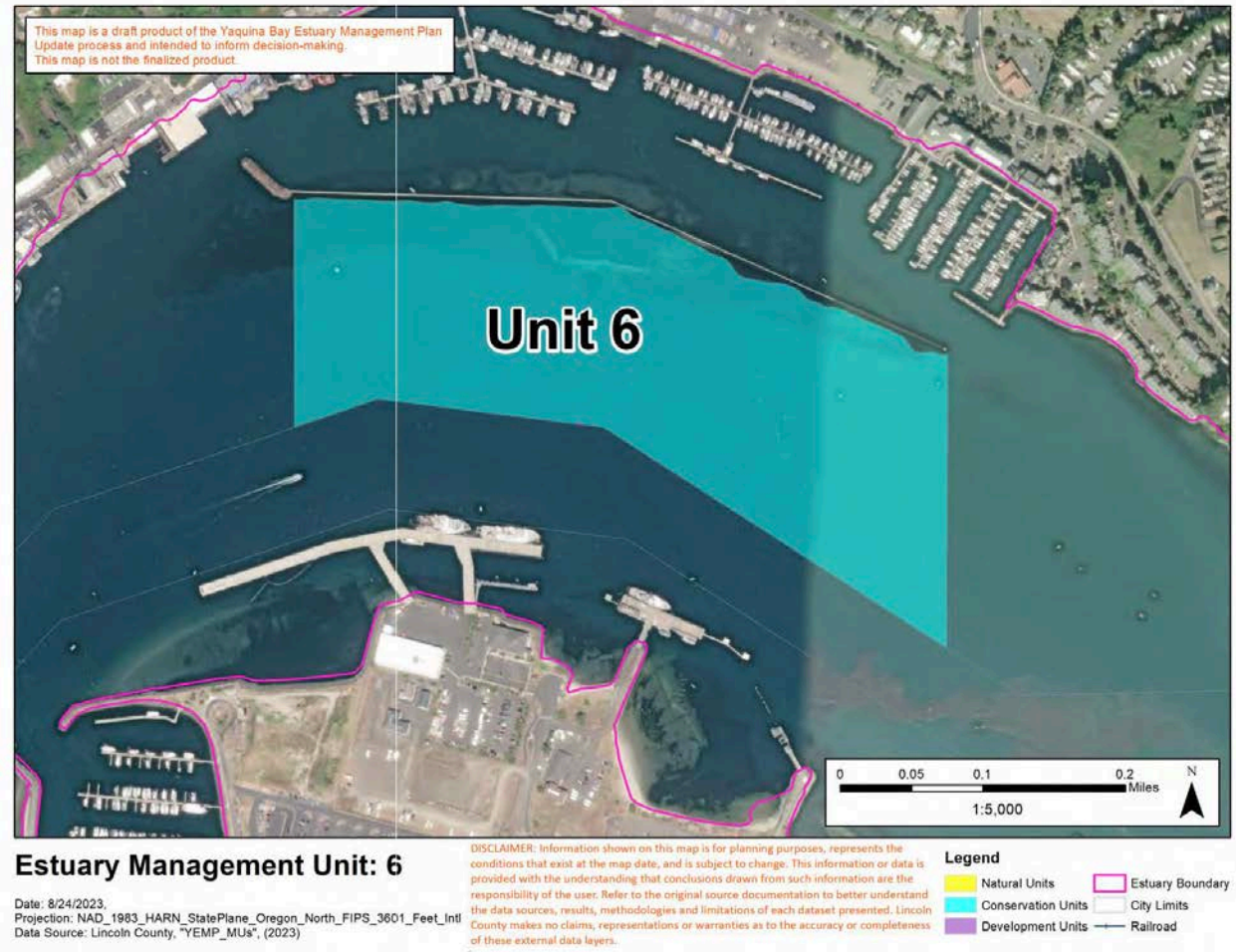
> Management Objective: Management Unit 5 shall be managed to provide for the development of port facilities and other water-dependent uses requiring aquatic area alterations. Water-related and non-related uses not requiring dredge or fill may be permitted consistent with the unique mixed-use character of the Newport waterfront.

> Special Policies: Important shellfish beds are located in Management Unit 5, in particular the ODFW designated shellfish preserve on the north side of the north marina breakwater, as described in OAR 635-005-0290(7). Adverse impacts on these shellfish beds from development shall be minimized to the extent practical.

Due to the limited water surface area available and the need for direct land to water access, alternatives ~~(such as mooring buoys or dry land storage)~~ to docks and piers for commercial and industrial uses (such as mooring buoys or dry land storage) are not feasible in Unit 5. Multiple use facilities common to several users are encouraged where practical.

Nonwater-related uses may be permitted within the estuarine area adjacent to the old waterfront from Bay Street to Pine Street, extending out to the pierhead line as established by the Corps of Engineers. Tourist related activities will be encouraged to locate on the landward side of S.W. Bay Boulevard. The bay side of S.W. Bay Boulevard should accommodate water-dependent and water-related types of uses. Some tourist related uses may locate on the water side but only upon the issuance of a conditional use permit.

Management Unit 6



> Description: Management Unit 6 consists of the area south of the north marina breakwater, extending from MLW south to the navigation channel. Unit 6 is bounded on the west by a north-south line extending from the west end of the breakwater to the navigation channel, and on the east by a north-south line extending from the east end of the breakwater to the navigation channel. Unit 6 contains both intertidal and subtidal area with a number of important resource characteristics. Significant habitat areas include eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Major uses in the unit include recreation (fishing, boating, crabbing and clamming), medium and shallow draft navigation, and some limited commercial harvest activities. Alterations within the unit include pilings and navigation aids.

> Classification: Conservation. This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

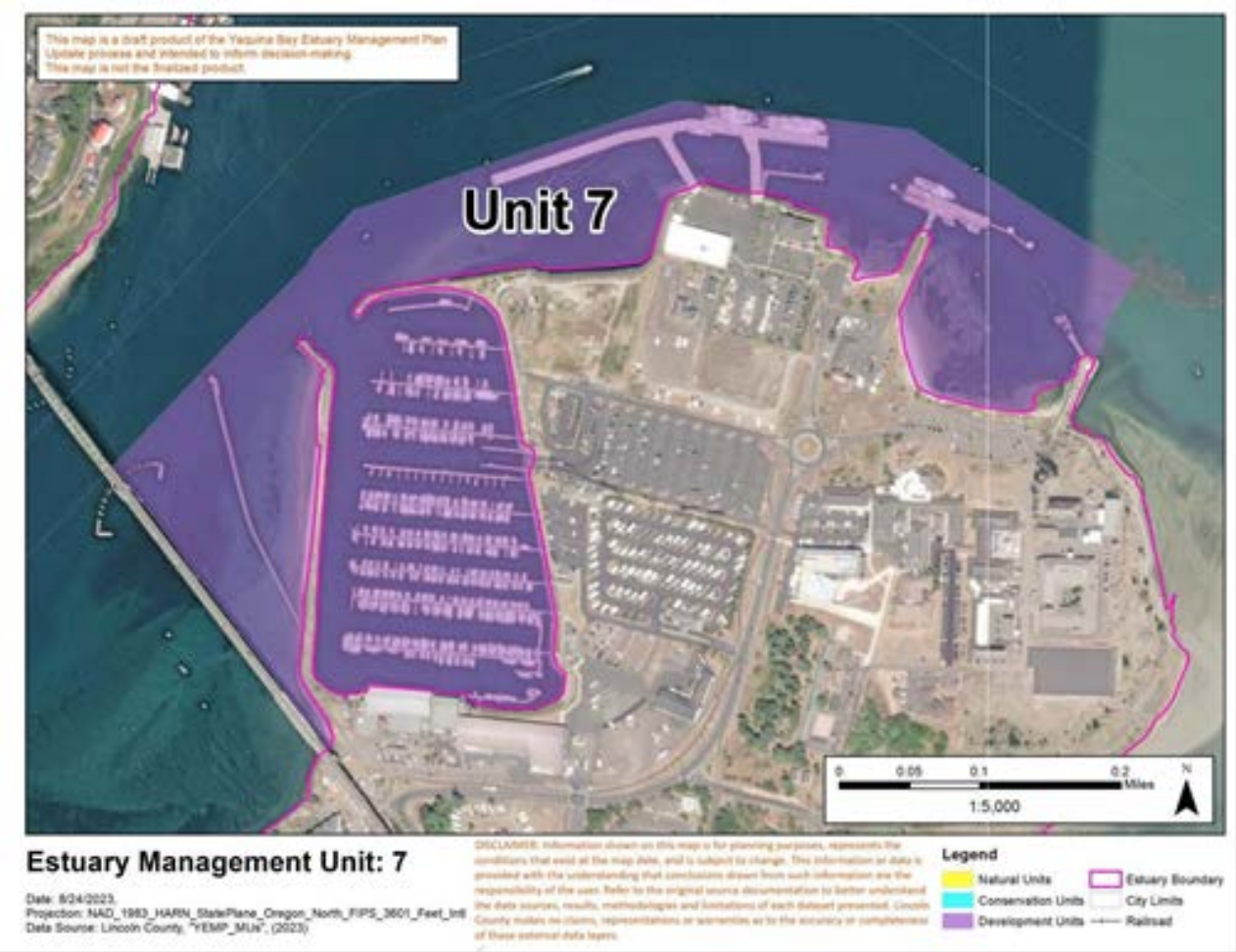
> Resource Capability: Management Unit 6 is a mostly sub-tidal area near the upper end of the marine subsystem. It supports a variety of important resources that could be adversely impacted by major fill, removal or other aquatic alterations. Important uses in the

unit such as navigation and recreation require a largely unobstructed surface area. For these reasons, alterations consistent with the resource capability of this unit are limited to minor structural alterations such as pilings and dolphins. Any fill or removal activities should be evaluated on a case-by-case basis.

> Management Objective: Management Unit 6 shall be managed to conserve natural resources and to provide for uses compatible with existing navigation and recreation activities.

> Special Policies: The shellfish beds south of the north marina breakwater as defined by the publication "Sub-tidal Clam Populations: Distribution, Abundance and Ecology" (OSU Sea Grant, May 1979) are considered a resource of major importance. Adverse impacts on this resource shall be avoided or minimized to the extent practical.

Management Unit 7



> Description: Management Unit 7 consists of the aquatic area between the navigation channel and the south shore, from the west boundary of the Highway 101 right-of-way east to the small boat pier at the OSU Hatfield Marine Science Center. A portion of the west boundary of Management Unit 7 extends beyond the Highway 101 right of way to include a

50-foot radius around the fender dolphins that protect the west side of the Yaquina Bay bridge support structures. It includes the South Beach Marina, the NOAA Marine Operations Center, and the OSU Hatfield Marine Science Center facilities. The majority of the unit is sub-tidal and includes eelgrass and shellfish beds, and fish spawning and nursery areas. Major uses in the area are deep, medium and shallow draft navigation, moorage, recreation and some limited commercial harvest. Alterations include pilings, piers and wharves, breakwaters, floating docks, riprap, and periodic dredging.

> Classification: Development. This unit has been classified as development to provide for water dependent uses, including the NOAA Marine Operations Center, the South Beach Marina and OSU Hatfield Marine Science Center facilities.

> Resource Capability: Management Unit 7 is classified for development; therefore, authorized uses are not subject to resource capability requirements.

> Management Objective: Management Unit 7 shall be managed to provide for water dependent development compatible with existing uses. Non-water dependent uses not requiring dredge or fill may be permitted consistent with adjacent coastal shorelands designations.

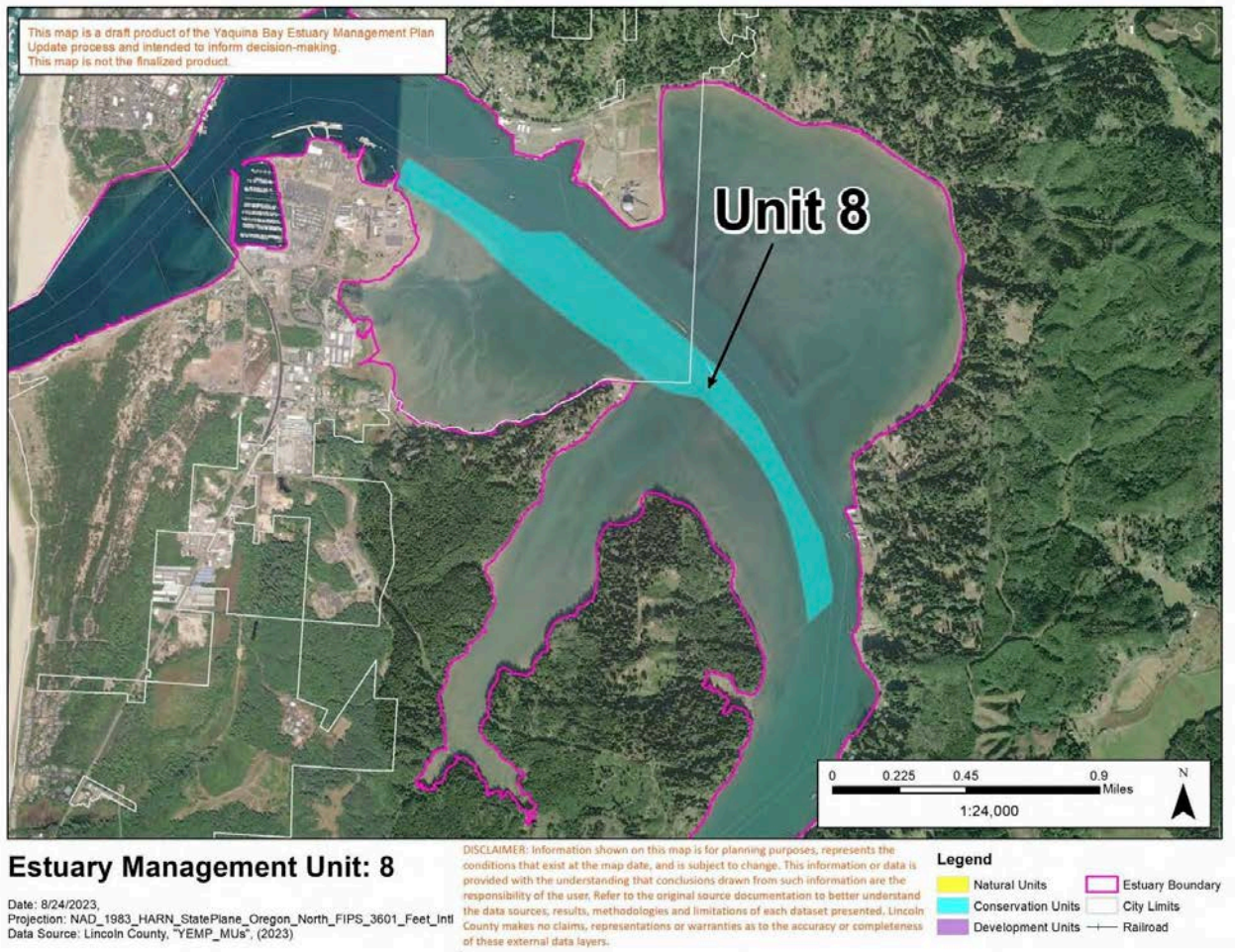
> Special Policies: Eelgrass beds, shellfish beds, and fish spawning and nursery areas are located within Management Unit 7. Adverse impacts of development on these resources shall be avoided or minimized to the extent practical.

Submerged crossings, bridge footings, pilings, dolphins, and other navigation and marina related development undertaken as part of the approved comprehensive plan shall be permitted, as well as docking and other facilities to serve proposed development.

Development of deep and medium draft port facilities shall be a permitted use only outside of the existing South Beach Marina boat basin.

Due to the limited water surface area available and the need for direct land to water access, alternatives (such as buoys and dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 7. Multiple use facilities common to several users are encouraged where practical.

Management Unit 8



> Description: Management Unit 8 is a sub-tidal area between the navigation channel and the intertidal flats of the Idaho Point/King's Slough area. It contains significant habitat areas, including eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Uses within the unit consist of medium and shallow draft navigation, commercial harvest and recreation. Existing alterations are limited to navigation aids.

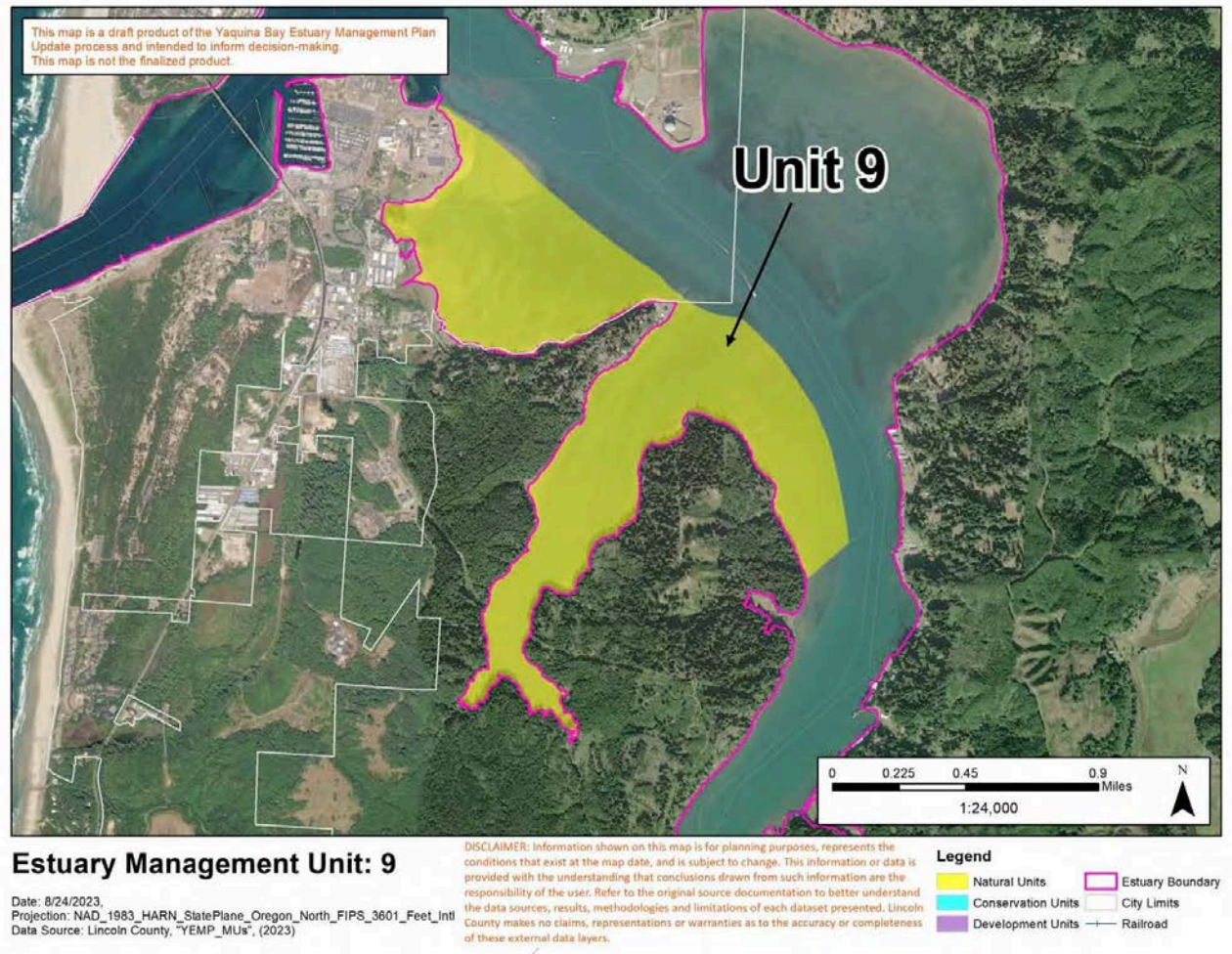
> Classification: Conservation. This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: Management Unit 8 is an important resource area. Shallow portions of this sub-tidal unit support eelgrass beds; major shellfish beds are also located in this area. Alterations in this area are limited to navigation aids (pile supported). Similar minor structural alterations such as pilings and dolphins are consistent with the resource capabilities of this area.

> Management Objective: Management Unit 8 shall be managed to conserve and protect natural resources such as eelgrass and shellfish beds.

> Special Policies: A cobble/pebble dynamic revetment for shoreline stabilization may be authorized for protection of public facilities (such as at the OSU Hatfield Marine Science Center).

Management Unit 9



> Description: Management Unit 9 includes the Idaho Flats tideflat between the Marine Science Center and Idaho Point, all of King Slough, and the intertidal area upstream from the mouth of King Slough known as Raccoon Flat.

More than 600 acres of tideland are estimated to be included in Management Unit 9. This includes 250 acres at Idaho Flat, 235 acres in King Slough and at the mouth of King Slough, and over 120 acres upstream from the mouth of King Slough. Of this total, about 260 acres are inside the Newport City Limits, most notably Idaho Flat and a smaller area just east of Idaho Flat.

This is one of the largest tideflats in the estuary with a number of natural resource values of major significance, including eelgrass beds, shellfish beds, low salt marsh, fish spawning and nursery areas and waterfowl habitat.

The area is used for recreational purposes with significant recreational clamming in Idaho Flat (accessed primarily from the OSU Hatfield Marine Science Center location) and occasional angling and waterfowl hunting. There are several private boat ramps, including one at Idaho Point (formerly the site off a small marina)..

Nearly all of the intertidal flat area is in public ownership (State of Oregon Board of Higher Education), and it is adjacent to, and accessible from, the OSU Hatfield Marine Science Center campus. The intertidal areas are utilized to support research and educational activities at Hatfield.

Most of the intertidal area of King Slough is privately owned and was used historically for log storage. Log storage will no longer be done in this area. Tideland in the middle and northern portions of Kings Slough and adjacent to the mouth of King Slough have been identified as candidate sites, or currently support, small-scale, low intensity aquaculture operations (oyster farms).. A substantial portion of the intertidal area upstream from King Slough (Raccoon Flat) is privately-owned by the Yakona Nature Preserve and Learning Center. Alteration to the unit is minimal, with a few scattered pilings and limited areas of riprapped shoreline.

> Classification: Natural. Management Unit 9 has large tideflats with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. This unit has been classified natural in order to preserve the area's natural resources, including eelgrass and clam beds.

> Resource Capability. Management Unit 9 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. In order to maintain resource values, alterations in this unit shall be kept to a minimum. Minor alterations which result in temporary disturbances (e.g., limited dredging for submerged crossings) are consistent with resource values in this area; other more permanent alterations will be reviewed individually.

> Management Objective. Management Unit 9 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture.

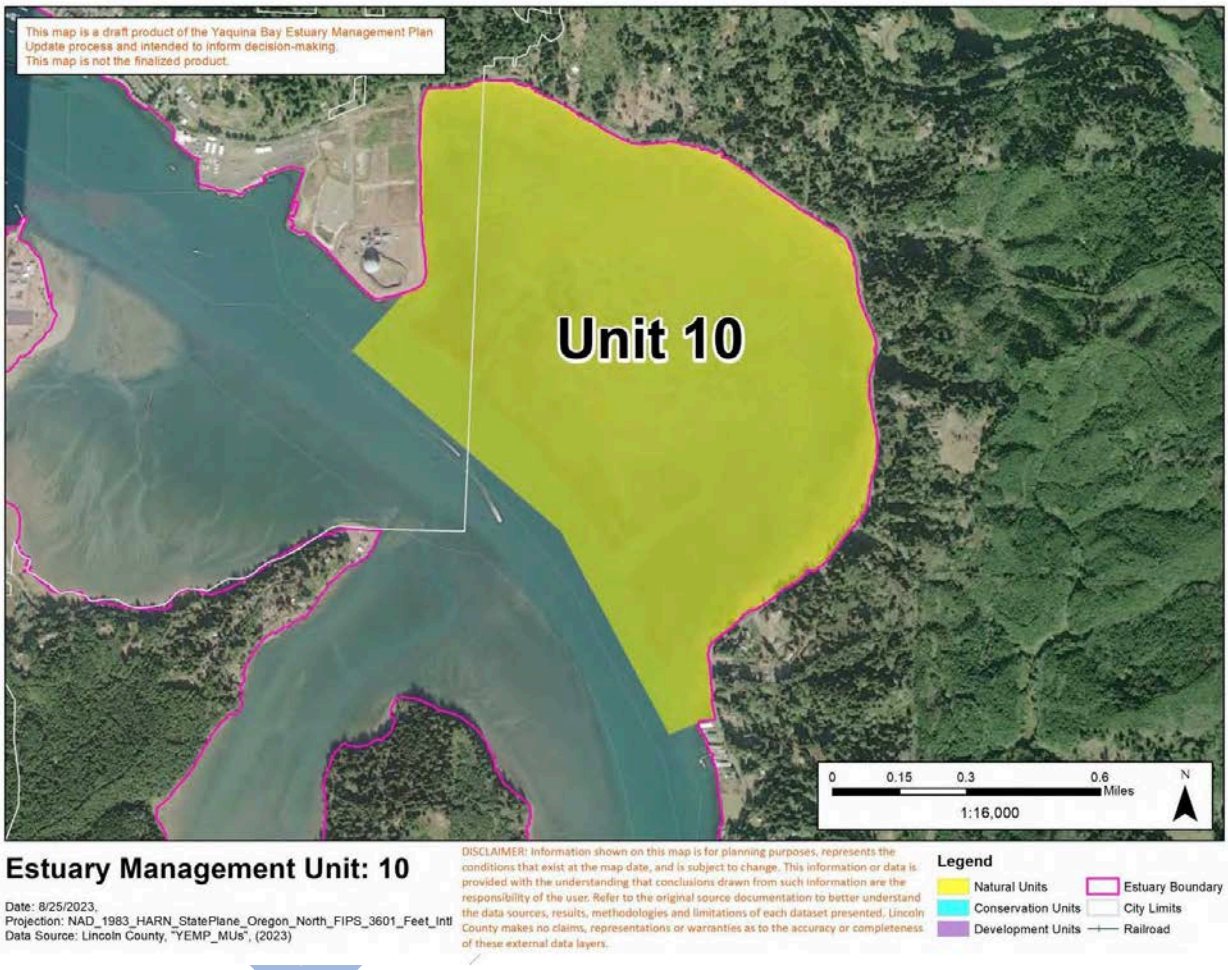
> Special Policies. Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or establishment of new marina uses is not permitted.

Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged.

Newport had previously taken two Goal 16 exceptions that will remain in effect, those being the waste seawater outfall for the Oregon Coast Aquarium and storm water run-off through natural, existing drainage systems. Both uses are permitted in Management Unit 9.

A cobble/pebble dynamic revetment for shoreline stabilization may be authorized for protection of public facilities (such as at the OSU Hatfield Marine Science Center). ~~A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.~~

Management Unit 10



> Description. Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel. A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases ~~out~~ another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to Mclean Point are inside the Newport city limits and Urban Growth Boundary. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become much smaller over time, although the cause, whether natural or manmade, is unknown. Eelgrass and associated habitat make this an extremely important fish spawning and nursery area. It also supports recreationally clamming, and is important migratory bird habitat. Additionally, it has been observed that the middle portion of MU 10 is utilized on occasion by pinnipeds (seals and sea lions) as a haul out region. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point. (wWhile a small section of MU 10 may be suitable for native oyster restoration, most of the MU 10 is not suitableunlikely to be utilized by native oysters given habitat and substrate.

Existing uses in this area include shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the southern corner).

> Classification: Natural. Sally's Bend is a large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. This unit has been classified natural in order to preserve the area's natural resources, including eelgrass, clam beds, and Olympia oysters.

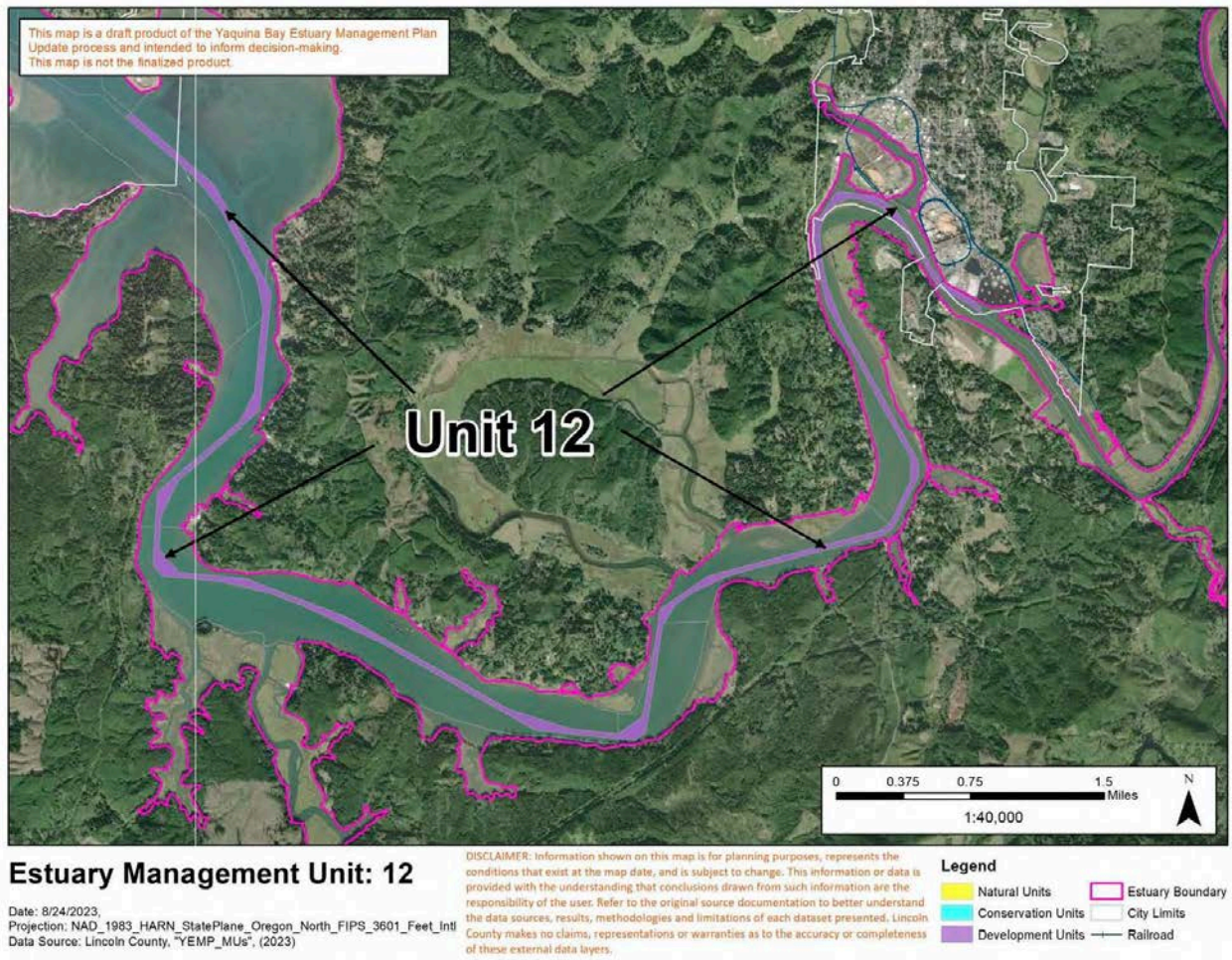
> Resource Capability: Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerged crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

> Management Objective: Management Unit 10 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible aquaculture.

> Special Policies: Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, significant adverse impacts to existing Olympia oyster beds shall be avoided.

Deepening and widening of the federal navigation channel and turning basin into this management unit, which would impact the significant ecosystems within Sally's Bend, shall be avoided.

Management Unit 12



> Description. Management Unit 12 consists of the Corps of Engineers federally authorized navigation channel from the turning basin to the upstream extent of dredging at RM 14 in Toledo (see Figure 17). The channel above the turning basin is maintained to a depth of 18 feet up to Yaquina (RM 4+ 20), and to a depth of 10 feet from Yaquina up to Toledo. Natural resources of major significance in the unit are shellfish beds and fish spawning and nursery areas. The channel is used extensively for shallow and medium draft navigation, though there is currently no active commercial cargo traffic. Other uses include recreation, commercial harvest and aquaculture. Alterations within the channel include maintenance dredging and several minor alterations such as pilings, submerged cable crossings and navigation aids. Only a small portion of this management unit is within the Newport Urban Growth Boundary.

> Classification: Development. This unit has been classified development as it is the federally authorized navigation channel and undergoes periodic maintenance dredging.

> Resource Capability: Resources within Management Unit 12 are subject to periodic major alterations a result of maintenance dredging activities. Authorized uses in this unit are not subject to resource capability requirements.

> Management Objective: Management Unit 12 shall be managed to maintain navigational access to upriver areas above the turning basin.

> Special Policies: Bridge crossing construction shall be permitted only for maintenance or replacement of the existing Butler Bridge crossing.

Mitigation and Restoration

The mitigation provisions of Statewide Planning Goal 16: Estuarine Resources require that appropriate sites be designated to meet anticipated needs for estuarine resource replacement required to compensate for dredge or fill in intertidal or tidal marsh areas. These sites are to be protected from uses that would preempt their availability for required mitigation activities. Mitigation sites have been selected from among the restoration sites identified in the Lincoln County Estuary Management Plan for Yaquina Bay (see Figure 4 below). All of these sites have been evaluated as potential mitigation sites based on the following criteria:

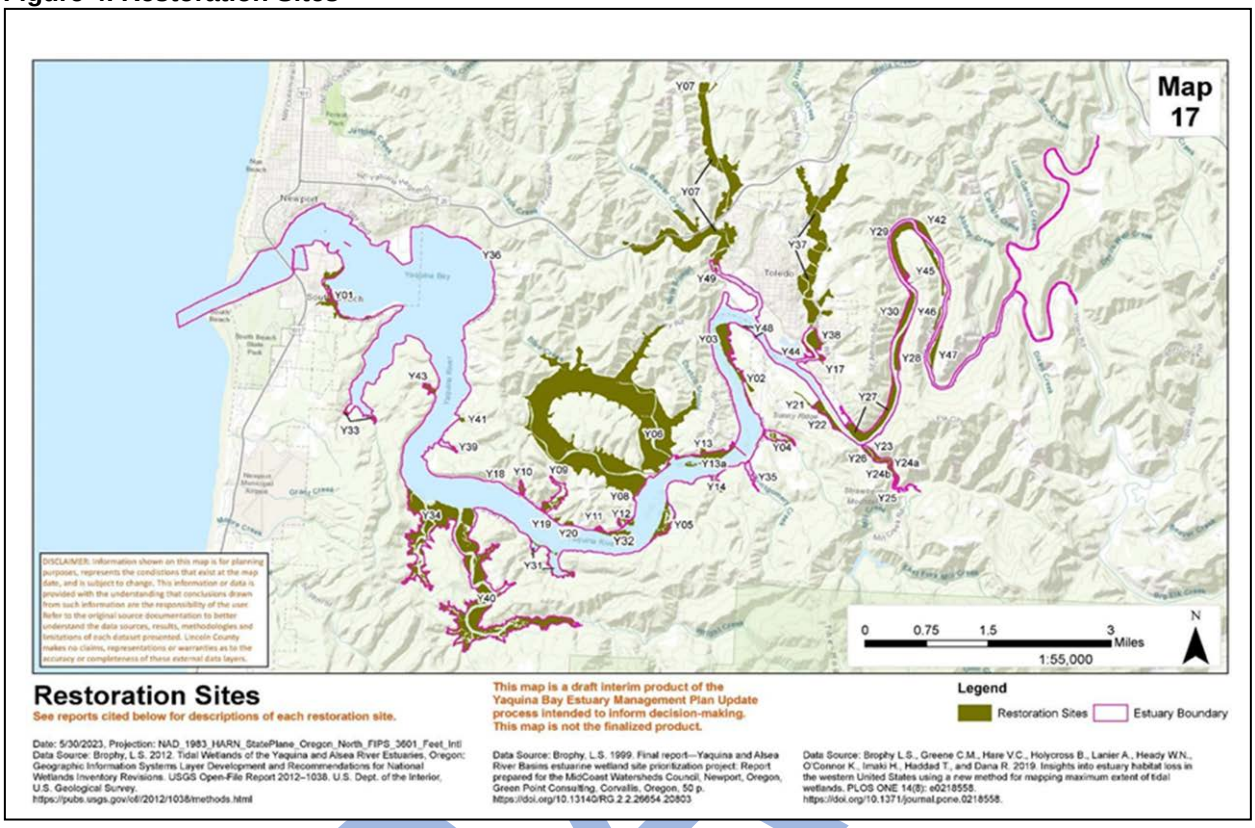
1. Biological Potential: Sites have been evaluated in terms of their similarity of habitat to areas likely to be altered or destroyed by future development activities; or, alternatively, sites were chosen which may provide resources that are in greatest scarcity compared to their past abundance or distribution. This evaluation has been based on an analysis of each site relative to a general assessment of probable foreseeable mitigation needs in each estuary, as well as past alterations or losses.

2. Engineering or Other Technical Constraints: Sites have been evaluated in terms of the type and magnitude of technical limitations that need to be overcome to accomplish restoration or enhancement. Sites with fewer constraints were considered more appropriate for use as mitigation sites.

3. Present Availability: The probable availability of each site during the original planning period has been evaluated. This evaluation was based primarily on the presence or absence of existing conflicting uses and ownership factors that might influence availability (e.g., public versus private ownership).

4. Feasibility of Protecting the Site: An assessment of each site has been done to determine the likelihood that an overriding need for a preemptive use will arise during the planning period. Sites for which no conflicting uses are anticipated are considered most desirable from the standpoint of ensuring future availability through protective zoning or other means.

Figure 4. Restoration Sites



Mitigation Needs and Sites

Future mitigation needs in Yaquina Bay will most likely be generated by dredge and fill activities in intertidal flat areas in the Newport and Toledo sub-areas and possibly in the Yaquina sub-area. Almost all of the tidal marsh areas in Yaquina Bay are protected by Natural Management Unit designations, so projects involving dredge and/or fill in tidal marsh areas are unlikely.

Opportunities for restoration or enhancement in intertidal flat or shore areas in Yaquina Bay are limited. For this reason, the mitigation sites listed below were selected for the opportunities they provide for restoration primarily of tidal marsh, a historically diminished resource. The matching of sites to individual dredge or fill projects will be accomplished as part of the Oregon Department of State Lands Removal-Fill permit process.

It is important to note that the identification and protection of the following sites is intended to reserve a supply of sites and ensure their availability for estuarine resource replacement as required by Goal 16. This list in no way precludes the use of other appropriate sites or actions to fulfill Goal 16 mitigation requirements as determined by the Department of State Lands. The identified sites are from the following publication: Brophy, L.S. 1999. Final Report: Yaquina and Alsea River Basins Estuarine Wetland Site Prioritization Project (for the MidCoast Watersheds Council). The site numbers correspond to the sites visualized in Figure 4. All sites are outside of the jurisdiction of the City of Newport.

Site # (Brophy, 1999)	Protective Mechanism
Y18	Coastal Shorelands (C-S) Overlay (significant wetland)
Y19	Estuary Management Unit (16)
Y20	C-S Overlay (significant wetland)
Y11	Estuary Management Unit (23)
Y30	C-S Overlay (significant wetland)
Y31	Estuary management Unit (21)
Y6	C-S Overlay (significant wetland)

Implementation

To implement the policies and standards of the Lincoln County Estuary Management Plan for Yaquina Bay, the City of Newport shall, at a minimum:

- Specify permissible uses for individual management units consistent with the Management Classification requirements of Part IV of the Lincoln County Estuary Management Plan for Yaquina Bay;
- Provide for the application of review standards set forth in Part II, Part IV and Part V in accordance with applicable procedural requirements; and
- Establish a requirement to assess the impacts of proposed estuarine alterations in accordance with Statewide Planning Goal 16, implementation requirement 1 and Part II of Lincoln County Estuary Management Plan for Yaquina Bay.
- ~~Require~~ Impact Assessments ~~Requirements~~
- ~~Unless fully addressed elsewhere in this chapter,~~for actions that would potentially alter the estuarine ecosystem. Such assessments shall be preceded by a clear presentation of the impacts of the proposed alteration. Impact Assessments are required for dredging, fill, in-water structures, shoreline protective structures including riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow lane disposal of dredged material, and other activities that could affect the estuary's physical processes or biological resources.

The Impact Assessment requirement does not by itself establish any approval threshold related to impacts. The purpose of the Impact Assessment is to provide information to allow local decision makers and other reviewers to understand the expected impacts of proposed estuarine alterations, and to inform the application of relevant approval criteria (e.g., consistency with resource capabilities).

The Impact Assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases, it should enable reviewers to gain a clear understanding of the impacts to be expected. The Impact Assessment shall be submitted in writing to the local jurisdiction and include information on:

1. The type and extent of alterations expected;
2. The type of resource(s) affected;
3. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
4. The expected extent of impacts of the proposed alteration must reference relevant Climate Vulnerabilities as described in applicable sub-area(s) for the management unit(s) where the alterations are proposed (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:
   a. long term continued use of the proposed alteration
   b. water quality and other physical characteristics of the estuary,
   c. living resources,
   d. recreation and aesthetic use,
   e. navigation, and
   f. other existing and potential uses of the estuary;
5. The methods which could be employed to avoid or minimize adverse impacts ~~to the extent practical~~; and
6. References, information, and maps relied upon to address (1) through (5) above.

Local Review Procedures

Statewide Planning Goal 16 establishes a number of discretionary standards that apply to the review of proposed estuarine development activities. These standards are in turn incorporated into this estuary management plan, specifically in Parts II, IV, V, VI of the Lincoln County Estuary Management Plan for Yaquina Bay.

City approval of estuarine alterations subject to one or more discretionary review criteria is a "permit" as defined in ORS 215 and ORS 227 and subject to the procedural requirements of ORS 227.160 to 227.186. In compliance with statutory procedural requirements, all proposals for estuarine alterations subject to Goal 16, Implementation Requirement 2, or subject to findings of consistency with the resource capabilities of the area, shall be reviewed in accordance with either Type II procedure (decision without a hearing subject to notice), or Type III procedure (public hearing), as specified in the applicable jurisdiction's land use regulations.

State and Federal Regulation

Most development activities in estuarine aquatic areas are subject to regulation by one or more state and federal agencies. These regulatory requirements derive from state and federal statutes, and these authorities are discrete and independent from the provisions of the Lincoln County Estuary Management Plan and this Comprehensive Plan. State and federal regulatory requirements are therefore additive to the policies and implementation requirements of the Lincoln County Estuary Management Plan and this Comprehensive Plan. That is, the authorization of uses and activities through the City of Newport does not remove the requirement for applicants to comply with applicable state and federal

regulatory requirements. Likewise, state and/or federal approvals of estuarine development activities do not supersede or pre-empt the requirements of Newport's plan and implementing regulations. For detailed information regarding state and federal regulatory programs involved in estuarine alterations, users should contact the relevant agency.
State and Local Coordination

Under ORS Chapter 197, state agencies are required to conduct their activities (including the issuance of permits and other authorizations) in a manner that complies with the statewide planning goals and is compatible with local comprehensive plans and land use regulations. To address this requirement, each state agency has developed and adopted a state agency coordination (SAC) program that has been approved by the Land Conservation and Development Commission. The SAC sets forth the procedures each agency will employ to assure that agency actions comply with the statewide planning goals and are compatible with local plans and regulations.

For state agencies with regulatory authority over estuarine development, the primary mechanism for ensuring compatibility with local estuary plan requirements is the Land Use Compatibility Statement (LUCS). Applicants for Removal-Fill permits, waterway authorizations, water quality certifications and most other state agency authorizations are required to obtain from the local land use authority a LUCS that certifies that the proposed use or activity complies with local land use requirements or that specifies local land use approvals are required to establish compliance. In general, state agencies will not begin their permit review until compatibility with local planning requirements is certified by the local jurisdiction.

Exceptions

With Ordinance No(s), the City of Newport took two exceptions to Goal 16/"Estuarine Resources." The first is for a seawater outfall line in conjunction with the Oregon Coast Aquarium. The second is for storm water drainage and outfall for the portion of South Beach that naturally drains into Management Unit 9~~-A~~.

(Existing language to be retained except where edited)

Yaquina Bay Shorelands:

This section summarizes inventory information about the shorelands adjacent to Yaquina Bay. Identification of the shorelands boundary was based upon consideration of several characteristics of the bay and adjacent uplands. Resources shown on the Yaquina Bay Shorelands Map within the bay-related portion of the shorelands boundary include:

> Areas subject to 100-year floods as identified on the Flood Insurance Rate Map (FIRM).

> Significant natural areas, adjacent marsh, and riparian vegetation along the shore.

> Points of public access to the water.

> Areas especially suited for water-dependent uses.

> Dredged material disposal sites (for a more detailed discussion of dredged material disposal sites, see the amended Yaquina Bay and River Dredged Material Disposal Plan[13]).

Several of the Goal 17 inventory topics for coastal shorelands do not appear in the legend for the Yaquina Bay Shorelands Map either because they do not occur (coastal headlands) or are not directly associated with it (geologic hazards). However, the report

and mapping of hazards by RNKR Associates is included in the Newport Comprehensive Plan inventory.[14] The historic and archaeological resources of the Yaquina Bay Shoreland have been identified in the historical section of this document.

The Yaquina Bay Bridge is the major aesthetic landmark on Yaquina Bay. Views associated with the ocean have relegated the river scenes to secondary importance.[15] The Visual Resource Analysis of the Oregon Coastal Zone classified the whole of Yaquina Bay as an area with a "less obvious coastal association" than the ocean beaches or Yaquina Head.[16]

Flooding

Areas of 100-year floods along Yaquina Bay (Zone AE), as shown on the Flood Insurance Rate Map for the City of Newport (effective October 18, 2019), are included on the Yaquina Bay Shorelands Map. This line represents base flood elevation of 9 or 10 feet, depending upon the location.

The City of Newport has adopted flood plain management regulations that have been approved by the Federal Emergency Management Agency (FEMA). The regulations include provisions that meet the requirements of the National Flood Insurance Program.

[13] Wilsey & Ham, Yaquina Bay and River Dredged Material Disposal Plan, 1977.
[14] RNKR Associates, Environmental Hazard Inventory: Coastal Lincoln County, Oregon, 1978.
[15] Wilsey & Ham, Yaquina Bay Resource Inventory, 1977.
[16] Walker, Havens, and Erickson, Visual Resource Analysis of the Oregon Coastal Zone, 1979.

Significant Natural Areas

The Oregon Natural Heritage Program identified two significant natural areas on Yaquina Bay within the Newport UGB. These areas are mostly within the boundaries of Estuarine Management Units 9 and 10. However, the shore adjacent to these management units also contains riparian vegetation and marshland.[17] These significant shoreland and wetland habitats and adjacent wetlands, including riparian vegetation, are shown on the Yaquina Bay Shorelands Map on page XXX.

Public Access Points

The Yaquina Bay Shorelands Map identifies points of public access to the water for purposes of boating, clamming, fishing, or simply experiencing the bay environment. In addition to those points, there are several points identified in the Inventory of Coastal Beach Access Sites published by Benkendorf and Associates.[18] That document is hereby included within this Plan by reference.

Areas Especially Suited for Water-Dependent Uses

There are several shoreland areas in the Newport UGB that are especially suited for water-dependent uses (ESWD). The shoreland areas especially suited for water-dependent recreational uses within the Newport UGB are virtually all on the ocean as described in the Ocean Shorelands Inventory. Suitable sites for water-dependent commercial and industrial uses exist on both the north and south shores of Yaquina Bay. Some of the water-dependent commercial areas, such as the marina sites, also have a recreational aspect. The port development section of this element will discuss the ESWD sites in more detail.

The factors which contribute to special suitability for water-dependent uses on Yaquina Bay Shorelands are:

> Deep water (22 feet or more) close to shore with supporting land transport facilities suitable for ship and barge facilities;

> Potential for aquaculture;

> Potential for recreational utilization of coastal water or riparian resources;

> Absence of steep slopes or other topographic constraints to commercial and industrial uses next to the water;

> Access or potential for access to port facilities or the channel from the shorelands unobstructed by streets, roads or other barriers.

[17] Wilsey & Ham, Yaquina Bay Resource Inventory, 1977.
[18] Benkendorf and Associates, Inventory of Coastal Beach Access Sites, 1989.

The first three factors are stated in Goal 17. Protected areas subject to scour that would require little dredging for use as marinas do not exist in Newport. The last two factors are based upon analysis of the characteristics of Yaquina Bay and its shorelands.

There are three areas within the Yaquina Bay Shorelands that have been identified as ESWD based on the five factors listed above. The degree and nature of the suitability for water-dependent uses varies both within and among these areas; consequently, a flexible approach to evaluate proposed uses in these areas on a case-by-case basis will be necessary.

The ESWD areas are noted below with applicable factors from the above list in parentheses, beginning with the east end of the original plat of Newport and proceeding clockwise around the bay. (See the Yaquina Bay Shorelands Map on page XXX for locations.)

1.) The Port of Newport's commercial boat basin facilities and parking lot/storage area lie between the bayfront on the west and the Embarcadero Marina and parking area on the east. This area lies entirely to the south of Bay Boulevard (factors 3, 4 and 5).

This area is largely developed or committed to port facilities, including docks, port offices, and a parking area. This is the port area devoted to berthing commercial fishing boats. There is development potential for changes in the port's facilities to meet the changing needs of the commercial fishing industry. While the total number of vessels has declined, their size and diversity is increasing. Some vessels in the 70 to 100 foot class routinely fish as far away as the north Alaskan coast. Uses outside or on the fringes of the port area that do not conflict or interfere with commercial fishing needs could be acceptable and appropriate.

2.) The other area on the north side of the bay especially suited for water dependent uses is part of the McLean Point fill area, including Sunset Terminals and the LNG tank. Only that land with close proximity to the deep water channel is included. This area is entirely south of the western portion of Yaquina Bay Road (factors 1, 4 and 5).

This area has existing facilities and future development potential for a variety of water-borne transportation, shipping and storage activities in conjunction with fish processing, marine industry, and bulk shipping of limestone, logs, and lumber, liquefied natural gas, or other commodities. A variety of industrial uses would be desirable on the landward side of the terminal facilities.

3.) On the south side of the bay, the OSU Marine Science Center's dock facilities, the Ore-Aqua commercial salmon hatchery, and the land immediately adjacent to the South Beach Marina are especially suited for water-dependent uses (factors 2, 3, 4 and 5), and will also serve the needs of workers and visitors to the area.

This area is only partly developed. Additional water-related and non water-related developments associated with the existing South Beach Marina, the OSU Marine Science Center, and port development as identified in the port development plan are envisioned for the areas landward of this ESWD area. These facilities further

the public's enjoyment and understanding of the coastal environment, and resources are most desirable.

Port Development Plan:

The City of Newport's Urban Renewal Agency and the Port of Newport contracted with CH2M HILL of Corvallis to prepare an update of the port development element of the city's Comprehensive Plan (already mentioned in this section).

The first part of the port development plan is an executive summary of the entire plan. That section is repeated here.

Executive Summary

Industry Demands: The waterfront property bordering historic and scenic Yaquina Bay is used for a wide variety of activities. This diversity of uses contributes to the vibrancy of the Newport area. However, there is a tension between the various industries using the waterfront property as they compete for space to grow and expand their respective activities. The primary industries vying for use of bay front property are:

- Commercial shipping
- Commercial fishing
- Research and education
- Tourism

Commercial shipping provides the justification for continued federal participation in harbor and navigation channel maintenance activities. The channels not only provide access to the deep draft shipping lanes of the Pacific Ocean but also make Yaquina Bay a favored harbor for a large commercial fishing fleet, which in turn attracts many tourists to the bay front to observe off-loading and processing of the catch. Research and education activities support the commercial fishing industry and also attract visitors to the area. The combined presence of the OSU Hatfield Marine Science Center and the deep draft navigation channel draws large ocean research vessels into the harbor for supplies, repairs, and to provide floating exhibitions open to the public. Thus, these major industries are all linked together.

Two hundred and fifty acres along the estuary are zoned for water-related or water-dependent use, and it is important to balance the needs of all to provide balanced growth in the local economy. The current needs of each of these industries are discussed below.

> The commercial shipping industry requires additional staging areas and needs to reserve room for future expansion. Additions of a dedicated shipper or a second export commodity, such as wood chips or other forest products, is the type of activity that could generate the need for additional berths.

> Commercial fishing activities are restricted by lack of moorage, service and work docks, and upland support area for storage and repair work. Competition between ports often leads to marketing support facilities at rates that do not meet debt service in the name of economic development and job creation. This is done to attract commercial fishing vessels to a port because of the financial impact one of these boats can make on the local economy. Each boat is, in essence, an independent business, and the boats are increasingly being operated in a business-like manner.

> Research and education requirements are fairly straightforward: room for expansion and maintenance of the environmental parameters upon which they depend (e.g., water quality in the vicinity of seawater intake facilities).

> The tourism industry relies on the continued presence of the fishing fleet and access to the variety of activities that may be enjoyed along the waterfront, in addition to room for expansion.

Potential Development of Bay Front Areas: Parking is in short supply. Retail merchants, tourists, and commercial fisherman alike put this shortage at the forefront of their needs. Access to the bayfront could be enhanced by a multi-level parking structure with a capacity for approximately 400 vehicles. This would not solve all parking shortages nor completely eliminate congestion; however, construction of such a facility would provide the opportunity to establish one-way traffic along the bay and restrict all but commercial and emergency vehicles from the lower reach of Bay Boulevard.

The lower bayfront offers the potential for cold storage facilities, ice making and selling facilities, receiving docks and buying stations, and transient moorage space. If the now vacant Snow Mist site is not used for these activities, then it may be appropriate to allow other short-term uses. This should be permitted only if the short-term use allows easy conversion to the proposed primary use upon demonstrated need and demand for such a facility.

The area from Port Dock 5 to the Embarcadero should be dedicated, primarily, to the needs of the commercial fishing industry. However, some current uses, such as long term storage for crab pots and cod pots, are not appropriate considering the limited amount of upland area along the waterfront. The potential for major redevelopment of this area has been identified. This would enhance public enjoyment of the waterfront in addition to expanding facilities for the commercial fishing fleet.

The project requires filling of public tidelands between Port Docks 3 and 5. This would provide space for a waterfront park area with a good view of the commercial fishing activities at Port Dock 5. Bay Boulevard could also be widened to provide additional street-side parking and one-way traffic lanes along this section. The remaining land would be converted to more efficient gear staging and short term storage, parking dedicated to the commercial fishermen, and marine retail lease space. A boardwalk running from Port Dock 3 to the Embarcadero would also allow tourists visual access to the activities of the fleet while maintaining the physical separation necessary for public safety.

Other elements of the overall development of this area's potential include relocating the U.S. Army Corps of Engineers' breakwater to expand the commercial fishing moorages. Realignment of the Port docks would also be considered, along with replacing the original Port Dock 3 transient moorage facility.

The benefits of this major redevelopment project will be limited if more moorage and long term gear storage facilities are not developed elsewhere. The Fishermen's Investment Company site offers the necessary land for long term gear storage, service and work docks, permanent and transient moorage for boats up to 300 feet in length, and marine industrial lease facilities. Developing this facility would be strategic for the Port. Then, the Port Dock 7 fill area could be completely redeveloped for more appropriate uses.

The port's International Terminals facility has the capability for minor expansions of cargo staging areas, or possibly for the addition of facilities for barges or commercial fishing vessels. However, available land limits the potential for growth at this location.

McLean Point has the largest parcel of undeveloped property on the lower bay. This property is privately owned, and plans for development have not been announced. It would be well suited for a wide variety of uses such as:

- Boat haulout and marine fabrication
- Gear storage and staging
- Service and work docks
- Fish receiving, buying and processing facilities
- Moorage
- Commercial shipping terminals
- Surimi processing

This undeveloped parcel of land is critical to the overall development of the lower bay. If it is not developed, then the Port of Newport should consider buying or leasing the property with the intent to develop it to meet the needs of the shipping or fishing industries.

The South Beach peninsula serves as the home for many recreational boaters and for the research and education community. Potential developments that are attractive to the long term use of this area include moorages for research vessels, continued expansion of the Marine Science Center, and continued development at the Newport Marina at South Beach complex.

Idaho Point offers limited potential for development. Possibly a small boat haulout facility servicing the smaller commercial fishing boats could be developed. The shallow channel to the area, its small land area suitable for development, and its isolation from other businesses and support facilities severely limit the potential for developing a major haulout facility.

Development Restrictions: Limited funding and environmental regulations will be the most likely restrictions to developing the identified projects. Projects that should be developed in the next five years are those without major environmental restraints or that are fairly small in scale. Other projects should be developed later, as market conditions dictate or as funds become available. Construction on the waterfront is not inexpensive, and foundation conditions along the north side of Yaquina Bay are complicated by a very dense Nye mudstone formation, locally called "hardpan."

GOALS AND POLICIES
YAQUINA BAY AND ESTUARY

Goal: To recognize and balance the unique economic, social, and environmental values of the Yaquina Bay Estuary.

Policy 1: Balanced Use of Estuary. The City of Newport shall continue to ensure that the overall management of the Yaquina Bay Estuary shall provide for the balanced development, conservation, and natural preservation of the Yaquina Bay Estuary as appropriate in various areas.

Policy 2: Cooperative Management. The city will cooperate with Lincoln County, the State of Oregon, and the Federal Government in the management of the Yaquina Bay Estuary.

Policy 3: Use Priorities. The Yaquina Bay Estuary represents an economic resource and provides vital ecosystem services of regional importance. The overall management of the estuary shall ensure adequate provision for protection of the estuarine ecosystem, including its biological productivity, habitat, diversity, unique features and water quality, and development, consistent with its overall management classification – deep-draft development – and according to the following general priorities (from highest to lowest). The prioritization of management policies is not intended to reduce or alter the tribal trust responsibilities of the federal government:

a) Uses which maintain the integrity of the estuarine ecosystem;

b) Water dependent uses requiring an estuarine location;

c) Water related uses which do not degrade or reduce natural estuarine resources and values;

d) Non-dependent, non-related uses that do not alter, degrade, or reduce estuarine resources or values and are compatible with existing and committed uses.

Policy 4: Natural Resources. The Yaquina Bay Estuary supports a variety of vitally important natural resources that also support the major economic sectors of Newport and the surrounding area. The overall management of the estuary shall include adequate provision for both conservation and preservation of natural resources. This will include consideration of culturally important tribal resources.

Policy 5: Riparian Vegetation. Riparian vegetation shall be protected along the Yaquina Bay shoreland where it exists. The only identified riparian vegetation within the UGB is that shoreland vegetation adjacent to Management Unit 9~~-A~~. This vegetation shall be protected by requiring a fifty (50) foot setback from the high water line for any development in the area. Adjacent public roads may be maintained as needed.

Policy 6: Recreational Resources. The Yaquina Bay Estuary represents a recreational resource of both local and statewide importance. Management of the estuary shall protect recreational values and ensure adequate public access to the estuary. This will include consideration of culturally important tribal resources.

Policy 7: Dredged material disposal sites identified in the Yaquina Bay and River Dredged Material Disposal Plan, which are located within the Newport urban growth boundary, shall be protected. Development that would preclude the future use of these sites for dredged material disposal shall not be allowed unless a demonstration can be made that adequate alternative disposal sites are available. Dredging and/or filling in the estuary shall be allowed only:

a.) if required for navigation or other water dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this plan; and

b.) if a need (e.g., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights or tribal cultural resources or practices; and

c.) if no feasible alternative upland locations exist; and

d.) if adverse impacts are minimized~~ to the extent practical~~.

~~e.) other uses and activities which could alter the estuary shall only be allowed if the requirements in b., c., and d. are met.~~

Policy 8: All restoration projects should serve to revitalize, return, replace or otherwise improve estuarine ecosystem characteristics. Examples include restoration of biological productivity, fish or wildlife habitat, other natural or cultural characteristics or resources, or ecosystem services that have been diminished or

lost by past alterations, activities or catastrophic events. In general, beneficial restoration of estuarine resources and habitats, consistent with Statewide Planning Goal 16, should be facilitated through implementing measures.

Policy 9: Newport Sub-Area. The primary objective in the Newport sub-area shall be to manage the development of water dependent uses, including but not limited to deep draft navigation, marine research, and commercial fishery support facilities. In general, non-water related uses shall not occupy estuarine surface area. However, limited non-water related uses may be permitted in keeping with the scenic and historic bayfront community on the north side of the sub-area. Adverse impacts of development on natural resources and established recreational uses shall be minimized~~ to the extent practical~~. Land uses of adjacent shorelands should be consistent with the preferences and uses of other sub-areas.

Policy 10: Bayfront Uses. The city shall encourage a mix of uses on the bayfront. Preference shall be given to water-dependent or water-related uses for properties adjacent the bay. Nonwater-dependent or related uses shall be encouraged to locate on upland properties.

Policy 11: Water-Dependent Zoning Districts. Areas especially suited for water-dependent development shall be protected for that development by the application of the W-1/"Water-Dependent" zoning district. Temporary uses that involve minimal capital investment and no permanent structures shall be allowed, and uses in conjunction with and incidental to water-dependent uses may be allowed.

Policy 12: Solutions To Erosion and Flooding. Nonstructural solutions to problems of erosion or flooding shall be preferred to structural solutions. Where flood and erosion control structures are shown to be necessary, they shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns~~, to the extent practical~~. Additionally, or cobble/pebble dynamic revetments in MU 8 and 9 to be allowed, the project must demonstrate a need to protect public facility uses, that land use management practices and nonstructural solutions are inadequate, and the proposal is consistent with the applicable management unit as required by Goal 16.

Policy 13: Impact Assessment. Impact Assessments are required for dredging, fill, in-water structures, shoreline protective structures including riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow lane disposal of dredged material, and other activities that could affect the estuary's physical processes or biological resources.

The Impact Assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases, it should enable

reviewers to gain a clear understanding of the impacts to be expected. The Impact Assessment shall be submitted in writing to the local jurisdiction and include information on:

a.) The type and extent of alterations expected;

b.) The type of resource(s) affected;

c.) The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;

d.) The expected extent of impacts of the proposed alteration must reference relevant Climate Vulnerabilities as described in applicable sub-area(s) for the management unit(s) where the alterations are proposed (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

1.) long term continued use of the proposed alteration

2.) water quality and other physical characteristics of the estuary,

3.) living resources,

4.) recreation and aesthetic use,

5.) navigation, and

6.) other existing and potential uses of the estuary;

e.) The methods which could be employed to avoid or minimize adverse impacts ~~to the extent practical~~; and

f.) References, information, and maps relied upon to address (1) through (5) above.

<u>Policy 14</u>: Alteration of the Estuary. Uses and activities other than dredge and fill activity which could alter the estuary shall be allowed only:

a.) If the need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;

b.) If no feasible alternative upland locations exist; and

c.) If adverse impacts are minimized to the extent practical.

Policy 15: Resource Capability Determinations - Natural Management Units. Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, injury, or for future intended use.

Policy 16: Resource Capability Determinations - Conservation Management Units. Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

Policy 17: Temporary Alterations in Natural and Conservation Management Units. A temporary alteration is dredging, filling, or other estuarine alteration occurring over no more than three years which is needed to facilitate a use allowed by the Comprehensive Plan and the ~~Permitted Use Matrices of the~~ Zoning Ordinance. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

Temporary alterations include:

> Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);

> Alterations to establish mitigation sites, alterations for bridge construction or repair, and for drilling or other exploratory operations; and

> Minor structures (such as blinds) necessary for research and educational observation.

Temporary alterations require a resource capability determination to ensure that:

> The short-term damage to resources is consistent with resource capabilities of the area; and

> The area and affected resources can be restored to their original condition.

Policy 18: ~~Exempt Uses~~Uses Permitted Outright. New development or

redevelopment that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as ~~exempt~~ uses permitted outright that do not require~~from~~ estuarine review.

August 16, 2024 Revisions to NMC Chapter 14 Implementing Relevant Provisions of the Updated Yaquina Bay Estuary Plan

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS**

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14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

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~~**Adverse Impact (Significant)**. means any impact, resulting in degradation of an important resource, that is unacceptable because it cannot be mitigated or because of unacceptable conflicts in the management or use of the impacted resource.~~

Alteration (estuary). means any human-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.

Aquaculture. the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

Breakwater. An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

Bridge Crossing. A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

Bridge Crossing Support Structures. Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

Climate Change. The increasing changes in the measures of climate over a long period of time including precipitation, temperature, sea levels, and wind patterns.

Cobble Dynamic Revetment. The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble dynamic revetment represents a transitional strategy between a conventional riprap revetment of large interlocking stones and a beach nourishment project.

Dike. An earthen embankment or ridge constructed to restrain high waters.

Docks. A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

Dredging (estuary). The removal of sediment or other material from the estuary for the purpose of deepening a channel, mooring basin, or other navigation area. (This does not apply to dredging for clams.)

Dredged Material Disposal (estuary). The deposition of dredged material in estuarine areas or shorelands.

Dolphin. A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

Estuarine Enhancement. An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

Excavation (estuary). The process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

Fill (estuary). The placement of material in the estuary to create new shoreland area or raise the elevation of land.

Groin. A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

Jetty. An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

Management Unit. A policy level in the Yaquina Bay Estuary Management Plan that is designed to provide specific implementing provisions for individual project proposals. Each unit is given a management classification of Natural, Conservation, or Development. These classifications are based on the resource characteristics of the units as determined through an analysis of resource inventory information. The classification carries with it a general description of intent and a management objective. Each management unit objective is implemented by its applicable Estuary Zoning District which specifies uses and activities that are permitted or conditional within the unit. Many management units also contain a set of Special Policies that relate specifically to that individual unit.

Marina. A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

Minor Navigational Improvements. Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

Mitigation (estuary). The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

Pier. A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

Pile Dike. Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

Piling. A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise

embedded into the bed of the estuary for the purpose of supporting a load.

Port Facilities. Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.

Restoration (estuary). Revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

Active restoration involves the use of specific remedial actions such as removing fills or dikes, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas, etc.

Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

Shoreline stabilization. The stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

Submerged Crossings. Power, telephone, water, sewer, gas, or other transmission lines that are constructed beneath the estuary, usually by embedding into the bottom of the estuary.

Temporary Alteration (estuary). Dredging, filling, or other estuarine alteration occurring over a specified short period of time (not to exceed three years) that is needed to facilitate a use allowed by the applicable Estuary Zoning District. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

Wharf. A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

Staff: The above definitions will be added to NMC Chapter 14.01 in alphabetical order. The terms provide context for regulatory changes in NMC Chapter 14.04. There has been significant discussion, and competing definitions, offered for "Significant Adverse Impact." This draft eliminates the definition. Any City definition of the term would not be binding on state and federal permitting authorities. Eliminating the definition gives local decision-makers flexibility to interpret the term based upon the body of evidence and provides the applicant the opportunity to both make their case and to seek alignment in how all of the permitting authorities view the term. A reference to "sea levels" has been added to the definition of climate change per the Commission's request.

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CHAPTER 14.02 ESTABLISHMENT OF ZONES

14.02.010 Establishment of Zones

In order to carry out the purpose and provisions of this Code, the following zones are hereby established:

	Abbreviated Zone Designation
Estuary Conservation Zone	(E-C)
Estuary Development Zone	(E-D)
Estuary Natural Zone	(E-N)
Low Density Residential	(R-1)
Low Density Residential	(R-2)
High Density Residential	(R-3)
High Density Residential	(R-4)
Retail Commercial	(C-1)
Tourist Commercial	(C-2)
Highway Commercial	(C-3)
Light Industrial	(I-1)

Medium Industrial	(I-2)
Heavy Industrial	(I-3)
Water Dependent	(W-1)
Water Related	(W-2)
~~Management Unit 1~~	~~(Mu-1)~~
~~Management Unit 2~~	~~(Mu-2)~~
~~Management Unit 3~~	~~(Mu-3)~~
~~Management Unit 4~~	~~(Mu-4)~~
~~Management Unit 5~~	~~(Mu-5)~~
~~Management Unit 6~~	~~(Mu-6)~~
~~Management Unit 7~~	~~(Mu-7)~~
~~Management Unit 8~~	~~(Mu-8)~~
~~Management Unit 9~~	~~(Mu-9)~~
~~Management Unit 10~~	~~(Mu-10)~~
Public Buildings and Structures	(P-1)
Public Recreation	(P-2)
Public Open Space	(P-3)
~~Mobile Homes~~	~~(M-H)~~

Staff: The Management Units have been categorized under three new zoning classifications, "Estuary Conservation Zone," "Estuary Development Zone," and "Estuary Natural Zone" and will no longer be independent zoning districts. These revisions reflect that change. The City eliminated its M-H zoning overlay decades ago, so that deletion is a housekeeping clean-up item. The same is true with respect to the addition of the I-3 zone district, which was inadvertently left off of the table.

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CHAPTER 14.03 ZONING DISTRICTS

14.03.010 Purpose.

It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into ~~four~~ five (~~4~~5) basic classifications and ~~thirteen~~ eighteen (~~13~~18) use districts as follows:

A. Districts zoned for residential use(s).

1. R-1 Low Density Single-Family Residential.
2. R-2 Medium Density Single-Family Residential.
3. R-3 Medium Density Multi-Family Residential.
4. R-4 High Density Multi-Family Residential.

B. Districts zoned for commercial use(s).

1. C-1 Retail and Service Commercial.
2. C-2 Tourist Commercial.
3. C-3 Heavy Commercial.

C. Districts zoned for industrial use(s).

1. I-1 Light Industrial.
2. I-2 Medium Industrial.
3. I-3 Heavy Industrial.
4. W-1 Water Dependent.
5. W-2 Water Related.

D. Districts zoned for public use(s).

1. P-1 Public Structures.
2. P-2 Public Parks.
3. P-3 Public Open Space.

E. Districts zoned for estuary use(s).

1. E-C Estuary Conservation

2. E-D Estuary Development

3. E-N Estuary Natural

Staff: The above changes add the three estuary zones to the list of zone districts within the City of Newport.

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14.03.040 Intent of Zoning Districts.

Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

E-C/"Estuary Conservation." The intent of the E-C district is to conserve, protect, and where appropriate enhance renewable estuarine resources for long term uses and to manage for uses that do not substantially degrade the natural or recreational resources or require major alterations to the estuary.

E-D/"Estuary Development." The intent of the E-D district is to provide for water dependent and water related development. Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses. Non-water related uses may also be permitted in this district.

E-N/"Estuary Natural." The intent of the E-N district is to preserve, protect and where appropriate enhance these areas ~~for the resource~~ and support the values and functions they provide. These areas shall be managed to ensure the protection of significant fish and wildlife habitats; of continued biological productivity within the estuary; and of scientific, research, and educational needs.

Staff: This section of the Newport Municipal Code includes "intent statements" for each of the City's zoning districts. The intent language for these three new zone districts aligns with the Management objectives for each of them, as outlined in the updated Yaquina Bay Estuary Management Plan.

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14.03.120 Estuary Uses

The following list sets forth the uses allowed within the estuary land use classification. Management units are a subclassification of the listed zones. Uses not identified herein are not allowed.

"P" = Permitted Uses.

"C" = Conditional uses subject to the approval of a conditional use permit.

"X" = Not Allowed.

		E-C	E-D	E-N
	Management Units	3, 6, and 8	1, 2, 4, 5, 7, and 12	1a, 9, and 10
1.	Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.	C	P [3]	C [1]
2.	Aquaculture requiring dredge, fill or other alteration of estuarine aquatic area.	C [1]	P [3]	X
3.	Aquaculture that does not involve dredge or fill or other estuarine aquatic area alteration except that incidental dredging for harvest of benthic species or the use of removable structures such as stakes or racks may be permitted.	C	P [3]	C [1]
4.	Boat ramps for public use not requiring dredge or fill.	C	P [4]	C [1]
5.	Bridge crossing support structures and dredging necessary for their installation.	C	P [3]	C [1]
6.	Bridge crossing spans that do not require the placement of support structures within an E-C or E-N zone.	P	P	P
7.	Commercial boat basins and similar moorage facilities.	X	C	X
8.	Communication facilities.	C	P [3]	C [1]
9.	High intensity water dependent recreation, including, but not limited to, boat ramps and marinas, and including new and maintenance dredging for such uses.	C [1]	C	X
10.	Installation of tide gates in existing functional dikes.	C	P [3]	C [1]
11.	In-water disposal of dredged material.	X	C	X
12.	Marine terminals.	X	C	X
13.	Mining and mineral extraction, including dredging necessary for such extraction.	C [1]	P [3]	X

14.	Minor navigational improvements.	C [1]	P [3]	X
15.	Navigation activities and improvements.	X	C	X
16.	Navigation aids such as beacons and buoys.	C	P [3]	C
17.	On-site maintenance of existing functional tide gates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.	C	P [3]	C
18.	Other water dependent uses requiring the occupation of estuarine surface area by means other than fill	C [1]	P [3]	X
19.	Passive restoration activities.	P [2]	P [3]	P [2]
20.	Pipelines, cables and utility crossings including incidental dredging necessary for their installation.	C	P [3]	C [1]
21.	Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources.	P [2]	P [3]	P [2]
22.	Research and educational observations.	P [2]	P [3]	P [2]
23.	Riprap for the protection of uses existing as of October 7, 1977.	C	P [3]	C
24.	Riprap for the protection of unique resources, historical and archeological values, and public facilities.	C	P [3]	C
25.	Temporary alterations.	C [1]	P [3]	C [1]
26.	Undeveloped low intensity recreation.	P [2]	P [3]	P [2]
27.	Water dependent commercial uses.	X	P [4]	X
28.	Water dependent industrial uses.	X	P [4]	X
29.	Uses allowed conditionally in an adjacent water-dependent or water-related zone district	X	C	X
30.	Water storage of products used in industry, commerce, or recreation.	X	C	X

[1] Conditional use is subject to a resource capability test.

[2] Projects that require aquatic area alteration may be permitted as conditional uses.

[3] Projects may, or may not, include aquatic area alteration and are subject to staff level review using a Type 1 decision making process.

[4] Projects are subject to staff level review using a Type 1 decision making process unless they involve dredging or the placement of fill, in which case they are subject to conditional use review.

Staff: The above table is formatted to match those used for other zone classifications within the City. The footnotes inform the level of review required, with detailed standards being included in the NMC Chapter 14.04

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CHAPTER 14.04 ESTUARINE USE STANDARDS

14.04.010 Purpose

The purpose of this section to establish standards for new development and redevelopment within estuarine aquatic areas in a manner consistent with Statewide Planning Goal 16. As used in this section, "estuarine aquatic area" means estuarine waters, submerged lands, tidelands, and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.

14.04.020 Outright Permitted Uses

The following uses and their accessory uses are permitted outright and are not subject to the standards contained in this chapter:

A. Within all Estuary Zone Districts

1. Undeveloped low intensity recreation requiring no aquatic area alteration.
2. Research and educational observations requiring no aquatic area alteration.
3. Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources requiring no aquatic area alteration.
4. Passive restoration that requires no aquatic area alteration.
5. Bridge crossing spans that do not require the placement of support structures.

B. Within the E-D Zone District

1. Piling repair involving welded patches, wraps, sleeves, or the injection of grout or similar reinforcing material.
2. Removal or installation of not more than six pile associated with an in-water structure within a 12 month period.
3. In-kind replacement of a floating structure.
4. Underwater welding.

Staff: The phrase "Exempt Uses" has been replaced with "Outright Permitted Uses," addressing a concern raised by the Oregon Shores Conservation Coalition.

14.04.030 General Standards

The following standards will be applied to all new uses, expansion of existing structures, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

A. Structures: Structures include all constructed facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands. All structures proposed within an estuary zoning district must adhere to the following:

1. The siting and design of all structures shall be chosen to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, and patterns of erosion and accretion, to the extent practical.

2. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.

3. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.

4. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.

5. Where feasible, breakwaters of the floating type shall be used over those of solid construction.

6. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions to this requirement may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.

7. Individual single-purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.

8. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.

9. For structures associated with marinas or port facilities:

    a. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities;
    b. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be encouraged;
    c. Provision of public access to the estuary shall be encouraged, where feasible and consistent with security and safety requirements.

10. Shoreline stabilization structures shall be confined to those areas where:

    a. Active erosion is occurring that threatens existing uses or structures; or
    b. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities;

11. Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal

demonstrates that a higher priority method is unreasonable. The following, in order, are the preferred methods of shoreline stabilization:

a. Vegetative or other nonstructural technique;
b. Cobble dynamic revetment;
c. Vegetated riprap;
d. Unvegetated riprap;
e. Bulkheads (except that the use of bulkheads shall be limited to ED and EC management units only).

12. Minor modifications of the shoreline profile may be permitted on a case-by-case basis. These alterations shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.

B. Dikes: New diking is the placement of dikes on an area that has never been previously diked; or has previously been diked but all or a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.

1. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.

2. New dikes in estuarine areas shall be allowed only:
   a. As part of an approved fill project, subject to the standards for fill in the applicable Estuary Zoning District; and
   b. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.

3. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill in the applicable Estuary Zoning District.

4. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

C. Submerged Crossings:

1. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in the applicable Estuary Zoning District.

2. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.

3. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

D. Excavation:

1. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.

2. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

3. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.

4. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

14.04.040 Special Standards

A. Dredging, filling, or other alterations of the estuary shall be allowed only:

1. In conjunction with a use authorized in accordance with a use listed in NMC 14.03.120;

2. If a substantial public benefit is demonstrated;

3. If the use or alteration does not substantially interfere with public trust rights;

4. No feasible alternative upland locations exists; and

5. If adverse impacts are minimized or mitigated. Adverse impacts include:

   a. Short-term effects such as pollutant release, dissolved oxygen depletion, and disturbance of important biological communities.
   b. Long-term effects such as loss of fishing habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biologically harmful changes in circulation patterns.
   c. Removal of material in wetlands and productive shallow submerged lands.

6. Dredging, filling, or both is not permitted in conjunction with water related or non-water related commercial and industrial uses.

B. Restoration in the E-D Zone shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

Staff: Added "or mitigated" under criterion #5 above per DLCD's recommendation. It provides clarity as to how impacts could be minimized.

14.04.050 Impact Assessments

A. All decisions authorizing uses that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance (e.g. docks, aquaculture facilities), a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact (e.g. navigation channels, boat basins), the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:

1. The type and extent of alterations to be authorized;

2. The type of resources affected;

3. The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;

4. The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as described in applicable sub-area(s) and management unit (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

a. continued use of the proposed alteration given projected climate change impacts
b. water quality and other physical characteristics of the estuary,
c. living resources,
d. recreation and aesthetic use,
e. navigation, and
f. other existing and potential uses of the estuary; and

5. Methods to be employed to avoid or minimize adverse impacts.

B. In the process of gathering necessary factual information for the preparation of the impact assessment, the Community Development Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements or assessments may be utilized to comply with this requirement if such statements are available.

14.04.060 Conditional Use Standards

A. Conditional uses within the E-N zone district shall comply with the following standards:

1. The use is consistent with the intent of the E-N zone district; and

2. The use complies with any applicable Special Policies of the individual Management Unit.

3. The use is consistent with the resource capabilities of the Management Unit and the applicant demonstrates:

a. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
b. The resources of the area are able to assimilate the use and its effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, or injury or for future intended use.

4. Information from the Impact Assessment shall be used to determine if a use is consistent with the resource capability of the area.

Staff: Clarified the language in sub-section 3 (above).

B. Conditional uses within the E-C zone district shall comply with the following standards:

1. The use is consistent with the intent of the E-C zone district; and

2. The use complies with any applicable Special Policies of the individual Management Unit.

3. The use shall be consistent with the resource capabilities of the Management Unit and the applicant demonstrates:

a. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
b. The resources of the area are able to assimilate the use and its effects and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

4. Information from the Impact Assessment shall be used to determine if a use is consistent with the resource capability of the area.

Staff: Clarified the language in sub-section 3 (above).

C. Conditional uses within the E-D zone district shall comply with the following standards:

1. The use is consistent with the intent of the E-D zone district; and

2. The use is consistent with the management objective of the individual Management Unit; and.

3. The use complies with any applicable Special Policies of the individual Management Unit.

4. The use is permitted outright or conditionally in the adjacent water-related or water-dependent zone district.

5. Information from the Impact Assessment shall be used to determine if a use satisfies the standards of this sub-section.

14.04.070 Dredged Material Disposal Standards

A. Priorities for the placement of dredged material disposal sites shall be (in order of preference):

1. Upland or approved fill project sites.

2. Approved offshore ocean disposal sites.

3. Aquatic E-D zoned areas.

B. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

C. Disposal of dredged materials should occur on the smallest possible land area to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.

D. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of suspended sediments into the estuary.

E. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife for the protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing of suspended sediments.

F. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to ensure that adequate cell structures have been constructed and are functioning properly.

G. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.

H. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.

Staff: NMC Chapter 14.04 is being rewritten in its entirety to include the approval criteria from the updated Yaquina Bay Estuary Management Plan.

CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

(Chapter to be rewritten and relevant policies will be incorporated into Chapter 14.04)

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CHAPTER 14.13 DENSITY LIMITATIONS

14.13.010 Density Limitations

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NMC 14.13.020

Table "A"

Zone District	Min. Lot Area	Min. Wid	Required Setbacks [3, 7]			Lot Coverage (%)	Max. Building	Density (Land Area Required Per Unit (sf))
			Front/2nd Front [1]	Side	Rear			

	(sf)	th					Heig ht	
R-1	7,500 sf	65-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft & 8-ft	15-ft	54 %	30-ft	SFD - 7,500 sf [2] Duplex - 3,750 sf [2]
R-2	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	57%	30-ft	SFD – 5,000 sf [2] Duplex - 2,500 sf [2] Townhouse - 2,500 sf [3]
R-3	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	60%	35-ft	1,250 sf [3]
R-4 [4]	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	64%	35-ft	1,250 sf [3, 5]
C-1	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
C-2 [4]	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
C-3	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
I-1	5,000 sf	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
I-2	20,000 sf	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
I-3	5 acres	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
W-1	0	0	0	0	0	85-90% [6]	40-ft [6]	n/a
W-2	0	0	0	0	0	85-90% [6]	35-ft [6]	n/a
E-C, E-D, and E-N ~~MU-1 to MU-10 Mgmt. Units~~	0	0	0	0	0	100%	40-ft [6]	n/a
P-1	0	0	0	0	0	100%	50-ft	n/a
P-2	0	0	0	0	0	100%	35-ft	n/a
P-3	0	0	0	0	0	100%	30-ft	n/a

Staff: This change reflects the shift to the new zoning classifications. No material changes have been made to the density limitations.

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CHAPTER 14.34 CONDITIONAL USES

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14.34.060 Supplemental Estuary Conditional Use Standards

Uses permitted conditionally within estuary zone districts, pursuant to NMC 14.03.120 shall be subject to the standards listed in NMC Chapter 14.04.

Staff: This section is being added to the end of the Conditional Use chapter to put individuals on notice that additional standards apply to conditional uses proposed within the estuary.

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CHAPTER 14.52 PROCEDURAL REQUIREMENTS

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14.52.060 Notice

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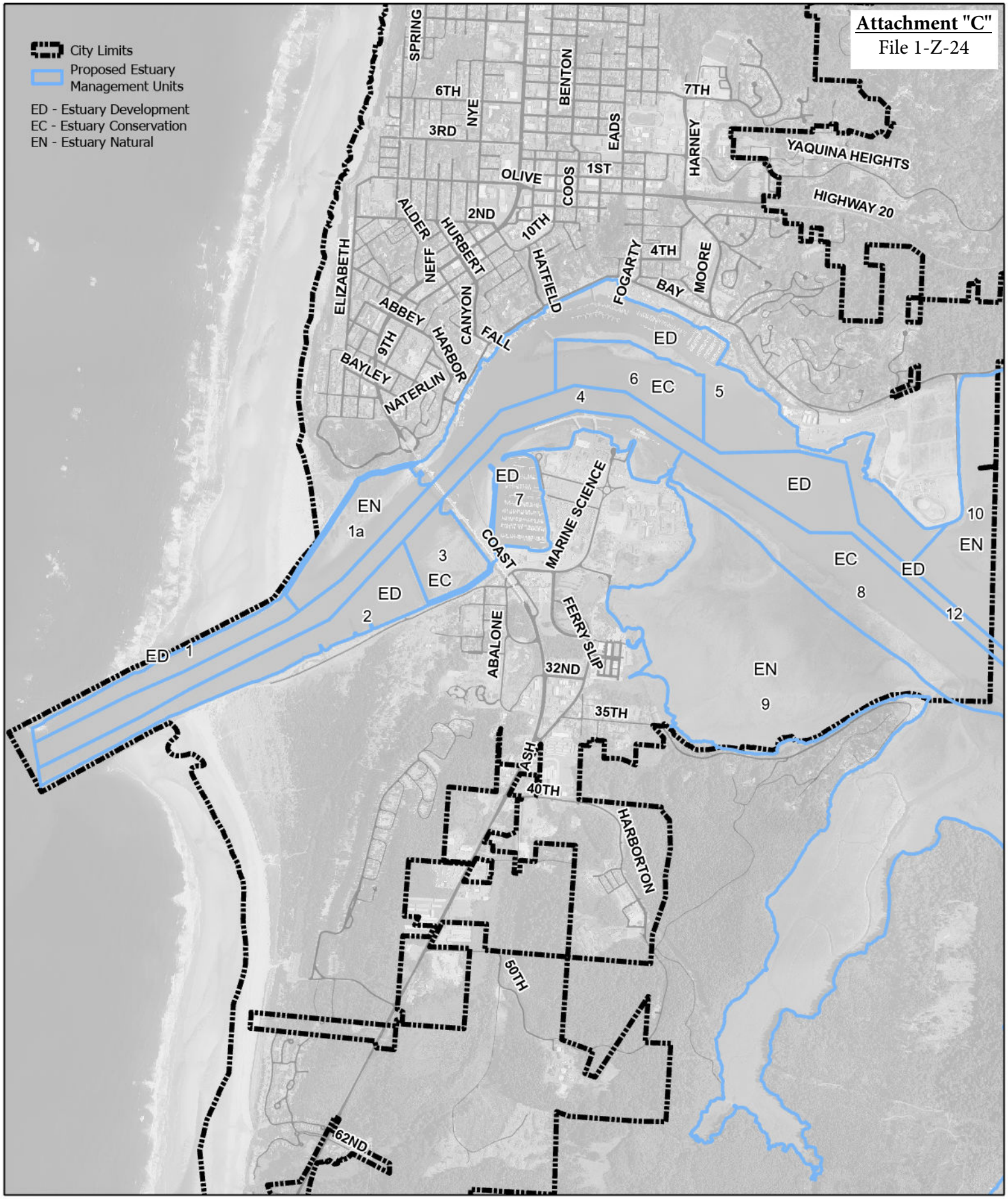
G. Written Notice for Land Use Decision in Estuary Zone Districts. The City of Newport shall notify state and federal agencies with ~~interest or~~ jurisdiction in estuaries of estuary use applications which may require their review. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.

Staff: This section is being added to the land use procedural chapter to identify notice requirements for City land use decisions within estuary zones.



City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone:1.541.574.0629
Fax:1.541.574.0644

Proposed Estuary Management Units

Image Taken July 2018
4-inch, 4-band Digital Orthophotos
Quantum Spatial, Inc. Corvallis, OR

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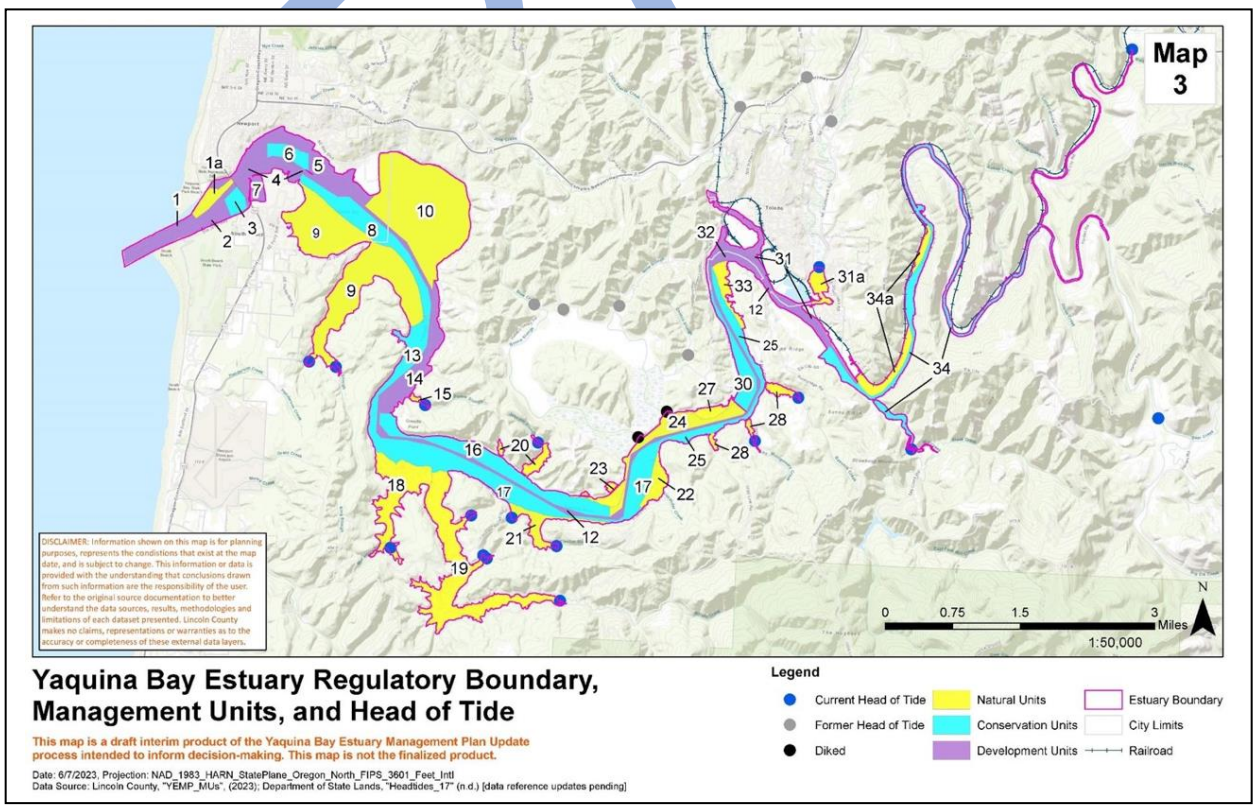
YAQUINA BAY AND ESTUARY SECTION

Introduction:

The purpose of Statewide Planning Goal 16: Estuarine Resources and all estuary management plans is "to recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries." Yaquina Bay is one of three estuaries on the Oregon coast designated a deep-draft development estuary with a deep-water navigation channel and turning basin federally authorized by the United States Army Corps of Engineers.

The Lincoln County Estuary Management Plan is a special area management plan that governs estuarine resource conservation and development decisions in all the estuaries within Lincoln County, including Yaquina Bay. The City of Newport incorporates the relevant policy provisions of that plan here in its Comprehensive Plan and the applicable implementing measures are placed in its Municipal Code. Alterations and uses within estuarine areas are regulated. The boundary of the estuary is estuarine waters, tidelands, tidal marshes and submerged lands up to the line of Mean Higher High Water (MHHW) or the line of non-aquatic vegetation, whichever is further landward. The jurisdictional extent of the estuary extends upstream to the head of tide. (See Figure 1. Yaquina Bay Regulatory Extent and Head of Tide Map). Adjoining shorelands are subject to separate, coordinated land use regulations.

Figure 1. Regulatory Boundary, Estuary Management Unit Classifications, & Head of Tide



Yaquina Bay provides habitat and ecosystem services that benefit and support the local economy and community. Ecosystem services are positive benefits that ecological systems, habitats, or wildlife provide to humans. Yaquina Bay's estuary provides ecosystem services to nearby residents and the City of Newport that include mitigation of the impacts of flooding due to storm surges, improvements in water quality through vegetation and substrate filtration, and improvements in air quality through plant photosynthesis and respiration. The cultural significance of this area as well as opportunities for recreation are also considered important ecosystem services. In addition, much of the local economy is built upon productive seafood and fish harvesting and processing such as Dungeness crab which require eelgrass and other estuarine habitats for their lifecycle. The sequestration and storage of carbon by the estuary's subtidal and intertidal plants benefits residents of the State of Oregon and beyond by helping attenuate carbon dioxide contributions to climate change and its projected impacts. There are many ecosystem services Yaquina Bay provides to people in addition to the examples provided here.

Resource Inventories:

Inventories have been conducted to provide information necessary for designating estuary management units and their associated uses and policies. These inventories provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of development potential.

Inventories include maps and sourced spatial data on the following resources and information: ecological estuarine data using the Coastal Marine and Ecological Classification Standard (CMECS), port facilities and tide gates, current estuary planning extent, historical estuarine boundaries and vegetation, head of tide, sea level rise projections, landward migration zone projections, and restoration sites. The information contained in the management unit descriptions and resource capability assessments is based on factual base material drawn from these comprehensive resource inventories. The rationale for permitted use decisions and management classifications is contained in these brief factual base summaries; for detailed resource information and a bibliography of documents included in the inventory, the ~~XYZ section/document~~ Yaquina Bay Estuary Goal 16 Resource Inventory Bibliography, dated July 15, 2024, should be consulted.

Climate Change Vulnerabilities:

Climate change considerations were assessed and integrated into the estuary management plan for Yaquina Bay. As proposed alterations in the estuary have the potential to be in place for decades, impacts from climate change can jeopardize their continued use and potentially lead to negative outcomes that could threaten the unique environmental, economic, and social values of Yaquina Bay. The following are projected climate change impacts for the Yaquina Bay:

- Sea Level Rise: Global sea level rise is projected to increase Yaquina Bay's Mean Higher High Water mark by a range of 0.8 to 6.1ft by 2100.[1] There is a lot of uncertainty due to the unknowns around greenhouse gas emissions into the future. After 2000 years of relative stability, average global sea levels have risen about 8 inches in the last 100 years.[2]

[1] Sweet, W.V., et al. 2022. Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines. NOAA Technical Report. National Oceanic and Atmospheric Administration, National Ocean Service, Silver Spring, MD.

[2] U.S. Global Change Research Program. 2009. Global climate change impacts in the United States: a state of knowledge report. New York: Cambridge University Press.

- Estuary Acidification: More acidic estuary waters are likely, as open ocean waters are projected to be acidic enough to dissolve the biogenic carbonate shells of shellfish by 2100.[3] As the ocean absorbs CO2, its pH is lowered and becomes more acidic. "Since 1750, the pH of seawater has dropped significantly (about 0.1 globally). That means water is about 1 ¼ times more acidic today."[4]
- Heat and Drought: Warmer summers with more extreme heat days and periods of drought are anticipated. The average annual temperature in Oregon increased by 2.2 degrees Fahrenheit from 1895 to 2019.[1] Projected average daily temperatures for the City of Newport and the broader Yaquina Bay region are expected to be 3-4 degrees higher by 2050 (NOAA Climate Explorer 2022).
- Precipitation: More rain in fewer and bigger storms instead of snow during winter months at higher elevations are anticipated. Despite an expected overall increase in winter precipitation, the past 50 years have documented a 60% or greater reduction in snow water recorded annually on April 1st for Columbia River tributaries.[5]

These climate change impacts are expected to create secondary effects such as increased risk to and prevalence of forest fires, bay and riverine flooding, loss of protected habitats and species, loss and landward migration of coastal habitats, loss of fisheries habitat relied upon by the local fishing economy, loss of eelgrass and other macrophytes due to heat waves , stress on endangered fish, destabilizing infrastructure in and on the Bay, erosion and accretion changes, sediment and nutrient loading, and many more. Potential cumulative impacts of alterations and development activities were considered and integrated into the policies and requirements of the Estuary Management Plan for Yaquina Bay.

Estuary Management Sub-Areas:

Due to the size and complexity of the Yaquina Bay estuary system, an additional tier of policy has been established at the sub-area level. The sub-area policies are intended to provide general planning guidance at a geographic scale between the overall management policies and the individual management unit level.

For this purpose, the estuary has been divided into seven sub-areas, each representing a common set of natural and anthropogenic features. (See Figure 2. Yaquina Bay Sub-Areas) These sub-areas provide a basis for describing in broad terms how different reaches of the estuary presently function and are used, and to identify considerations in planning for future use and conservation. Each sub-area is described in terms of its existing character, its major committed uses, and its existing and potential conflicts. Policies are established for each sub-area for the purpose of guiding the establishment of management unit designations and specific implementation measures.

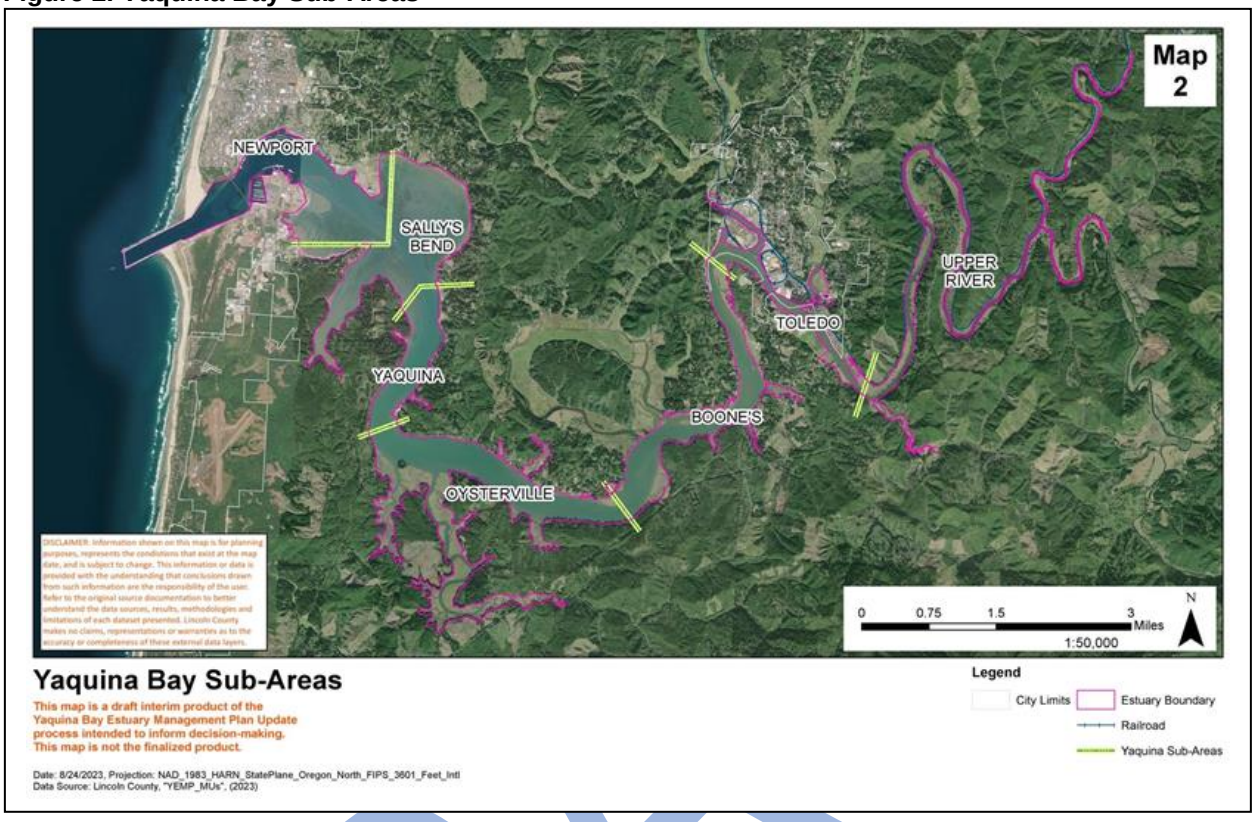
[3] Feely et al. 2008. Barton, A, B. Hales, G. G. Waldbusser, C. Langdon, R.A. Feely. 2012. The Pacific oyster, Crassostrea gigas, shows negative correlation to naturally elevated carbon dioxide levels: Implications for near-term ocean acidification effects. Limnology and Oceanography, 57(3): 698-710.

[4] Feely, R. A, C. L Sabine, J. M Hernandez-Ayon, D. Ianson, and B. Hales. 2008. Evidence for upwelling of corrosive "acidified" water onto the continental shelf. Science 320, no. 5882: 1490.

[5] Oregon Department of Fish and Wildlife: The Oregon Conservation Strategy Fact Sheet Climate Change and Oregon's Estuaries (YEAR)

[6] Front. Mar. Sci., 01 April 2022. Differential Responses of Eelgrass and Macroalgae in Pacific Northwest Estuaries Following an Unprecedented NE Pacific Ocean Marine Heatwave. Sec. Coastal Ocean Processes Volume 9 - 2022. https://doi.org/10.3389/fmars.2022.838967

Figure 2. Yaquina Bay Sub-Areas



Sub-area policies are intended to serve as general guidance for overall spatial planning; they are not applicable approval criteria for individual project or permit reviews. The criteria applicable to individual land use decisions for estuarine development proposals are as set forth in pertinent implementing land use regulations. The Newport sub-area is the only sub-area that is within the Newport Urban Growth Boundary.

Newport Sub-Area:

The size and complexity of the Yaquina Bay estuary required the bay to be divided into seven sub-areas, each representing a common set of natural and human-related features. Sub-areas provide a basis for describing how different areas of the estuary presently function and how they should be planned to function in the future. Each sub-area is described in terms of its existing character; its major committed uses; its existing and potential conflicts; and its climate vulnerabilities. The City of Newport contains the Newport sub-area of Yaquina Bay, which is a high intensity use area. It is the hub of commercial fishing, deep water shipping and research, and tourist related commercial activities on Yaquina Bay. Adjacent shorelands are urban in character and the shoreline is mostly continuously altered throughout the sub-area. Aquatic area alterations within the sub-area are extensive. Major alterations include dredging, jetties and other navigation improvements, intertidal fills, and numerous in-water structures, including docks, piers, wharfs, and breakwaters. As a fully serviced urban area near the harbor entrance and with shoreland access to the deep-water navigation channel, the Newport sub-area represents the most important portion of the estuary for water dependent development.

Important natural resources within the sub-area include eel-grass and algal beds, shellfish beds and fish spawning and nursery areas. Eelgrass and associated habitat is extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. Additionally, it is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act.

> Major Committed Uses. The sub-area contains a mix of water dependent, water related, and non-water related uses. Industrial uses are concentrated at McLean Point (Northwest Natural's liquid natural gas tank and the Port of Newport's International Terminal) and along the Newport bayfront. A recreational marina and a number of non-water related, tourist-oriented commercial uses also occur along the Newport bayfront. Major uses in the South Beach area include the Oregon State University (OSU) Hatfield Marine Science Center, the South Beach Marina recreational complex, the NOAA Marine Operations Center - Pacific facility and the Oregon Coast Aquarium. Many entities residing in the South Beach area provide experiential educational opportunities for tens of thousands of students and families every year. The sub-area takes in the major components of the authorized Corps of Engineers navigation project, including the jetties, the main navigation channel and turning basin, the boat basins, and related navigation improvements. Recreational use in the sub-area, including sport fishing, crabbing, clamming, diving, and boating, is heavy. In some years, a limited commercial herring fishery occurs within the sub-area.

> Existing and Potential Conflicts. Several conflicts exist within the sub-area. Conflicts have developed between tourist-oriented commercial uses and water dependent commercial and industrial uses along the Newport bayfront. These conflicts involve both competition for available space as well as use conflicts (e.g., traffic, parking, etc.) between established users. As demand accelerates for both types of uses, conflicts may worsen. In the past, competition between recreational and commercial vessels for moorage has been a problem; however, the opening in 1980 of approximately 500 moorage spaces designed to accommodate recreational vessels at the South Beach Marina has largely alleviated this conflict. The maintenance and redevelopment of water dependent uses in the sub-area will necessitate development in aquatic areas, posing a potential conflict with the protection of natural resources in some portions of the sub-area.

> Climate Vulnerabilities. The following list contains potential vulnerabilities to climate change that this sub-area of the estuary may experience over the coming years. These vulnerabilities shall be considered during reviews of proposed activities or uses in this sub-area as applicable:

- Increased shoreline erosion due to changes in sediment transport or deposition patterns or increased intensity of storm surges;
- Increased frequency and extent of storm surge flooding due to sea level rise risking the integrity and hindering the use of critical infrastructure;

- Increased risk of jetty or breakwater failures due to sea level rise and storm surge;
- Increased risk of loss of structural integrity to underground or submerged infrastructure due to higher water tables from sea level rise;
- Increased risk of sea level rise submerging port, marina, and other moorage infrastructure;
- Increased risk of structural failure of boat ramp and recreation facilities due to sea level rise and storm surge;
- Increased frequency and extent of storm surge flooding due to sea level rise of bay-adjacent industrial and waste treatment sites increasing risk of structural damage and pollution events;
- Increased risk of toxic leaks from erosion and destabilization of submerged sewer, natural gas and other pipes and utility lines due to changes in sediment transport and deposition patterns;
- Aquaculture and recreational shellfish losses due to ocean acidification and dissolution of oyster shells;
- Loss of suitable habitat conditions for eelgrass, Sitka spruce swamps, or other critical species and habitats due to sea level rise, warming waters, or increased downstream sedimentation;
- Extended use of salt marshes, eelgrass beds, tidal channels and other cool water refugia habitats for juvenile salmonids and forage fish such as herring, anchovies, and smelt due to warmer upriver temperatures in the mid-summer to early fall;
- Increased use of productive estuary habitats by marine birds during periods of low food abundance in the ocean, which are associated with marine heat waves and climate-driven changes in ocean processes;
- Increased use of Yaquina Bay habitats by migratory birds as other regional habitats become unsuitable for climate-related reasons (i.e. climate-related shifts in breeding, migration, and overwintering ranges);
- Increased risk to current dredging regime or location of navigation channels as erosion and accretion patterns change due to sea level rise and storm surge.

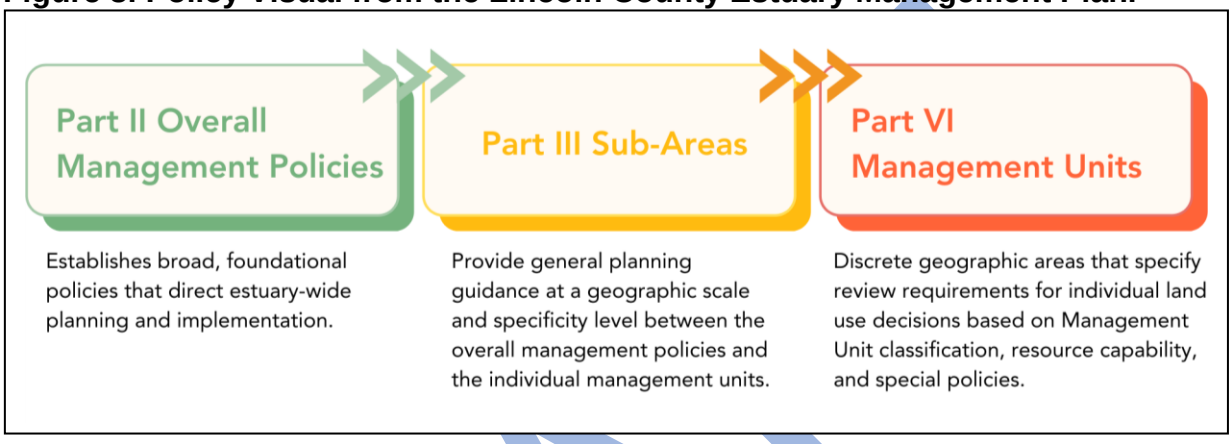
Estuary Policy Framework and Coordination:

The Lincoln County Estuary Management Plan provides an overall, integrated management scheme for Yaquina Bay. Elements of the Estuary Management Plan that the City of Newport incorporates into its Comprehensive Plan are those that apply inside the Newport Urban Growth Boundary. Proposed amendments to this section and its implementing provisions should be coordinated with Lincoln County to promote a common understanding and consistent application of the Estuary Management Plan.

This section contains comprehensive provisions for guiding estuarine development and

conservation activities, from broad overall policies to site specific implementing measures. The planning and decision-making framework for Yaquina Bay within the City of Newport is contained within a concept of descending levels of policies: Overall Management Policies to Sub-Area Policies to individual Management Units. Each level of policy and the size of the area to which those provisions apply is smaller and more specific than the preceding level, ending with site specific guidelines at the management unit scale.

Figure 3. Policy Visual from the Lincoln County Estuary Management Plan.



Individuals or entities seeking to alter or use the estuary should consult the specific management unit(s) encompassing the site and the applicable estuary zoning requirements in the Newport Municipal Code.

Newport Sub-Area Estuary Management Units:

A management unit is a discrete geographic area defined by biophysical characteristics and features within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited. This is the most specific policy level and is designed to provide specific implementing provisions for individual project proposals. Each unit is given a management classification of Natural, Conservation, or Development (defined below). These classifications are based on the resource characteristics of the units as determined through an analysis of resource inventory information. The classification carries with it a general description of intent and a Management Objective. Each management unit objective is implemented by its applicable Estuary Zoning District in the Municipal Code, which specifies uses and activities that are permitted or conditionally permitted within the unit. Many management units also contain a set of Special Policies that relate specifically to that individual unit.

The management unit classification system consists of three management classifications: Natural, Conservation and Development. The classifications are defined below in terms of the general attributes and characteristics of geographic areas falling into each category. The management objective and permissible uses and alterations for each classification are also specified.

Natural Management Units

Natural Management Units are those areas that are needed to ensure the protection of significant fish and wildlife habitats; of continued biological productivity within the estuary; and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, tidal swamps, and seagrass and algal beds.

Management Objective: To preserve, protect and where appropriate enhance these areas for the resource and support values and functions they provide.

The following uses are permitted in Natural Management Units:

a. undeveloped low-intensity water-dependent recreation;
b. research and educational observation;
c. navigational aids, such as beacons and buoys;
d. protection of habitat, nutrient, fish, wildlife and aesthetic resources;
e. passive restoration measures;
f. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;
g. riprap for protection of uses existing as of October 7, 1977;
h.; unique natural resources, historical and archeological values; and public facilities; and
~~h~~i. bridge crossings.

Where consistent with the resource capabilities of the area and the purpose of this management unit, the following uses may be allowed:

a. aquaculture which does not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;
b. communication facilities;
c. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;
d. boat ramps for public use where no dredging or fill for navigational access is needed;
e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation;
f. installation of tidegates in existing functional dikes;
g. temporary alterations;
h. bridge crossing support structures and dredging necessary for their installation.

In Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant, or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.

Conservation Management Units

Conservation Management Units shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary except for the purpose of restoration. These areas shall be managed to conserve their natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, water quality, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in Natural Units above, and recreational or commercial oyster and clam beds not included in Natural Units above. Areas that are partially altered and adjacent to existing development of moderate intensity that do not possess the resource characteristics of natural or development units shall also be included in this classification.

While the general purpose and intent of the conservation classification are as described above, uses permitted in specific areas subject to this classification may be adjusted by special policies applicable to individual management units to accommodate needs for natural resource preservation.

Management Objective: To conserve, protect and where appropriate enhance renewable estuarine resources for long term uses and to manage for uses that do not substantially degrade the natural or recreational resources or require major alterations of the estuary.

Permissible uses in conservation areas shall be all those allowed in Natural Units above except temporary alterations. Where consistent with the resource capabilities of the area and the purposes of this management unit, the following additional uses may be allowed:

a. high-intensity water-dependent recreation, including boat ramps, marinas and new dredging for boat ramps and marinas;
b. minor navigational improvements;
c. mining and mineral extraction, including dredging necessary for mineral extraction;
d. other water-dependent uses requiring occupation of water surface area by means other than dredge or fill;
e. aquaculture requiring dredge or fill or other alteration of the estuary;
f. active restoration for purposes other than those listed in 1(d);
g. temporary alterations.

In a Conservation Management Unit, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner that conserves long-term renewable resources, natural biologic productivity and aesthetic values and aquaculture.

Development Management Units

Development Management Units shall be designated to provide for navigation and other identified needs for public, commercial, or industrial water dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification.

Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, sub-tidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary.

While the general purpose and intent of the development classification are as described above, uses permitted in specific areas subject to this clarification may be adjusted by special policies applicable to individual management units to accommodate needs for natural resource preservation.

Management Objective: To provide for water dependent and water related development. Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

The following uses may also be permissible in development management units:

a. dredge or fill, as allowed elsewhere in the plan;
b. navigation and water-dependent commercial enterprises and activities;
c. water transport channels where dredging may be necessary;
d. flow-lane disposal of dredged material monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units;
e. water storage areas where needed for products used in or resulting from industry, commerce and recreation;
f. marinas.
g. Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and non-dependent, non-related uses not requiring dredge or fill; mining and mineral extraction; and activities identified in Natural and Conservation above, shall also be appropriate.

The overall classification scheme for management units is described above. Each individual management unit within the Newport Sub-Area is given a number and a more detailed and specific description. Each management unit description includes:

- the management classification (natural, conservation or development) of the unit and a summary rationale for the classification;
- a description of the spatial boundaries of the unit;
- a summary of the natural resource characteristics of the unit;
- a description of major uses and alterations present in the unit;
- a management objective which provides an overall statement of priorities for management of the unit;
- permitted uses within the unit, both those that are deemed consistent with the resource capability of the unit, and those uses that will require case-by-case resource capability determinations;
- special policies specific to the unit which serve to clarify, or in some cases further limit, the nature and extent of permitted uses.

It is important to note that the text descriptions are the regulating boundary of the management units. Maps and GIS data layers used by the City are a representation of those boundaries. In case of any doubt, the text descriptions should be used to resolve any boundary confusion. Each individual management unit within the City of Newport is described below.

Management Unit 1

> Description: Management Unit 1 consists of the area between the navigation channel and the north jetty, west of the west boundary of the Highway 101 right-of-way, excepting the area described as Management Unit 1A (see description for Management Unit 1A). Natural resources of importance include shellfish beds, fish spawning and nursery areas, and wildlife habitat. Of special importance are areas used by ling cod for spawning. Primary uses in the area are medium and shallow draft navigation and recreation (angling, boating, diving and surfing). Alterations include the north jetty, riprapped shoreline east of the jetty, navigation aids, and piling dolphins at the base of the bridge columns. (See maps for location of resources and uses)

> Classification: Development. This unit has been classified as Development in order to provide for maintenance and repair of the north jetty, a navigation improvement that may require periodic major alterations. Other than providing for alterations necessary to maintain navigation, management of Unit 1 should conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: As a development management unit, permissible uses in Management Unit 1 are not subject to the resource capability test.

> Management Objective: Management Unit 1 shall be managed to provide for maintenance and repair of the north jetty as necessary to maintain the functionality of the deep-water channel. Otherwise, this unit shall be managed to conserve shellfish beds, fish spawning and nursery areas, and other natural resources.

> Special Policies: Major alterations in Management Unit 1 shall be limited to jetty and other navigation improvements necessary to maintain the authorized federal navigation channel. However, uses should minimize disturbance of important natural resources identified in this unit, to the extent practical.

Management Unit 1a

> Description: Management Unit 1A consists of the intertidal and subtidal area west of the west boundary of the Highway 101 right-of-way (Yaquina Bay Bridge), lying between the navigation channel and the north shore. Along the north jetty, Unit 1A extends up to 50 lineal feet waterward from the base of the north jetty. Unit 1A is bounded on the west by MLLW, and on the east by the Highway 101 right-of-way. Natural resources of importance include shellfish beds, fish spawning and nursery areas, and wildlife habitat. Of special importance is a major algal bed. Primary uses in the area are medium and shallow draft navigation and recreation (angling, boating, diving and surfing). Alterations include the riprapped shoreline east of the jetty, navigation aids, and piling dolphins at the base of the

bridge column.

> Classification: Natural. This unit has been classified as Natural in order to protect the natural resources of the unit and limit alterations to low intensity activities similar to those now existing in the unit.

> Resource Capability: The major algal bed in this unit is a sensitive habitat area of special value. Other habitats, while of major importance, are less susceptible to disturbance from minor alterations. Low intensity alterations such as pilings, dolphins and riprap have occurred in this area in the past without significant damage to resource values. Similar activities of this nature in conjunction with the uses contemplated in Unit 1a will constitute minor alterations consistent with the resource capabilities of the area.

> Management Objective: Management Unit 1a shall be managed to preserve natural resources.

> Special Policies: The algal bed within Management Unit 1A as defined by the Oregon Department of Fish and Wildlife Habitat Classification Map shall be preserved.

Management Unit 2

> Description: Management Unit 2 contains the area between the south jetty and the navigation channel, extending from the channel entrance east to the spur jetty. From the spur jetty east to the Yaquina Bay Bridge, Unit 2 includes the aquatic area between the south jetty and Mean Low Water (MLW). Natural resources of importance include shellfish beds, algal beds, eel-grass beds, fish spawning and nursery areas and waterfowl habitat. Major uses in the unit are shallow draft navigation and recreational activities, including fishing, diving and boating. Alterations in the area include the south jetty, the spur jetty and groins, and navigation aids.

> Classification: Development: This unit has been classified as Development in order to provide for the maintenance and reconstruction of navigation improvements, including the south jetty and the spur jetty and groins, which may require major alterations.

> Resource Capability: As a development management unit, permissible uses in Management Unit 2 are not subject to the resource capability test. However, uses should minimize disturbance of important natural resources identified in this unit to the extent practical.

> Management Objective: Management Unit 2 shall be managed to provide for the maintenance and repair of the south jetty and associated navigation improvements. Major alterations shall be limited to those necessary to provide for these uses. Otherwise, this unit shall be managed to conserve shellfish beds, algal beds, fish spawning and nursery areas and other natural resources.

> Special Policies: Major alterations in Management Unit 2 shall be limited to jetty, groin and other navigation improvements necessary to maintain the functionality of the

authorized federal navigation channel. However, uses should minimize disturbance of important natural resources identified in this unit to the extent practical.

Management Unit 3

> Description: Management Unit 3 consists of the area between the navigation channel and MLW along the south shore, from the spur jetty east to the west boundary of the Highway 101 right-of-way. The area has several important natural resources, including tideflats, eelgrass beds, significant shellfish beds, important fish spawning and nursery areas, and important waterfowl habitat. Major uses within the unit are shallow draft navigation and recreation (clam digging, fishing, boating). Some minor commercial shellfish harvest takes place in the unit. Alterations include navigation aids, dolphins, and riprapped shorelines.

> Classification: Conservation: This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: Management Unit 3 has significant intertidal area, and important shellfish beds. Existing alterations are minor in nature. Further minor structural alterations such as pilings and dolphins would be consistent with the existing character and resource capability of the area.

> Management Objective: Management Unit 3 shall be managed to conserve natural resources of importance.

> Special Policies: Major clam beds are located within Management Unit 3. These clam beds shall be protected.

Management Unit 4

> Description: Management Unit 4 is the Corps of Engineers authorized deep-water federal navigation channel, up to and including the turning basin at McLean Point. This unit includes the 40-foot-deep, 400-foot-wide entrance channel; the 30-foot-deep, 300-foot-wide bay channel, and the turning basin. Natural resources within the unit include fish spawning and nursery areas, and important shellfish beds. Major uses within the unit include navigation (shallow, medium and deep draft), recreation (fishing, crabbing, and boating) and some limited commercial harvest. Alterations include pilings, navigation aids, submerged crossings and the Yaquina Bay bridge crossing. Of special importance is the maintenance dredging of the federally authorized navigation channel and turning basin. Management Unit 4 is an area of diverse marine influenced habitats, including some major shellfish beds.

> Classification: Development. This unit has been classified as development, to provide for the dredging and other alterations required to maintain the deep-water navigation channel and turning basin.

> Resource Capability: As a development management unit, authorized uses are not subject to resource capability requirements. The area is periodically dredged for maintenance of the federally authorized navigation channel and turning basin, and resources present are subject to this regular disturbance.

> Management Objective: Management Unit 4 shall be managed to protect and maintain the authorized navigation channel and turning basin for deep-draft navigation.

> Special Policies: ~~None.~~ Adverse impacts of dredging operations within Management Unit 4 on existing shellfish beds shall be minimized to the extent practical. Port facilities may extend into the deep water channel subject to approval by federal and state agencies that maintain jurisdiction, in part, to ensure that new development does not impede navigation.

Management Unit 5

> Description: Management Unit 5 consists of the area between the north shore of the bay and the navigation channel, from the west boundary of the Highway 101 right-of-way east to McLean Point. It includes the Port of Newport commercial moorage basins (Port Docks 3, 5 and 7, and the north marina breakwater), the developed waterfront in the Newport urban area, and the Port of Newport's international terminal facilities at McLean Point. Natural resources of importance include tideflats, eelgrass and shellfish beds, and fish spawning and nursery areas. This portion of the estuary is used intensively for shallow and medium draft navigation, moorage of small and large boats, and for recreation. Other significant uses include the Port of Newport's international terminal operation, research activities, the U.S. Coast Guard Station, seafood processing plants and infrastructure, and mixed-use development along the historic Newport bayfront. The shoreline and aquatic areas are extensively altered with riprap, bulkheads, piers and wharves, the north marina breakwater, pilings, floating docks, periodic maintenance dredging and other activities.

> Classification: Development. This unit is classified as development to provide for the port's development needs in support of navigation, commercial fishing and other water dependent and mixed uses along the urban waterfront.

> Resource Capability: Management Unit 5 is the most extensively altered area in the estuary. Maintenance and redevelopment of existing facilities in this area, along with new development, will result in further alterations, including major dredging and construction activities. As a development management unit, these authorized uses within Management Unit 5 are not subject to resource capability requirements.

> Management Objective: Management Unit 5 shall be managed to provide for the development of port facilities and other water-dependent uses requiring aquatic area alterations. Water-related and non-related uses not requiring dredge or fill may be permitted consistent with the unique mixed-use character of the Newport waterfront.

> Special Policies: Important shellfish beds are located in Management Unit 5, in particular the ODFW designated shellfish preserve on the north side of the north marina breakwater, as described in OAR 635-005-0290(7). Adverse impacts on these shellfish

beds from development shall be minimized to the extent practical.

Due to the limited water surface area available and the need for direct land to water access, alternatives (such as mooring buoys or dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 5. Multiple use facilities common to several users are encouraged where practical.

Nonwater-related uses may be permitted within the estuarine area adjacent to the old waterfront from Bay Street to Pine Street, extending out to the pierhead line as established by the Corps of Engineers. Tourist related activities will be encouraged to locate on the landward side of S.W. Bay Boulevard. The bay side of S.W. Bay Boulevard should accommodate water-dependent and water-related types of uses. Some tourist related uses may locate on the water side but only upon the issuance of a conditional use permit.

Management Unit 6

> Description: Management Unit 6 consists of the area south of the north marina breakwater, extending from MLW south to the navigation channel. Unit 6 is bounded on the west by a north-south line extending from the west end of the breakwater to the navigation channel, and on the east by a north-south line extending from the east end of the breakwater to the navigation channel. Unit 6 contains both intertidal and subtidal area with a number of important resource characteristics. Significant habitat areas include eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Major uses in the unit include recreation (fishing, boating, crabbing and clamming), medium and shallow draft navigation, and some limited commercial harvest activities. Alterations within the unit include pilings and navigation aids.

> Classification: Conservation. This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: Management Unit 6 is a mostly sub-tidal area near the upper end of the marine subsystem. It supports a variety of important resources that could be adversely impacted by major fill, removal or other aquatic alterations. Important uses in the unit such as navigation and recreation require a largely unobstructed surface area. For these reasons, alterations consistent with the resource capability of this unit are limited to minor structural alterations such as pilings and dolphins. Any fill or removal activities should be evaluated on a case-by-case basis.

> Management Objective: Management Unit 6 shall be managed to conserve natural resources and to provide for uses compatible with existing navigation and recreation activities.

> Special Policies: The shellfish beds south of the north marina breakwater as defined by the publication "Sub-tidal Clam Populations: Distribution, Abundance and Ecology" (OSU Sea Grant, May 1979) are considered a resource of major importance. Adverse impacts on this resource shall be avoided or minimized to the extent practical.

Management Unit 7

> Description: Management Unit 7 consists of the aquatic area between the navigation channel and the south shore, from the west boundary of the Highway 101 right-of-way east to the small boat pier at the OSU Hatfield Marine Science Center. It includes the South Beach Marina, the NOAA Marine Operations Center, and the OSU Hatfield Marine Science Center facilities. The majority of the unit is sub-tidal and includes eelgrass and shellfish beds, and fish spawning and nursery areas. Major uses in the area are deep, medium and shallow draft navigation, moorage, recreation and some limited commercial harvest. Alterations include pilings, piers and wharves, breakwaters, floating docks, riprap, and periodic dredging.

> Classification: Development. This unit has been classified as development to provide for water dependent uses, including the NOAA Marine Operations Center, the South Beach Marina and OSU Hatfield Marine Science Center facilities.

> Resource Capability: Management Unit 7 is classified for development; therefore, authorized uses are not subject to resource capability requirements.
> Management Objective: Management Unit 7 shall be managed to provide for water dependent development compatible with existing uses. Non-water dependent uses not requiring dredge or fill may be permitted consistent with adjacent coastal shorelands designations.

> Special Policies: Eelgrass beds, shellfish beds, and fish spawning and nursery areas are located within Management Unit 7. Adverse impacts of development on these resources shall be avoided or minimized to the extent practical.

Submerged crossings, bridge footings, pilings, dolphins, and other navigation and marina related development undertaken as part of the approved comprehensive plan shall be permitted, as well as docking and other facilities to serve proposed development.

Development of deep and medium draft port facilities shall be a permitted use only outside of the existing South Beach Marina boat basin.

Due to the limited water surface area available and the need for direct land to water access, alternatives (such as buoys and dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 7. Multiple use facilities common to several users are encouraged where practical.

Management Unit 8

> Description: Management Unit 8 is a sub-tidal area between the navigation channel and the intertidal flats of the Idaho Point/King's Slough area. It contains significant habitat areas, including eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Uses within the unit consist of medium and shallow draft navigation, commercial harvest and recreation. Existing alterations are limited to navigation aids.

> Classification: Conservation. This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

> Resource Capability: Management Unit 8 is an important resource area. Shallow portions of this sub-tidal unit support eelgrass beds; major shellfish beds are also located in this area. Alterations in this area are limited to navigation aids (pile supported). Similar minor structural alterations such as pilings and dolphins are consistent with the resource capabilities of this area.

> Management Objective: Management Unit 8 shall be managed to conserve and protect natural resources such as eelgrass and shellfish beds.

> Special Policies: ~~None.~~ A cobble/pebble dynamic revetment for shoreline stabilization may be authorized for protection of public facilities (such as at the OSU Hatfield Marine Science Center).

Management Unit 9

> Description: Management Unit 9 includes the Idaho Flats tideflat between the Marine Science Center and Idaho Point, all of King Slough, and the intertidal area ~~upriver~~ upstream from the mouth of King Slough known as Raccoon Flat.

More than 600 acres of tideland are estimated to be included in Management Unit 9. This includes 250 acres at Idaho Flat, 235 acres in King Slough and at the mouth of King Slough, and over 120 acres upstream from the mouth of King Slough. Of this total, about 260 acres are inside the Newport City Limits, most notably Idaho Flat and a smaller area just east of Idaho Flat.

This is one of the largest tideflats in the estuary with a number of natural resource values of major significance, including eelgrass beds, shellfish beds, low salt marsh, fish spawning and nursery areas and waterfowl habitat.

The area is used ~~extensively~~ for recreational purposes~~, primarily angling, clamming and waterfowl hunting~~ with significant recreational clamming in Idaho Flat (accessed primarily from the OSU Hatfield Marine Science Center location) and occasional angling and waterfowl hunting. There are several private boat ramps, including one at Idaho Point ~~A private boat ramp~~ (formerly the site off a small marina). ~~is present at Idaho Point~~.

~~The~~ Nearly all of the intertidal flat area ~~west of Idaho Point~~ is in public ownership (State of Oregon Board of Higher Education), and it is adjacent to, and accessible from, the OSU Hatfield Marine Science Center campus. The intertidal areas are utilized to support research and educational activities at Hatfield.

Most of the intertidal area of King Slough is privately owned and was used historically for log storage. Log storage will no longer be done in this area. Tideland in the middle and

northern portions of Kings Slough and adjacent to the mouth of King Slough have been identified as candidate sites, or currently support, ~~There is a~~ small-scale, low intensity aquaculture operations (~~tipping bag oyster culture~~oyster farms). ~~on the east side of King slough~~. A substantial portion of the intertidal area upstream from King Slough (Raccoon Flat) ~~intertidal area along the west shore above the mouth of King Slough~~ is privately-owned by the Yakona Nature Preserve and Learning Center. Alteration to the unit is minimal, with a few scattered pilings and limited areas of riprapped shoreline.

> Classification: Natural. Management Unit 9 has large tideflats with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. ~~As a major tract of tideflat, t~~This unit has been classified natural in order to preserve the area's natural resources, including eelgrass and clam beds. ~~of the unit.~~

> Resource Capability. Management Unit 9 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. In order to maintain resource values, alterations in this unit shall be kept to a minimum. Minor alterations which result in temporary disturbances (e.g., limited dredging for submerged crossings) are consistent with resource values in this area; other more permanent alterations will be reviewed individually.

> Management Objective. Management Unit 9 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture.

> Special Policies. Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or establishment of new marina uses is not permitted.

Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged.

Newport had previously taken two Goal 16 exceptions that will remain in effect, those being the waste seawater outfall for the Oregon Coast Aquarium and storm water run-off through natural, existing drainage systems. Both uses are permitted in Management Unit 9.

A cobble/pebble dynamic revetment for shoreline stabilization may be authorized for protection of public facilities (such as at the OSU Hatfield Marine Science Center). A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.

Management Unit 10

> Description. Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel. ~~Much of this unit is owned by the Port of Newport.~~ A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases ~~out~~ another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to Mclean Point are inside the Newport city limits and Urban Growth Boundary. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become much smaller over time, ~~indicating a significant loss of habitat~~although the cause, whether natural or manmade, is unknown, Eelgrass and associated habitat make this an~~area~~ extremely important fish spawning and nursery area.~~for Endangered Species Act (ESA) listed fish species, commercially important fisheries species,~~ It also supports recreationally ~~important clams~~clamming, and is important migratory ~~birds~~bird habitat. ~~It is recognized as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation and Management Act.~~ Additionally, ~~a significant area in~~ it has been observed that the middle portion of MU 10 is utilized on occasion by pinnipeds (seals and sea lions) as a haul out region.~~, which are species supported under the Marine Mammal Protection Act.~~ Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point (while a small section of MU 10 may be suitable for native oyster restoration, most of the MU 10 is not suitable given habitat and substrate.

Existing uses in this area include ~~Uses in the area are limited to~~ shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the southern corner).

> Classification: Natural. Sally's Bend is a large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. ~~As a major tract of tideflat with eelgrass beds, t~~This unit has been classified natural in order to preserve the area's natural resources ~~in the unit.~~, including eelgrass, clam beds, and Olympia oysters.

> Resource Capability: Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources

in this area, permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerged crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

> Management Objective: Management Unit 10 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible aquaculture.

> Special Policies: Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, significant adverse impacts to existing Olympia oyster~~s~~ beds shall be avoided.

Deepening and widening of the federal navigation channel and turning basin into this management unit, which would impact the significant ecosystems within Sally's Bend, shall be avoided.

Management Unit 12

> Description. Management Unit 12 consists of the Corps of Engineers federally authorized navigation channel from the turning basin to the upstream extent of dredging at RM 14 in Toledo (see Figure 17). The channel above the turning basin is maintained to a depth of 18 feet up to Yaquina (RM 4+ 20), and to a depth of 10 feet from Yaquina up to Toledo. Natural resources of major significance in the unit are shellfish beds and fish spawning and nursery areas. The channel is used extensively for shallow and medium draft navigation, though there is currently no active commercial cargo traffic. Other uses include recreation, commercial harvest and aquaculture. Alterations within the channel include maintenance dredging and several minor alterations such as pilings, submerged cable crossings and navigation aids. Only a small portion of this management unit is within the Newport Urban Growth Boundary.

> Classification: Development. This unit has been classified development as it is the federally authorized navigation channel and undergoes periodic maintenance dredging.

> Resource Capability: Resources within Management Unit 12 are subject to periodic major alterations a result of maintenance dredging activities. Authorized uses in this unit are not subject to resource capability requirements.

> Management Objective: Management Unit 12 shall be managed to maintain navigational access to upriver areas above the turning basin.

> Special Policies: Bridge crossing construction shall be permitted only for maintenance or replacement of the existing Butler Bridge crossing.

Mitigation and Restoration

The mitigation provisions of Statewide Planning Goal 16: Estuarine Resources require that appropriate sites be designated to meet anticipated needs for estuarine resource replacement required to compensate for dredge or fill in intertidal or tidal marsh areas. These sites are to be protected from uses that would preempt their availability for required mitigation activities. Mitigation sites have been selected from among the restoration sites identified in the Lincoln County Estuary Management Plan for Yaquina Bay (see Figure 4 below). All of these sites have been evaluated as potential mitigation sites based on the following criteria:

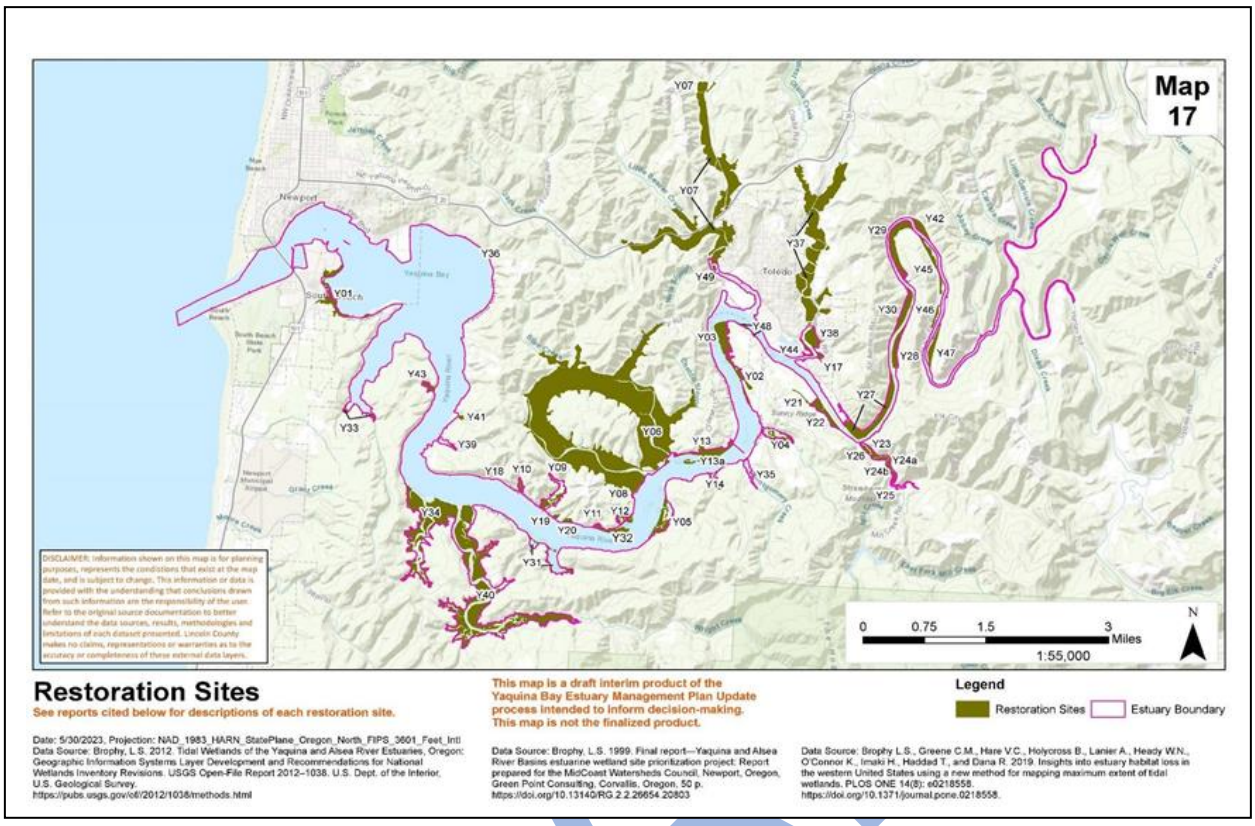
1. Biological Potential: Sites have been evaluated in terms of their similarity of habitat to areas likely to be altered or destroyed by future development activities; or, alternatively, sites were chosen which may provide resources that are in greatest scarcity compared to their past abundance or distribution. This evaluation has been based on an analysis of each site relative to a general assessment of probable foreseeable mitigation needs in each estuary, as well as past alterations or losses.

2. Engineering or Other Technical Constraints: Sites have been evaluated in terms of the type and magnitude of technical limitations that need to be overcome to accomplish restoration or enhancement. Sites with fewer constraints were considered more appropriate for use as mitigation sites.

3. Present Availability: The probable availability of each site during the original planning period has been evaluated. This evaluation was based primarily on the presence or absence of existing conflicting uses and ownership factors that might influence availability (e.g., public versus private ownership).

4. Feasibility of Protecting the Site: An assessment of each site has been done to determine the likelihood that an overriding need for a preemptive use will arise during the planning period. Sites for which no conflicting uses are anticipated are considered most desirable from the standpoint of ensuring future availability through protective zoning or other means.

Figure 4. Restoration Sites



Mitigation Needs and Sites

Future mitigation needs in Yaquina Bay will most likely be generated by dredge and fill activities in intertidal flat areas in the Newport and Toledo sub-areas and possibly in the Yaquina sub-area. Almost all of the tidal marsh areas in Yaquina Bay are protected by Natural Management Unit designations, so projects involving dredge and/or fill in tidal marsh areas are unlikely.

Opportunities for restoration or enhancement in intertidal flat or shore areas in Yaquina Bay are limited. For this reason, the mitigation sites listed below were selected for the opportunities they provide for restoration primarily of tidal marsh, a historically diminished resource. The matching of sites to individual dredge or fill projects will be accomplished as part of the Oregon Department of State Lands Removal-Fill permit process.

It is important to note that the identification and protection of the following sites is intended to reserve a supply of sites and ensure their availability for estuarine resource replacement as required by Goal 16. This list in no way precludes the use of other appropriate sites or actions to fulfill Goal 16 mitigation requirements as determined by the Department of State Lands. The identified sites are from the following publication: Brophy, L.S. 1999. Final Report: Yaquina and Alsea River Basins Estuarine Wetland Site Prioritization Project (for the MidCoast Watersheds Council). The site numbers correspond to the sites visualized in Figure 4. All sites are outside of the jurisdiction of the City of Newport.

Site # (Brophy, 1999)	Protective Mechanism
Y18	Coastal Shorelands (C-S) Overlay (significant wetland)
Y19	Estuary Management Unit (16)
Y20	C-S Overlay (significant wetland)
Y11	Estuary Management Unit (23)
Y30	C-S Overlay (significant wetland)
Y31	Estuary management Unit (21)
Y6	C-S Overlay (significant wetland)

Implementation

To implement the policies and standards of the Lincoln County Estuary Management Plan for Yaquina Bay, the City of Newport shall, at a minimum:

- Specify permissible uses for individual management units consistent with the Management Classification requirements of Part IV of the Lincoln County Estuary Management Plan for Yaquina Bay;
- Provide for the application of review standards set forth in Part II, Part IV and Part V in accordance with applicable procedural requirements; and
- Establish a requirement to assess the impacts of proposed estuarine alterations in accordance with Statewide Planning Goal 16, implementation requirement 1 and Part II of Lincoln County Estuary Management Plan for Yaquina Bay.

Impact Assessment Requirements

- Unless fully addressed elsewhere in this chapter, actions that would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Impact Assessments are required for dredging, fill, in-water structures, shoreline protective structures including riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow lane disposal of dredged material, and other activities that could affect the estuary's physical processes or biological resources.

The Impact Assessment requirement does not by itself establish any approval threshold related to impacts. The purpose of the Impact Assessment is to provide information to allow local decision makers and other reviewers to understand the expected impacts of proposed estuarine alterations, and to inform the application of relevant approval criteria (e.g., consistency with resource capabilities).

The Impact Assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases, it should enable reviewers to gain a clear understanding of the impacts to be expected. The Impact Assessment shall be submitted in writing to the local jurisdiction and include information on:

1. The type and extent of alterations expected;
2. The type of resource(s) affected;
3. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
4. The expected extent of impacts of the proposed alteration must reference relevant Climate Vulnerabilities as described in applicable sub-area(s) for the management unit(s) where the alterations are proposed (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:
   a. long term continued use of the proposed alteration
   b. water quality and other physical characteristics of the estuary,
   c. living resources,
   d. recreation and aesthetic use,
   e. navigation, and
   f. other existing and potential uses of the estuary;
5. The methods which could be employed to avoid or minimize adverse impacts to the extent practical; and
6. References, information, and maps relied upon to address (1) through (5) above.

Local Review Procedures

Statewide Planning Goal 16 establishes a number of discretionary standards that apply to the review of proposed estuarine development activities. These standards are in turn incorporated into this estuary management plan, specifically in Parts II, IV, V, VI of the Lincoln County Estuary Management Plan for Yaquina Bay.

City approval of estuarine alterations subject to one or more discretionary review criteria is a "permit" as defined in ORS 215 and ORS 227 and subject to the procedural requirements of ORS 227.160 to 227.186. In compliance with statutory procedural requirements, all proposals for estuarine alterations subject to Goal 16, Implementation Requirement 2, or subject to findings of consistency with the resource capabilities of the area, shall be reviewed in accordance with either Type II procedure (decision without a hearing subject to notice), or Type III procedure (public hearing), as specified in the applicable jurisdiction's land use regulations.

State and Federal Regulation

Most development activities in estuarine aquatic areas are subject to regulation by one or more state and federal agencies. These regulatory requirements derive from state and federal statutes, and these authorities are discrete and independent from the provisions of the Lincoln County Estuary Management Plan and this Comprehensive Plan. State and federal regulatory requirements are therefore additive to the policies and implementation requirements of the Lincoln County Estuary Management Plan and this Comprehensive Plan. That is, the authorization of uses and activities through the City of Newport does not remove the requirement for applicants to comply with applicable state and federal regulatory requirements. Likewise, state and/or federal approvals of estuarine development

activities do not supersede or pre-empt the requirements of Newport's plan and implementing regulations. For detailed information regarding state and federal regulatory programs involved in estuarine alterations, users should contact the relevant agency.
State and Local Coordination

Under ORS Chapter 197, state agencies are required to conduct their activities (including the issuance of permits and other authorizations) in a manner that complies with the statewide planning goals and is compatible with local comprehensive plans and land use regulations. To address this requirement, each state agency has developed and adopted a state agency coordination (SAC) program that has been approved by the Land Conservation and Development Commission. The SAC sets forth the procedures each agency will employ to assure that agency actions comply with the statewide planning goals and are compatible with local plans and regulations.

For state agencies with regulatory authority over estuarine development, the primary mechanism for ensuring compatibility with local estuary plan requirements is the Land Use Compatibility Statement (LUCS). Applicants for Removal-Fill permits, waterway authorizations, water quality certifications and most other state agency authorizations are required to obtain from the local land use authority a LUCS that certifies that the proposed use or activity complies with local land use requirements or that specifies local land use approvals are required to establish compliance. In general, state agencies will not begin their permit review until compatibility with local planning requirements is certified by the local jurisdiction.

Exceptions

With Ordinance No(s), the City of Newport took two exceptions to Goal 16/"Estuarine Resources." The first is for a seawater outfall line in conjunction with the Oregon Coast Aquarium. The second is for storm water drainage and outfall for the portion of South Beach that naturally drains into Management Unit 9-A.

(Existing language to be retained except where edited)

Yaquina Bay Shorelands:

This section summarizes inventory information about the shorelands adjacent to Yaquina Bay. Identification of the shorelands boundary was based upon consideration of several characteristics of the bay and adjacent uplands. Resources shown on the Yaquina Bay Shorelands Map within the bay-related portion of the shorelands boundary include:

> Areas subject to 100-year floods as identified on the Flood Insurance Rate Map (FIRM).

> Significant natural areas, adjacent marsh, and riparian vegetation along the shore.

> Points of public access to the water.

> Areas especially suited for water-dependent uses.

> Dredged material disposal sites (for a more detailed discussion of dredged material disposal sites, see the amended Yaquina Bay and River Dredged Material Disposal Plan[13]).

Several of the Goal 17 inventory topics for coastal shorelands do not appear in the legend for the Yaquina Bay Shorelands Map either because they do not occur (coastal headlands) or are not directly associated with it (geologic hazards). However, the report

and mapping of hazards by RNKR Associates is included in the Newport Comprehensive Plan inventory.[14] The historic and archaeological resources of the Yaquina Bay Shoreland have been identified in the historical section of this document.

The Yaquina Bay Bridge is the major aesthetic landmark on Yaquina Bay. Views associated with the ocean have relegated the river scenes to secondary importance.[15] The Visual Resource Analysis of the Oregon Coastal Zone classified the whole of Yaquina Bay as an area with a "less obvious coastal association" than the ocean beaches or Yaquina Head.[16]

[13] Wilsey & Ham, Yaquina Bay and River Dredged Material Disposal Plan, 1977.
[14] RNKR Associates, Environmental Hazard Inventory: Coastal Lincoln County, Oregon, 1978.
[15] Wilsey & Ham, Yaquina Bay Resource Inventory, 1977.
[16] Walker, Havens, and Erickson, Visual Resource Analysis of the Oregon Coastal Zone, 1979.

Flooding

Areas of 100-year floods along Yaquina Bay (Zone A~~E~~), as shown on the Flood Insurance Rate Map for the City of Newport (effective ~~April 15, 1980~~October 18, 2019), are included on the Yaquina Bay Shorelands Map. This line represents base flood elevation of 9 or 10 feet, depending upon the location.

The City of Newport has adopted flood plain management regulations that have been approved by the Federal Emergency Management Agency (FEMA). The regulations include provisions that meet the requirements of the National Flood Insurance Program.

Significant Natural Areas

The Oregon Natural Heritage Program identified two significant natural areas on Yaquina Bay within the Newport UGB. These areas are mostly within the boundaries of Estuarine Management Units 9~~-A~~ and 10~~-A~~. However, the shore adjacent to these management units also contains riparian vegetation and marshland.[17] These significant shoreland and wetland habitats and adjacent wetlands, including riparian vegetation, are shown on the Yaquina Bay Shorelands Map on page XXX.

Public Access Points

The Yaquina Bay Shorelands Map identifies points of public access to the water for

purposes of boating, clamming, fishing, or simply experiencing the bay environment. In addition to those points, there are several points identified in the Inventory of Coastal Beach Access Sites published by Benkendorf and Associates.[18] That document is hereby included within this Plan by reference.

Areas Especially Suited for Water-Dependent Uses

There are several shoreland areas in the Newport UGB that are especially suited for water-dependent uses (ESWD). The shoreland areas especially suited for water-dependent recreational uses within the Newport UGB are virtually all on the ocean as described in the Ocean Shorelands Inventory. Suitable sites for water-dependent commercial and industrial uses exist on both the north and south shores of Yaquina Bay. Some of the water-dependent commercial areas, such as the marina sites, also have a recreational aspect. The port development section of this element will discuss the ESWD sites in more detail.

[17] Wilsey & Ham, Yaquina Bay Resource Inventory, 1977.
[18] Benkendorf and Associates, Inventory of Coastal Beach Access Sites, 1989.

The factors which contribute to special suitability for water-dependent uses on Yaquina Bay Shorelands are:

> Deep water (22 feet or more) close to shore with supporting land transport facilities suitable for ship and barge facilities;

> Potential for aquaculture;

> Potential for recreational utilization of coastal water or riparian resources;

> Absence of steep slopes or other topographic constraints to commercial and industrial uses next to the water;

> Access or potential for access to port facilities or the channel from the shorelands unobstructed by streets, roads or other barriers.

The first three factors are stated in Goal 17. Protected areas subject to scour that would require little dredging for use as marinas do not exist in Newport. The last two factors are based upon analysis of the characteristics of Yaquina Bay and its shorelands.

There are three areas within the Yaquina Bay Shorelands that have been identified as ESWD based on the five factors listed above. The degree and nature of the suitability for water-dependent uses varies both within and among these areas; consequently, a flexible approach to evaluate proposed uses in these areas on a case-by-case basis will be necessary.

The ESWD areas are noted below with applicable factors from the above list in parentheses, beginning with the east end of the original plat of Newport and proceeding clockwise around the bay. (See the Yaquina Bay Shorelands Map on page XXX for locations.)

1.) The Port of Newport's commercial boat basin facilities and parking lot/storage area lie between the bayfront on the west and the Embarcadero Marina and parking area on the east. This area lies entirely to the south of Bay Boulevard (factors 3, 4 and 5).

This area is largely developed or committed to port facilities, including docks, port offices, and a parking area. This is the port area devoted to berthing commercial fishing boats. There is development potential for changes in the port's facilities to meet the changing needs of the commercial fishing industry. While the total number of vessels has declined, their size and diversity is increasing. Some vessels in the 70 to 100 foot class routinely fish as far away as the north Alaskan coast. Uses outside or on the fringes of the port area that do not conflict or interfere with commercial fishing needs could be acceptable and appropriate.

2.) The other area on the north side of the bay especially suited for water dependent uses is part of the McLean Point fill area, including Sunset Terminals and the LNG tank. Only that land with close proximity to the deep water channel is included.

This area is entirely south of the western portion of Yaquina Bay Road (factors 1, 4 and 5).

This area has existing facilities and future development potential for a variety of water-borne transportation, shipping and storage activities in conjunction with fish processing, marine industry, and bulk shipping of limestone, logs, and lumber, liquefied natural gas, or other commodities. A variety of industrial uses would be desirable on the landward side of the terminal facilities.

3.) On the south side of the bay, the OSU Marine Science Center's dock facilities, the Ore-Aqua commercial salmon hatchery, and the land immediately adjacent to the South Beach Marina are especially suited for water-dependent uses (factors 2, 3, 4 and 5), and will also serve the needs of workers and visitors to the area.

This area is only partly developed. Additional water-related and non water-related developments associated with the existing South Beach Marina, the OSU Marine Science Center, and port development as identified in the port development plan are envisioned for the areas landward of this ESWD area. These facilities further

the public's enjoyment and understanding of the coastal environment, and resources are most desirable.

Port Development Plan:

The City of Newport's Urban Renewal Agency and the Port of Newport contracted with CH2M HILL of Corvallis to prepare an update of the port development element of the city's Comprehensive Plan (already mentioned in this section).

The first part of the port development plan is an executive summary of the entire plan. That section is repeated here.

Executive Summary

Industry Demands: The waterfront property bordering historic and scenic Yaquina Bay is used for a wide variety of activities. This diversity of uses contributes to the vibrancy of the Newport area. However, there is a tension between the various industries using the waterfront property as they compete for space to grow and expand their respective activities. The primary industries vying for use of bay front property are:

- Commercial shipping
- Commercial fishing
- Research and education
- Tourism

Commercial shipping provides the justification for continued federal participation in harbor and navigation channel maintenance activities. The channels not only provide access to the deep draft shipping lanes of the Pacific Ocean but also make Yaquina Bay a favored harbor for a large commercial fishing fleet, which in turn attracts many tourists to the bay front to observe off-loading and processing of the catch. Research and education activities support the commercial fishing industry and also attract visitors to the area. The combined presence of the OSU Hatfield Marine Science Center and the deep draft navigation channel draws large ocean research vessels into the harbor for supplies, repairs, and to provide floating exhibitions open to the public. Thus, these major industries are all linked together.

Two hundred and fifty acres along the estuary are zoned for water-related or water-dependent use, and it is important to balance the needs of all to provide balanced growth in the local economy. The current needs of each of these industries are discussed below.

> The commercial shipping industry requires additional staging areas and needs to reserve room for future expansion. Additions of a dedicated shipper or a second export commodity, such as wood chips or other forest products, is the type of activity that could generate the need for additional berths.

> Commercial fishing activities are restricted by lack of moorage, service and work docks, and upland support area for storage and repair work. Competition between ports often leads to marketing support facilities at rates that do not meet debt service in the name of economic development and job creation. This is done to attract commercial fishing vessels to a port because of the financial impact one of these boats can make on the local economy. Each boat is, in essence, an independent business, and the boats are increasingly being operated in a business-like manner.

> Research and education requirements are fairly straightforward: room for expansion and maintenance of the environmental parameters upon which they depend (e.g., water quality in the vicinity of seawater intake facilities).

> The tourism industry relies on the continued presence of the fishing fleet and access to the variety of activities that may be enjoyed along the waterfront, in addition to room for expansion.

Potential Development of Bay Front Areas: Parking is in short supply. Retail merchants, tourists, and commercial fisherman alike put this shortage at the forefront of their needs. Access to the bayfront could be enhanced by a multi-level parking structure with a capacity for approximately 400 vehicles. This would not solve all parking shortages nor completely eliminate congestion; however, construction of such a facility would provide the opportunity to establish one-way traffic along the bay and restrict all but commercial and emergency vehicles from the lower reach of Bay Boulevard.

The lower bayfront offers the potential for cold storage facilities, ice making and

selling facilities, receiving docks and buying stations, and transient moorage space. If the now vacant Snow Mist site is not used for these activities, then it may be appropriate to allow other short-term uses. This should be permitted only if the short-term use allows easy conversion to the proposed primary use upon demonstrated need and demand for such a facility.

The area from Port Dock 5 to the Embarcadero should be dedicated, primarily, to the needs of the commercial fishing industry. However, some current uses, such as long term storage for crab pots and cod pots, are not appropriate considering the limited amount of upland area along the waterfront. The potential for major redevelopment of this area has been identified. This would enhance public enjoyment of the waterfront in addition to expanding facilities for the commercial fishing fleet.

The project requires filling of public tidelands between Port Docks 3 and 5. This would provide space for a waterfront park area with a good view of the commercial fishing activities at Port Dock 5. Bay Boulevard could also be widened to provide additional street-side parking and one-way traffic lanes along this section. The remaining land would be converted to more efficient gear staging and short term storage, parking dedicated to the commercial fishermen, and marine retail lease space. A boardwalk running from Port Dock 3 to the Embarcadero would also allow tourists visual access to the activities of the fleet while maintaining the physical separation necessary for public safety.

Other elements of the overall development of this area's potential include relocating the U.S. Army Corps of Engineers' breakwater to expand the commercial fishing moorages. Realignment of the Port docks would also be considered, along with replacing the original Port Dock 3 transient moorage facility.

The benefits of this major redevelopment project will be limited if more moorage and long term gear storage facilities are not developed elsewhere. The Fishermen's Investment Company site offers the necessary land for long term gear storage, service and work docks, permanent and transient moorage for boats up to 300 feet in length, and marine industrial lease facilities. Developing this facility would be strategic for the Port. Then, the Port Dock 7 fill area could be completely redeveloped for more appropriate uses.

The port's International Terminals facility has the capability for minor expansions of cargo staging areas, or possibly for the addition of facilities for barges or commercial fishing vessels. However, available land limits the potential for growth at this location.

McLean Point has the largest parcel of undeveloped property on the lower bay. This property is privately owned, and plans for development have not been announced. It would be well suited for a wide variety of uses such as:

- Boat haulout and marine fabrication
- Gear storage and staging
- Service and work docks
- Fish receiving, buying and processing facilities

- Moorage
- Commercial shipping terminals
- Surimi processing

This undeveloped parcel of land is critical to the overall development of the lower bay. If it is not developed, then the Port of Newport should consider buying or leasing the property with the intent to develop it to meet the needs of the shipping or fishing industries.

The South Beach peninsula serves as the home for many recreational boaters and for the research and education community. Potential developments that are attractive to the long term use of this area include moorages for research vessels, continued expansion of the Marine Science Center, and continued development at the Newport Marina at South Beach complex.

Idaho Point offers limited potential for development. Possibly a small boat haulout facility servicing the smaller commercial fishing boats could be developed. The shallow channel to the area, its small land area suitable for development, and its isolation from other businesses and support facilities severely limit the potential for developing a major haulout facility.

Development Restrictions: Limited funding and environmental regulations will be the most likely restrictions to developing the identified projects. Projects that should be developed in the next five years are those without major environmental restraints or that are fairly small in scale. Other projects should be developed later, as market conditions dictate or as funds become available. Construction on the waterfront is not inexpensive, and foundation conditions along the north side of Yaquina Bay are complicated by a very dense Nye mudstone formation, locally called "hardpan."

GOALS AND POLICIES
YAQUINA BAY AND ESTUARY

Goal: To recognize and balance the unique economic, social, and environmental values of the Yaquina Bay Estuary.

Policy 1: Balanced Use of Estuary. The City of Newport shall continue to ensure that the overall management of the Yaquina Bay Estuary shall provide for the balanced development, conservation, and natural preservation of the Yaquina Bay Estuary as appropriate in various areas.

Policy 2: Cooperative Management. The city will cooperate with Lincoln County, the State of Oregon, and the Federal Government in the management of the Yaquina Bay Estuary.

Policy 3: Use Priorities. The Yaquina Bay Estuary represents an economic

resource and provides vital ecosystem services of regional importance. The overall management of the estuary shall ensure adequate provision for protection of the estuarine ecosystem, including its biological productivity, habitat, diversity, unique features and water quality, and development, consistent with its overall management classification – deep-draft development – and according to the following general priorities (from highest to lowest). The prioritization of management policies is not intended to reduce or alter the tribal trust responsibilities of the federal government:

a) Uses which maintain the integrity of the estuarine ecosystem;

b) Water dependent uses requiring an estuarine location;

c) Water related uses which do not degrade or reduce natural estuarine resources and values;

d) Non-dependent, non-related uses that do not alter, degrade, or reduce estuarine resources or values and are compatible with existing and committed uses.

Policy 4: Natural Resources. The Yaquina Bay Estuary supports a variety of vitally important natural resources that also support the major economic sectors of Newport and the surrounding area. The overall management of the estuary shall include adequate provision for both conservation and preservation of natural resources. This will include consideration of culturally important tribal resources.

Policy 5: Riparian Vegetation. Riparian vegetation shall be protected along the Yaquina Bay shoreland where it exists. The only identified riparian vegetation within the UGB is that shoreland vegetation adjacent to Management Unit 9 A. This vegetation shall be protected by requiring a fifty (50) foot setback from the high water line for any development in the area. Adjacent public roads may be maintained as needed.

Policy 6: Recreational Resources. The Yaquina Bay Estuary represents a recreational resource of both local and statewide importance. Management of the estuary shall protect recreational values and ensure adequate public access to the estuary. This will include consideration of culturally important tribal resources.

Policy 7: Dredged material disposal sites identified in the Yaquina Bay and River Dredged Material Disposal Plan, which are located within the Newport urban growth boundary, shall be protected. Development that would preclude the future use of these sites for dredged material disposal shall not be allowed unless a demonstration can be made that adequate alternative disposal sites are available. Dredging and/or filling in the estuary shall be allowed only:

a.) if required for navigation or other water dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this plan; and

b.) if a need (e.g., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights or tribal cultural resources or practices; and

c.) if no feasible alternative upland locations exist; and

d.) if adverse impacts are minimized to the extent practical.

e.) other uses and activities which could alter the estuary shall only be allowed if the requirements in b., c., and d. are met.

Policy 8: All restoration projects should serve to revitalize, return, replace or otherwise improve estuarine ecosystem characteristics. Examples include restoration of biological productivity, fish or wildlife habitat, other natural or cultural characteristics or resources, or ecosystem services that have been diminished or lost by past alterations, activities or catastrophic events. In general, beneficial restoration of estuarine resources and habitats, consistent with Statewide Planning Goal 16, should be facilitated through implementing measures.

Policy 9: Newport Sub-Area. The primary objective in the Newport sub-area shall be to manage the development of water dependent uses, including but not limited to deep draft navigation, marine research, and commercial fishery support facilities. In general, non-water related uses shall not occupy estuarine surface area. However, limited non-water related uses may be permitted in keeping with the scenic and historic bayfront community on the north side of the sub-area. Adverse impacts of development on natural resources and established recreational uses shall be minimized to the extent practical. Land uses of adjacent shorelands should be consistent with the preferences and uses of other sub-areas.

Policy 10: Bayfront Uses. The city shall encourage a mix of uses on the bayfront. Preference shall be given to water-dependent or water-related uses for properties adjacent the bay. Nonwater-dependent or related uses shall be encouraged to locate on upland properties.

Policy 11: Water-Dependent Zoning Districts. Areas especially suited for water-dependent development shall be protected for that development by the application of the W-1/"Water-Dependent" zoning district. Temporary uses that involve minimal capital investment and no permanent structures shall be allowed, and uses in conjunction with and incidental to water-dependent uses may be allowed.

Policy 12: Solutions To Erosion and Flooding. Nonstructural solutions to problems of erosion or flooding shall be preferred to structural solutions. Where flood and erosion control structures are shown to be necessary, they shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns, to the extent practical. Additionally, or cobble/pebble dynamic revetments in MU 8 and 9~~-A~~ to be allowed, the project must demonstrate a need to protect public facility uses, that land use management practices and nonstructural solutions are inadequate,

and the proposal is consistent with the applicable management unit as required by Goal 16.

Policy 13: Impact Assessment. Impact Assessments are required for dredging, fill, in-water structures, shoreline protective structures including riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow lane disposal of dredged material, and other activities that could affect the estuary's physical processes or biological resources.

The Impact Assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases, it should enable reviewers to gain a clear understanding of the impacts to be expected. The Impact Assessment shall be submitted in writing to the local jurisdiction and include information on:

a.) The type and extent of alterations expected;

b.) The type of resource(s) affected;

c.) The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;

d.) The expected extent of impacts of the proposed alteration must reference relevant Climate Vulnerabilities as described in applicable sub-area(s) for the management unit(s) where the alterations are proposed (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

1.) long term continued use of the proposed alteration

2.) water quality and other physical characteristics of the estuary,

3.) living resources,

4.) recreation and aesthetic use,

5.) navigation, and

6.) other existing and potential uses of the estuary;

e.) The methods which could be employed to avoid or minimize adverse impacts

to the extent practical; and

f.) References, information, and maps relied upon to address (1) through (5) above.

Policy 14: Alteration of the Estuary. Uses and activities other than dredge and fill activity which could alter the estuary shall be allowed only:

a.) If the need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;

b.) If no feasible alternative upland locations exist; and

c.) If adverse impacts are minimized to the extent practical.

Policy 15: Resource Capability Determinations - Natural Management Units. Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, injury, or for future intended use.

Policy 16: Resource Capability Determinations - Conservation Management Units. Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

Policy 17: Temporary Alterations in Natural and Conservation Management Units. A temporary alteration is dredging, filling, or other estuarine alteration occurring over no more than three years which is needed to facilitate a use allowed by the Comprehensive Plan ~~and the Permitted Use Matrices~~ of the Zoning Ordinance. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

Temporary alterations include:

> Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);

> Alterations to establish mitigation sites, alterations for bridge construction or repair, and for drilling or other exploratory operations; and

> Minor structures (such as blinds) necessary for research and educational observation.

Temporary alterations require a resource capability determination to ei~~i~~nsure that:

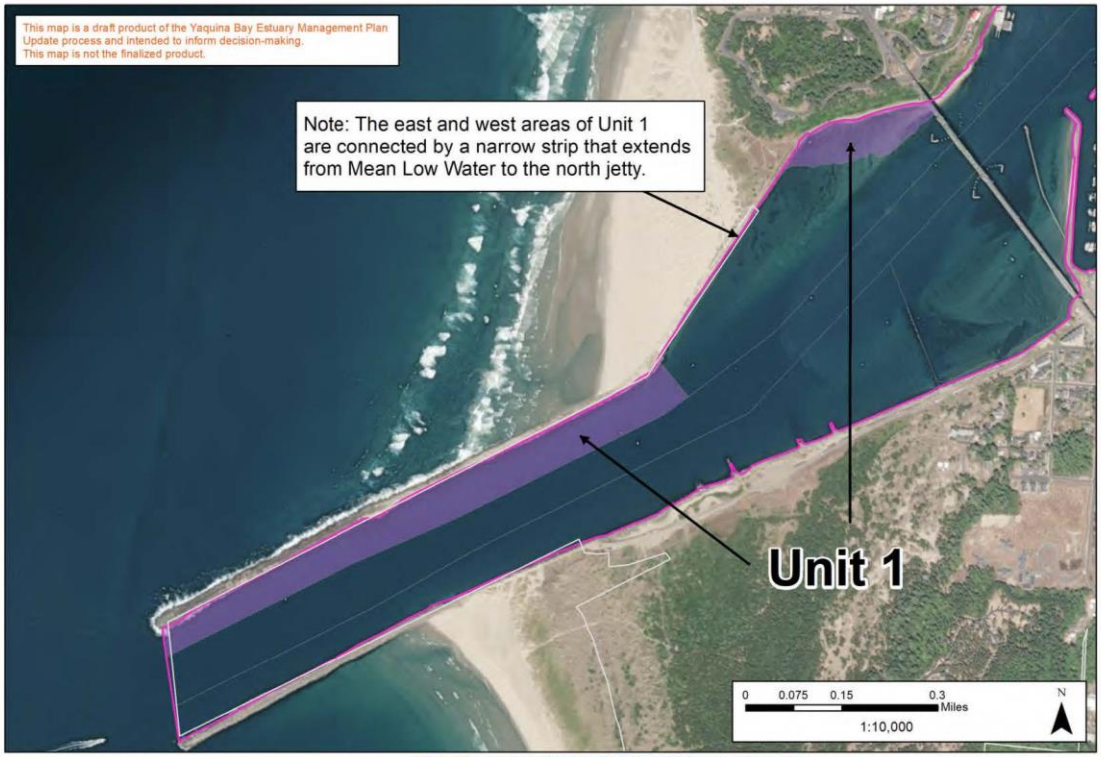
> The short-term damage to resources is consistent with resource capabilities of the area; and

> The area and affected resources can be restored to their original condition.

Policy 18: Exempt Uses. New development or redevelopment that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as exempt from estuarine review.

Individual Yaquina Bay Management Unit Maps

Estuary Management Unit 1



Estuary Management Unit: 1

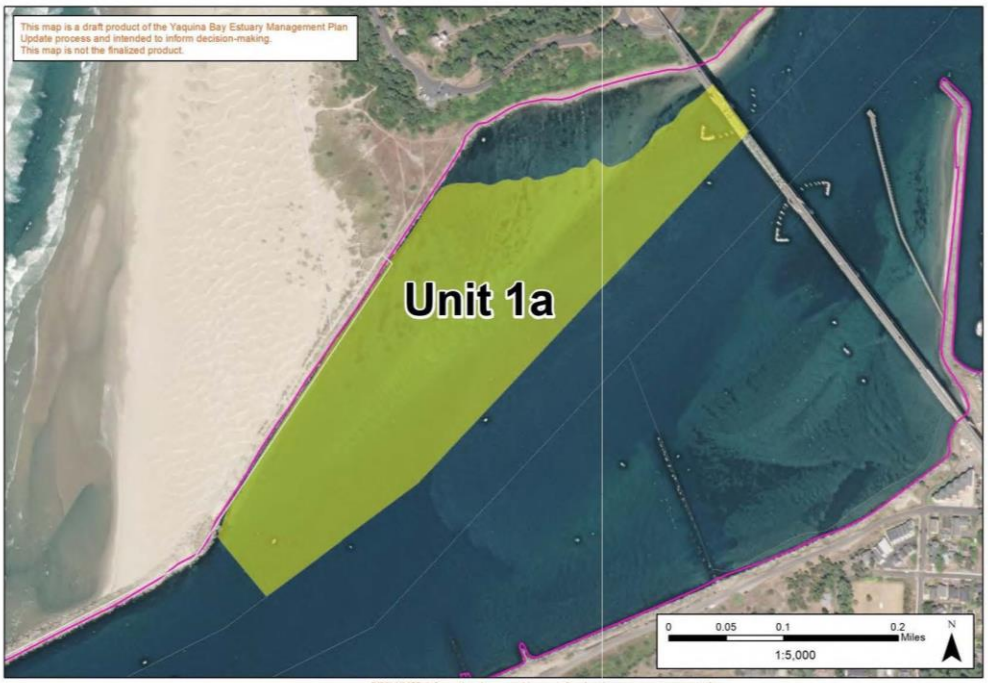
Date: 8/25/2023,
Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: Lincoln County, "YEMP_MUs", (2023)

DISCLAIMER: Information shown on this map is for planning purposes, represents the conditions that exist at the map date, and is subject to change. This information or data is provided with the understanding that conclusions drawn from such information are the responsibility of the user. Refer to the original source documentation to better understand the data sources, results, methodologies and limitations of each dataset presented. Lincoln County makes no claims, representations or warranties as to the accuracy or completeness of these external data layers.

Legend

- Natural Units
- Conservation Units
- Development Units
- Estuary Boundary
- City Limits
- Railroad

Estuary Management Unit 1a



Estuary Management Unit: 1a

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Legend

- Natural Units
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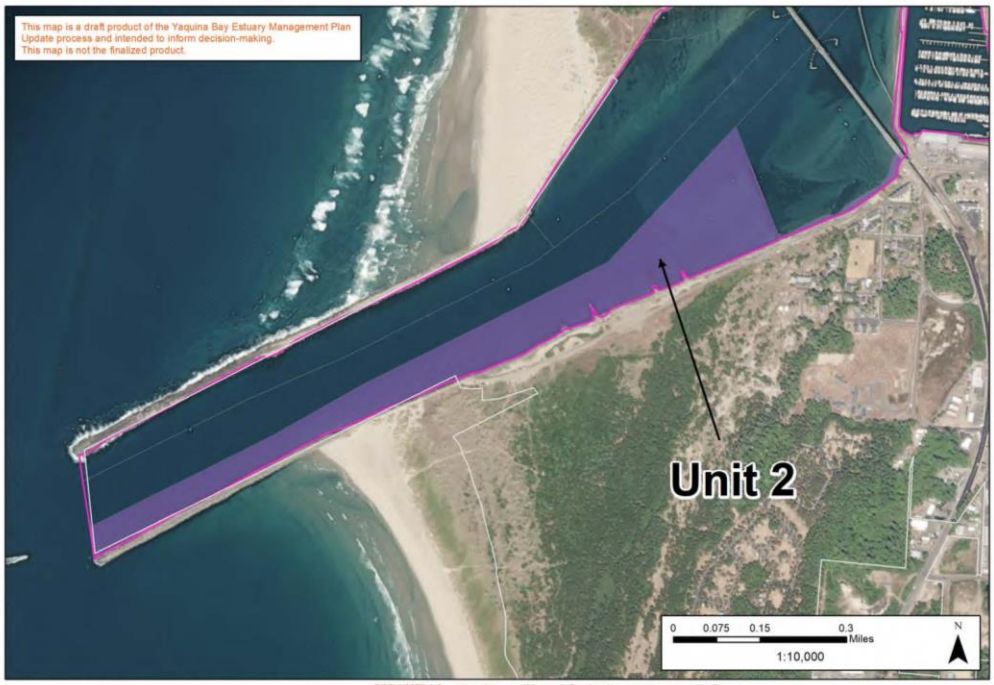
- Railroad

Estuary Management Unit 2



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Legend

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- Conservation Units
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- Estuary Boundary
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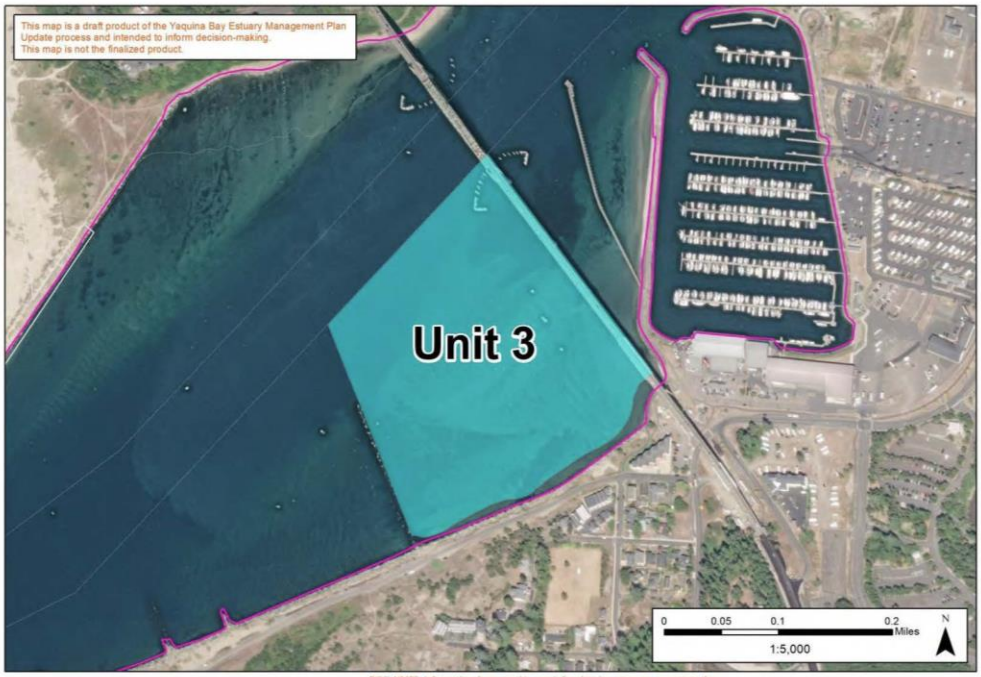
- Railroad

Estuary Management Unit 3



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Legend

- Natural Units
- Conservation Units
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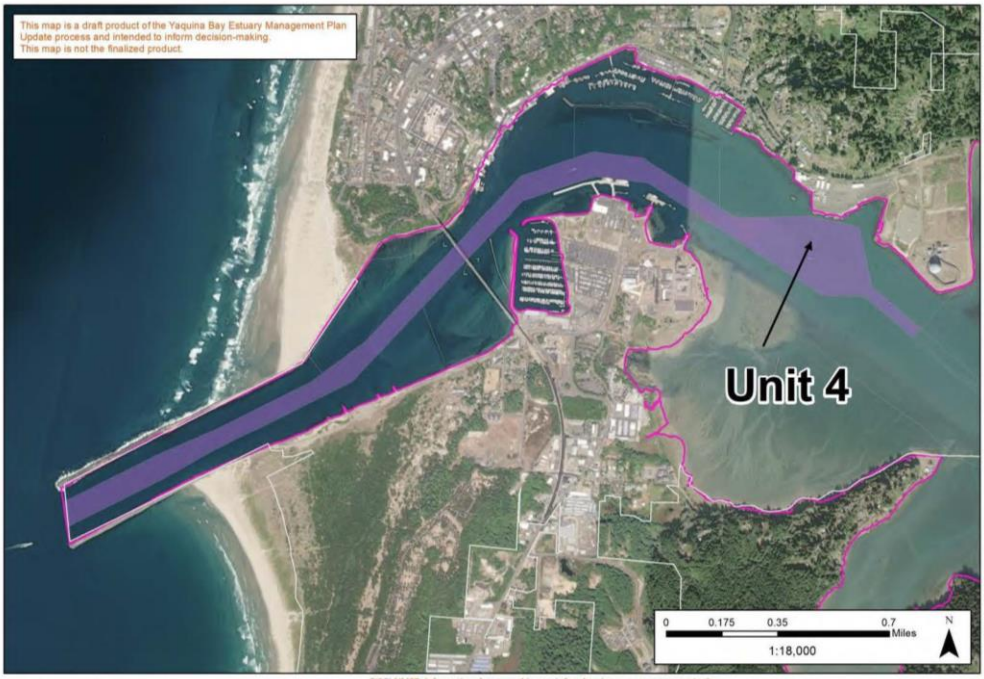
- Estuary Boundary
- City Limits
- Railroad

Estuary Management Unit 4



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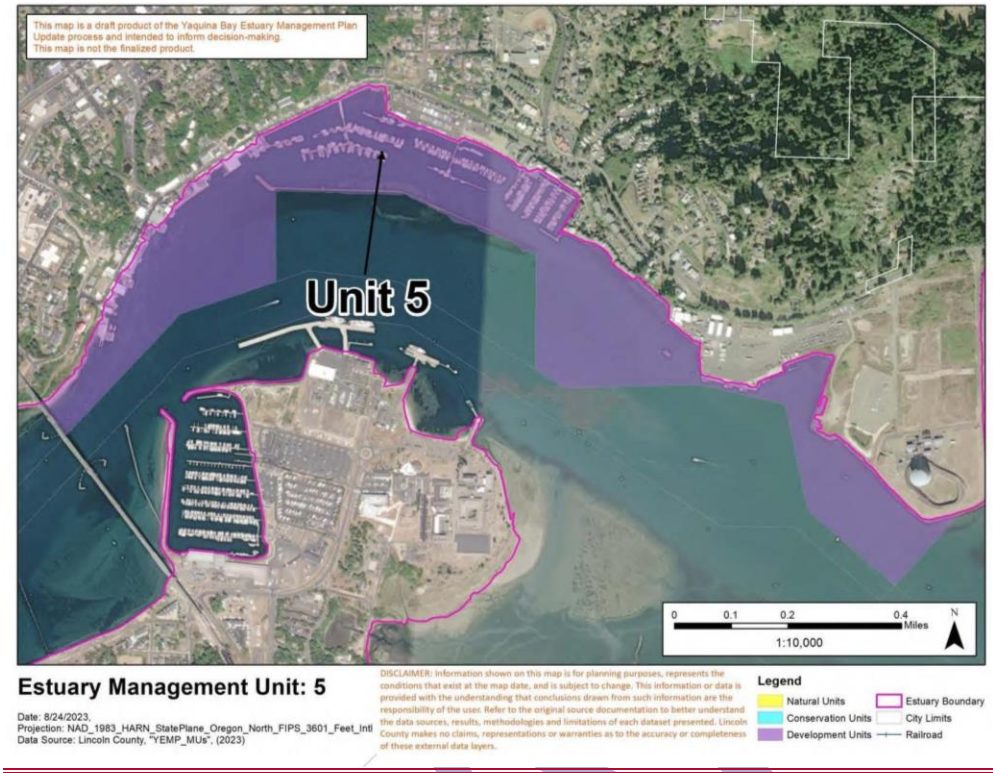
DISCLAIMER: Information shown on this map is for planning purposes, represents the conditions that exist at the map date, and is subject to change. This information or data is provided with the understanding that conclusions drawn from such information are the responsibility of the user. Refer to the original source documentation to better understand the data sources, results, methodologies and limitations of each dataset presented. Lincoln County makes no claims, representations or warranties as to the accuracy or completeness of these external data layers.

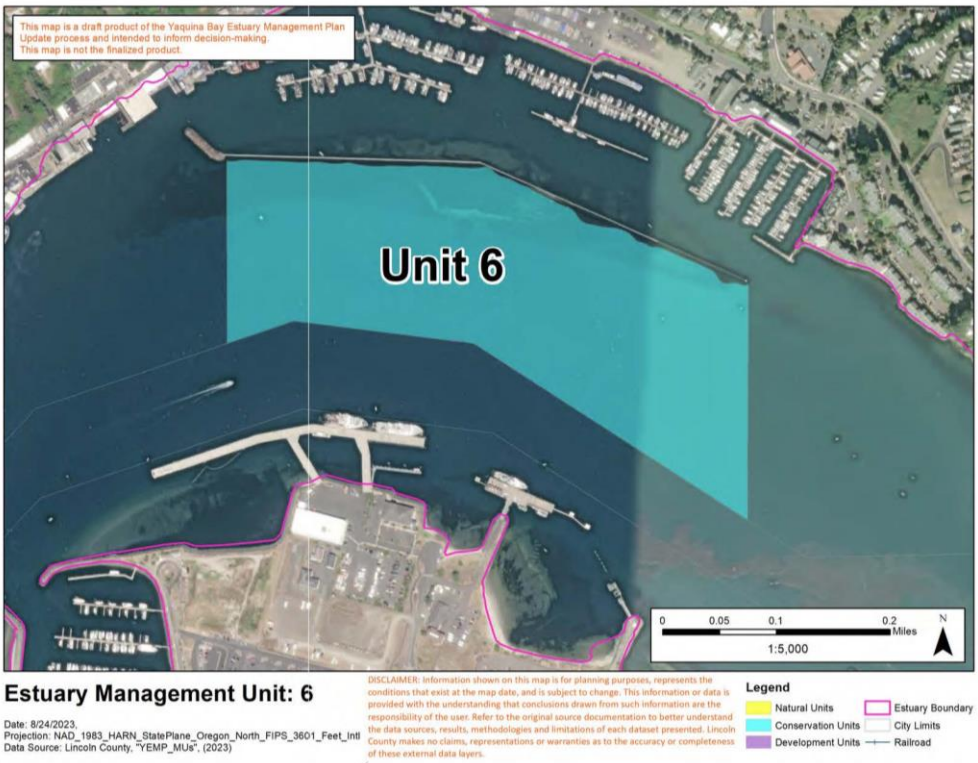
Legend

- Natural Units
- Conservation Units
- Development Units
- Estuary Boundary
- City Limits
- Railroad

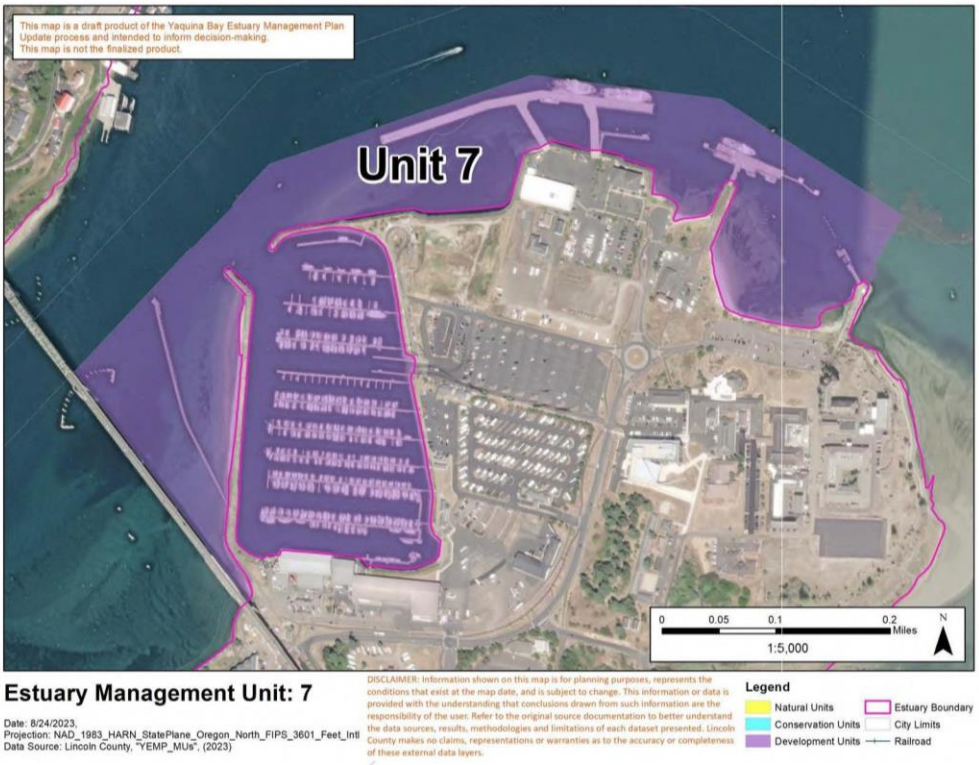
Estuary Management Unit 5



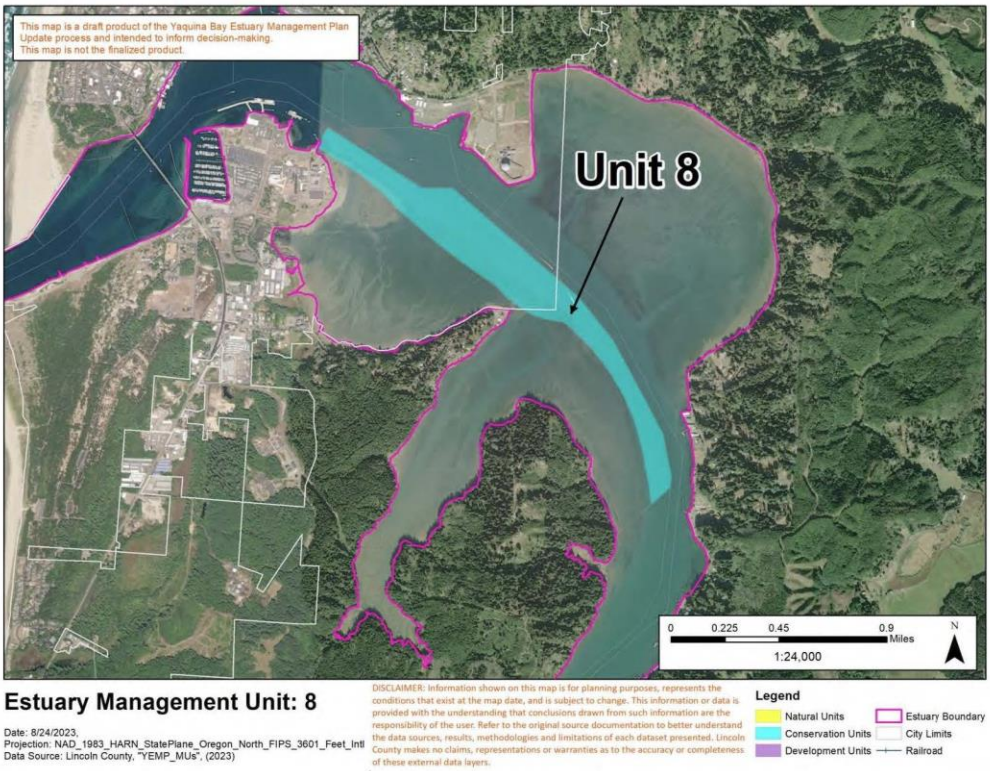
Estuary Management Unit 6



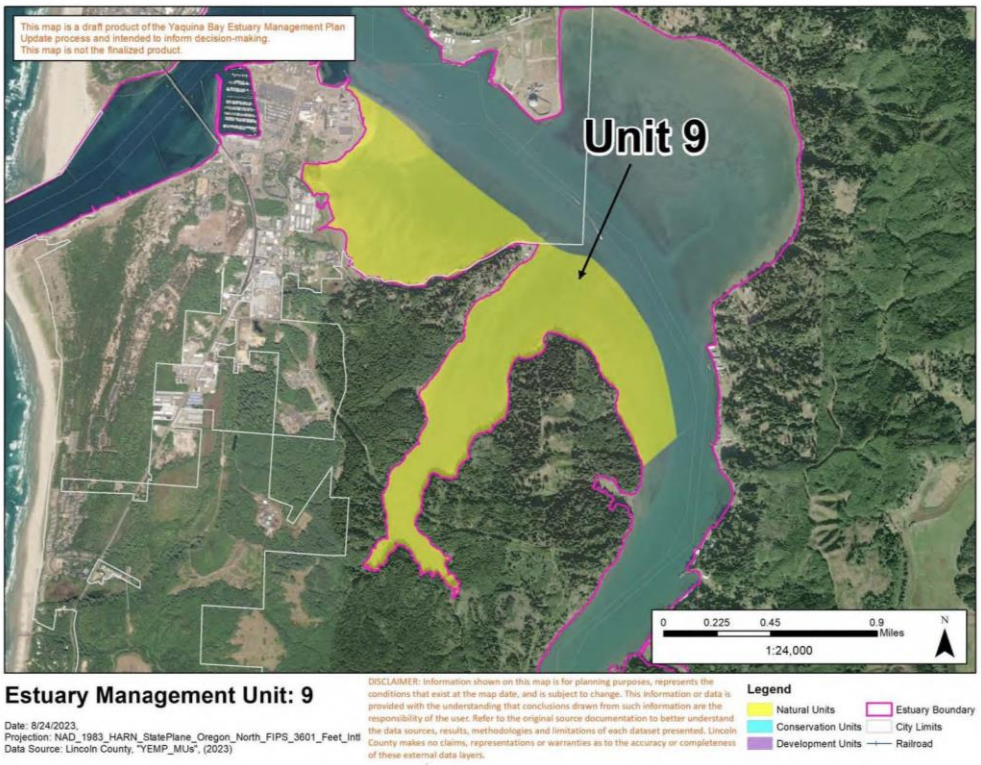
Estuary Management Unit 7



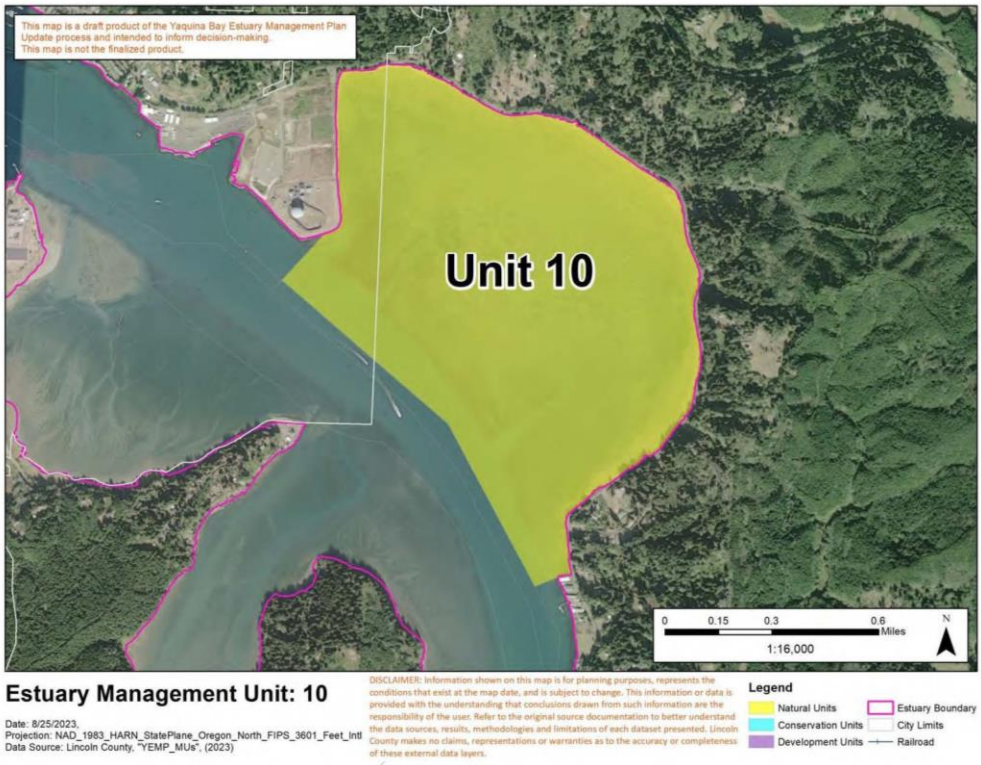
Estuary Management Unit 8



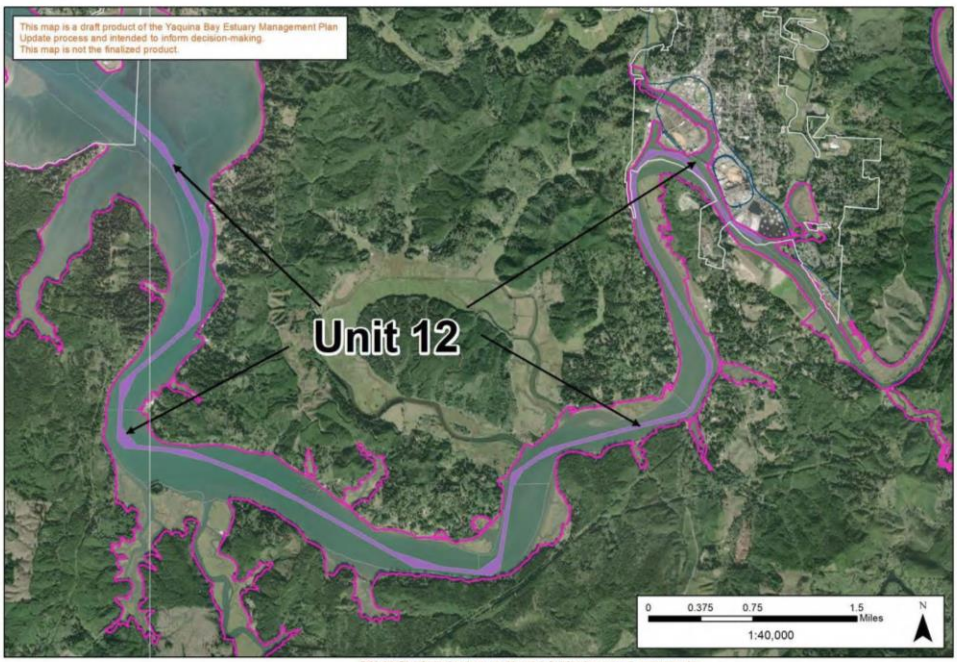
Estuary Management Unit 9



Estuary Management Unit 10



Estuary Management Unit 12



Estuary Management Unit: 12

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Legend

- Natural Units
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June 20, 2024 Revisions to NMC Chapter 14 Implementing Relevant Provisions of the Updated Yaquina Bay Estuary Plan

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS**

***

14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

***

Adverse Impact (Significant). means any impact, resulting in degradation of ~~an important~~ resource, that is unacceptable because it cannot be mitigated or because of unacceptable conflicts in the management or use of the impacted resource.

Alteration (estuary). means any human-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.

Aquaculture. the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

Breakwater. An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

Bridge Crossing. A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

Bridge Crossing Support Structures. Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

Commented [SG1]: Well done definitions except they don't include policy definitions-- see comments below

Commented [DT2]: Added definition per DLCD's recommendation.

Commented [MR3R2]: Made an edit to delete "important."

Commented [DT4]: Added definition from OAR 660-017-0005.

Climate Change. The increasing changes in the measures of climate over a long period of time including precipitation, temperature, and wind patterns.

Cobble Dynamic Revetment. The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble dynamic revetment represents a transitional strategy between a conventional riprap revetment of large interlocking stones and a beach nourishment project.

Dike. An earthen embankment or ridge constructed to restrain high waters.

Docks. A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

Dredging (estuary). The removal of sediment or other material from the estuary for the purpose of deepening a channel, mooring basin, or other navigation area. (This does not apply to dredging for clams.)

Dredged Material Disposal (estuary). The deposition of dredged material in estuarine areas or shorelands.

Dolphin. A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

Estuarine Enhancement. An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

Excavation (estuary). The process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

Fill (estuary). The placement of material in the estuary to create new shoreland area or raise the elevation of land.

Groin. A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

Jetty. An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

Management Unit. A policy level in the Yaquina Bay Estuary Management Plan that is designed to provide specific implementing provisions for individual project proposals. Each unit is given a management classification of Natural, Conservation, or Development. These classifications are based on the resource characteristics of the units as determined through an analysis of resource inventory information. The classification carries with it a general description of intent and a management objective. Each management unit objective is implemented by its applicable Estuary Zoning District which specifies uses and activities that are permitted or conditional within the unit. Many management units also contain a set of Special Policies that relate specifically to that individual unit.

Commented [DT5]: Added definition of Management Unit. Aligns with similar language in the Estuary Management Plan.

Marina. A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

Minor Navigational Improvements. Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

Mitigation (estuary). The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

Pier. A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

Pile Dike. Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

Piling. A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise

embedded into the bed of the estuary for the purpose of supporting a load.

Port Facilities. Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.

Restoration (estuary). Revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

Active restoration involves the use of specific remedial actions such as removing fills or dikes, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas, etc.

Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

Shoreline stabilization. The stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

Submerged Crossings. Power, telephone, water, sewer, gas, or other transmission lines that are constructed beneath the estuary, usually by embedding into the bottom of the estuary.

Temporary Alteration (estuary). Dredging, filling, or other estuarine alteration occurring over a specified short period of time (not to exceed three years) that is needed to facilitate a use allowed by the applicable Estuary Zoning District. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

Wharf. A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

Staff: The above definitions will be added to NMC Chapter 14.01 in alphabetical order. The terms provide context for regulatory changes in NMC Chapter 14.04.

***

CHAPTER 14.02 ESTABLISHMENT OF ZONES

14.02.010 Establishment of Zones

In order to carry out the purpose and provisions of this Code, the following zones are hereby established:

Zone Designation	Abbreviated
Estuary Conservation Zone	(E-C)
Estuary Development Zone	(E-D)
Estuary Natural Zone	(E-N)
Low Density Residential	(R-1)
Low Density Residential	(R-2)
High Density Residential	(R-3)
High Density Residential	(R-4)
Retail Commercial	(C-1)
Tourist Commercial	(C-2)
Highway Commercial	(C-3)
Light Industrial	(I-1)
Medium Industrial	(I-2)
Heavy Industrial	(I-3)
Water Dependent	(W-1)
Water Related	(W-2)
~~Management Unit 1~~	~~(Mu-1)~~
~~Management Unit 2~~	~~(Mu-2)~~
~~Management Unit 3~~	~~(Mu-3)~~
~~Management Unit 4~~	~~(Mu-4)~~
~~Management Unit 5~~	~~(Mu-5)~~
~~Management Unit 6~~	~~(Mu-6)~~

Commented [SG6]: You have eliminated the individual management units and collapsed them within their designated zones. How does this reconcile with the Estuary Management plan itself which has individual information for each management unit (although very incomplete and poorly done)?

Commented [MR7R6]: Through the other pieces of this code as updated through the revisions, an applicant will need to address the individual management unit objectives and special policies so that is not being lost through the change to the zoning district concept.

~~Management Unit 7~~	~~(Mu-7)~~
~~Management Unit 8~~	~~(Mu-8)~~
~~Management Unit 9~~	~~(Mu-9)~~
~~Management Unit 10~~	~~(Mu-10)~~
Public Buildings and Structures	(P-1)
Public Recreation	(P-2)
Public Open Space	(P-3)
~~Mobile Homes~~	~~(M-H)~~

Staff: The Management Units have been categorized under three new zoning classifications, "Estuary Conservation Zone," "Estuary Development Zone," and "Estuary Natural Zone" and will no longer be independent zoning districts. These revisions reflect that change. The City eliminated its M-H zoning overlay decades ago, so that deletion is a housekeeping clean-up item. The same is true with respect to the addition of the I-3 zone district, which was inadvertently left off of the table.

***

CHAPTER 14.03 ZONING DISTRICTS

Commented [GS8]: Must admit that I don't understand "zoning districts" relative to using either a category of "zone" or "district". Probably something to do with the planning definitions and lexicon.

Commented [MR9R8]: It is the same as it would be on land - this is how Newport describes all of its base zones. For example, residential, commercial, industrial. The concept is the same in the water as it is on land.

14.03.010 Purpose.

It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into ~~four~~ five (~~4~~5) basic classifications and ~~thirteen~~ eighteen (~~13~~18) use districts as follows:

A. Districts zoned for residential use(s).

1. R-1 Low Density Single-Family Residential.

2. R-2 Medium Density Single-Family Residential.

3. R-3 Medium Density Multi-Family Residential.

4. R-4 High Density Multi-Family Residential.

B. Districts zoned for commercial use(s).

1. C-1 Retail and Service Commercial.

2. C-2 Tourist Commercial.

3. C-3 Heavy Commercial.

C. Districts zoned for industrial use(s).

1. I-1 Light Industrial.

2. I-2 Medium Industrial.

3. I-3 Heavy Industrial.

4. W-1 Water Dependent.

5. W-2 Water Related.

D. Districts zoned for public use(s).

1. P-1 Public Structures.

2. P-2 Public Parks.

3. P-3 Public Open Space.

E. Districts zoned for estuary use(s).

1. E-C Estuary Conservation

2. E-D Estuary Development

3. E-N Estuary Natural

Staff: The above changes add the three estuary zones to the list of zone districts within the City of Newport.

***

14.03.040 Intent of Zoning Districts.

Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

E-C/"Estuary Conservation." The intent of the E-C district is to conserve, protect, and where appropriate enhance renewable estuarine resources for long term uses and to manage for uses that do not substantially degrade the natural or recreational resources or require major alterations to the estuary.

E-D/"Estuary Development." The intent of the E-D district is to provide for water dependent and water related development. Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses. Non-water related uses may also be permitted in this district.

E-N/"Estuary Natural." The intent of the E-N district is to preserve, protect and where appropriate enhance these areas ~~for the resource~~ and support the values and functions they provide. These areas shall be managed to ensure the protection of significant fish and wildlife habitats; of continued biological productivity within the estuary; and of scientific, research, and educational needs.

Staff: This section of the Newport Municipal Code includes "intent statements" for each of the City's zoning districts. The intent language for these three new zone districts aligns with the Management objectives for each of them, as outlined in the updated Yaquina Bay Estuary Management Plan.

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14.03.120 Estuary Uses

The following list sets forth the uses allowed within the estuary land use classification. Management units are a subclassification of the listed zones. Uses not identified herein are not allowed.

"P" = Permitted Uses.

Commented [SG10]: I assume these are totally consistent with Goal 16 (which of course provides more detail). Should you reference Goal 16?

Commented [MR11R10]: These zoning districts and their intents are consistent with the text of the updated Yaquina Bay EMP which is consistent with Goal 16. This is true of all parts of the zoning code as they are shaped by the statewide planning goals. There is no need to reference the goal itself.

Commented [SG12]: Is this phrase defined anywhere—who determines substantial degradation?

Commented [MR13R12]: In this case, this is a statement of the zone's intent. It would be incorporated into the existing list of all the other zoning districts in Newport (such as "Low Density Single-Family Residential" and "Light Industrial"). Applications are reviewed against all the applicable criteria in the zoning code and not just the intent descriptions. Intent statements are typically general and include terms that are not necessarily defined, but rather they describe land use categories that have common characteristics and development.

Commented [SG14]: Is the phrase "major alteration" defined anywhere?

Commented [MR15R14]: It is not. We have added a definition for "alteration."

Commented [GS16]: I assume that means that major alterations are allowed in the ED district.

Commented [MR17R16]: They can be, as long as they meet the other applicable criteria for those zones and any special policies of the development management unit. The major alteration must be for water-related or water-dependent uses.

Commented [DT18]: Add reference to non-water dependent and water-related uses.

Commented [MR19R18]: Added suggested language.

Commented [GS20]: No mention here about allowable uses consistent with Goal 16. Need additional wording such as "and allows uses consistent with this intent that do not have significant impacts on the natural area."

Commented [MR21R20]: Additional language added from the revised YBEMP here as an example.

The list of allowable uses (consistent with Goal 16) are listed in the next section: 14.03.120.

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"C" = Conditional uses subject to the approval of a conditional use permit.

"X" = Not Allowed.

		E-C	E-D	E-N
	Management Units	3, 6, and 8	1, 2, 4, 5, 7, and 12	1a, 9, and 10
1.	Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.	C	P [3]	C [1]
2.	Aquaculture requiring dredge, fill or other alteration of estuarine aquatic area.	C [1]	P [3]	X
3.	Aquaculture that does not involve dredge or fill or other estuarine aquatic area alteration except that incidental dredging for harvest of benthic species or the use of removable structures such as stakes or racks may be permitted.	C	P [3]	C [1]
4.	Boat ramps for public use not requiring dredge or fill.	C	P [4]	C [1]
5.	Bridge crossing support structures and dredging necessary for their installation.	C	P [3]	C [1]
6.	Bridge crossing spans that do not require the placement of support structures within an E-C or E-N zone.	P	P	P
7.	Commercial boat basins and similar moorage facilities.	X	C	X
8.	Communication facilities.	C	P [3]	C [1]
9.	High intensity water dependent recreation, including, but not limited to, boat ramps and marinas, and including new and maintenance dredging for such uses.	C [1]	C	X
10.	Installation of tide gates in existing functional dikes.	C	P [3]	C [1]
11.	In-water disposal of dredged material.	X	C	X
12.	Marine terminals.	X	C	X
13.	Mining and mineral extraction, including dredging necessary for such extraction.	C [1]	P [3]	X
14.	Minor navigational improvements.	C [1]	P [3]	X
15.	Navigation activities and improvements.	X	C	X
16.	Navigation aids such as beacons and buoys.	C	P [3]	C
17.	On-site maintenance of existing functional tide gates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.	C	P [3]	C

Commented [SG22]: OK—so aquaculture is allowed conditionally in natural areas.

Commented [MR23R22]: Correct - it is a conditional use subject to the resource capability test. Also, in E-N, aquaculture is limited to activities that do not include dredge or fill or alteration other than what is listed in the table. This language is directly from Goal 16.

18.	Other water dependent uses requiring the occupation of estuarine surface area by means other than fill	C [1]	P [3]	X
19.	Passive restoration activities.	P [2]	P [3]	P [2]
20.	Pipelines, cables and utility crossings including incidental dredging necessary for their installation.	C	P [3]	C [1]
21.	Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources.	P [2]	P [3]	P [2]
22.	Research and educational observations.	P [2]	P [3]	P [2]
23.	Riprap for the protection of uses existing as of October 7, 1977.	C	P [3]	C
24.	Riprap for the protection of unique resources, historical and archeological values, and public facilities.	C	P [3]	C
25.	Temporary alterations.	C [1]	P [3]	C [1]
26.	Undeveloped low intensity recreation.	P [2]	P [3]	P [2]
27.	Water dependent commercial uses.	X	P [4]	X
28.	Water dependent industrial uses.	X	P [4]	X
29.	Uses allowed conditionally in an adjacent water-dependent or water-related zone district	X	C	X
30.	Water storage of products used in industry, commerce, or recreation.	X	C	X

1. Conditional use is subject to a resource capability test.

2. Projects that require aquatic area alteration may be permitted as conditional uses.

3. Projects may, or may not, include aquatic area alteration and are subject to staff level review using a Type 1 decision making process.

4. Projects are subject to staff level review using a Type 1 decision making process unless they involve dredging or the placement of fill, in which case they are subject to conditional use review.

Staff: The above table is formatted to match those used for other zone classifications within the City. The footnotes inform the level of review required, with detailed standards being included in the NMC Chapter 14.04

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CHAPTER 14.04 ESTUARINE USE STANDARDS

14.04.010 Purpose

The purpose of this section to establish standards for new development and redevelopment within estuarine aquatic

Commented [DT24]: Added additional use allowance that should have been included. Picks up Bayfront conditional uses.

Commented [SG25]: Might be good to define this but assume it means showing no adverse significant impact to the natural productivity and ecological functioning of the management unity (as compared to an entire zone).

Commented [MR26R25]: The resource capability test has its own section in the code (Conditional Use Standards).

Commented [SG27]: Define

Commented [MR28R27]: Type 1 procedures are defined in the city's existing code, Chapter 14.52

areas in a manner consistent with Statewide Planning Goal 16. As used in this section, "estuarine aquatic area" means estuarine waters, submerged lands, tidelands, and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.

14.04.020 Exempt Uses

The following uses and their accessory uses are permitted outright and are not subject to the standards contained in this chapter:

A. Within all Estuary Zone Districts

1. Undeveloped low intensity recreation requiring no aquatic area alteration.
2. Research and educational observations requiring no aquatic area alteration.
3. Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources requiring no aquatic area alteration.
4. Passive restoration that requires no aquatic area alteration.
5. Bridge crossing spans that do not require the placement of support structures.

B. Within the E-D Zone District

1. Piling repair involving welded patches, wraps, sleeves, or the injection of grout or similar reinforcing material.
2. Removal or installation of not more than six pile associated with an in-water structure within a 12 month period.
3. In-kind replacement of a floating structure.
4. Underwater welding.

Commented [DT29]: Added minor development activities exempt from City estuarine review. May still require Army Corps/DSL permit. These changes have not been reviewed by DLCD and may need to be adjusted prior to a hearing.

14.04.030 General Standards

The following standards will be applied to all new uses, expansion of existing structures, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

A. Structures: Structures include all constructed facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands. All structures proposed within an estuary zoning district must adhere to the following:

1. The siting and design of all structures shall be chosen to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, and patterns of erosion and accretion, to the extent practical.
2. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.
3. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.
4. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.
5. Where feasible, breakwaters of the floating type shall be preferred over those of solid construction.
6. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions to this requirement may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.
7. Individual single-purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.
8. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.
9. For structures associated with marinas or port facilities:

Commented [SG30]: But minimizing at what cost? Often a phrase is added "to the extent practical" meaning that a huge cost cannot be incurred to achieve a small marginal benefit. I would use a phrase such as "reduce significant adverse impacts" For example see #4 below.

Commented [MR31R30]: Adding "to the extent practical" or to "reduce significant adverse impacts" would be fine. This section of the city's code is outside of what is required by Goal 16.

Commented [DT32R30]: Added "to the extent practical"

Commented [MR33]: Does this mean a goal exception? Or exemption from this requirement? Might be good to clarify.

Commented [DT34R33]: Language has been clarified.

Commented [SG35]: Define!

Commented [MR36R35]: Potential definition: "Significant Adverse Impact means any impact, resulting in degradation of an important resource, that is unacceptable because it cannot be mitigated or because of unacceptable conflicts in the management or use of the impacted resource."

Commented [DT37R35]: Definition added.

a. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities;
b. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be encouraged;
c. Provision of public access to the estuary shall be encouraged, where feasible and consistent with security and safety requirements.

10. Shoreline stabilization structures shall be confined to those areas where:
    a. Active erosion is occurring that threatens existing uses or structures; or
    b. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities;
11. Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal demonstrates that a higher priority method is unreasonable. The following, in order, are the preferred methods of shoreline stabilization:
    a. Vegetative or other nonstructural technique;
    b. Cobble dynamic revetment;
    c. Vegetated riprap;
    d. Unvegetated riprap;
    e. Bulkheads (except that the use of bulkheads shall be limited to ED and EC management units only).
12. Minor modifications of the shoreline profile may be permitted on a case-by-case basis. These alterations shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.

B. Dikes: New diking is the placement of dikes on an area that has never been previously diked; or has previously been diked but all or a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.
1. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.
2. New dikes in estuarine areas shall be allowed only:
a. As part of an approved fill project, subject to the standards for fill in the applicable Estuary Zoning District; and

Commented [SG38]: This a two word awkward phrase. I would eliminate or add the word "feasibility" next to security and safety at end of the sentence. .

Commented [MR39R38]: Agree that this wording is awkward.

Commented [DT40R38]: Language has been redrafted for clarity.

b. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.
3. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill in the applicable Estuary Zoning District.
4. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

C. Submerged Crossings:
1. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in the applicable Estuary Zoning District.
2. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.
3. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

D. Excavation:
1. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.
2. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.
3. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.
4. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

14.04.040 Special Standards

A. Dredging, filling, or other alterations of the estuary shall be allowed only:~~subject to a Resource Capability Test that satisfies the following:~~

Commented [DT41]: Retitle to "Special Standards" to match the updated Estuary Management Plan.

Commented [MR42]: The resource capability test and the dredge/fill/alteration test are two different processes under Goal 16. Edited to match the Goal's requirements.

1. ~~The activity will occur i~~In conjunction with a use authorized in accordance with a use listed in NMC 14.03.120;
2. If a~~A~~ substantial public benefit is demonstrated;
3. If ~~T~~the use or alteration does not substantially interfere with public trust rights;
4. No feasible alternative upland locations exists; and
5. If a~~A~~dverse impacts are minimized. Adverse impacts include:
   a. Short-term effects such as pollutant release, dissolved oxygen depletion, and disturbance of important biological communities.
   b. Long-term effects such as loss of fishing habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biologically harmful changes in circulation patterns.
   c. Removal of material in wetlands and productive shallow submerged lands.
6. Dredging, filling, or both is not permitted in conjunction with water related or non-water related commercial and industrial uses.

B. Restoration in the E-D Zone shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

14.04.050 Impact Assessments

A. All decisions authorizing uses that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance (e.g. docks, aquaculture facilities), a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact (e.g. navigation channels, boat basins), the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:

1. The type and extent of alterations to be authorized;

Commented [SG43]: Same comment as before—needs a modifying phrase such as to the "extent practical" and who determines what "minimized" implies in the context of major costs?

Commented [MR44R43]: The intent here is that the applicant provides this information and describes how any adverse impacts are minimized. It is a discretionary decision, made through the conditional use process. The list of potential adverse impacts included with this provision is meant to help guide what is meant by adverse impacts.

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Commented [SG45]: When is the word "use:' appropriate relative to "alterations". Are they synonymous? Is alterations a physical change only? A definition would be useful.

Commented [MR46R45]: 'Use' and 'alteration' are not synonymous. Use is defined by the city's code as: "Use: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained."

In the context of the estuary, 'use' is how the area is to be used. An activity is usually a way to get to the use. For example, dredging is an activity to develop a marina, which is the use. Both uses and activities are regulated by Goal 16. Alterations are typically about the activities occurring in the estuary to get to an approved use. 'Alteration,' while undefined in Goal 16, has broad meaning by the context in which it is used throughout the Goal.

In OAR 660-017-0005, there is a definition for estuarine alteration that could be incorporated here.

"Estuarine Alteration" means any human-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.

Commented [DT47R45]: Definition added.

Commented [SG48]: This is identical language as the estuary management plan but has the same problem. Similar to other comments is there a definition or examples of "minimal estuarine disturbance". Il this spatially or temporally dependent? Some may define minimal as zero impacts. Need good definition and examples.

Commented [MR49R48]: It is discretionary. Examples could be provided: "alterations with minimal estuarine disturbance (for example, docks, aquaculture facilities)." "Alterations with potential for greater impact, (for example, navigation channels, boat basins)."

Commented [DT50R48]: Examples added.

2. The type of resources affected;
3. The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
4. The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as described in applicable sub-area(s) and management unit (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:
    a. continued use of the proposed alteration given projected climate change impacts
    b. water quality and other physical characteristics of the estuary,
    c. living resources,
    d. recreation and aesthetic use,
    e. navigation, and
    f. other existing and potential uses of the estuary; and
5. Methods to be employed to avoid or minimize adverse impacts.

In the process of gathering necessary factual information for the preparation of the impact assessment, the Community Development Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements or assessments may be utilized to comply with this requirement if such statements are available.

14.04.060 Conditional Use Standards

A. Conditional uses within the E-N zone district shall comply with the following standards:
    1. The use is consistent with the intent of the E-N zone district; and
    2. The use complies with any applicable Special Policies of the individual Management Unit.
    3. The use shall be consistent with the resource capabilities of the Management Unit. A use is consistent with the resource capabilities of the Unit when:

Commented [DT51]: Setup sub-sections by Zone.

Commented [SG52]: I assume this is determined by the Estuary Management Plan Management Unit policies and not the city.

Commented [MR53R52]: Correct. The City could decide to include additional special policies for the management units with their jurisdiction. The city will be adopting the policies for each management unit within their jurisdiction in the Newport Comprehensive Plan.

a. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or

b. The resources of the area are able to assimilate the use and its effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, or injury or for future intended use. ~~which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.~~

4. Information from the Impact Assessment shall be used to determine if a use is consistent with the resource capability of the area.

B. Conditional uses within the E-C zone district shall comply with the following standards:

1. The use is consistent with the intent of the E-C zone district; and
2. The use complies with any applicable Special Policies of the individual Management Unit.
3. The use shall be consistent with the resource capabilities of the Management Unit. A use is consistent with the resource capabilities of the area when:
   a. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
   b. The resources of the area are able to assimilate the use and its effects and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

Commented [SG54]: This needs definition and examples. The phrase "are not significant" needs to be defined with examples.

Commented [MR55]: Meeting the resource capability test is different for conservation and natural zones as prescribed by Goal 16.

4. Information from the Impact Assessment shall be used to determine if a use is consistent with the resource capability of the area.

C. Conditional uses within the E-D zone district shall comply with the following standards:
1. The use is consistent with the intent of the E-D zone district; and
2. The use is consistent with the management objective of the individual Management Unit; and.
3. The use complies with any applicable Special Policies of the individual Management Unit.
4. The use is permitted outright or conditionally in the adjacent water-related or water-dependent zone district.
5. Information from the Impact Assessment shall be used to determine if a use satisfies the standards of this sub-section.

Commented [MR56]: This requirement should be included in E-C and E-N as well.

14.04.070 Dredged Material Disposal Standards

A. Priorities for the placement of dredged material disposal sites shall be (in order of preference):
1. Upland or approved fill project sites.
2. Approved offshore ocean disposal sites.
3. Aquatic E-D areas.

B. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

Commented [MR57]: Moved these to be first since they are important to setting the stage for disposal activities.

C. Disposal of dredged materials should occur on the smallest possible land area to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.

D. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of suspended sediments into the estuary.

E. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife to ensure adequate protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing of suspended sediments.

F. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to ensure that adequate cell structures have been constructed and are functioning properly.

G. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.

H. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.

~~Priorities for the placement of dredged material disposal sites shall be (in order of preference):~~

~~Upland or approved fill project sites.~~

~~Approved offshore ocean disposal sites.~~

~~Aquatic areas.~~

~~Where flow-lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.~~

Staff: NMC Chapter 14.04 is being rewritten in its entirety to include the approval criteria from the updated Yaquina Bay Estuary Management Plan.

CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

(Chapter to be rewritten and relevant policies will be incorporated into Chapter 14.04)

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CHAPTER 14.34 CONDITIONAL USES

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14.34.060 Supplemental Estuary Conditional Use Standards

Uses permitted conditionally within estuary zone districts, pursuant to NMC 14.03.120 shall be subject to the standards listed in NMC Chapter 14.04.

Staff: This section is being added to the end of the Conditional Use chapter to put individuals on notice that additional standards apply to conditional uses proposed within the estuary.

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CHAPTER 14.52 PROCEDURAL REQUIREMENTS

***

14.52.060 Notice

***

G. Written Notice for Land Use Decision in Estuary Zone Districts. The City of Newport shall notify state and federal agencies with ~~interest or~~ jurisdiction in estuaries of estuary use applications which may require their review. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.

Staff: This section is being added to the land use procedural chapter to identify notice requirements for City land use decisions within estuary zones.

Commented [SG58]: Is there a time frame (e.g., within 30 days etc.)

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Commented [DT59]: The notice parameters differ depending upon whether or not it is a staff level (Type II) or Planning Commission (Type III) land use action. Those timeframes are spelled out elsewhere in NMC 14.52. This provision adds state and federal agencies to the list of individuals and organizations we must notify. I am eliminating the reference to agencies with an "interest" rather than jurisdiction as that term is too open ended.

Sherri Marineau

From: Derrick Tokos
Sent: Thursday, August 22, 2024 11:34 AM
To: Sherri Marineau
Subject: FW: coalition comments to Newport Planning Commission
Attachments: YBEMP coalition comment-Newport Planning Commission 8.21.24.pdf

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From: Annie Merrill [redacted]
Sent: Wednesday, August 21, 2024 2:28 PM
To: Derrick Tokos [redacted]
Cc: REED Meg * DLCD [redacted]
Subject: coalition comments to Newport Planning Commission

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hey Derrick,

Thank you so much for sending the latest version of the Comprehensive Plan and Zoning Ordinance amendments, implementing the Yaquina Bay Estuary Management Plan.

Please see the attached testimony to the Newport Planning Commission, submitted on behalf of Oregon Shores, Coast Range Association, Bird Alliance of Oregon, and Audubon Society of Lincoln City.

I also intend to testify in person on Monday, so please sign me up.

I appreciate your thoughtfulness in responding to all my inquiries and comments thus far. Thanks so much for all your hard work.

Kind regards,
Annie

--

August 21, 2024

To: Derrick Tokos, Planning Director, Community Development Department, City of Newport; Members of the City of Newport Planning Commission;

RE: Newport Comprehensive Plan and Zoning Ordinance amendments to implement the 2023 Yaquina Bay Estuary Management Plan (File No. 1-CP-24 and 1-Z-24)

I. Introduction

Thank you for the opportunity to provide comments on the proposed amendments to the City of Newport's Comprehensive Plan and Zoning Ordinance, to implement the updated Yaquina Bay Estuary Management Plan. The undersigned groups share an interest in protecting Oregon's unique and valuable estuarine resources and the uses thereof. We submit these comments for your consideration on behalf of our thousands of members and supporters across Oregon and hundreds in Lincoln County.

We wholeheartedly support the update of the Yaquina Bay Estuary Management Plan, and several of our organizations were active participants on the Advisory Group during the update process. We applaud the City of Newport for working diligently to adopt and incorporate the updated plan in the City's plans and policies. Overall, the new plan is much improved from the original 1982 version, and is the first EMP in Oregon to undergo a comprehensive update and incorporate language about climate change.

While we support the adoption of this plan, we offer the following comments and recommendations to make the plan components under Newport's jurisdiction even stronger and more consistent with state polices. We are confident that our suggested edits, if incorporated, will lead to a legally defensible plan that meets the needs of the community and responsibly stewards our estuarine resources. We also believe this adoption offers an important opportunity to address many of the challenges our estuarine communities and ecosystems face from climate change and the associated loss of habitat and resources, so we urge the City to consider our suggested changes aimed to build greater resilience and mitigate impacts. Comments on the Comprehensive Plan and Zoning Ordinance are made in the order each section appears in the proposed drafts, for ease of reference and incorporation of suggestions. See the conclusion section at the bottom for a summary of comments herein.

II. Comprehensive Plan (Yaquina Bay and Estuary Section) comments

A. Management Unit section

Adding more descriptive resource information

During the Yaquina EMP update process, our organizations advocated for new natural resource inventory information and data, displayed in the updated maps, to be incorporated into text descriptions of each management unit, to more accurately reflect the present state of the bay. While the maps were updated, special policies and management unit descriptions were not updated to reflect new resource information. We still maintain that incorporating more specific resource information within management unit "Descriptions," "Resource Capability," and "Management Objectives" sections in all management units is advantageous in that it provides justification for the management unit objectives, it improves the implementation of relevant standards and Resource Capability Tests, and provides more clarity to plan users and decision-makers regarding the ecological and cultural resources present in a given unit.

In particular, we recommend that Aquatic Resources of Special Concern (ARSC), designated and defined by the Department of State Lands, be described in management units where these resources are known to be present (See 2A Definitions). ARSC include mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), and wooded tidal wetlands. Providing this information will clarify plan implementation for applicants and for agencies processing removal-fill permits, where such resources need to be considered. We also recommend that this section align resource descriptions with the Oregon Conservation Strategy, which identifies estuaries as a strategy habitat and the following species as strategy species: Black Brant, Dungeness crab, black rockfish, copper rockfish, and kelp greenling (all dependent on eelgrass habitats) and coho and Chinook salmon dependent on estuarine habitats.[1] Other strategy species known to use Yaquina estuarine habitats include Brown Pelican, Caspian Tern, Red-necked Grebe, Franklin's Gull, and Marbled Murrelet (also listed in the federal Endangered Species Act as Threatened and in Oregon's ESA as Endangered).

Example of MU section

We have in the past offered a template to the planning team for structuring MU descriptions and incorporating new resource inventory information in all other management units in the county and city's relative jurisdictions (See attachment). We still recommend this template be applied to all management units in Newport's boundaries. See below for an example provided for management unit 10.

Management Unit 10:
Description:
Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and is bounded on the south by the authorized federal navigation channel (see Figure 15), and units 14 and 5, classified as Development. The large majority of this unit (X percent) is owned

[1] ODFW Oregon Conservation Strategy: https://www.oregonconservationstrategy.org/

by the Port of Newport, with a small component held in public ownership by the state (to the South East) and a “Special District” on the North West corner of the unit).

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance, identified by ODFW in the late 1970’s, including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterbird (waterfowl, shorebird, etc.) habitat. These resources are still present. Historic extent of eelgrass covered over 50% of this management unit (PMEP 2019) and the meadow present in MU 10 is the largest eelgrass area in the entire bay. However, recent maps show that eelgrass beds are only present in small patches on the edges and middle of the management unit (CMECS Biotic, 2018), indicating a significant loss of habitat. It is estimated that dredge and fill activities in the lower Yaquina Bay have decreased eelgrass habitat by 16%.[2] Eelgrass and associated habitat makes this area extremely important for ESA listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as “Essential Fish Habitat” under the Magnuson–Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region (ODFW, 2011), which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.[3] X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

Uses in the area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally’s Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021 on the state-owned tidelands region of MU 10 (on the Southern corner).

Several areas of shorelines altered by pilings and riprap exist at X and X locations. The Northwest corner of Sally’s Bend was filled to accommodate development, which became the NW Natural Gas site in 1977.

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 10, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, projected by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the Yaquina Bay Road flooding, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Additionally, these same areas are expected to be inundated in the event of a Tsunami scenario ranging from small to large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in adjacent shoreline areas under sea-level rise conditions ranging from 2.5- 4.7 ft and is designated as a high priority zone to accommodate this migration.[4] A small freshwater

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[2] Ferraro, Steven P; Cole, Faith A., 2010. Ecological periodic tables for nekton usage of four US Pacific Northwest estuarine habitats. Canadian Journal of Fisheries and Aquatic Sciences, 67(12), pp.1957-1967.

[3] Bohlen, Victoria L. 2019. Evaluation of a Habitat Suitability Model to predict the geospatial distribution of Olympia oyster presence in Yaquina Bay, Oregon, Master’s Thesis, Oregon State University Scholars Archive. Accessed: https://ir.library.oregonstate.edu/concern/graduate_projects/0v838678g

[4] Brophy, Laura S; Ewald, Michael J. 2018. Modeling sea level rise impacts to Oregon’s tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. MidCoast Watersheds Council. Oregon State University

emergent wetland that was formerly tidal, on the E. side of Sally's Bend at the junction of John Nye Road and N. Bay Road is designated as a potential Restoration Site (Y36).

Classification: Natural
As a major tract of tide flat with seagrass beds, this unit has been classified as Natural in order to preserve significant natural resources in the unit. Rationale: Goal 16 states that areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:
Management Unit 10 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat support for biodiversity, and shoreline protection from storms. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

In order to maintain resource values, permitted alterations should be limited to those which result in only temporary, minor disturbances, (several submerged crossings have been located in this area). More permanent alterations should be reviewed individually for consistency with the resource capabilities of the area.

Management Objective:
Because of the resource capabilities of Management Unit 10, it shall be managed to preserve and protect natural resources and values. This area shall be managed to aid eelgrass expansion, native oyster re-establishment, and improved water quality to enhance natural resources present.

Minor alterations

The term "minor alteration" is used throughout the descriptions for each individual management unit. More specifically, minor alterations are permitted in all units. OAR 660-017-0005(1) provides the definition of alteration to mean "any man-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality."

Given that minor alterations are permitted in all units, a clear definition of "minor alteration" is important to ensuring that any allowed use is consistent with Goal 16 and the management unit objectives. OAR 660-017-0020 states that "no development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units." Together the definition of alteration and OAR 660-017-0025 standard for level of development or alteration, suggest that any man-caused change to the environment cannot be more intensive than Goal 16's permitted uses for each management unit. Therefore, a minor alteration must be something less than those permitted uses.

We propose that the following definition be incorporated in this section, and the corresponding zoning ordinances:

> Minor alteration is an action that results in only short-term, temporary impacts to species or habitats and does not degrade or compromise estuarine habitats, water quality, and natural productivity.

Special Policies

Each management unit contains special policies which include additional protections for important species or estuarine resources. Special policies provide an opportunity to update and/or strengthen protections for important ecological resources. During the update process in 2023, new special policies were never considered by the planning team due to the limited scope of the update. We ask that the city take this plan adoption opportunity to improve special policies that apply to management units within Newport's jurisdiction. We recommend the following additions below:

Of the 28 management units within the original 1982 YBEMP, where current Pacific Marine and Estuarine Partnership data[5] shows that eelgrass and its suitable habitat are present, eelgrass is only acknowledged in the narrative statements (i.e., description, management objective, classification, resource capability) of 10 management units (MU3, MU5, MU6, MU7, MU8, MU9, MU10, MU14, MU21, and MU24), seven of which are under the city of Newport's jurisdiction. Only one of these management units (unit 7) has a special policy to minimize impacts to existing eelgrass beds.

Eelgrass is an essential estuarine resource that offers an array of climate resilience benefits and ecosystem services to the Newport community, including carbon sequestration, storm buffering, ocean acidification amelioration, erosion mitigation, improved water quality, support for fisheries, migratory birds, etc. Eelgrass is also a key habitat that supports ecosystem function and biodiversity, contributing to the overall health of Yaquina bay. Eelgrass resources are also disappearing in Yaquina bay rapidly, even in Natural Management Units (i.e. MU 9 and 10) where minimal development has occurred.[6] We strongly recommend Newport support eelgrass persistence and recovery in the comprehensive plan.

Each management unit with identified existing and suitable eelgrass habitat should include a special policy that avoids and/or minimizes impacts to eelgrass beds. Special policy language should depend on the type of management unit. The following policies are recommended for each type of management unit:

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[5] PMEP Estuary Viewer uses "Maximum Eelgrass Extent" to display historic presence of eelgrass https://psmfc.maps.arcgis.com/apps/webappviewer/index.html?id=f25b8d649f2a46cbafc5c66fe21c99de

[6] Kaldy, Jim. Past, Present & Future of Seagrasses in Yaquina Bay and other Estuaries. Hatfield Marine Science Center Fall 2021 Seminar Series, Newport, OR, October 21, 2021.

- For Natural and Conservation Management Units with identified existing and suitable eelgrass habitat, a special policy should be included, stating that development proposals with potential to impact these areas must provide a Resource Capability Test, supported by an Impacts Assessment, in accordance with Goal 16. Additionally, if the Resource Capability Test and Impacts Assessment indicate high risk of eelgrass degradation or loss, then the project should be deemed incompatible or action must be taken to mitigate impacts to eelgrass to achieve no net loss of eelgrass function.

- Development Management Units[7] with existing and potential eelgrass habitat should be revised to include the following special policy: Eelgrass beds and suitable eelgrass habitat areas are located within this management unit. Adverse impacts of future development on these resources shall be avoided, and unavoidable impacts shall be minimized.

In addition, special policies for each type of management unit should also include specific mitigation requirements to maintain eelgrass habitat function.

B. Mitigation and Restoration section

In this section, it should be noted that the purpose of mitigation is first to avoid impacts, then minimize the impacts. This is key to conserving resources, since restoration is difficult and both restoration and mitigation projects often fail to achieve similar ecological functions, even over time. Therefore the Impact Assessment Requirements Section of the Comprehensive Plan must also include sufficient information that allows for assessment if and how robust efforts have been done to avoid, minimize, rectify impacts, and the other requirements of the mitigation process.

While restoration and mitigation sites have been selected, the section on mitigation should make clear that since these areas are outside Newport's jurisdiction and that additional mitigation opportunities can be identified, nothing in this section precludes restoration on these sites.

C. Goals and Policies section

<u>Outright Permitted Uses-Policy 18</u>

We appreciate the change in language in this policy from "exempt uses" to "outright permitted" uses. However, we are still concerned that these uses are improperly being treated as exempt, when they should be treated parallel to other permitted uses in the plan.

The language of this policy suggests that the uses are an exception to uses allowed in a management unit. However, "outright permitted uses" are just permitted uses described under

[7] In the revised YBEMP, any proposal to expand development units 4, 5, 7, 12, 14, 31, and 32 would likely require a goal exception.

Goal 16 and should be identified as such in the zoning code use matrix. Including these uses as being exempt from review under the plan seemingly allows the proposed uses to avoid compliance with the general policies and standards of the plan, which is directly contrary to Goal 16. Therefore, Policy 18, which creates an "outright permitted use" policy is misleading and should not be included in the plan update.[8] See section 2C below, regarding the Zoning Ordinance section.

II. Zoning Ordinance comments

A. Section 14.01.020: Definitions

In general, we strongly encourage the city to use definitions stated in other state policies and statutes wherever possible. This is important for ensuring greater consistency across permitting processes, and improving clarity for plan users. We offer the following changes and additions to definitions as suggestions to improve plan use.

<u>Adverse Impact (significant)</u>

We still maintain that it is important to define significant adverse impact for greater clarity. We recommend NOAA's definition (15 CFR 971.101)[9] be incorporated:

> "Significant adverse environmental effect means: (1) Important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values"

<u>Cumulative Impacts</u>

We recommend the following definition of cumulative impacts be added to definitions, for use in the impacts assessment section (see 2E), as used by the U.S. Environmental Protection Agency:

> "Cumulative impacts" are defined as the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes.[10] Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person's lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people

[8] Yaquina Bay Estuary Management Plan Update, at 39, https://www.newportoregon.gov/citygov/comm/pc/agendas/06-24-2024_PC_Work_Session_Meeting.pdf
[9] NOAA (15 CFR 971.101) https://www.law.cornell.edu/cfr/text/15/971.101
[10] United States Environmental Protection Agency (US EPA). 2022. Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development. September 2022. https://www.epa.gov/system/files/documents/2023-05/CUMULATIVE%20IMPACTS%20RESEARCH-FINAL%20REPORT-EPA%20600-R-22-014A%20%2812%29.PDF

> through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community.

Mitigation (definition consistent with state definition)

The City of Newport should use the definition of Mitigation that is consistent with the Department of State Land's definition to ensure consistency across permitting processes. Under DSL's Removal-Fill policies:

> "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
> (a) Avoiding the effect altogether by not taking a certain action or parts of an action;
> (b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;
> (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;
> (d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
> (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

Aquatic Resources of Special Concern

We recommend the following definition for Aquatic Resources of Special Concern be incorporated in the definitions section, and referenced in the Management Unit section of the Comprehensive Plan, where such resources are present:

> "Aquatic Resources of Special Concern" (ARSP) are waters of this state that provide functions, values and habitats that are limited in quantity because they are naturally rare or have been disproportionately lost due to prior impacts. These include mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), and wooded tidal wetlands (OAR 141-085-0510).

Nature Based Solutions and Natural Climate Solutions

It is important to define Natural Climate Solutions, or Nature Based Solutions, which will likely be proposed as future uses of the Yaquina Bay. In particular, DLCD is currently developing an Estuarine Resilience Action Plan for Lincoln County, which will outline opportunities for restoration and resilience projects in Yaquina Bay that offer nature based solutions to climate change and other vulnerabilities. It is important that the Newport Comprehensive Plan identifies

these possible uses now, so those projects can be implemented. We suggest the following definition, Oregon law (H.B. 3409, 2023)[11]:

> "natural climate solution" is an activity that enhances or protects net biological carbon sequestration on natural and working lands, while maintaining or increasing ecosystem resilience and human well-being.

Natural Working Lands

Note that H.B. 3409 identified estuarine habitats as "Natural Working Lands", as one of the habitats that Natural Climate Solutions activities are a focus of the State. The city might also consider including a definition of Natural and Working Lands, to clarify future proposed uses that can be considered both restoration and agricultural uses. Lack of clarity in other local comprehensive plans and EMPs in Coos county has caused permit delays and general confusion for plan users and decision-makers. We suggest the following definition, from the bill language:

"Natural and working lands" means:

> Lands actively used by an agricultural owner or operator for an agricultural operation, including but not limited to active engagement in farming or ranching; producing forest products; consisting of forests, woodlands, grasslands, sagebrush steppes, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas or the submerged and submersible lands within Oregon's territorial sea and marine habitats associated with those lands.

Climate Change

The definition of climate change could be improved for greater accuracy and relevant estuarine context could be added. We suggest the following definition:

> The rapidly increasing changes in the measures of climate including precipitation, temperature, sea levels, and wind patterns; resulting from an increase in greenhouse gas concentrations in the atmosphere. Estuarine environments are expected to be biologically and physically impacted by climate change via sea level rise, alteration of hydrology, increases in erosion and salinity, changes in storm patterns, and ocean acidification, etc.

Landward Migration

We recommend the following definition of landward migration be included, to bring attention to changes in estuarine habitat that are expected to occur as a result of sea level rise:

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[11] Oregon State Legislature. HB 3409 (2023) Relating to climate; and declaring an emergency. p34 https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3409/Enrolled

> The landward movement of tidal wetlands over time due to accelerating rising sea levels. Landward migration requires suitable conditions, such as a gradual slope and land free of urban development. Areas within Oregon's estuaries have limited capacity for landward migration as they have steep slopes and urban barriers.

Sea Level Rise

We recommend the following definition of sea level rise be incorporated as well:

> Sea level rise is an increase in the ocean's surface height relative to the land in a particular location resulting from the expansion of warm ocean water and melting polar ice due to human-caused climate change. These factors result from the increasing human greenhouse gas emissions driving Earth's temperatures higher.

B. Section 14.03.120: Estuary Uses

Section 14.03.120 describes the estuary uses permitted within each of the management unit types. In addition to listing the permitted uses within each type of management unit, it is important to note that under OAR 660-017-0025 "no development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units." We suggest that this language be included as an opening or final sentence within this section.

Additionally, excavation is discussed in the general standards, Section 14.04.030, but is not included within the use matrix. This leaves it unclear where excavation is allowed or not, causing conflicts with Goal 16, which only allows removal-and-fill in specific circumstances for each management unit classification. Accordingly, we believe two rows should be added to the matrix. First, a row for excavation for restoration, which should be a conditional use in all management units. Second, a row for excavation for navigation or other water-dependent uses, which should be a conditional use in development units and a prohibited use in conservation and natural units.

C. Section 14.04.020: Outright Permitted Uses

As discussed above regarding the Comprehensive Plan section on outright permitted uses (1C), characterizing certain uses as being excepted from the estuary management plan contradicts Goal 16, regardless of whether they are described as "exempt" uses or "outright permitted uses." The uses listed here in the Zoning Codes illustrate why this is true.

For example, "[r]emoval or installation of not more than six pile associated with an in-water structure within a 12 month period" is listed as a use "not subject to the standards in this chapter." However, there are no permitted uses under Goal 16 that would allow pile in a natural management unit. And, presumably, depending on how and where the pile are installed, it is foreseeable that they could "potentially alter the estuarine ecosystem" and thus require an impact statement under Goal 16. Therefore, broadly providing that these activities are not

subject to the other standards of the ordinance violates Goal 16. The other listed uses suffer from the same flaw. This section should be removed from the ordinance and the uses recategorized as permitted uses in corresponding management units in Section 14.03.120.

D. Section 14.04.030: General Standards

The following additions to the General Standards section would greatly increase estuarine resilience to climate and development stressors and improve consistency between the Comprehensive Plan and Zoning Ordinances.

General Mitigation Standard

Throughout the estuary management plan update, various sub-area and management unit policies include requirements to minimize impacts to relevant resources. These requirements are not well-reflected in the proposed zoning code language. To remedy this inconsistency, we recommend the following catch-all provision that requires identified adverse impacts be minimized in all situations to be included at the top of the general standards section:

> The siting, design, and conduct of all proposed structures and uses shall be carried out and conditioned to minimize adverse impacts identified in a Section 14.04.050 impacts assessment. The impacts to be minimized shall include impacts on aquatic life and habitats, flushing and circulation characteristics, patterns of erosion and accretion, and neighboring uses. Where there is insufficient or incomplete information available to determine the impacts of a proposed use, applicants must provide an adaptive management plan that includes corrective actions that will be carried out in response to measurable and identified outcomes.

This language is based on the language that was already included in the code for all proposed structures in Paragraph A.1. of this section, which can be removed if the above policy is included. We believe the intent of the plan update and Goal 16 are better met by applying this requirement to all uses.

Climate Vulnerability Standard

While the Climate Vulnerability Assessment is a fantastic addition to the zoning codes, applicants are not required to take any actions to mitigate the climate vulnerabilities they identify in this assessment. We see an opportunity to apply and require adaptation measures in the city's Zoning Ordinances in the General Standards section, which can help avoid costly, repetitive building and damage to infrastructure from increased floods, storm intensity, and sea level rise if applied. We recommend the following, to increase overall climate mitigation and help the city proactively plan for all the climate vulnerabilities identified in Section 14.04.050.

Suggested standard:

> Structures must be designed to minimize the climate vulnerabilities identified in the Section 14.04.050 impact assessment. Where possible, such minimization shall include

> constructing infrastructure that is designed to be adaptive and resilient in the long-term as well as integrating natural climate solutions or hybrid designs that blend natural and built systems.

See definition of Natural Climate Solutions in 2A.

Shoreline Stabilization Structure Standards

General standard A.10 and A.11 should be strengthened to enforce Goal 17's requirement that "[l]and-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions." As these policies are currently written, there are no "land-use management practices" being utilized and the requirements for non-structural solutions are unclear and do not include feasible relocation of existing structures.

We recommend that Newport adopt a policy that no new structures or substantial improvements to existing structures can be permitted in locations that will foreseeably require shoreline stabilization within a 50-year analysis time frame with recognition of sea level rise. We also recommend that Newport require that new structures be built on the safest possible site with the least exposure to risk from future erosion and flooding.[12] These suggested changes better align with Goal 17's preference for "land-use management practices" for erosion control and ensure that new construction along the estuary will be viable in the long-term. We suggest the following policy language:

> Applications for new structures or substantial improvements to existing structures shall include an analysis of the foreseeable impacts of expected sea level rise to the structure in the next 50 years. Such analysis shall include an assessment of the site most suitable for development based on the least exposure to risk from future erosion and flooding. Structures and substantial improvements shall only be permitted where applicants demonstrate that the structure will not face substantial flooding or erosion risk from rising sea levels within 50 years. Flooding or erosion risk is substantial where it would require future shoreline stabilization. New structures must also demonstrate that development is occurring on the safest possible site.

Additionally, we recommend strengthening the requirements in standard A.11 to make clear what showings are required of an applicant to establish that the higher priority shoreline stabilization methods are not feasible and adding relocation of threatened structures as the highest priority method. The current language only states that applicants must demonstrate a higher priority method is "unreasonable," without discussion of how they should show that or what "unreasonable" means. And relocation of existing structures, which avoids the need for shoreline stabilization in the first place, was not included as an alternative.[13]

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[12] This recommendation is based on similar language from Neskowin's Coastal Hazard Overlay Zone. Tillamook County Land Use Ordinance, Section 3.530(7)(d).

[13] The Oregon Parks and Recreation Department includes relocation of existing structures as an alternative to structural shoreline stabilization in its regulations for ocean shore structures. OAR 736-020-0003(2)(b).

Goal 17 prioritizes non-structural solutions to erosion and flooding because structural solutions like riprap revetments severely reduce the shoreline, limiting public access and harming critical ecosystem functions of an estuary.[14] As the impacts of climate change grow and sea levels rise, the harmful impacts of these hardened structures will only increase. Historically, contrary to Goal 17, many applicants for structural shoreline stabilization have avoided implementing less-harmful alternatives while only conducting cursory review of their feasibility. To ensure that the identified higher-priority alternatives are actually prioritized, we recommend the following language to replace the current standard:

> Applications for structural shoreline stabilization structures shall include an analysis of hazard avoidance alternatives. Such structures shall be permitted only where an applicant can show that there are no feasible higher-priority alternatives that would preserve the primary purpose of the existing use. If cost of an alternative is listed as a factor for why a higher-priority alternative is not feasible, the applicant must include cost estimate(s) from licensed contractors. Higher cost alone is not sufficient to demonstrate that a higher-priority alternative is not feasible unless that cost greatly outweighs the social, economic, and environmental benefits of the alternative. The following, in order, are the preferred hazard avoidance approaches:
>
> a. Relocation of threatened structures
> b. Vegetative, natural, or other nonstructural technique;
> c. Cobble dynamic revetment;
> d. Vegetated riprap;
> e. Unvegetated riprap;
> f. Bulkheads (except that the use of bulkheads shall be limited to ED and EC management units only).

<u>Submerged Crossing Standards</u>

The state recently underwent a process for considering how to handle submerged crossings through the Territorial Sea, resulting in the updated Territorial Sea Plan Part Four.[15] Many of the policies expressed in the plan are just as relevant in the context of submerged crossings through the estuary, and we recommend including adapted versions of three of those policies to strengthen this section.

First, we recommend replacing standard C.2 with the following language, which ensures that uses beyond navigation are protected:

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[14] Statewide Land Use Goal 17, Implementation Requirement 5; Matthew S. Kornis et al., Estuaries and Coasts, *Linking the Abundance of Estuarine Fish and Crustaceans in Nearshore Waters to Shoreline Hardening and Land Cover* (June 24, 2016), https://link.springer.com/article/10.1007/s12237-017-0213-6.
[15] Oregon Territorial Sea Plan Part Four: Uses of the Sea Floor, https://www.oregon.gov/lcd/OCMP/SiteAssets/Pages/Territorial-Sea-Plan/TSP%20Part%204%208.25.23.pdf.

> Submerged crossings, including their landing onshore, shall be designed and located so as to avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other natural resources of the estuary.

Second, we recommend including the following language to require crossings be located in close proximity to each other to limit their impacts:

> Where feasible, submerged crossings should be located as close as possible to existing crossings.

Finally, we recommend including the following requirement that submerged crossings should be buried wherever possible to avoid long-term impacts on other uses and the ecosystem:

> All submerged crossings shall be buried unless that burial cannot be practicably achieved and the adverse effects of not burying the crossing have been avoided, minimized, or mitigated to the maximum extent practicable.

E. Section 14.04.050 Impact Assessments

<u>Methods to Avoid or Minimize Impacts</u>

Goal 16 requires that an impact assessment include “the methods which could be employed to avoid or minimize adverse impacts.” However, the impact assessment standards in the proposed code provisions only require an analysis of “methods to be employed to avoid or minimize adverse impacts,” which is narrower than what Goal 16 requires. To remedy this inconsistency and improve the information available to the City in its decision making in other parts of the code, we recommend changing the language to include:

> Methods to be employed to avoid or minimize adverse impacts, as well as any additional methods that could be employed and an explanation for why they are not included.

<u>Aquatic Resources of Special Concern</u>

There are certain resources in the estuary that are particularly important to its future health. It is thus critical to understand the impact proposed uses will have on these resources. Including a requirement to identify the presence of any of these aquatic resources of special concern (see definition in 2A) and assess potential impacts to them will maximize the efficiency of the impact assessment and allow for more informed decision making. We propose the following standard to be added after paragraph A.3 of this section in combination with the proposed definition of aquatic resources of special concern above:

> The presence of any aquatic resources of special concern and analysis of all foreseeable impacts to those resources.

Cumulative Impacts

The impact assessments section currently does not include an explicit requirement for assessing the cumulative impacts of a proposed project with other projects. Understanding this aspect of a proposal is crucial to understanding the project's full effects. While these cumulative impacts (see definition in 2A) are likely already included with the broad requirement to assess the impacts of a project on the estuary, making that requirement explicit is worthwhile to clarify what is required to applicants. We suggest the following language to be added under paragraph A.3 of this section:

> The cumulative impacts of the project in conjunction with the impacts of past projects, other current projects, and probable future projects with potential overlapping effects.

This assessment or resource inventory should include historic and current conditions of habitat as well as species of conservation concern - native oysters, herring or sturgeon as examples. Current conditions would also include water quality. Recent information indicates that 99% of Oregon's estuaries are water quality impaired as such DEQ will be engaging in the TMDL process in the future for each estuary.

F. Section 14.04.060: Conditional Use Standards

Section 14.04.060 provides the conditional use standards for each management unit. In addition to the standards laid out, this section should include language from OAR 660-017-0025(3)(a), which states that "both shallow and deep draft development estuaries shall be managed to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses consistent with overall Estuarine Resources Goal Requirements." Including this as a standard makes clear that a use that is not outright permitted in natural, development, and conservation management units must still be consistent with Goal 16 in addition to the management objective and special policies of the unit.

Resource Capability Test

We strongly recommend that the "Resource capability test" is better described in section 14.04.040. This test is extremely important for determining whether a conditional use is permissible within a given management unit and for determining the impact of a proposed use and whether the resources in a given unit can assimilate the impact and continue to function. Therefore, it is necessary for every plan user and decision-maker to understand what the test is, how it is applied, and under what circumstances the resource capability test is needed.

We recommend the following language for the resource capability test to replace the paragraphs at Section 14.040.060(A)(4) and Section 14.040.060(B)(4):

A Resource Compatibility Test is applied as a decision-making tool, to determine whether a proposed conditional use may be compatible with the existing resources or ecology of an area. A determination of consistency with resource capability and the purposes of the management unit shall be based on the following:

a. A description of resources identified in the plan inventory as well as any existing threats to those resources; and
b. An evaluation of impacts on those resources by the proposed use conducted as part of the impacts assessment required by Section 14.04.050. The impacts assessment for a conditional use must analyze the cumulative impacts of the activity when combined with other existing and planned activities and be sufficiently detailed to demonstrate with substantial evidence that the project is compatible with those resources.

III. Other (general) comments

A. Adaptive management

We recommend an adaptive management structure be incorporated into the Newport Comprehensive Plan and Zoning Ordinances to prompt a periodic review of resource inventory data and plan effectiveness every five years or so, and follow through with needed updates. This would allow targeted updates to occur more frequently to match the rapidly changing conditions of the estuary; including sea level rise (which will alter the estuary boundary), increasing coastal hazards, habitat and species migration, and loss of biodiversity. Without this structure, the Yaquina Bay EMP and the Newport Comprehensive Plan are at risk of being quickly outdated. Indeed, much work was needed to update the Yaquina Bay EMP precisely because the plan had gone unchanged for approximately 40 years.

Adaptive management is a structured, iterative process of robust decision-making in the face of uncertainty, with an aim to reduce uncertainty over time via system monitoring. It is useful in the context of managing natural resources in the face of climate change, because it allows planners to monitor how conditions are changing, create and test management strategies (i.e. climate mitigation), evaluate how well those management strategies are working, and then adapt the plan accordingly, despite the high degree of uncertainty.

Given the impacts of climate change and the degree of uncertainty in the plan updates section, the zoning code should outline a structured process to monitor, re-evaluate, analyze plan success, and then adapt the plan to changing needs. The code should also describe the various adaptive management strategies and provide a timeline for undergoing this process. The boundaries of the estuary are not the only thing changing as a result of climate change.

Furthermore, there is an opportunity to use an adaptive management structure to evaluate how well the new climate vulnerability impact assessments works to allow planners to address hazards, and evolve this climate strategy accordingly. As suggested in DLCD's Sea Level Rise

Planning Guide[16], “the plan could include time-based triggers to review hazard datasets on a regular basis (e.g., every five years) to continue to adopt and use the best available information.” Such time-based triggers for plan adaptation and a protocol for monitoring plan success should be embedded in the Zoning Ordinances.

Additionally, new tools and planning resources are being developed by DLCD and NOAA to help cities adapt to climate change. A periodic review of the Comprehensive Plan and Zoning Ordinances would create an opportunity to draw on those resources for new ideas to develop a strong climate mitigation plan, and incorporate new solutions. Without a robust system to monitor the effectiveness of planning strategies and learn from past mistakes and successes, the City won’t be able to mitigate the effects of climate change and adapt effectively.

Along with the recommendation to include a clear adaptive management strategy, we also recommend that new spatial data be incorporated into the associated Yaquina Bay Estuary Management Plan Map Viewer[17] as it becomes available. It is important that land use decisions made during the life of the updated Yaquina Bay EMP are informed by the best available scientific information and guided by the policies in the plan. This Map Viewer is a tool that will allow data to be updated frequently without a full plan update, and we encourage the city to use it regularly and coordinate with DLCD to keep it updated, to the benefit of all plan users and the public.

IV. Conclusion/Summary

Our comments underscore the importance of incorporating descriptive natural resource information and special policies to minimize impacts to eelgrass in every management unit. We request that the “Outright Permitted Uses” policy (18) be removed, as it is inconsistent with Goal 16. Our comments on the Zoning Ordinances provide improved and additional definitions, consistent with state policies. We urge the City to consider our suggestions for improving General Standards to increase resilience to climate change impacts and create greater consistency with statewide land use planning goals. We also point to improvements to the Impact Assessment requirements to consider aquatic resources of special concern and methods to minimize adverse and cumulative impacts. Further, we recommend language to better describe the Resource Capability Test for enhanced plan useability. Last, we recommend the City consider an adaptive management approach to update these Yaquina Bay EMP components more frequently and efficiently in the face of uncertainty and accelerating climate change. In general, our comments were designed to help the City strengthen the Comprehensive Plan and Zoning Ordinances to build better consistency across state policies and permitting processes, while taking into account current and future threats to estuarine resources. Thank you for considering our recommendations and concerns, and we look forward to the adoption of the Yaquina Bay EMP.

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[16] https://www.coastalatlas.net/sealevelriseplanning/downloads/SLR_Planning_Guide_V1.pdf
[17] https://www.coastalatlas.net/yaquina_emp/viewer/

Sincerely,

Annie Merrill
Ocean and Estuaries Manager
Oregon Shores Conservation Coalition

Joe Liebezeit
Assistant Director of Statewide Conservation
Bird Alliance of Oregon

Steve Griffiths
Conservation Chair
Audubon Society of Lincoln City

Michael Gaskill
Marine Programs Director
Coast Range Association

Sherri Marineau

From: Derrick Tokos
Sent: Thursday, August 22, 2024 11:35 AM
To: Sherri Marineau
Subject: FW: coalition comments to Newport Planning Commission
Attachments: Recommended MU Template for Update_Final.docx (1).pdf

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From: Annie Merrill [redacted]
Sent: Wednesday, August 21, 2024 2:32 PM
To: Derrick Tokos [redacted]
Subject: Re: coalition comments to Newport Planning Commission

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hey Derrick,

Sorry, I forgot the attachment, mentioned in the comment letter. See attached as a supporting document to the comment letter.

Cheers,
Annie

On Wed, Aug 21, 2024 at 2:28 PM Annie Merrill [redacted] wrote:

> Hey Derrick,
>
> Thank you so much for sending the latest version of the Comprehensive Plan and Zoning Ordinance amendments, implementing the Yaquina Bay Estuary Management Plan.
>
> Please see the attached testimony to the Newport Planning Commission, submitted on behalf of Oregon Shores, Coast Range Association, Bird Alliance of Oregon, and Audubon Society of Lincoln City.
>
> I also intend to testify in person on Monday, so please sign me up.
>
> I appreciate your thoughtfulness in responding to all my inquiries and comments thus far. Thanks so much for all your hard work.
>
> Kind regards,
> Annie
>
> --

Recommended Management Unit Template for Draft YBEMP

Context

A new ODFW resource inventory was not conducted for this update, although some language has been updated, more can be added to ensure the descriptions do not include relic 40-year old information. Originally recommended in ODFWs report, *Habitat Classification and Inventory Methods for the Management of Oregon Estuaries*, a permanent monitoring program that works to provide planners the information they need, remains salient. The report states,

"As planning proceeds and development goals identified in local plans are implemented, basic inventory data will become increasingly important to all local, state, and federal agencies involved in estuary management. A standard, coordinated inventory program to provide this information is essential to ensure that the most pressing research needs have priority, that research time and dollars are spent most effectively, and that results achieve a high degree of transferability. The Oregon Estuarine Research Council, composed of state and. federal agencies and institutions, could help to coordinate research efforts and prevent duplication in future estuary inventories."

Oregon no longer has an Oregon Estuarine Research Council. We believe the inaccurate framing of what kind of tool EMPs are, what kind of monitoring support they are to receive from coastal partner agencies, and the viewpoint that they are a tool solely for one group of government official versus others or the community at large, is a result, in part, of a lack of investment in the implementation vision for the coastal goals and a loss of institutional knowledge. Planners are one end user of estuary management plans. A primary user, yes, but not the only one.

In absence of the 'envisioned' resource inventory monitoring program and supporting data, or even a one-time ODFW inventory effort for this YBEMP update, the research community and state agencies hold spatial data and other non-spatial research data that is available to support the YBEMP management unit updates and is quite plentiful. The project team gathered spatial data for static County maps, but no analysis occurred in the presence of natural resource managers, or others with expertise. There was no facilitated process to discuss management unit boundaries, resource presence/absence, or the management objectives for the 39 units. The advisory group that contained this project's natural resource expertise, has had the same amount of time as the public to view the new management unit boundaries overlaid with resource data; approximately 3 weeks.

Without adequate time for a meaningful analysis of the units and spatial information during this process, we offer the Steering Committee a template to consider for the Management Unit update work that remains in order to reflect current resource data and information based on 21st century technology, tools, and research. Collaborators included advisory group members and local community members that have natural resource backgrounds and natural history knowledge. This document goes further by providing example language for several units to illustrate the deficit in the current management unit section of the draft YBEMP. However, we recommend all units contain similar information synthesized from updated officially County adopted maps and other resource maps, and data not officially adopted by the County, but still helpful information for decision makers, applicants, and the interested public.

Recommended Template Outline

Resource Description

Overall, this section should address the most recent information to describe the characteristics of the unit. We recommend the following short paragraphs:

> **Paragraph 1:** location, geography, and locators. Percent private ownership.
>
> **Paragraph 2:** natural resources of note- info on water quality (issues, outfalls or otherwise- if no outfalls good to note as well) and cultural resources of note (that are appropriate to share in a public doc)
>
> **Paragraph 3:** past, current, and future potential uses.
>
> **Paragraph 4:** any known alterations, historic and contemporary
>
> **Paragraph 5:** Forward looking challenges and considerations. Particularly sea level rise modeling or other info from the state's SLR toolkit. The public can't access this viewer without a password-- https://www.coastalatlas.net/index.php/tools/planners/68-slr/ but the planning guide does provide the guidance that updated EMPs should consider SLR and modify management unit uses accordingly. https://www.coastalatlas.net/sealevelriseplanning/downloads/SLR_Planning_Guide_V1.pdf

Classification:

This paragraph should address the requirements of the classification of the unit from Goal 16. It is an appropriate place to provide a rationale for the classification to a greater extent than the existing language. This would help the public understand the classification system, the rationale that went into the classification, and serve as a reminder to future governmental staff what decision occurred in the past and why.

Resource Capability:

Originally, this section relied on the ODFW inventory of major and minor resources found within a given unit. Since we do not have an updated ODFW inventory with newly revised major and minor resource classifications, we recommend listing ecosystem services in addition to how the unit has served the human community (i.e. aquaculture). Services to human community in an economic sense is currently what is addressed in the language. The notion of 'ecosystem services' was not well developed when first written, so there is an opportunity to describe how estuary functions support the quality of life the community enjoys.

Management Objective:

This section should include more specifics about how the resources present will be sustained or what the goals are for 'enhancement'; a word frequently used in Goal 16. Much more is known about the extent and trend of resources in the estuary as well as how to manage (even through a planner's lens) a resource to make sure it is maintained. The objectives can also address human use management objectives (ie aquaculture).

Special Policies:

Ensuring estuary function per Goal 16 requires actions and management to take place at site-level scales. Ecosystem function is depleted by many cumulative decisions over time (ie death by a thousand cuts). Time should be taken to thoughtfully consider the potential impacts to and management goals for each unit and be used guide current and future planners as well as land use permit applicants for that unit.

Management Unit Examples

Below we provide example language (that is not necessarily finished) for management units 10, 14, 17, 18, 19, 24, 28, and 34A. The below examples do their best to illustrate what the template outline above is recommending.

We'd like to request that the information contained within these examples as well as the special policy examples be incorporated into the YBEMP draft. They are comments as well as examples.

We marked the absence of important numbers or information with an 'X' and indicated where the agencies or Tribes may have the needed information.

Management Unit 10:

Description:

Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and is bounded on the south by the authorized federal navigation channel (see Figure 15), and units 14 and 5, classified as Development. The large majority of this unit (X percent) is owned by the Port of Newport, with a small component held in public ownership by the state (to the South East) and a "Special District" on the North West corner of the unit).

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance, identified by ODFW in the late 1970's, including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. These resources are still present. Historic extent of eelgrass has covered over 50% of this management unit (PMEP 2019) and the meadow present in MU 10 is the largest eelgrass area in the entire bay. However, recent maps show that eelgrass beds are only present in small patches on the edges and middle of the management unit (CMECS Biotic, 2018), indicating a significant loss of habitat. It is estimated that dredge and fill activities in the lower Yaquina Bay have decreased eelgrass habitat by 16%.[1] Eelgrass and associated habitat makes this area extremely important for ESA listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region (ODFW, 2011), which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.[2] X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

---

[1] Ferraro, Steven P; Cole, Faith A., 2010. Ecological periodic tables for nekton usage of four US Pacific Northwest estuarine habitats. Canadian Journal of Fisheries and Aquatic Sciences, 67(12), pp.1957-1967.

[2] Bohlen, Victoria L. 2019. Evaluation of a Habitat Suitability Model to predict the geospatial distribution of Olympia oyster presence in Yaquina Bay, Oregon, Master's Thesis, Oregon State University Scholars Archive. Accessed: https://ir.library.oregonstate.edu/concern/graduate_projects/0v838678g

Uses in the area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the Southern corner).

Several minor alterations are present, including piling and rip rapped shorelines at X and X locations. The Northwest corner of Sally's Bend was filled to accommodate development, which became the NW Natural Gas site in 1977

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 10, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, projected by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the Yaquina Bay Road flooding, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Additionally, these same areas are expected to be inundated in the event of a Tsunami scenario ranging from small to large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in adjacent shoreline areas under sea-level rise conditions ranging from 2.5- 4.7 ft and is designated as a high priority zone to accommodate this migration.[3] A small freshwater emergent wetland that was formerly tidal, on the E. side of Sally's Bend at the junction of John Nye Road and N. Bay Road is designated as a potential Restoration Site (Y36).

Classification: Natural
As a major tract of tide flat with seagrass beds, this unit has been classified as natural in order to preserve significant natural resources in the unit. Rationale: Goal 16 states that areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:
Management Unit 10 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat support for biodiversity, and shoreline protection from storms. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

In order to maintain resource values, permitted alterations should be limited to those which result in only temporary, minor disturbances, (several submerged crossings have been located in this area). More permanent alterations should be reviewed individually for consistency with the resource capabilities of the area.

Management Objective:

[3] Brophy, Laura S; Ewald, Michael J. 2018. Modeling sea level rise impacts to Oregon's tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. MidCoast Watersheds Council. Oregon State University

Because of the resource capabilities of Management Unit 10, it shall be managed to preserve and protect natural resources and values. This area shall be managed to aid eelgrass expansion, native oyster re-establishment, and improved water quality to enhance natural resources present.

Special Policies:

1. To maintain the ecosystem integrity of this area to support continued resource capabilities and ecosystem services, future development within this unit shall not be permitted.
2. Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, impacts to Olympia oysters present shall be avoided.
3. To support the continued presence of eelgrass beds in this unit, reduced water quality and sedimentation in this unit that is a result of dredging in other, nearby units will be mitigated. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.
4. Deepening and widening of the channel and turning basin in this management unit impacting eelgrass and hydrology within Sally's Bend shall be avoided.

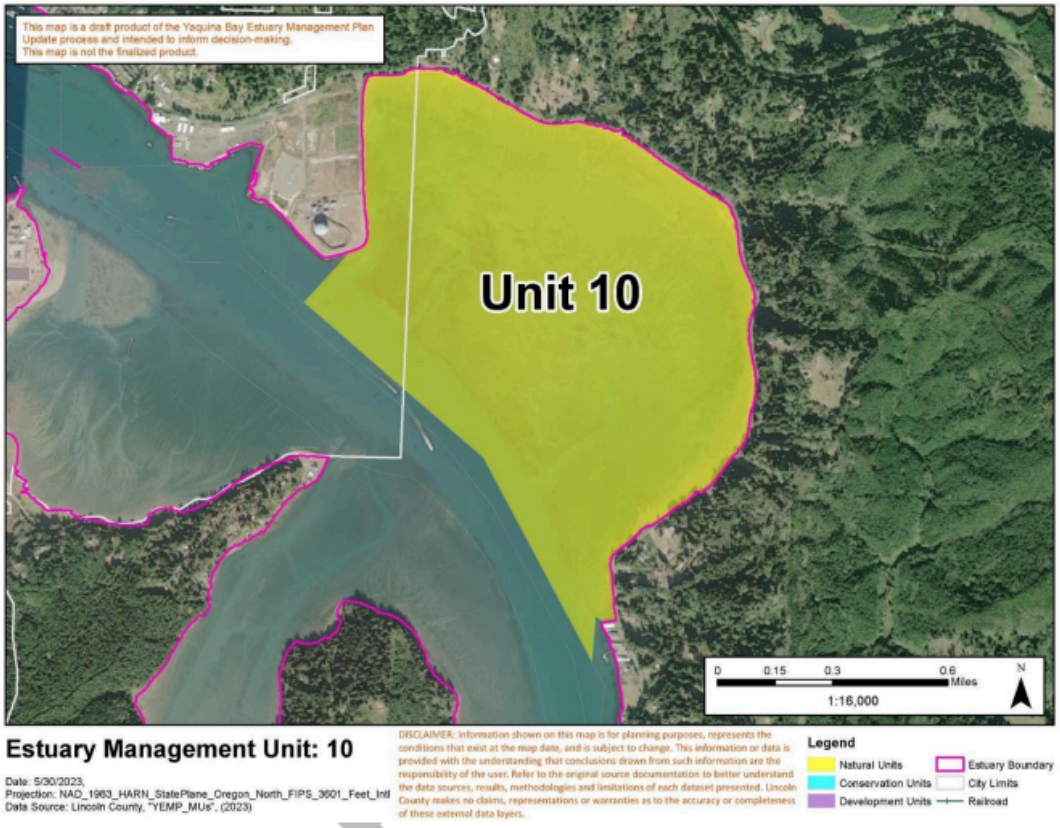

Figure 15. Estuary Management Unit 10, Yaquina Bay

Management Unit 14:

Description:

Management Unit 14 is the area between the navigation channel and the east shore from Coquille Point up to River Bend (Oneatta Point) in the Yaquina sub-area (see Figure 18). Parker Slough (MU 15) meets

the Yaquina River at the Southern end of MU 14 and a dike separates the two management Units. X percent is privately owned.

Natural resources present in this unit, as identified by ODFW in the late 1970's, include fish spawning and nursery areas, eelgrass, and shellfish beds, tideflats, wildlife and waterfowl habitat (all of minor significance). These resources are still present, primarily patches of eelgrass lining the channel (CMECS Biotic, 2018). These eelgrass patches are habitat corridors for migrating fish species of commercial importance, such as Fall Chinook, Chum, Coho, and Coastal Cutthroat (USFW, 2023). Recovering populations of native Olympia oysters have also been surveyed throughout the management unit (Bohlen, 2019). X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

The predominant uses in the unit are small boat moorage, medium and shallow draft navigation, marine construction and repair, and recreation.

Major alterations are present in the form of boat launches and haul outs, piling, wharves, floating docks that serve marina development, and marine construction and repair operations. Additional alterations include fills along the shoreline, dredging, navigation aids, and stabilized (bulkheads and riprap) shorelines, and dikes.

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 14, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, while 2 more areas are projected to be flooded with 1-2 ft of sea level rise by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the shoreline flooding across, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Significant areas of the shoreline adjacent to MU 14 are expected to be inundated in the event of a Tsunami scenario ranging from small to extra-large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in the majority of adjacent shoreline areas under sea-level rise conditions ranging from 1.6- 4.5 ft but is designated as a low priority zone to accommodate this migration (Brophy et al. 2018). A small formal tidal marsh just S of Weiser Point (Y41) and a tidal flat on the E. bank of Yaquina (Y39) are designated as potential Restoration Sites within this unit.

Classification: Development
Unit 14 is a deep-water area close to shore with existing development of moderate intensity and thus is classified for development management. Rationale: Goal 16 states that areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance.

Resource Capability:
Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat for commercially important fish, and shoreline protection from storms. Resource capabilities of this unit also support water-dependent uses and recreation.

Numerous major alterations have occurred in this area in conjunction with past developments, including dredging, intertidal fills, and structures such as piers and docks. This unit also has natural deep water adjacent to developable shorelands, one of the last such areas in the estuary. Development of these areas for water dependent uses is not subject to resource capability findings and will be consistent with the purpose of a development management unit.

Management Objective:
Management Unit 14 shall be managed to provide for water dependent development consistent with available levels of services and backup space.

Special Policies:
1. Due to the limited water surface area available and the need for direct land to water access, alternatives (such as mooring buoys and dry land storage) to docks and piers for commercial and industrial use are not feasible in Unit 14. Multiple use facilities common to several users are encouraged where practical.
2. Due to the presence of recovering Olympia oysters in this management unit, suitable material for oyster settlement shall be placed in the water during a development, when possible

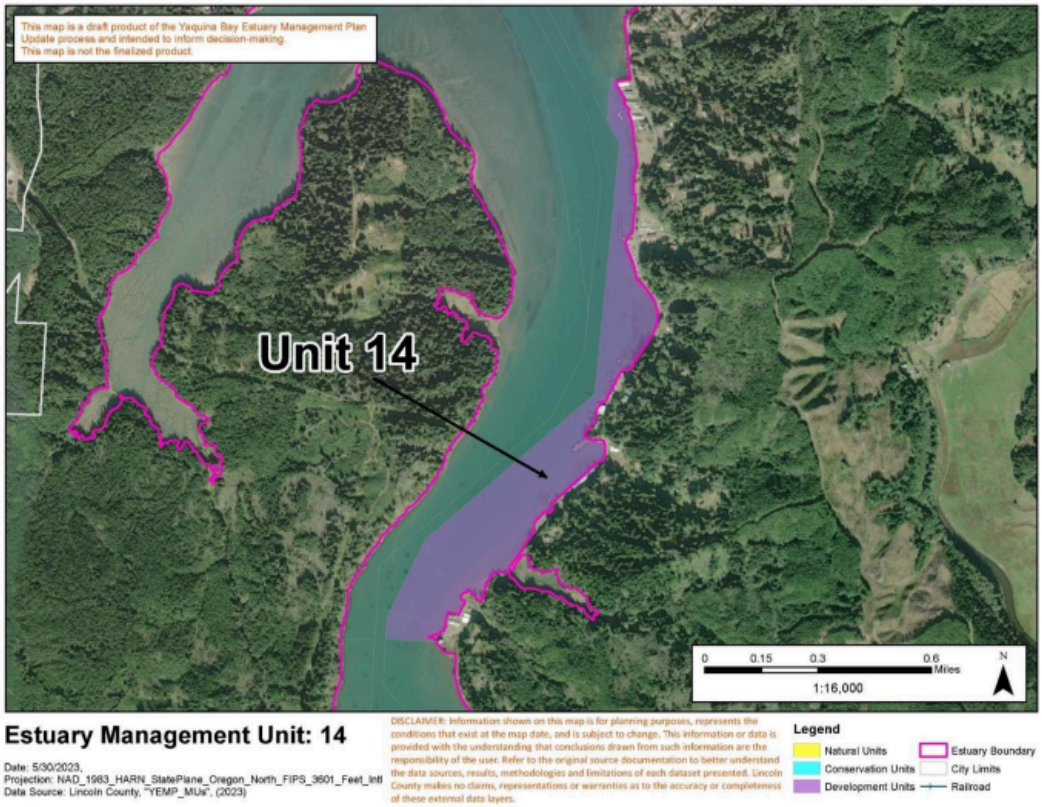

Figure 18. Estuary Management Unit 14, Yaquina Bay

Management Unit 17:

Description:

Management Unit 17 consists of the area between the river left of the navigation channel and the south shore of the bay from River Bend east to Grassy Point. Four natural management units (18,19,21, and 22) abut this unit nearshore. The unit extends from river mile X to X. X percent of this unit is privately owned.

Natural resources of significance identified by ODFW in the late 1970's include shellfish beds, fish spawning and nursery areas, and wildlife habitat. These resources are still present [ODFW should confirm]. Eelgrass is present in the nearshore area of this unit, especially in the area next to natural MU's 18 and 19. Cool water flowing into this unit from the adjacent sloughs, the slower water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey. In 2019, mid-estuary was determined to be most suitable for Olympia oysters suitable for restoration of native oyster reef and native oysters were present in intertidal sampling.[4] [More here as desired….]

Cultural resources…[More here as desired by SHPO and the Tribes]

This unit represents a portion of the prime aquaculture area of the estuary and oyster farming is the principal use in the unit. There are no public boat launches or other recreational infrastructure to access the water. Other uses in the unit include shallow and medium draft navigation, recreation, and commercial harvest..

XX percent of the shoreline has been hardened with rip rap. Pilings from previous alterations are present at X and X locations. Floating docs are present, however not as dense in other management units. DSL proprietary records report XX dock registration and over water leases in this unit. [DSL should help with this information].

Numerous minor alterations needed for commercial aquaculture operations have taken place in this area. Alterations include piling, piers, floating docks, and stabilized shorelines.

Current sea-level rise modeling indicates that by 20XX this unit will experience increased water depth of xx. The natural management units abutting this unit to the south will likely help this unit's resilience to flooding, water temperature increases, and habitat migration that supports current fish and wildlife resources.

Classification: Conservation

This is an area suitable for commercial aquaculture, native shellfish restoration, recreation, and related activities. The 'conservation' classification is warranted. Rationale: Goal 16 states that areas not specifically set aside for preservation (and labelled 'natural'), will be given a 'conservation' classification, and shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary. This unit shall be managed to conserve the natural resources and benefits it provides. This unit will support the maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture uses of the estuary. This area contains tracts of significant habitat but also contains current commercial aquaculture practices described below, so is best classified as conservation.

[4] Bohlen, V. 2029. Evaluation of a Habitat Suitability Model to Predict the geospatial distribution of Olympia Oyster presence in Yaquina Bay, Oregon.

Resource Capability:

Restoration adjacent to this management unit has increased the ecosystem function of this area over the decades. Ecosystem services provided by this unit because of the capabilities of present resources include…..[more here.]

Relatively high-water quality established this unit as an area suitable for aquaculture by ODA and it has been used as a commercial oyster growing area for decades. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

Similar types of minor alterations described above will be necessary for the continued operation of the oyster industry and are consistent with the resource capabilities of this unit.

Management Objective:

Because of the capabilities of Management Unit 17, it shall be managed to maintain and enhance natural resources present. Aided by the restored natural management units abutting the unit, the area is expected to experience eelgrass and mudflat expansion, native oyster re-establishment, and shallow water habitat, and it will be managed to support these goals. This unit will also be managed to cultivate aquaculture opportunities and will provide for aquaculture related development.

Special Policies:

1. Aquaculture facilities may include receiving, processing, and retail sales facilities.

2. To maintain the suitability of this area for aquaculture and otherwise protect important resources, development for high intensity water dependent recreation shall not be permitted in Management Unit 17.

3. Because units in the mid-estuary are especially suitable for native oyster re-establishment, impacts to Olympia oysters present will be avoided and where appropriate shell or other appropriate biogenic material added when development is permitted.

4. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 18

Description:

Management Unit 18 includes the tidal marsh complex and intertidal area of McCaffery Slough (see Figure 22). This is an important natural resource area, with extensive areas of a major tract of intact aquatic area and tidal marsh providing important primary productivity and extensive wildlife habitat. Except for the upper- most end of McCaffery, all the tidal marshes are owned by the Wetlands Conservancy (TWC) and are managed for conservation. [Note that Map 5 Ownership map does not show the extent of TWC ownership here]. Additionally, in the lower area, substantial area of tidal marsh bridge between McCaffery and Poole Slough (management unit 19) and are owned by The Wetland

Conservancy, and acquisition and conservation of additional tidal marsh is a high priority. Most of the aquatic area and wetlands of this unit remain essentially unaltered.

Water quality is high, with no outfalls and OR DEQ maintains one Water Quality Portal station here. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence and sedimentation can keep up.

McCaffery Slough was once considered as a candidate site for a State Estuarine Research Reserve.

Classification: Natural

As a major tract of unaltered tidal marsh, this unit is classified natural in order to preserve its essential resource characteristics.

Resource Capability:

The McCaffery Slough area provides major resource values in the form of primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. McCaffery Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported.

The sub-tidal portion of McCaffery Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence which builds up marsh soil elevations and sedimentation can keep up.

Management Objective:
Management Unit 18 shall be managed to preserve and protect natural resources and values.

Because sedimentation appears to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris. OSU. 2010), minor structural alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. alterations such as piling or navigation aids.

Special Policies:

1. Conditional uses shall not be allowed in this management subunit except for:

(a) Research and educational observations that require minor aquatic area alteration.

(b) Navigation aids such as beacons and buoys.

(c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

(d) Passive restoration that requires estuarine aquatic area alteration.

(e) Active restoration of fish and wildlife habitat, including native oysters, water quality, or estuarine productivity.

2. No new aquaculture leases shall be issued within McCaffery Slough.

3. Existing unused aquaculture lease areas shall be terminated or if renewed shall only allow native shellfish and plants aquaculture to be cultivated provided that:

- No dredging for harvest of shellfish shall be allowed.
- No aquaculture related gear shall cover extensive water area or be allowed to contact the bottom at low tides.

4. This area shall be considered for Estuarine Research Reserve designation

5. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 19

Description:

Management Unit 19 includes all of the tidal marsh area of Poole's Slough (see Figure 23). This area is part of the largest and most diverse tidal marsh complex in the estuary and provides an extensive area of significant wildlife habitat. These areas are managed for protection of ecological values. conservation.

Uses in this area include shallow draft navigation related to aquaculture activities, and recreational use. Substantial portions of the unit are owned and protected by The Wetlands Conservancy. TWC has also worked to remove diked areas and add large woody debris to restore tidal marsh, including as a restoration project for the ODOT Highway 20 project which removed 1400 linear feet of dike, restoring 2.25 acres of tidal marsh and about 600 feet of channels. Large wood was also placed on the marsh to create habitat complexity. The MidCoast Watersheds Council has also done restoration in Poole Slough, removing an old road grade blocking tidal flow to restore tidal marsh habitat and has placed extensive large wood on the marsh and floodplain to restore habitat complexity and serve as nurse logs for tidal spruce swamp habitat restoration. Tidal spruce swamps and tidal scrub shrub habitats were once common habitat in the Yaquina and throughout west coast estuaries, but are now rare. Over 92% of this habitat type has been lost in Yaquina Bay (and throughout Oregon and the west coast). Historically, Poole Slough had tidal forested and shrub wetlands in its upper most reaches (Brophy 2019, see page 48, 58, 66 74 for Yaquina information)

Water quality is high. There are no outfalls located here and Oregon DEQ maintains four Water Quality Portal stations within Poole Slough.

A dredge material disposal site was designated at the mouth of Poole Slough, but is an inappropriate legacy use and should be removed during this comprehensive plan update. Upland dredge disposal sites exist, e.g. see analysis done by Green Point Consulting for the Port of Toledo in 2008 (attached).

The sub-tidal portion of Poole Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

There are some medium-high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence, which builds up marsh soil elevation, and sedimentation can keep up.

Management Unit 19 also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Classification: Natural

This area is a major tract of tidal marsh and is classified natural in order to preserve important resource values.

Resource Capability:

Poole Slough Unit provides a large area of significant tidal marsh and the associated resource values, particularly primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. Poole Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported foraging shorebirds when exposed and fishing herons and egrets when flooded.

Poole Slough also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

This is a sensitive area and because sedimentation appeared to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris 2010), Therefore, alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. minor structural alterations such as piling or navigation aids.

The sub-tidal portion of Poole's Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Structural alterations that do not significantly unduly alter impede circulation, occupy excessive surface area or adversely affect water quality are consistent with the resource capabilities of this unit.

There are some medium high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough

Management Objective:

Management Unit 19 shall be managed to preserve and protect natural resources and values.

Special Policies:
NOTE: The Goal 16 exception taken for this area is a relic and should be removed from this comprehensive plan update.

1. Conditional uses shall not be allowed in this management subunit except for:

    (a) Research and educational observations that require minor aquatic area alteration.

    (b) Navigation aids such as beacons and buoys.

    (c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

    (d) Passive restoration that requires estuarine aquatic area alteration.

    (e) Active restoration of fish and wildlife habitat (including native oysters), water quality, or estuarine productivity.

2. Aquaculture operations shall be confined to the existing footprint.

    (a)dredging for harvest of shellfish shall not be allowed.

    (b) No aquaculture related gear shall be allowed to contact the bottom at low tides.

3. No new aquaculture lease shall be allowed and unused leases shall be terminated.

4. This area shall be considered for Estuarine Research Reserve designation.

5. Disposal of dredge material is prohibited

6. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 24:

Description:

Management Unit 24 includes the area between the authorized federal navigation channel and the north shore from Grassy Point east to Criteser's Moorage (see Figure 28). Management Units 23 and 27 are located to the east and west (classified as "Natural") and restoration site Y06 is located to the north/east. Approximately a third of this unit is publicly owned (County, Federal, or Special District), with the rest held privately.

This unit contains a number of natural resources of major significance, including eelgrass and shellfish beds, fish spawning and nursery areas, tideflats and wildlife habitat. Fish species include Fall Chinook, Chum, Coho, Coastal Cutthroat, Pacific Lamprey, Western River Lamprey, Winter Steelhead, and White Sturgeon as indicated from Inventory Map 13.

Cultural resources…[More here as desired by SHPO and the Tribes]

Medium and shallow draft navigation and recreational activity are the major uses within the unit. Alterations include XX feet of riprapped shorelines, and piling, navigation aids, and dikes located [insert specific location]. Tidegates are located at the mouth of Boone and Nute Sloughs.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012), which has implications for the future of the Yaquina Bay Road. With 5ft of sea level rise, the adjacent restoration site Y06 will be inundated. This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to inundate restoration site Y06 and the Yaquina Bay Road, which poses a hazard risk to residents (FEMA, 2019). This management unit is also expected to be inundated in the event of a Tsunami scenario ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in MU 24 at 1.6, 2.5, and 4.7ft of sea level rise, and areas within this MU are ranked low to medium priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural

This unit is classified natural in order to preserve the important diversity of natural resources of major significance in this area. Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

Unit 24 is an area of diverse resource values, including productive intertidal and shallow sub-tidal areas, shellfish beds, fish spawning and nursery areas, and eelgrass beds. The nature of the resources in this unit is such that minor structural alterations such as piling or small docks that do not occupy extensive surface area or significantly affect circulation patterns, could be considered if they do not have serious impacts on the functional characteristics of the area. The mouths of Boone and Nute sloughs and their associated tide gates are located within Unit 24. These sloughs represent a significant potential

restoration resource, and alterations undertaken for the purpose of active restoration in this portion of Unit 24 would be consistent with the resource capabilities of this area.

To maintain natural resource values, permitted alteration shall be limited to those which result in temporary or minor disturbances. More permanent alterations shall be reviewed individually for consistency with the resource capabilities of this area.

Management Objective
Management Unit 24 shall be managed to preserve or enhance natural resources such as shellfish and eelgrass beds, productive tidal wetlands, wildlife habitat, and water quality.

Special Policies:

1. No use will be allowed that permanently block restoration of full aquatic passage or potential restoration of Boone and Nute Slough.
2. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

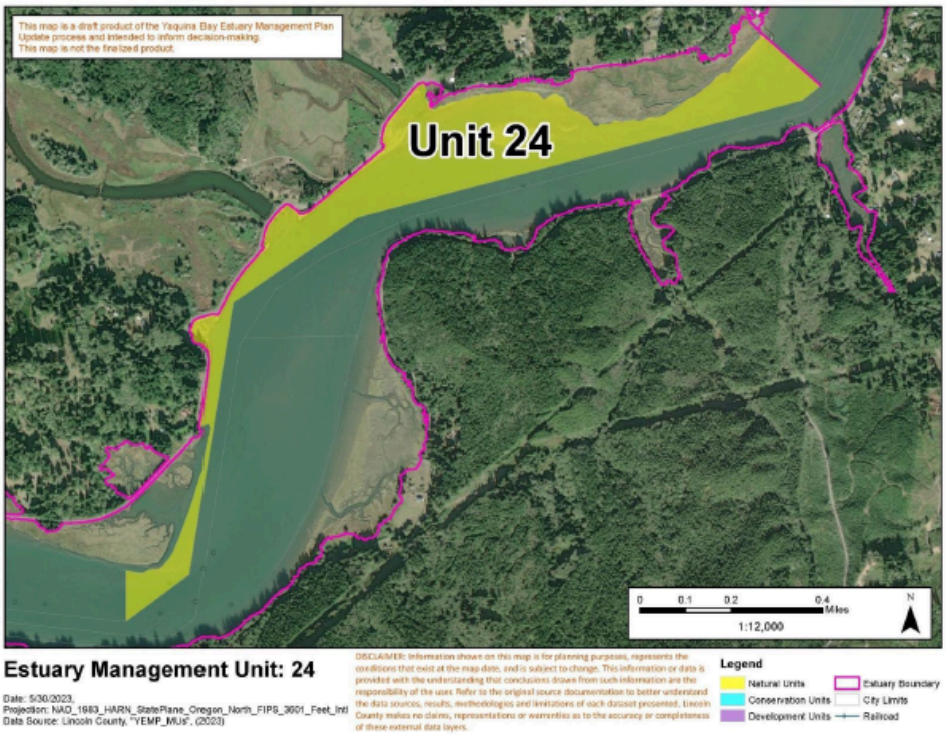

Figure 28. Estuary Management Unit 24, Yaquina Bay

Management Unit 28

Description:

Estuary Management Unit (EMU) 28 consists of three small sloughs formed by the mouths Babcock Creek, Montgomery Creek and a third unnamed creek, located along the south shore of the bay west of the Toledo airport. These sloughs contain important intertidal flats, channels and salt tidal marshes, and

provide fish spawning and nursery areas and wildlife habitat of major significance. Minor recreational activity is the only current use within this unit. All three sloughs are partially closed off at the mouth by the county road crossings but piling bridges or culverts allow the sloughs to fill and drain with the tides. A majority of this unit (XX acres) is owned by the Confederated Tribes of Siletz Indians.

Important natural resources include cool water flowing into this unit from the upstream tributaries, water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey.

Importance of habitat for birds and wildlife [ODFW input here].

Cultural resources…[More here as desired by SHPO and the Tribes]

Historical and contemporary alterations….[DSL input here].

Current sea-level rise modeling indicate that by 20XX this unit will experience increased water depth of xx.

Classification: Natural

The Yaquina Bay Estuary Management Plan (YBEMP) classifies EMU 28 as Natural. The classification is warranted.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

The areas are primarily intertidal flats, with low and high tidal marshes around the fringes. This Unit has only a small acreage of fringing tidal marsh. In addition to their value for productivity, these sloughs provide a protected environment for rearing juvenile fishes and crabs as well as valuable waterfowl feeding and resting sites. Because of these important resource values, alterations should be limited to minor structural types in association with low intensity uses.

Tidal circulation is currently impeded in these areas as a result of the county road Crossing at the mouth of the inlet. The construction of bridge crossings or the placement of additional or larger culverts to enhance tidal circulation would improve resource values and would be consistent with the area's resource capabilities.

Management Objectives:

Management Unit 28 shall be managed to preserve, protect and where appropriate, enhance the natural resources and values**.**

Special Policies:

1. Bridge crossing construction and/or culvert replacement activities may be permitted for maintenance or replacement of existing crossings or for active restoration of flushing action tidal exchange in these sloughs. Alterations for these activities are consistent with the purpose and resource capabilities of this unit.

2. Retain and enhance large woody debris as it provides habitat complexity and cover, which is especially important for ESA listed juvenile Coho salmon utilizing estuarine areas for rearing[5]

Management Unit 34A

Description:

Management Unit 34A consists of two tracts of restored tidal marsh and intertidal fringe located along the north and west shore, upriver of the STEDCO industrial property and lying between the railroad grade and MLLW (see Figure 38). Management Units 31 and 34 (classified as "Development" and "Conservation" Management Units) are directly adjacent to this site. Management Unit 34A includes roughly 77 acres of tidal marsh currently owned by The Wetlands Conservancy (2023). These areas were blocked from tidal exchange by man-made dikes in the early 20th century, and have been restored to the estuary system through dike breaching and channel restoration that began in 2002. Additional restoration actions including levee lowering, new channel establishment, large woody debris placement, and planting of native vegetation occurred in 2020. These marshes are part of the river sub-system, which is a primarily riverine environment with marine influence. These tidal marshes represent a scarce habitat type in this reach of the estuary and are considered resources of major significance. There are currently no active human uses in this unit.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012). This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to cover this entire management unit (FEMA, 2019). MU 34a is also expected to be inundated in the event of a Tsunami ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in this MU at 1.6, 2.5, and 4.7ft of sea level rise. Areas within this MU are ranked high, medium, and medium-low priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural
As a major tract of tidal marsh, this unit has been classified natural in order to preserve natural resources in the unit which are of major significance.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

[5] Koski, K V. 2009. The fate of coho salmon nomads: the story of an estuarine-rearing strategy promoting resilience. Ecology and Society 14(1): 4. [online] URL: http://www.ecologyandsociety.org/vol14/iss1/art4/

Management Unit 34A is a formerly diked area that was disconnected from the tidal regime of the estuary. These tracts are now largely restored to tidal exchange and thus reconnected to the estuarine system. However, the restoration of full function of this marsh is ongoing and additional active restoration activities may be undertaken to further enhance the value of these tracts to the estuarine system. Active and passive restoration activities are consistent with the resource capabilities of this unit. Other uses are inconsistent with the resource capabilities of this unit.

Management Objective:

Because this site is being restored to increase estuarine/riverine function, the management objective is to maintain the goals of restoration including floodplain function, slowing floodwater, increased woody debris and recruitment of woody debris, and natural vegetation to provide high quality fish and wildlife habitat, enhance water quality and other ecosystem services.

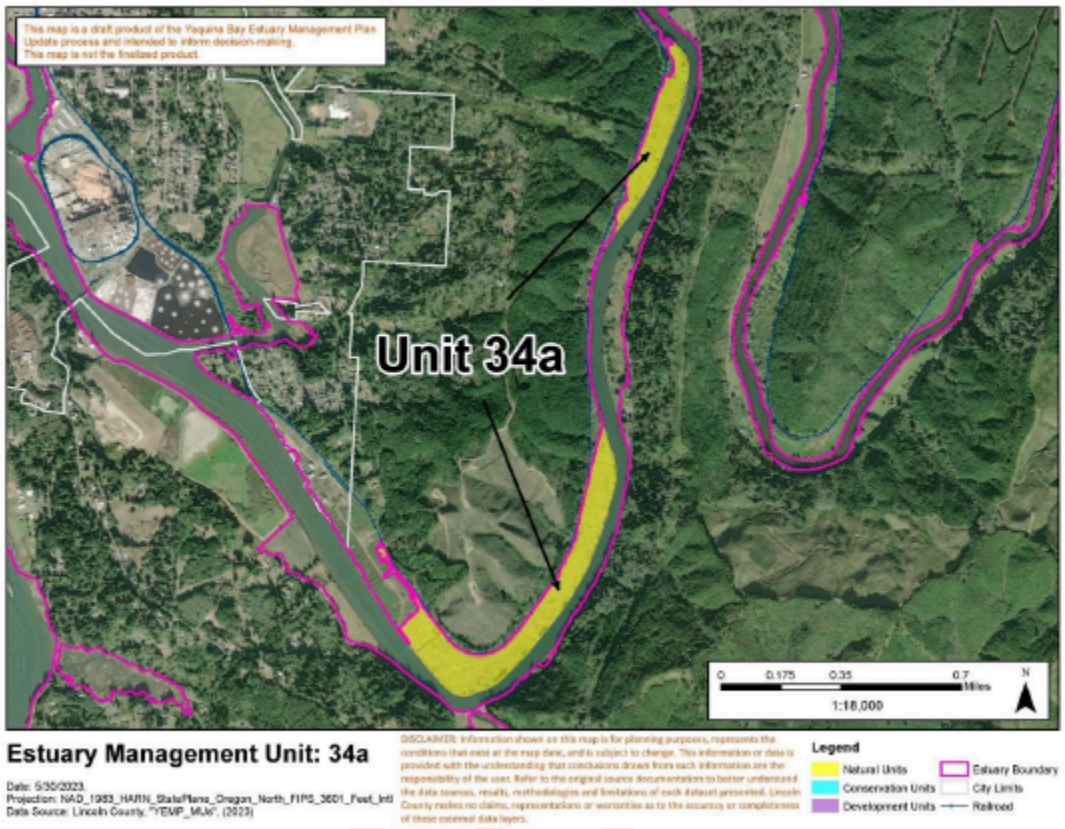

Figure 38. Estuary Management Unit 34a, Yaquina Bay

Megan

Due to the high volume of inquiries I am receiving, my responses are delayed. Thank you for your patience.

Megan Hoff | Senior Planner

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e: mhoff@co.lincoln.or.us | **w:** www.co.lincoln.or.us
p: Main 541-265-4192 | Direct 541-265-0233

From: Lynch, Samantha M (Sam) CIV USARMY CENWP (USA) <Samantha.M.Lynch@usace.army.mil>
Sent: Friday, July 26, 2024 2:08 PM
To: Megan Hoff <mhoff@co.lincoln.or.us>; Ellis, Karla G CIV USARMY CENWP (USA) <karla.G.Ellis@usace.army.mil>
Cc: John W. O'Leary <joleary@co.lincoln.or.us>; Onno Husing <ohusing@co.lincoln.or.us>; REED Meg * DLCD <Meg.REED@dlcd.oregon.gov>
Subject: RE: Question about USACE Yaquina Bay Jetty Maintenace Width for Lincoln County Estuary Management Plan

Hi Megan,

Thanks for your patience as I gathered input from Corps personnel involved in the operation, maintenance, and repair of our navigation features. Given the historic and ongoing needs of our program, we request a minimum width of 300-feet around the navigation features relevant to the federal navigation channel including the north and south jetties, spur groins along the south jetty, and the South Beach Boat Basin breakwaters. Additionally, we propose buffers around aids to navigation (ATON) at least twice as wide as the depth of water they are in (see table below). The attached image and KMZ provide a rough idea of where those relevant features are and approximate the location of a 300-foot buffer around the jetties, groins, and breakwaters.

ATON	Approximate Water Depth (ft)	Buffer (ft)
Entrance Lighted Buoy 3	42	84
Channel Lighted Buoy 7	30 (authorized channel depth)	60
Channel Lighted Buoy 9	17	34
Channel Lighted Buoy 11	17	34
Channel Daybeacon 12A	15	30

One important point from the team is that terrestrial staging space is needed on both sides of the channel to allow the Corps and its contractors to perform heavy marine rock work. The proposed buffer in this map would provide adequate space for this work.

We appreciate the opportunity to provide feedback to Lincoln County on this Estuary Management Plan and we welcome future engagement on this plan. Please let me know if you have any questions or concerns.

Kind regards,
Sam

Sam M. Lynch (she/her/they)
Coastal Project Manager
Portland District Navigation Division
U.S. Army Corps of Engineers
503.828.6059

From: Megan Hoff <mhoff@co.lincoln.or.us>
Sent: Friday, July 26, 2024 10:55 AM
To: Ellis, Karla G CIV USARMY CENWP (USA) <karla.G.Ellis@usace.army.mil>; Lynch, Samantha M (Sam) CIV USARMY CENWP (USA) <Samantha.M.Lynch@usace.army.mil>
Cc: John W. O'Leary <joleary@co.lincoln.or.us>; Onno Husing <ohusing@co.lincoln.or.us>; REED Meg * DLCD <Meg.REED@dlcd.oregon.gov>
Subject: [Non-DoD Source] Re: Question about USACE Yaquina Bay Jetty Maintenace Width for Lincoln County Estuary Management Plan

Hi Sam,

Thanks so much for your voicemail update yesterday morning, I apologize for missing your call! We have been in all day meetings this week.

We are very appreciative of your work on this!

Megan

Due to the high volume of inquiries I am receiving, my responses are delayed. Thank you for your patience.

Lincoln County

Megan Hoff | Senior Planner

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From: Megan Hoff <mhoff@co.lincoln.or.us>
Sent: Monday, July 22, 2024 12:12 PM
To: Ellis, Karla G CIV USARMY CENWP (USA) <karla.g.ellis@usace.army.mil>
Cc: John W. O'Leary <joleary@co.lincoln.or.us>; Onno Husing <ohusing@co.lincoln.or.us>; REED Meg * DLCD <Meg.REED@dlcd.oregon.gov>; Lynch, Samantha M (Sam) CIV USARMY CENWP (USA)

Oregon Shores Conservation Coalition

July 18, 2024

To: Derrick Tokos, Community Development Director, City of Newport;
Members of the Newport Planning Commission

RE: Amendments to Newport Comprehensive Plan and Zoning Code to implement the Updated Yaquina Bay Estuary Management Plan and response to the Port of Newport's comments on MU 10

Thank you for the opportunity to provide comments on the draft Newport Comprehensive Plan and Zoning Amendments aimed to implement the Updated Yaquina Bay Estuary Management Plan. Oregon Shores Conservation Coalition is a non-profit whose mission is to engage, educate, and empower people to protect and increase the resilience of the coast's ecosystems, landscapes, and communities. Oregon Shores has been actively involved in the update of the Yaquina Bay Estuary Management Plan (YBEMP) as members of the Advisory Group and Technical Group over the past several years, and we have provided many comments on each component of the plan every step of the way.

Comprehensive Plan Management Unit 10
First, I just want to provide some background context and clarity around some of the text found in Management Unit 10, that was brought for discussion and comment by representatives of the Port of Newport during the June 24 work session. Natural resource information in the text in MU 10 (Sally's Bend) of the YBEMP was enriched as a result of comments made by Oregon Shores, and several other conservation groups on the Advisory committee in July of 2023. At this time, we advocated that the latest data and information from the new maps and resource inventories be integrated in-text within individual management unit sections to better contextualize the natural resources present and ecological and cultural value of each unit (See Attachment). We maintain that this is crucial to fully updating the YBEMP, otherwise the plan will continue to be implemented using 40 year old resource information. Providing greater context about natural resources also serves to provide justification for the specific management objectives and special policies of each unit and directly inform the Resource Capability Test, that will be used to determine if a proposed use is compatible with the ecological function of an area. In our letter, we offered several examples to demonstrate more descriptive language of MUs, and provided a template to integrate such information in all the MUs in the YBEMP.

This information was offered to the steering committee, of which the Port of Newport was a member, who chose to integrate and tweak our suggested examples and approved the final draft including those changes. Additionally, the special policy regarding deepening and widening the federal navigation channel and turning basin in MU 10 was integrated to make it clear that such an alteration is not consistent with the goals of the natural management unit or compatible with the resources in MU 10. This special policy was added in response to a sub-area policy for Sally's Bend, found in the original 1982 YBEMP, which states:

> *It is recognized that some alteration of the sub-area may be required in conjunction with expansion and/or deepening of the deepwater channel and turning basin, Other*

alterations shall be limited to those necessary to maintain existing uses or those undertaken in conjunction with restoration projects.

If there has been no Goal 16 exception has been pursued and granted for this channel modification and expansion, which would include significantly altering a natural management unit in Sally's Bend, this sub-area policy for Sally's Bend should be removed from the plan altogether, as it is blatantly inconsistent with Goal 16 and the management objectives of MU 10.

Sally's Bend (MU10) is one of the most ecologically valuable areas in Newport's jurisdiction and text describing this MU should reflect this. Of note, MU 10 is indeed identified as a pinniped haul-out area, and it has one of the largest seagrass meadows in the entire estuary, according to the updated resource inventory maps. Given this background on updated text contained in MU 10, we are concerned that the changes the Port of Newport is requesting may result in important resource information being stripped from the plan. We would like to come to a reasonable compromise on the language found in this section. As such, we request the opportunity to review and respond to the latest edits of the comprehensive plan before they move forward to public hearing.

New Exempt Uses Section

Goal 16 describes the three types of management units and the permissible uses in each management unit. In management units classified as natural, permissible uses include: "(a) undeveloped low-intensity, water-dependent recreation; (b) research and educational observations; (c) protection of habitat, nutrient, fish wildlife and aesthetic resources; (e) passive restoration measures; and (h) bridge crossings."[1] These uses are outright allowed in natural management units and not subject to the resource capability test. For management units classified as conservation and development, the permissible uses differ from those listed for natural management units.

However, section 14.04.020 of the city's zoning ordinance amendments lists these permissible uses as exempt uses. Permitted uses are not the same as exempt uses and permitted uses vary depending on the classification of the management unit. An exempt use suggests that the uses are an "exception" to uses allowed in a management unit. However, under Goal 16, the listed "exempt uses" are just permitted uses allowed in natural management units. There are no "exempt uses" under Goal 16. The new language proposed by the Newport Community Development Department misconstrues the permitted uses in natural management units as "exempt uses."

In addition, the updated estuary plan states that "potential cumulative impacts of alterations and development activities were considered and integrated into the policies and

[1] Goal 16, at 2-3, https://www.oregon.gov/lcd/OP/Documents/goal16.pdf; see also OAR 660-017-0024(1)(a).

requirements of the Estuary Management Plan for Yaquina Bay.[2] However, the plan allows minor alterations in both development and conservation management units. Neither the plan nor the zoning code defines “minor alterations” or considers the cumulative impacts of multiple/various “minor alterations” over time. Even more, construing the permitted uses as exempt uses circumvents analyzing the cumulative impacts of “minor alterations” and “minimal impact developments” given that those uses would be exempt and not subject to the resource capability test. Cumulative impacts of “minimal impact developments” add up over time because everyone is entitled to the exemption. As such, we recommend this new special policy be removed from the comprehensive plan and zoning codes, and that permitted and conditional uses instead be clarified.

Specifying Management Unit Objectives

Management unit objectives guide the management of each unit based on the unit’s classification. Currently, the management objectives for most of the units are fairly broad. For example, management unit 3’s objective is “to conserve natural resources of importance.”[3] Providing more specific management unit objectives would help inform specific special policies as well as resource capability. For example management unit 10 has a much more descriptive and comprehensive management objective than other units in Newport’s jurisdiction. Unit 10’s management objective states “ Management Unit 10 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture.”[4]

We encourage the city to use management 10’s objective statement as a model for other management units. Further, where ecologically significant species such as eelgrass are present in the management unit, the unit’s objective should include language that protects eelgrass and mitigates any adverse impacts. Further, maintaining specific natural resource language, such as that found in the current text of MU 10 guides and justifies more specific management objectives and provides more clarity to plan users.

Resource Capability Test

The resource capability test helps determine whether a conditional use is compatible with the continued existence and functioning of resources within management units.[5] The resource capability test “determines the impact of a proposed use and whether the resources

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[2] Updated Yaquina Bay and Estuary Section, at 6, https://www.newportoregon.gov/citygov/comm/pc/agendas/06-24-2024_PC_Work_Session_Meeting.pdf
[3] Update Yaquina Bay and Estuary Management Plan, at 16, https://www.newportoregon.gov/citygov/comm/pc/agendas/06-24-2024_PC_Work_Session_Meeting.pdf
[4] *Id.* at 222.
[5] OAR 660-017-0024(1)(a), (2).

and ecosystem can assimilate the impact and continue to function."[6] "A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education."[7] Further, an impact assessment which looks at the effects of use on a management unit's resources, informs the resource capability test.[8]

Section 14.04.040 provides the resource capability test. However, this section neither describes what the test is nor how it is applied. Even further, the code amendments do not explain the process for performing the resource capability test- who is supposed to implement the resource capability test, how is it determined that a use is not significant and that the resources and ecosystem in that management unit can "assimilate the impact and continue to function," and how an applicant can be sure they have met the standards in 14.04.040. Given the importance of the resource capability test in determining whether a conditional use is permissible within a given management unit, the zoning code amendments should provide more clarity on what the test is, how it should apply, and how to meet the test standards/requirements.

Significant adverse impact

The terms "adverse impacts" and "significant adverse impacts" are used throughout the zoning code amendments and the updated management plan. However, nowhere in either of those documents are the terms significant adverse impacts or adverse impacts defined. Having a clear definition of adverse impacts and significant adverse impacts is important for enforcing the zoning code requirements and providing consistency across permitting decisions.

For example, under the Oregon Department of Fish and Wildlife's habitat mitigation policy, "impact means an adverse effect of a development action upon fish and wildlife habitat."[9] We propose the following definition of adverse impact, which incorporates language from the resource compatibility test:

> Adverse impact means a use or activity that is not consistent with the resources of the area and estuarine species, habitats, biological productivity and water quality cannot assimilate the use or activities' effects. Estuarine species, wildlife habitats, natural biological productivity cannot continue to function as a result of the use or activity proposed."

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[6] Estuary Planning, Oregon Coastal Management Program, Statewide Planning Goal 16, https://www.oregon.gov/lcd/ocmp/pages/estuary-planning.aspx#:~:text=Certain%20uses%20are%20considered%20permissible,impact%20and%20continue%20to%20function.
[7] Goal 16, at 3, https://www.oregon.gov/lcd/OP/Documents/goal16.pdf
[8] Assessment of Oregon's Regulatory Framework for Managing Estuaries, DLCD, at 17, Mar 2014, https://www.oregon.gov/lcd/OCMP/Documents/RegulatoryAssessment.pdf
[9] OAR 635-415-0005(10).

Thank you for considering the above comments for informing the next iteration of zoning codes and comprehensive plan text edits. We welcome the opportunity to discuss these changes at any time and look forward to future engagement in this important process.

Kind Regards,

Annie Merrill
Ocean and Estuaries Manager
Oregon Shores Conservation Coalition

Recommended Management Unit Template for Draft YBEMP

Context

A new ODFW resource inventory was not conducted for this update, although some language has been updated, more can be added to ensure the descriptions do not include relic 40-year old information. Originally recommended in ODFWs report, *Habitat Classification and Inventory Methods for the Management of Oregon Estuaries*, a permanent monitoring program that works to provide planners the information they need, remains salient. The report states,

"As planning proceeds and development goals identified in local plans are implemented, basic inventory data will become increasingly important to all local, state, and federal agencies involved in estuary management. A standard, coordinated inventory program to provide this information is essential to ensure that the most pressing research needs have priority, that research time and dollars are spent most effectively, and that results achieve a high degree of transferability. The Oregon Estuarine Research Council, composed of state and. federal agencies and institutions, could help to coordinate research efforts and prevent duplication in future estuary inventories."

Oregon no longer has an Oregon Estuarine Research Council. We believe the inaccurate framing of what kind of tool EMPs are, what kind of monitoring support they are to receive from coastal partner agencies, and the viewpoint that they are a tool solely for one group of government official versus others or the community at large, is a result, in part, of a lack of investment in the implementation vision for the coastal goals and a loss of institutional knowledge. Planners are one end user of estuary management plans. A primary user, yes, but not the only one.

In absence of the 'envisioned' resource inventory monitoring program and supporting data, or even a one-time ODFW inventory effort for this YBEMP update, the research community and state agencies hold spatial data and other non-spatial research data that is available to support the YBEMP management unit updates and is quite plentiful. The project team gathered spatial data for static County maps, but no analysis occurred in the presence of natural resource managers, or others with expertise. There was no facilitated process to discuss management unit boundaries, resource presence/absence, or the management objectives for the 39 units. The advisory group that contained this project's natural resource expertise, has had the same amount of time as the public to view the new management unit boundaries overlaid with resource data; approximately 3 weeks.

Without adequate time for a meaningful analysis of the units and spatial information during this process, we offer the Steering Committee a template to consider for the Management Unit update work that remains in order to reflect current resource data and information based on 21st century technology, tools, and research. Collaborators included advisory group members and local community members that have natural resource backgrounds and natural history knowledge. This document goes further by providing example language for several units to illustrate the deficit in the current management unit section of the draft YBEMP. However, we recommend all units contain similar information synthesized from updated officially County adopted maps and other resource maps, and data not officially adopted by the County, but still helpful information for decision makers, applicants, and the interested public.

Recommended Template Outline

Resource Description

Overall, this section should address the most recent information to describe the characteristics of the unit. We recommend the following short paragraphs:

> **Paragraph 1:** location, geography, and locators. Percent private ownership.
>
> **Paragraph 2:** natural resources of note- info on water quality (issues, outfalls or otherwise- if no outfalls good to note as well) and cultural resources of note (that are appropriate to share in a public doc)
>
> **Paragraph 3:** past, current, and future potential uses.
>
> **Paragraph 4:** any known alterations, historic and contemporary
>
> **Paragraph 5:** Forward looking challenges and considerations. Particularly sea level rise modeling or other info from the state's SLR toolkit. The public can't access this viewer without a password-- https://www.coastalatlas.net/index.php/tools/planners/68-slr/ but the planning guide does provide the guidance that updated EMPs should consider SLR and modify management unit uses accordingly. https://www.coastalatlas.net/sealevelriseplanning/downloads/SLR_Planning_Guide_V1.pdf

Classification:

This paragraph should address the requirements of the classification of the unit from Goal 16. It is an appropriate place to provide a rationale for the classification to a greater extent than the existing language. This would help the public understand the classification system, the rationale that went into the classification, and serve as a reminder to future governmental staff what decision occurred in the past and why.

Resource Capability:

Originally, this section relied on the ODFW inventory of major and minor resources found within a given unit. Since we do not have an updated ODFW inventory with newly revised major and minor resource classifications, we recommend listing ecosystem services in addition to how the unit has served the human community (i.e. aquaculture). Services to human community in an economic sense is currently what is addressed in the language. The notion of 'ecosystem services' was not well developed when first written, so there is an opportunity to describe how estuary functions support the quality of life the community enjoys.

Management Objective:

This section should include more specifics about how the resources present will be sustained or what the goals are for 'enhancement'; a word frequently used in Goal 16. Much more is known about the extent and trend of resources in the estuary as well as how to manage (even through a planner's lens) a resource to make sure it is maintained. The objectives can also address human use management objectives (ie aquaculture).

Special Policies:

Ensuring estuary function per Goal 16 requires actions and management to take place at site-level scales. Ecosystem function is depleted by many cumulative decisions over time (ie death by a thousand cuts). Time should be taken to thoughtfully consider the potential impacts to and management goals for each unit and be used guide current and future planners as well as land use permit applicants for that unit.

Management Unit Examples

Below we provide example language (that is not necessarily finished) for management units 10, 14, 17, 18, 19, 24, 28, and 34A. The below examples do their best to illustrate what the template outline above is recommending.

We'd like to request that the information contained within these examples as well as the special policy examples be incorporated into the YBEMP draft. They are comments as well as examples.

We marked the absence of important numbers or information with an 'X' and indicated where the agencies or Tribes may have the needed information.

Management Unit 10:

Description:

Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and is bounded on the south by the authorized federal navigation channel (see Figure 15), and units 14 and 5, classified as Development. The large majority of this unit (X percent) is owned by the Port of Newport, with a small component held in public ownership by the state (to the South East) and a "Special District" on the North West corner of the unit).

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance, identified by ODFW in the late 1970's, including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. These resources are still present. Historic extent of eelgrass has covered over 50% of this management unit (PMEP 2019) and the meadow present in MU 10 is the largest eelgrass area in the entire bay. However, recent maps show that eelgrass beds are only present in small patches on the edges and middle of the management unit (CMECS Biotic, 2018), indicating a significant loss of habitat. It is estimated that dredge and fill activities in the lower Yaquina Bay have decreased eelgrass habitat by 16%.[1] Eelgrass and associated habitat makes this area extremely important for ESA listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region (ODFW, 2011), which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.[2] X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

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[1] Ferraro, Steven P; Cole, Faith A., 2010. Ecological periodic tables for nekton usage of four US Pacific Northwest estuarine habitats. Canadian Journal of Fisheries and Aquatic Sciences, 67(12), pp.1957-1967.

[2] Bohlen, Victoria L. 2019. Evaluation of a Habitat Suitability Model to predict the geospatial distribution of Olympia oyster presence in Yaquina Bay, Oregon, Master's Thesis, Oregon State University Scholars Archive. Accessed: https://ir.library.oregonstate.edu/concern/graduate_projects/0v838678g

Uses in the area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the Southern corner).

Several minor alterations are present, including piling and rip rapped shorelines at X and X locations. The Northwest corner of Sally's Bend was filled to accommodate development, which became the NW Natural Gas site in 1977

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 10, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, projected by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the Yaquina Bay Road flooding, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Additionally, these same areas are expected to be inundated in the event of a Tsunami scenario ranging from small to large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in adjacent shoreline areas under sea-level rise conditions ranging from 2.5- 4.7 ft and is designated as a high priority zone to accommodate this migration.[3] A small freshwater emergent wetland that was formerly tidal, on the E. side of Sally's Bend at the junction of John Nye Road and N. Bay Road is designated as a potential Restoration Site (Y36).

Classification: Natural
As a major tract of tide flat with seagrass beds, this unit has been classified as natural in order to preserve significant natural resources in the unit. Rationale: Goal 16 states that areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:
Management Unit 10 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat support for biodiversity, and shoreline protection from storms. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

In order to maintain resource values, permitted alterations should be limited to those which result in only temporary, minor disturbances, (several submerged crossings have been located in this area). More permanent alterations should be reviewed individually for consistency with the resource capabilities of the area.

Management Objective:

[3] Brophy, Laura S; Ewald, Michael J. 2018. Modeling sea level rise impacts to Oregon's tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. MidCoast Watersheds Council. Oregon State University

Because of the resource capabilities of Management Unit 10, it shall be managed to preserve and protect natural resources and values. This area shall be managed to aid eelgrass expansion, native oyster re-establishment, and improved water quality to enhance natural resources present.

Special Policies:

1. To maintain the ecosystem integrity of this area to support continued resource capabilities and ecosystem services, future development within this unit shall not be permitted.
2. Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, impacts to Olympia oysters present shall be avoided.
3. To support the continued presence of eelgrass beds in this unit, reduced water quality and sedimentation in this unit that is a result of dredging in other, nearby units will be mitigated. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.
4. Deepening and widening of the channel and turning basin in this management unit impacting eelgrass and hydrology within Sally's Bend shall be avoided.

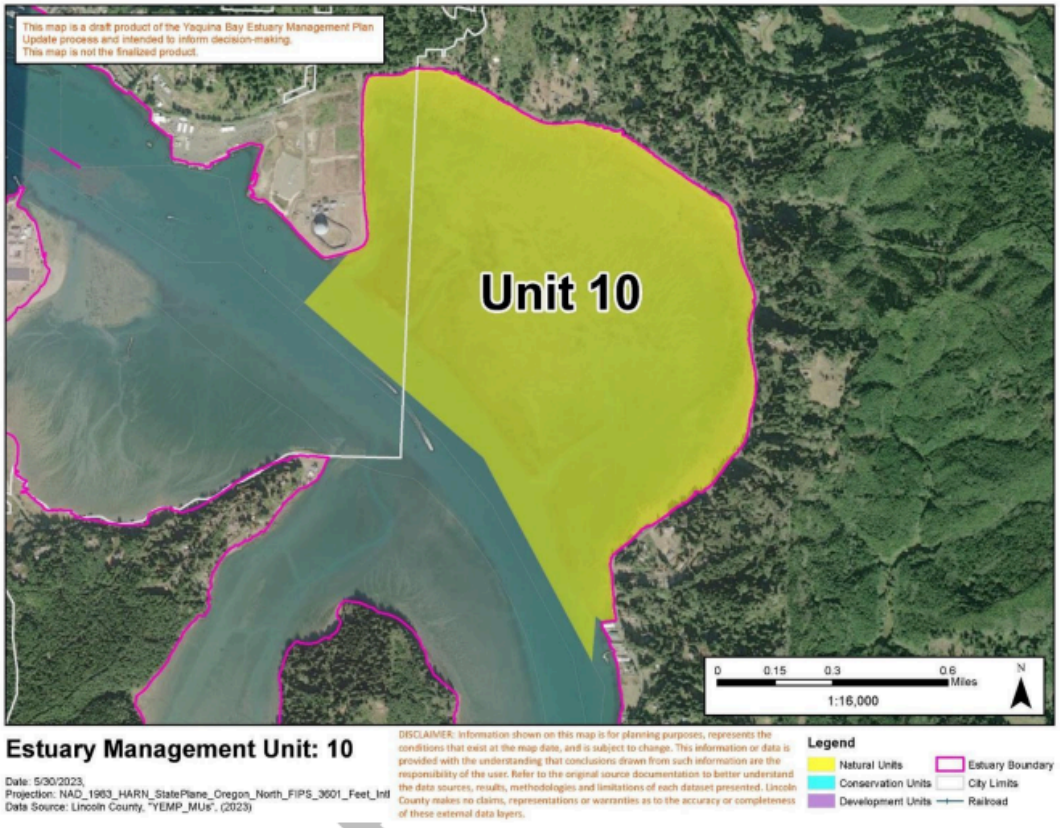

Figure 15. Estuary Management Unit 10, Yaquina Bay

Management Unit 14:

Description:

Management Unit 14 is the area between the navigation channel and the east shore from Coquille Point up to River Bend (Oneatta Point) in the Yaquina sub-area (see Figure 18). Parker Slough (MU 15) meets

the Yaquina River at the Southern end of MU 14 and a dike separates the two management Units. X percent is privately owned.

Natural resources present in this unit, as identified by ODFW in the late 1970's, include fish spawning and nursery areas, eelgrass, and shellfish beds, tideflats, wildlife and waterfowl habitat (all of minor significance). These resources are still present, primarily patches of eelgrass lining the channel (CMECS Biotic, 2018). These eelgrass patches are habitat corridors for migrating fish species of commercial importance, such as Fall Chinook, Chum, Coho, and Coastal Cutthroat (USFW, 2023). Recovering populations of native Olympia oysters have also been surveyed throughout the management unit (Bohlen, 2019). X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

The predominant uses in the unit are small boat moorage, medium and shallow draft navigation, marine construction and repair, and recreation.

Major alterations are present in the form of boat launches and haul outs, piling, wharves, floating docks that serve marina development, and marine construction and repair operations. Additional alterations include fills along the shoreline, dredging, navigation aids, and stabilized (bulkheads and riprap) shorelines, and dikes.

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 14, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, while 2 more areas are projected to be flooded with 1-2 ft of sea level rise by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the shoreline flooding across, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Significant areas of the shoreline adjacent to MU 14 are expected to be inundated in the event of a Tsunami scenario ranging from small to extra-large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in the majority of adjacent shoreline areas under sea-level rise conditions ranging from 1.6- 4.5 ft but is designated as a low priority zone to accommodate this migration (Brophy et al. 2018). A small formal tidal marsh just S of Weiser Point (Y41) and a tidal flat on the E. bank of Yaquina (Y39) are designated as potential Restoration Sites within this unit.

Classification: Development
Unit 14 is a deep-water area close to shore with existing development of moderate intensity and thus is classified for development management. Rationale: Goal 16 states that areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance.

Resource Capability:
Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat for commercially important fish, and shoreline protection from storms. Resource capabilities of this unit also support water-dependent uses and recreation.

Numerous major alterations have occurred in this area in conjunction with past developments, including dredging, intertidal fills, and structures such as piers and docks. This unit also has natural deep water adjacent to developable shorelands, one of the last such areas in the estuary. Development of these areas for water dependent uses is not subject to resource capability findings and will be consistent with the purpose of a development management unit.

Management Objective:
Management Unit 14 shall be managed to provide for water dependent development consistent with available levels of services and backup space.

Special Policies:
1. Due to the limited water surface area available and the need for direct land to water access, alternatives (such as mooring buoys and dry land storage) to docks and piers for commercial and industrial use are not feasible in Unit 14. Multiple use facilities common to several users are encouraged where practical.
2. Due to the presence of recovering Olympia oysters in this management unit, suitable material for oyster settlement shall be placed in the water during a development, when possible

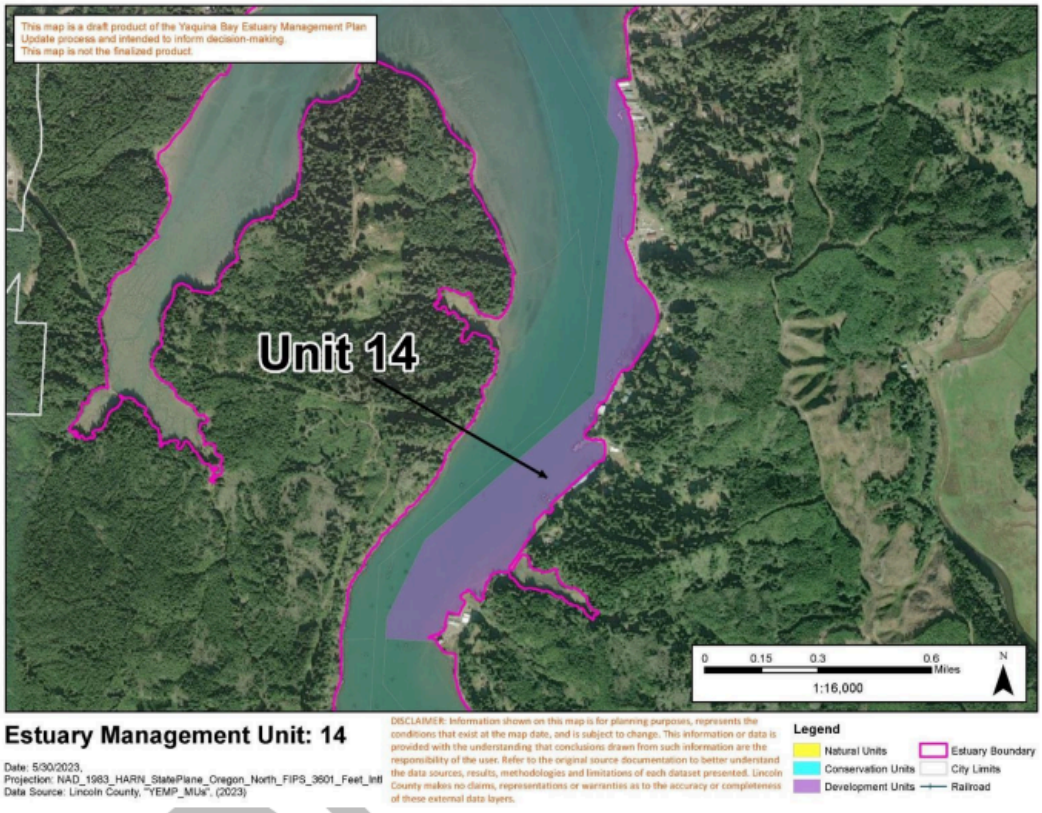

Figure 18. Estuary Management Unit 14, Yaquina Bay

Management Unit 17:

Description:

Management Unit 17 consists of the area between the river left of the navigation channel and the south shore of the bay from River Bend east to Grassy Point. Four natural management units (18,19,21, and 22) abut this unit nearshore. The unit extends from river mile X to X. X percent of this unit is privately owned.

Natural resources of significance identified by ODFW in the late 1970's include shellfish beds, fish spawning and nursery areas, and wildlife habitat. These resources are still present [ODFW should confirm]. Eelgrass is present in the nearshore area of this unit, especially in the area next to natural MU's 18 and 19. Cool water flowing into this unit from the adjacent sloughs, the slower water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey. In 2019, mid-estuary was determined to be most suitable for Olympia oysters suitable for restoration of native oyster reef and native oysters were present in intertidal sampling.[4] [More here as desired….]

Cultural resources…[More here as desired by SHPO and the Tribes]

This unit represents a portion of the prime aquaculture area of the estuary and oyster farming is the principal use in the unit. There are no public boat launches or other recreational infrastructure to access the water. Other uses in the unit include shallow and medium draft navigation, recreation, and commercial harvest..

XX percent of the shoreline has been hardened with rip rap. Pilings from previous alterations are present at X and X locations. Floating docs are present, however not as dense in other management units. DSL proprietary records report XX dock registration and over water leases in this unit. [DSL should help with this information].

Numerous minor alterations needed for commercial aquaculture operations have taken place in this area. Alterations include piling, piers, floating docks, and stabilized shorelines.

Current sea-level rise modeling indicates that by 20XX this unit will experience increased water depth of xx. The natural management units abutting this unit to the south will likely help this unit's resilience to flooding, water temperature increases, and habitat migration that supports current fish and wildlife resources.

Classification: Conservation

This is an area suitable for commercial aquaculture, native shellfish restoration, recreation, and related activities. The 'conservation' classification is warranted. Rationale: Goal 16 states that areas not specifically set aside for preservation (and labelled 'natural'), will be given a 'conservation' classification, and shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary. This unit shall be managed to conserve the natural resources and benefits it provides. This unit will support the maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture uses of the estuary. This area contains tracts of significant habitat but also contains current commercial aquaculture practices described below, so is best classified as conservation.

[4] Bohlen, V. 2029. Evaluation of a Habitat Suitability Model to Predict the geospatial distribution of Olympia Oyster presence in Yaquina Bay, Oregon.

Resource Capability:

Restoration adjacent to this management unit has increased the ecosystem function of this area over the decades. Ecosystem services provided by this unit because of the capabilities of present resources include…..[more here.]

Relatively high-water quality established this unit as an area suitable for aquaculture by ODA and it has been used as a commercial oyster growing area for decades. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

Similar types of minor alterations described above will be necessary for the continued operation of the oyster industry and are consistent with the resource capabilities of this unit.

Management Objective:

Because of the capabilities of Management Unit 17, it shall be managed to maintain and enhance natural resources present. Aided by the restored natural management units abutting the unit, the area is expected to experience eelgrass and mudflat expansion, native oyster re-establishment, and shallow water habitat, and it will be managed to support these goals. This unit will also be managed to cultivate aquaculture opportunities and will provide for aquaculture related development.

Special Policies:

1. Aquaculture facilities may include receiving, processing, and retail sales facilities.

2. To maintain the suitability of this area for aquaculture and otherwise protect important resources, development for high intensity water dependent recreation shall not be permitted in Management Unit 17.

3. Because units in the mid-estuary are especially suitable for native oyster re-establishment, impacts to Olympia oysters present will be avoided and where appropriate shell or other appropriate biogenic material added when development is permitted.

4. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 18

Description:

Management Unit 18 includes the tidal marsh complex and intertidal area of McCaffery Slough (see Figure 22). This is an important natural resource area, with extensive areas of a major tract of intact aquatic area and tidal marsh providing important primary productivity and extensive wildlife habitat. Except for the upper- most end of McCaffery, all the tidal marshes are owned by the Wetlands Conservancy (TWC) and are managed for conservation. [Note that Map 5 Ownership map does not show the extent of TWC ownership here]. Additionally, in the lower area, substantial area of tidal marsh bridge between McCaffery and Poole Slough (management unit 19) and are owned by The Wetland

Conservancy, and acquisition and conservation of additional tidal marsh is a high priority. Most of the aquatic area and wetlands of this unit remain essentially unaltered.

Water quality is high, with no outfalls and OR DEQ maintains one Water Quality Portal station here. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence and sedimentation can keep up.

McCaffery Slough was once considered as a candidate site for a State Estuarine Research Reserve.

Classification: Natural

As a major tract of unaltered tidal marsh, this unit is classified natural in order to preserve its essential resource characteristics.

Resource Capability:

The McCaffery Slough area provides major resource values in the form of primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. McCaffery Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported.

The sub-tidal portion of McCaffery Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence which builds up marsh soil elevations and sedimentation can keep up.

Management Objective:
Management Unit 18 shall be managed to preserve and protect natural resources and values.

Because sedimentation appears to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris. OSU. 2010), minor structural alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. alterations such as piling or navigation aids.

Special Policies:

1. Conditional uses shall not be allowed in this management subunit except for:

(a) Research and educational observations that require minor aquatic area alteration.

(b) Navigation aids such as beacons and buoys.

(c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

(d) Passive restoration that requires estuarine aquatic area alteration.

(e) Active restoration of fish and wildlife habitat, including native oysters, water quality, or estuarine productivity.

2. No new aquaculture leases shall be issued within McCaffery Slough.

3. Existing unused aquaculture lease areas shall be terminated or if renewed shall only allow native shellfish and plants aquaculture to be cultivated provided that:

- No dredging for harvest of shellfish shall be allowed.
- No aquaculture related gear shall cover extensive water area or be allowed to contact the bottom at low tides.

4. This area shall be considered for Estuarine Research Reserve designation

5. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 19

Description:

Management Unit 19 includes all of the tidal marsh area of Poole's Slough (see Figure 23). This area is part of the largest and most diverse tidal marsh complex in the estuary and provides an extensive area of significant wildlife habitat. These areas are managed for protection of ecological values. conservation.

Uses in this area include shallow draft navigation related to aquaculture activities, and recreational use. Substantial portions of the unit are owned and protected by The Wetlands Conservancy. TWC has also worked to remove diked areas and add large woody debris to restore tidal marsh, including as a restoration project for the ODOT Highway 20 project which removed 1400 linear feet of dike, restoring 2.25 acres of tidal marsh and about 600 feet of channels. Large wood was also placed on the marsh to create habitat complexity. The MidCoast Watersheds Council has also done restoration in Poole Slough, removing an old road grade blocking tidal flow to restore tidal marsh habitat and has placed extensive large wood on the marsh and floodplain to restore habitat complexity and serve as nurse logs for tidal spruce swamp habitat restoration. Tidal spruce swamps and tidal scrub shrub habitats were once common habitat in the Yaquina and throughout west coast estuaries, but are now rare. Over 92% of this habitat type has been lost in Yaquina Bay (and throughout Oregon and the west coast). Historically, Poole Slough had tidal forested and shrub wetlands in its upper most reaches (Brophy 2019, see page 48, 58, 66 74 for Yaquina information)

Water quality is high. There are no outfalls located here and Oregon DEQ maintains four Water Quality Portal stations within Poole Slough.

A dredge material disposal site was designated at the mouth of Poole Slough, but is an inappropriate legacy use and should be removed during this comprehensive plan update. Upland dredge disposal sites exist, e.g. see analysis done by Green Point Consulting for the Port of Toledo in 2008 (attached).

The sub-tidal portion of Poole Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

There are some medium-high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence, which builds up marsh soil elevation, and sedimentation can keep up.

Management Unit 19 also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Classification: Natural

This area is a major tract of tidal marsh and is classified natural in order to preserve important resource values.

Resource Capability:

Poole Slough Unit provides a large area of significant tidal marsh and the associated resource values, particularly primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. Poole Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported foraging shorebirds when exposed and fishing herons and egrets when flooded.

Poole Slough also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

This is a sensitive area and because sedimentation appeared to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris 2010), Therefore, alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. minor structural alterations such as piling or navigation aids.

The sub-tidal portion of Poole's Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Structural alterations that do not significantly unduly alter impede circulation, occupy excessive surface area or adversely affect water quality are consistent with the resource capabilities of this unit.

There are some medium high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough

Management Objective:

Management Unit 19 shall be managed to preserve and protect natural resources and values.

Special Policies:
NOTE: The Goal 16 exception taken for this area is a relic and should be removed from this comprehensive plan update.

1. Conditional uses shall not be allowed in this management subunit except for:

    (a) Research and educational observations that require minor aquatic area alteration.

    (b) Navigation aids such as beacons and buoys.

    (c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

    (d) Passive restoration that requires estuarine aquatic area alteration.

    (e) Active restoration of fish and wildlife habitat (including native oysters), water quality, or estuarine productivity.

2. Aquaculture operations shall be confined to the existing footprint.

    (a)dredging for harvest of shellfish shall not be allowed.

    (b) No aquaculture related gear shall be allowed to contact the bottom at low tides.

3. No new aquaculture lease shall be allowed and unused leases shall be terminated.

4. This area shall be considered for Estuarine Research Reserve designation.

5. Disposal of dredge material is prohibited

6. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 24:

Description:

Management Unit 24 includes the area between the authorized federal navigation channel and the north shore from Grassy Point east to Criteser's Moorage (see Figure 28). Management Units 23 and 27 are located to the east and west (classified as "Natural") and restoration site Y06 is located to the north/east. Approximately a third of this unit is publicly owned (County, Federal, or Special District), with the rest held privately.

This unit contains a number of natural resources of major significance, including eelgrass and shellfish beds, fish spawning and nursery areas, tideflats and wildlife habitat. Fish species include Fall Chinook, Chum, Coho, Coastal Cutthroat, Pacific Lamprey, Western River Lamprey, Winter Steelhead, and White Sturgeon as indicated from Inventory Map 13.

Cultural resources…[More here as desired by SHPO and the Tribes]

Medium and shallow draft navigation and recreational activity are the major uses within the unit. Alterations include XX feet of riprapped shorelines, and piling, navigation aids, and dikes located [insert specific location]. Tidegates are located at the mouth of Boone and Nute Sloughs.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012), which has implications for the future of the Yaquina Bay Road. With 5ft of sea level rise, the adjacent restoration site Y06 will be inundated. This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to inundate restoration site Y06 and the Yaquina Bay Road, which poses a hazard risk to residents (FEMA, 2019). This management unit is also expected to be inundated in the event of a Tsunami scenario ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in MU 24 at 1.6, 2.5, and 4.7ft of sea level rise, and areas within this MU are ranked low to medium priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural

This unit is classified natural in order to preserve the important diversity of natural resources of major significance in this area. Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

Unit 24 is an area of diverse resource values, including productive intertidal and shallow sub-tidal areas, shellfish beds, fish spawning and nursery areas, and eelgrass beds. The nature of the resources in this unit is such that minor structural alterations such as piling or small docks that do not occupy extensive surface area or significantly affect circulation patterns, could be considered if they do not have serious impacts on the functional characteristics of the area. The mouths of Boone and Nute sloughs and their associated tide gates are located within Unit 24. These sloughs represent a significant potential

restoration resource, and alterations undertaken for the purpose of active restoration in this portion of Unit 24 would be consistent with the resource capabilities of this area.

To maintain natural resource values, permitted alteration shall be limited to those which result in temporary or minor disturbances. More permanent alterations shall be reviewed individually for consistency with the resource capabilities of this area.

Management Objective
Management Unit 24 shall be managed to preserve or enhance natural resources such as shellfish and eelgrass beds, productive tidal wetlands, wildlife habitat, and water quality.

Special Policies:

1. No use will be allowed that permanently block restoration of full aquatic passage or potential restoration of Boone and Nute Slough.
2. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

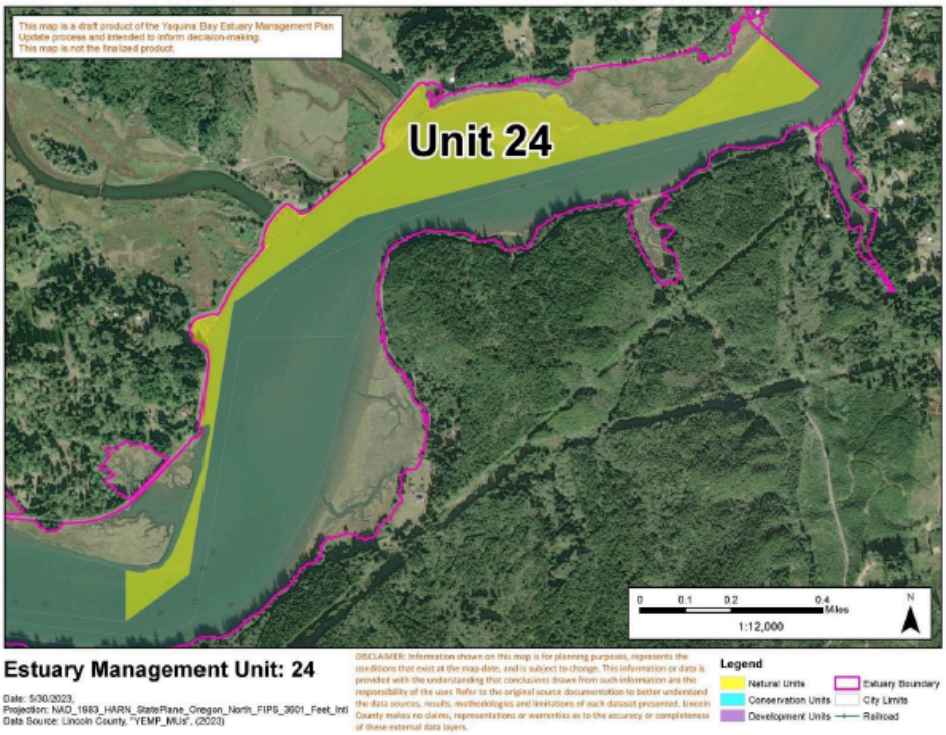

Figure 28. Estuary Management Unit 24, Yaquina Bay

Management Unit 28

Description:

Estuary Management Unit (EMU) 28 consists of three small sloughs formed by the mouths Babcock Creek, Montgomery Creek and a third unnamed creek, located along the south shore of the bay west of the Toledo airport. These sloughs contain important intertidal flats, channels and salt tidal marshes, and

provide fish spawning and nursery areas and wildlife habitat of major significance. Minor recreational activity is the only current use within this unit. All three sloughs are partially closed off at the mouth by the county road crossings but piling bridges or culverts allow the sloughs to fill and drain with the tides. A majority of this unit (XX acres) is owned by the Confederated Tribes of Siletz Indians.

Important natural resources include cool water flowing into this unit from the upstream tributaries, water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey.

Importance of habitat for birds and wildlife [ODFW input here].

Cultural resources…[More here as desired by SHPO and the Tribes]

Historical and contemporary alterations….[DSL input here].

Current sea-level rise modeling indicate that by 20XX this unit will experience increased water depth of xx.

Classification: Natural

The Yaquina Bay Estuary Management Plan (YBEMP) classifies EMU 28 as Natural. The classification is warranted.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

The areas are primarily intertidal flats, with low and high tidal marshes around the fringes. This Unit has only a small acreage of fringing tidal marsh. In addition to their value for productivity, these sloughs provide a protected environment for rearing juvenile fishes and crabs as well as valuable waterfowl feeding and resting sites. Because of these important resource values, alterations should be limited to minor structural types in association with low intensity uses.

Tidal circulation is currently impeded in these areas as a result of the county road Crossing at the mouth of the inlet. The construction of bridge crossings or the placement of additional or larger culverts to enhance tidal circulation would improve resource values and would be consistent with the area's resource capabilities.

Management Objectives:

Management Unit 28 shall be managed to preserve, protect and where appropriate, enhance the natural resources and values**.**

Special Policies:

1. Bridge crossing construction and/or culvert replacement activities may be permitted for maintenance or replacement of existing crossings or for active restoration of flushing action tidal exchange in these sloughs. Alterations for these activities are consistent with the purpose and resource capabilities of this unit.

2. Retain and enhance large woody debris as it provides habitat complexity and cover, which is especially important for ESA listed juvenile Coho salmon utilizing estuarine areas for rearing[5]

Management Unit 34A

Description:

Management Unit 34A consists of two tracts of restored tidal marsh and intertidal fringe located along the north and west shore, upriver of the STEDCO industrial property and lying between the railroad grade and MLLW (see Figure 38). Management Units 31 and 34 (classified as "Development" and "Conservation" Management Units) are directly adjacent to this site. Management Unit 34A includes roughly 77 acres of tidal marsh currently owned by The Wetlands Conservancy (2023). These areas were blocked from tidal exchange by man-made dikes in the early 20th century, and have been restored to the estuary system through dike breaching and channel restoration that began in 2002. Additional restoration actions including levee lowering, new channel establishment, large woody debris placement, and planting of native vegetation occurred in 2020. These marshes are part of the river sub-system, which is a primarily riverine environment with marine influence. These tidal marshes represent a scarce habitat type in this reach of the estuary and are considered resources of major significance. There are currently no active human uses in this unit.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012). This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to cover this entire management unit (FEMA, 2019). MU 34a is also expected to be inundated in the event of a Tsunami ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in this MU at 1.6, 2.5, and 4.7ft of sea level rise. Areas within this MU are ranked high, medium, and medium-low priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural
As a major tract of tidal marsh, this unit has been classified natural in order to preserve natural resources in the unit which are of major significance.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

[5] Koski, K V. 2009. The fate of coho salmon nomads: the story of an estuarine-rearing strategy promoting resilience. Ecology and Society 14(1): 4. [online] URL: http://www.ecologyandsociety.org/vol14/iss1/art4/

Management Unit 34A is a formerly diked area that was disconnected from the tidal regime of the estuary. These tracts are now largely restored to tidal exchange and thus reconnected to the estuarine system. However, the restoration of full function of this marsh is ongoing and additional active restoration activities may be undertaken to further enhance the value of these tracts to the estuarine system. Active and passive restoration activities are consistent with the resource capabilities of this unit. Other uses are inconsistent with the resource capabilities of this unit.

Management Objective:

Because this site is being restored to increase estuarine/riverine function, the management objective is to maintain the goals of restoration including floodplain function, slowing floodwater, increased woody debris and recruitment of woody debris, and natural vegetation to provide high quality fish and wildlife habitat, enhance water quality and other ecosystem services.

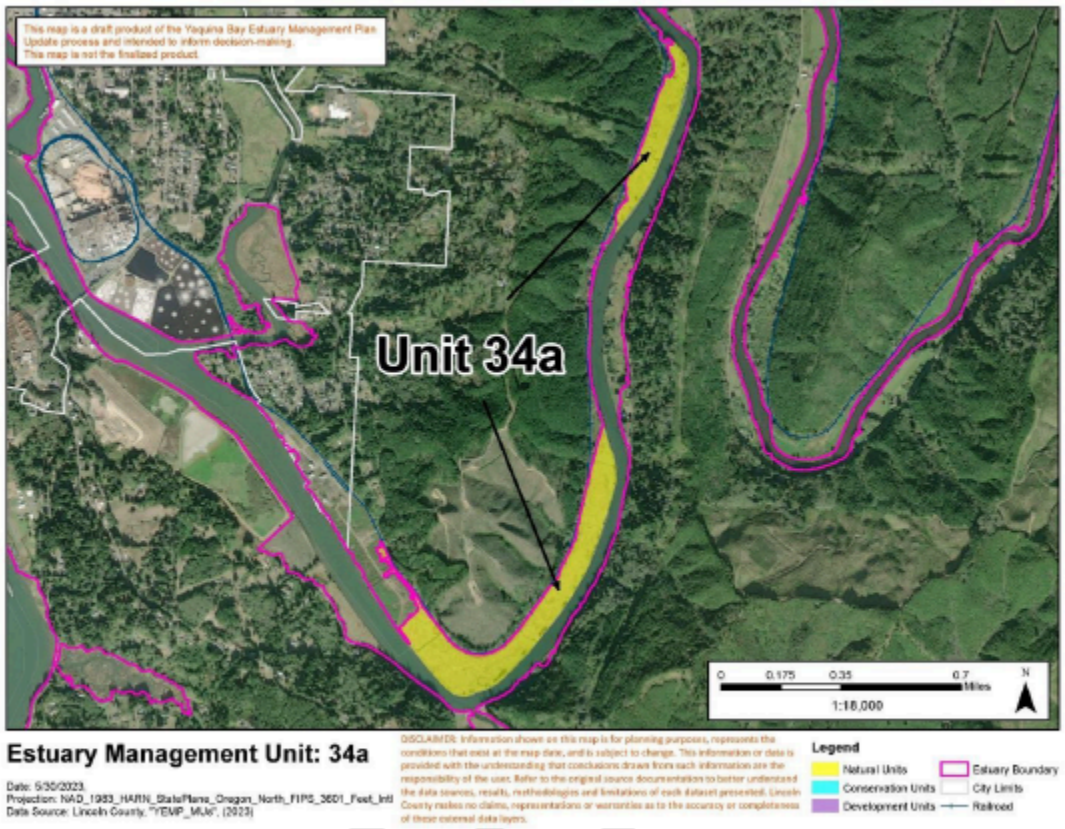

Figure 38. Estuary Management Unit 34a, Yaquina Bay

Oregon Shores Conservation Coalition

May 13, 2024

To: Newport Planning Commission
RE: Yaquina Bay Estuary Management Plan

Dear members of the Newport Planning Commission,

Oregon Shores Conservation Coalition is a non-profit organization whose mission is to engage, educate, and empower people to protect and increase the resilience of the coast's ecosystems, landscapes, and communities. Oregon Shores has been very engaged in the Yaquina Bay Estuary Management Plan (EMP) update since 2022, and our staff served on the Advisory Group guiding the plan update, and provided technical comments on draft components of the plan throughout.

We are very pleased to see this plan update occur and move toward adoption, as the update was badly needed to bring this 40-year old document into modern times. There are many strengths of the proposed plan, which we fully support. First, it is the first Estuary Management Plan in Oregon to incorporate language of climate threats to the estuary and include a climate vulnerability assessment. Second, the plan is now much more user-friendly and includes updated resource inventories and maps in digital format. Finally, restoration sites were expanded and newly restored regions were incorporated into the plan as natural management units.

Overall this process has been a tremendous collaborative effort, and we thank the Newport Community Development staff for their work on the plan update, including incorporating the plan into the City's zoning code and Comprehensive Plan. However, there are two key items that we respectfully request the Planning Commission consider in the present adoption process:

First, when the plan update occurred in 2023, Goal 17 (shorelands) was not considered and updated simultaneously with Goal 16. This was a missed opportunity for increasing climate resilience because it hindered the ability to plan for sea level rise impacts and upslope migration of habitat. The Newport Community Development Department can still begin this work by updating its Goal 17 provisions to incorporate the already mapped "landward migration zones" into the City's Comprehensive Plan. This will allow The Community Development Department to consider predicted sea-level rise impacts to both built and natural infrastructure and avoid inundation-vulnerable areas for development, and conserve these areas for wetland habitat in city revitalization planning efforts underway. **We recommend that goal 17 is updated in the Comprehensive plan revision at this stage, along with resource inventories relevant to shoreline management.**

Second, the Yaquina Bay EMP update was a pilot project or test-case of sorts. It was the first comprehensive EMP update with an aim to build climate resilience, and the planners did so without guidance on *how* to incorporate climate change. While the project made some important

strides by including a climate vulnerabilities assessment in the impact assessment conducted by an applicant, it is unclear what policies would be followed if the impact assessment negatively affects the estuary, reduces resilience, or exacerbates climate impacts. The Department of Land Conservation & Development is now building a Estuarine Resilience Action Plan for Lincoln County, which will include actionable projects to increase resilience to coastal hazards and climate impacts. DLCD also aims to develop model policies and guidance to help other governments update their EMPs. **We ask that the city adopt this new plan, but commit to re-visiting the EMP and Goal 16 (and Goal 17) provisions in their comprehensive plan in 5 years, when the state provides more resources, information, and guidance on building climate resilience in an estuary community.**

Thanks for the opportunity to provide public comment, and for considering these big-picture additions to the estuary planning process. We ultimately wish to see a robust plan that considers the impacts of climate change and meaningfully plans for changing future conditions, to the benefit of all users of Yaquina bay and the natural environment.

Sincerely,

Annie Merrill
Ocean and Estuaries Manager
Oregon Shores Conservation Coalition

Port of Newport

600 S.E. BAY BOULEVARD NEWPORT, OREGON 97365 PHONE (541) 265-7758 FAX (541) 265-4235
www.portofnewport.com

August 22, 2024

To: Derrick Tokos, Community Development Director, City of Newport;
Members of the Newport Planning Commission

RE: Amendments to Newport Comprehensive Plan and Zoning Code to implement the Updated Yaquina Bay Estuary Management Plan

The Port of Newport appreciates the opportunity to provide additional comments on the amendments to the Newport Comprehensive Plan and Zoning Code. Our comments are based on the reality that the Yaquina Bay Estuary is a working estuary. Development units border natural and conservation units which can create significant challenges in meeting the objectives for every management unit. Many existing Port-owned infrastructures need to be maintained on a regular basis. That includes ongoing dredge maintenance to the channel and berths. Sometimes, mitigations are also necessary to keep this existing infrastructure in place. We note that Unit 10 is highlighted as an important Natural Zone. Since the Port owns most of Unit 10, it is important that you recognize we have interest in utilizing some of those areas as possible aquaculture and mitigation sites in the future. The intent is to enhance this unit and avoid significant adverse impacts. The requested changes will allow the Port to continue our mission to provide economic opportunities to Newport while following all the rules to protect Yaquina Bay for future generations.

Comments

1) Goal 16 Standards: Throughout the Yaquina Bay Estuary management planning process, it was stressed that the plan was to be consistent with Goal 16, consequently Goal 16 language appears throughout the document. What is unclear, however, is whether some of the language, particularly language describing specific management units could be interpreted as exceeding Goal 16 standards for protection of natural, conservation, and development zones. If the City of Newport does not intend for these standards to exceed standards found in Goal 16 then this should be explicitly stated as a preamble to the document. If environmental standards are intended to be higher than those found in Goal 16 for any management unit then this should also be explicitly stated in the objectives for the specific management unit.

2) Definition of Significant (Adverse) Impact. The port remains concerned that there is no good definition or examples of "significant" versus non-significant impacts which is critical to understanding Goal 16 and developing impact assessments. The responsibility for definitions and examples, however, should not fall to individual municipalities but to

the state of Oregon and DLCD. We urge you to discuss this need with DLCD. The Port of Newport would be glad to participate in efforts to provide definitions and examples.

3) "To the extent Practical": We noted in the Policy section of the document (pgs 40-45) that the phrase "to the extent practical" has been deleted. In addition, the word "significant" is not use to modify "impact" or similar words including "loss", "destruction" or "injury". This creates a policy prescription potentially requiring the avoidance or mitigation of any size impact (whether minor or significant) regardless of the cost. Because Yaquina Bay is a working estuary this is not rational given there could be very high costs to the community to avoid very minor impacts which could preclude beneficial projects that under a reasonable interpretation of Goal 16 would be allowed. We urge the committee to add the word "significant" and add back the phrase "to the extent practical."

Thank you for the opportunity to provide these additional suggestions and comments and we look forward to helping the City of Newport develop their estuary management plan.

Paula Miranda—Port of Newport Executive Director
Aaron Bretz—Port of Newport Deputy Executive Director and Operations Manager
Gil Sylvia—Port of Newport Commission President

Port of Newport

600 S.E. BAY BOULEVARD NEWPORT, OREGON 97365 PHONE (541) 265-7758 FAX (541) 265-4235
www.portofnewport.com

July 22, 2024

To: Derrick Tokos, Community Development Director, City of Newport;
Members of the Newport Planning Commission

RE: Amendments to Newport Comprehensive Plan and Zoning Code to implement the Updated Yaquina Bay Estuary Management Plan

The Port of Newport appreciates the opportunity to provide additional comments on the amendments to the Newport Comprehensive Plan and Zoning Code. Below are three major comments and suggested edits to various sections:

Major Comments:

Unit descriptions: We appreciate the planning commission's efforts to improve the language in the unit descriptions and to place language including descriptions of relevant laws in a preamble paragraph since these issues pertain to all of the estuary units. In our view the descriptions need to include only the critical information relevant to each unit in an objective, balanced, and standardized approach that avoids unnecessary policy prescriptions. Additional information including maps, inventories, agency descriptions, etc. is best included in an annex to the plan.

We noted that of the seven required classification topics, three are included in the description category. We also noted, however, that "permitted uses" within the units is a missing category. In our edited section below we use Unit 10 to provide an example consistent with Goal 16 of what the description for a "permitted uses" category could look like.

Definition of Significant Impact: As we have emphasized in past comments the lack of definition of "significant impact" is a major problem given it is a critical element in Goal 16. We noted that a definition of "Adverse Impact (Significant)" was provided in the definitions section of the document but find the definition confusing and inadequate. To help support discussions to improve the understanding of concepts including "significant" and "adverse" we have provided a brief definition and discussion in the edited comment sections below.

Impact Assessment (Resource Capability Test): An important element in developing new projects, especially in conservation and natural areas is the resource capability test (also known as impact assessment) to determine the types of impacts and whether they are relatively small or large (significant). The impact assessment guidelines in the document provide basic principles for guiding the assessment that are reasonable for small projects with expected small impacts. Some details about the process and responsibilities, however, are not clear. We urge the City,

however, to proceed with caution in attempting higher level requirements that are costly and could be a regulatory burden that is not proportional with the expected level of impacts.

Suggested Edits (in yellow highlight):

Page 14 Unit description categories: The plan outlines the seven categories of information required for each management unit. A number of these categories are embedded in the description. Missing from the categories however is the description of "permitted uses". We provide an example in our edits for Management Unit 10 of a description of permitted uses consistent with Goal 16 language. Areas highlighted in yellow indicated additional suggested edits for Unit 10.

> *The overall classification scheme for management units is described above. Each individual management unit within the Newport Sub-Area is given a number and a more detailed and specific description. Each management unit description includes: •*
>
> - *the management classification (natural, conservation or development) of the unit and a summary rationale for the classification; •*
> - *a description of the spatial boundaries of the unit; •*
> - *a summary of the natural resource characteristics of the unit; •*
> - *a description of major uses and alterations present in the unit; •*
> - *a management objective which provides an overall statement of priorities for management of the unit; •*
> - *permitted uses within the unit, both those that are deemed consistent with the resource capability of the unit, and those uses that will require case-by-case resource capability determinations; •*
> - *special policies specific to the unit which serve to clarify, or in some cases further limit, the nature and extent of permitted uses.*

Pg 22: Management Unit 10

Description. Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel. ~~Much of this unit is owned by the Port of Newport~~. A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases out another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to Mclean Point are inside the Newport city limits and Urban Growth Boundary. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of ~~major~~ significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become ~~much~~ smaller over time, ~~indicating a significant loss of habitat~~

although the cause, whether natural or manmade, is unknown. Eelgrass and associated habitat make this area ~~are extremely~~ important fish spawning and nursery areas~~.for Endangered Species Act (ESA) listed fish species, commercially important fisheries species,~~ It also supports recreational~~ly~~ important ~~clams~~clamming, and ~~is~~ provides ~~important~~ migratory ~~birds~~bird habitat. ~~It is recognized as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation and Management Act.~~ Additionally, ~~a significant area in~~ it has been observed that the middle portion of MU 10 is utilized on occasion by pinnipeds (seals and sea lions) as a haul out region. ~~., which are species supported under the Marine Mammal Protection Act.~~ Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point (while a small section of MU 10 may be suitable for native oyster restoration, most of the MU 10 is not suitable given habitat and substrate).

Existing uses in this area include ~~Uses in the area are limited to~~ shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant on the West side and Coquille Point to the East. An Olympia oyster restoration project was initiated by ODFW in 2021, on the stateowned tidelands region of MU 10 (on the southern corner).

Classification: Natural. Sally's Bend is a large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. ~~As a major tract of tideflat with eelgrass beds.~~ This unit has been classified natural in order to preserve the area's natural resources ~~in the unit.,~~ including eelgrass, clam beds, and Olympia oysters.

Resource Capability: Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerged crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

Management Objective: Management Unit 10 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible aquaculture.

Permitted Uses: Consistent with Goal 16, permissible uses shall include undeveloped low intensity water dependent recreation, research and educational observations, navigational aids, protection of habitat, passive restoration measures, and dredging for maintenance of tide gates and associated drainage channels and bridge crossings supports, selected riprapping (as described in Goal 16), and bridge crossings. In addition, where consistent with resource capabilities of Unit 10 and other requirements of Goal 16, other uses may be allowed including

aquaculture, communication facilities, restoration of fish and wildlife, public boat ramps, pipelines/cables/utilities including incidental dredging, installation of tide-gates in existing dikes, temporary alterations, and bridge support structure.

Special Policies: Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, significant adverse impacts to existing Olympia oysters beds shall be avoided. Deepening and widening of the federal navigation channel and turning basin outside of the typical ongoing maintenance into this management unit in a manner which could significantly impact ~~the which could~~ ~~, which would impact the significant~~ ecosystems within Sally's Bend, shall be avoided.

Pg 35—Port of Newport and McClean Point

McLean Point has the largest parcel of undeveloped property on the lower bay. This property is privately owned, and plans for development have not been announced. It would be well suited for a wide variety of uses such as:

- *Boat haulout and marine fabrication*
- *Gear storage and staging*
- *Service and work docks*
- *Fish receiving, buying and processing facilities*
- *Moorage*
- *Commercial shipping terminals*
- *Surimi processing*
- *Aquaculture*

Pg 39—Policy 15, insert word significant consistent with Goal 16 language:

Policy 15: Resource Capability Determinations - Natural Management Units. Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from significant loss, destruction, injury, or for future intended use

Pg 39—Policy 16

Policy 16: Resource Capability Determinations - Conservation Management Units. Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids significant impact including wasteful or destructive uses and provides for future availability

Pg 111: Adverse Impact (Significant):
As noted above this definition should be deleted since it is unclear and introduces new concepts such as "mitigation" (in Goal 16 mitigation only applies to dredging and fill) and "unacceptable conflicts" which are not adequately explained or consistent with Goal 16 concepts.

> ~~*Adverse Impact (Significant)means any impact, resulting in degradation of an important resource, that is unacceptable because it cannot be mitigated or because of unacceptable conflicts in the management or use of the impacted resource.*~~

We offer an alternative definition consistent with Goal 16 language, based on basic principles and an assumption that an adverse impact only applies to natural biological/ecological systems (and not human social systems):

> *Significant (adverse) impact: A measurable long term and irreversible large scale effect on estuarine species, habitats, biological productivity and water quality that interferes with the functioning of ecosystems to assimilate the use and activity of these effects in a manner that protects significant wildlife habitats, natural biological productivity, and values for scientific research and education.*

We hope you understand the Yaquina Bay Estuary is an existing working estuary. Many existing infrastructures need to be maintained on the regular basis. That includes ongoing dredge maintenance to the channel and berths. Sometimes, mitigations are also necessary to keep this existing infrastructure in place. A lot of restrictions have been imposed on Unit 10. Since the Port owns most of Unit 10, we want to make sure you know we have interest in utilizing some of those areas as possible aquaculture and mitigation sites in the future. The intent is to enhance it and not damage it. Some of the requested changes will allow the Port to continue our mission to provide economic opportunities to Newport while following all the rules to protect Yaquina Bay for future generations.

Thank you for the opportunity to provide these additional suggestions and comments and we look forward to helping the City of Newport develop their estuary management plan.

Paula Miranda—Port of Newport Executive Director
Aaron Bretz—Port of Newport Deputy Executive Director and Operations Manager
Gil Sylvia—Port of Newport Commission President

Port of Newport Comments on the Updated Yaquina Bay and Estuary Section of the Comprehensive Plan

June 24, 2024

We have provided comments to the Planning Commission embedded in past emails. We would like to repeat some of those here since we don't believe that many of these comments were addressed. We would also like to comment on the new draft document especially on specific language for Management Unit 10 which is also relevant to similar units (e.g, Unit 9)

Our embedded comments (in your older Word draft) focused on six areas of concerns:

1. The planning commission's adoption of the language in the YBEMP including embracing Goal 16 standards and removing explicit use descriptions in each Management Unit and focusing on Zone Designations.

2. The reliance on Goal16 standards which are not well defined (e.g., what are "significant impacts"). Without transparency, clear definitions, and examples, this creates ambiguity and over reliance on interpretation by local and state planners. This leads to uncertainty, risk, costs, and delays for individuals and organizations that want to legally use their assets and tidelands. In the case of aquaculture this can create significant problems for development.

3. Consistency of wording. For example, the concept of "alterations", versus "degradation", versus, "impacts". These and other words are used but it is unclear how they relate. For example alterations of a management unit may occur but may not create discernable impacts.

4. The phrase "minimizing adverse impacts" is used in a number of sections in the document. But "minimization" can translate to large financial costs. Typically the phrase "to the extent practical" helps to modify and rationally constrain the "minimization" concept.

5. Given these concerns, especially with respect to aquaculture development, we will be recommending development of an Aquaculture Guidance document given the recommendation in the 2022 YBEMP Gaps and Needs document to "Develop Policy to Support the Aquaculture Industry." We note that the emphasis on the potential for aquaculture development that was in the 1982 plan has been deleted—we suggest adding that back into the new draft consistent with the YBEMP gaps needs document.

6. It should be noted that the Port has shared these concerns with those leading the development of the YBEMP but without any response. It is my hope that the Port and City can communicate effectively and work together in supporting the YBEMP plan including economic development.

<u>Specific comments on the new draft pdf document</u> (since we were unable to edit or add comments to the pdf version these are done in this email memorandum:

<u>Unit 10 comments</u>

<u>Introduction 3rd paragraph</u>:

"The historically large eelgrass meadow present in MU 10 has become much smaller over time, indicating a significant loss of habitat.

It is unknown what has caused this loss of eelgrass—it may be from natural causes. I would rephrase the sentence to read: *"The historically large eelgrass meadow present in MU 10 has become much smaller over time, although the cause, whether natural or man-made, is unknown.*

Eelgrass and associated habitat make this area extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act.

It is unclear why Unit 10 has such an emphasis on federal environmental laws. These laws apply to most areas in Yaquina Bay and most of the management units. This emphasis in Unit 10 could significantly suppress efforts to use the area consistent with Goal 16. We recommend removing this language out of the Unit discussions and into a foreword at the beginning of the document noting the importance of federal environmental laws to the management plan.

Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region, which are species supported under the Marine Mammal Protection Act.

Although pinnipeds may occasionally use Unit 10 for small temporary "haul outs" there are no documented studies indicating that that this area is a large and consistently used haul out area. We recommend striking this from the document until there are adequate studies indicating this is a major haul out area.

Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point."

Should be emphasized that while a small section of Unit 10 may be suitable for native oyster restoration, most of Unit 10 is not suitable given habitat and substrate.

Introduction 4th paragraph:

Uses in the area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams.

The wording here implies some type of purposeful or even regulatory limits. We suggest rephrasing to read: *Existing uses in this area include shallow draft navigation, recreational use, and some minor commercial harvest of clams.*

Management Objective:

Management Unit 10 shall be managed to preserve and protect natural resources and values. This includes protecting ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of the unit. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture.

We suggest that rather than *"compatible shellfish aquaculture"* we suggest deleting the word shellfish since there may be other types of aquaculture developed over time that are compatible (e.g., seaweed aquaculture).

Special Policies*:*

Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, impacts to existing Olympia oysters shall be avoided.

This is an example of where the word "impact" is used without the modifier "significant" which is a key operational word in Goal 16: *"A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or…."* Any anthropogenic activity will have some impact on the estuary—Goal 16 recognizes this fact and uses the modifier "significant" in order to allow uses of the estuary in conservation and natural areas. The sentence should read: *Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, significant impacts to existing Olympia oysters shall be avoided.*

Deepening and widening of the federal navigation channel and turning basin into this management unit, which would significantly impact the significant ecosystems within Sally's Bend, shall be avoided.

Precluding deepening or widening of the navigation channel and turning basin is an unnecessary and significant limitation on potential economic development of Yaquina Bay and the central coast area. It assumes that that such actions would be a significant and long-lasting impact on the entire Management Unit. The channel must be dredged occasionally to maintain its depth critical for ship use and navigation. There is no evidence that significant impacts would result. Whether there are significant and long-

lasting impacts will greatly depend on the size and depth of the dredging and when and how the dredging is carried out. We strongly recommend that this special policy be deleted and instead the city and county depend on the normal and comprehensive regulatory process to guide dredging rules and protocols.

Derrick Tokos

From: Sylvia, Gilbert [redacted]
Sent: Monday, June 24, 2024 4:41 PM
To: Derrick Tokos
Cc: Paula Miranda
Subject: RE: Newport Estuary Code Changes--My Comments
Attachments: Estuary Management Plan Comments--Port of Newport .docx

Derrick: Attached are comments from the Port of Newport on the Estuary Management Plan including the Commission's most recent revisions. Be glad to provide verbal comments if allowed and useful.

Gil Sylvia
President, Port of Newport Commission

From: Sylvia, Gilbert
Sent: Friday, June 21, 2024 11:12 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Paula Miranda [redacted]
Subject: RE: Newport Estuary Code Changes--My Comments

Derrick: Thanks. I will read through these. I don't see any item in the agenda that allows for public comments. Should I plan for making comments or not? I see a few places I would recommend changes, and assume I can comment on the newest draft.

Gil

From: Derrick Tokos <D.Tokos@NewportOregon.gov>
Sent: Thursday, June 20, 2024 7:53 PM
To: Sylvia, Gilbert [redacted]
Cc: Paula Miranda [redacted]
Subject: RE: Newport Estuary Code Changes--My Comments

[This email originated from outside of OSU. Use caution with links and attachments.]

Hi Gil,

Here is a link to the Planning Commission Work Session Agenda where you can access the updated set of amendments.

https://www.newportoregon.gov/citygov/comm/pc/agendas/06-24-2024_PC_Work_Session_Meeting.pdf

See you on Monday!

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

Port of Newport Comments on the Updated Yaquina Bay and Estuary Section of the Comprehensive Plan

June 24, 2024

We have provided comments to the Planning Commission embedded in past emails. We would like to repeat some of those here since we don't believe that many of these comments were addressed. We would also like to comment on the new draft document especially on specific language for Management Unit 10 which is also relevant to similar units (e.g, Unit 9)

Our embedded comments (in your older Word draft) focused on six areas of concerns:

1. The planning commission's adoption of the language in the YBEMP including embracing Goal 16 standards and removing explicit use descriptions in each Management Unit and focusing on Zone Designations.

2. The reliance on Goal16 standards which are not well defined (e.g., what are "significant impacts"). Without transparency, clear definitions, and examples, this creates ambiguity and over reliance on interpretation by local and state planners. This leads to uncertainty, risk, costs, and delays for individuals and organizations that want to legally use their assets and tidelands. In the case of aquaculture this can create significant problems for development.

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lasting impacts will greatly depend on the size and depth of the dredging and when and how the dredging is carried out. We strongly recommend that this special policy be deleted and instead the city and county depend on the normal and comprehensive regulatory process to guide dredging rules and protocols.

Sherri Marineau

From: Derrick Tokos
Sent: Monday, March 25, 2024 4:48 PM
To: Sherri Marineau
Cc: 'REED Meg * DLCD'
Subject: FW: Newport Planning Commission Work Session on Estuary Policies. Contact info for Derrick Tokos

Hi Sherri... please share this email with the Commission members.

Derrick

From: Sylvia, Gilbert [redacted]
Sent: Monday, March 25, 2024 4:15 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Paula Miranda <pmiranda@portofnewport.com>
Subject: Newport Planning Commission Work Session on Estuary Policies. Contact info for Derrick Tokos

[WARNING] This message comes from an external organization. Be careful of embedded links.

You don't often get email from [redacted]. Learn why this is important

Derrick: Hope you are doing well. As you may know I am President of the Port of Newport Commission and an OSU Emeritus Professor (32 years at HMSC and 21 years as Director of the Coastal Oregon Marine Experiment Station). I was appointed by Paula Miranda who is Executive Director of the Port of Newport to represent the port on the technical advisory committee of the Yaquina Bay Estuary Management Plan (Paula served on the Steering Committee). In my role on the technical committee I became concerned about lack of precise definition for key standards, lack of examples to explain differences in concepts such as "minor impact" relative to "significant impact" as well as other issues. These concerns were voiced verbally to the committee as well as in an email to the group leading the planning process. This email is copied below.

One particular concern is aquaculture use and development in the estuary including in areas zoned "natural". The Port of Newport Strategic Plan supports aquaculture development in Yaquina Bay. The Port of Newport also is a title holder to tidelands within the Bay including areas designated "Natural". Aquaculture use of areas zoned "Natural" is allowed under Goal 16 as well as the new Estuary Management Plan (which lifted the exact language from Goal 16). In particular, Goal 16 and the draft Management Plan allow aquaculture in natural areas *"consistent with the resource capabilities of the area and the purposes of the management unit"* and that does not *"involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in water structures such as stakes or racks."* In addition Goal 16 defines *"a use or activity consistent with the resource capabilities of the area when either the impacts of the use of the estuarine species, habitats, biological productivity and water quality* ***are not significant*** *or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education."*

Any reasonable interpretation of these definitions and standards indicate that aquaculture can be allowed in Natural Areas as long as the impacts are minor (i.e., not significant). For shellfish aquaculture in particular these impacts can be

nuanced since besides "negative" impacts there can also be "positive" impacts due to the filter feeding action of shellfish in improving water quality.

According to the Management Plan each management unit should include 7 classes of policy information including *"permitted uses within the unit, both those that are deemed consistent with the resource capability of the unit, and those uses that will require case-by-case resource capability determinations ".* I noted that for most Natural Area management units (e.g., Management Unit #9 and #10) there is no mention of allowable uses such as aquaculture that would be consistent with the Plan based on the Zoning Classification System (pg. 34 of the plan) as well as Goal 16. It is my opinion, that as a minimum, these potential uses should be added to all the Management Unit policies or reference allowable uses consistent with the Classification System on Pg 34 and pg 3 of Goal 16.

Based on my discussions with Paula, I believe these views are consistent with views help by the Executive Director of the Port as well as other commissioners, But Paula is presently on vacation. When she returns I will discuss with her and we can present at a future meeting or in a letter on Port letterhead. Although I had hoped to come to the work session tonight I am recovering from a couple of leg surgeries which is limiting my mobility.

Be glad to discuss in more detail any time.

Regards, Gil Sylvia
President, Port of Newport Commission
[redacted]

From: Sylvia, Gilbert
Sent: Monday, July 24, 2023 9:56 PM
To: Nicole Maness [redacted]; Ethan Brown [redacted]; DLCD [redacted]; REED Meg * DLCD [redacted]
Cc: Paula Miranda [redacted]
Subject: Comments on the draft plan.

Nicole: I will not be able to attend the advisory board meeting tomorrow but did want to provide some final high-level comments. My comments are based on the assumption that the new Yaquina Bay Estuary Management Plan will be a model for future Oregon Estuary Management plans so getting it right is critical. There are three major recommendations:

1) **Defining "impacts"**: Even though I have provided verbal and written comments on this issue I still note that the plan -- either in the glossary or elsewhere -- does not define terms such as "impacts", "significant impact" "adverse impact", minor impact, etc. (but neither does Goal 16). Because these terms are not clearly defined in the plan or by the state of Oregon, it is unknown when an impact may be determined consequential (e.g., significantly adverse). All human related actions in the estuary will create some type of impact to the estuary. Most of these are so minor as to be inconsequential with respect to any type of ecological function or damage. It is critical that standards and definitions be developed defining the types and degrees of impacts. These standards and definitions are important in order to support clear understanding as well as conversations between affected stakeholders, planning agencies, and other parties.
    a. Besides clear and transparent definitions there needs to be practical examples illustrating the classes/types of estuarine impacts that includes the intensity of the impact across space and time.
    b. Once definitions are developed the "impact" terminology must be consistently used throughout the Plan.

2) **Climate Change**: I have also shared my concern regarding the significant uncertainty regarding potential climate change related impacts – predictions about sea level rise is a good example. Since this now a requirement in the impact report there needs to be clear instruction on how to use highly uncertain predictions with major error bars (which are also guesses) especially with respect to long term infrastructure projects (e.g. a dock with a forty year lifespan). Again, examples in the report would be useful.
3) **Five Year Plan Review**: Given these and other issues, the Estuary Plan should undergo a limited review every five years or so to determine how well the plan is working and review plan requirements that may need adjustment (e.g., such as updating climate predictions).

I appreciate the opportunity to comment.

Gil Sylvia
Port of Newport Commissioner

Emeritus Professor
Applied Economics/Coastal Oregon Marine Experiment Station
Oregon State University
Cell# 541-740-0208

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Friday, August 23, 2024 9:47 AM
To: Derrick Tokos; Sherri Marineau
Subject: Comments about Proposed Comp Plan and Zoning Ordinance. Input for Planning Commission Session on 8/26/24.
Attachments: Mark Arnold comment, Resource Inventories, 8-22-24.pdf; Mark Arnold comment, HMSC water intake and outflow, 8-22-24.pdf; Mark Arnold comment, Mgt Unit 9 Special Policy, 8-22-24.pdf; Mark Arnold comment, Policy 18 Uses Permitted Outright, 8-22-24.pdf; Mark Arnold comment, Definition of Restoration, 8-22-24.pdf; Mark Arnold comment, Additional requested edits and revisions to proposed Newport Comprehensive Plan 8-22-24.pdf

[WARNING] **This message comes from an external organization. Be careful of embedded links.**

Derrick,

HI. Thank you very much for sending your updated version of the proposed Comp Plan and Zoning Ordinance revisions earlier this week.

Attached are comments by topic. These comments update, replace, and expand on comments I submitted last month. Each comment is limited to a few pages, with one comment having some additional attached information.

- Resource Inventories; Related Goal and Policy
- Water Intake and Outfalls at Hatfield Marine Science Center (HMSC)
- Private Ownership of Tideland in Management Unit 9 (this is a request for alternative Special Policy language)
- Policy 18: Uses Permitted Outright: Including Scientific Research Activities That Do Not Require a Structure
- Definition of Restoration
- Additional Edits and Revisions to Proposed Newport Comprehensive Plan

This is as much input as I have been able to prepare over the last two days. Some of the input consists of comments submitted previously for your and the Planning Commission's background and consideration.

I appreciate all the work done by you and the Planning Commission. The proposed Comprehensive Plan and Zoning Ordinance revisions have been greatly improved by the Planning Commission's and your work and review of input provided to date. Because the Yaquina Bay Estuary Management Plan, the Newport Comprehensive Plan, and Newport Zoning Ordinance are long and detailed, and will determine what uses can and cannot be approved for the estuary, the work you and the Commission have done and are doing is very important and will have a significant future impact on the greater Newport area.

Thank you.

Mark

Mark Arnold
[redacted]

RESOURCE INVENTORIES; RELATED GOAL AND POLICY

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background

Under the heading "Resource Inventories" (page 2), the last sentence reads as follows:

- "The rationale for permitted use decisions and management classifications is contained in these brief factual base summaries; for detailed resource information and a bibliography of documents included in the inventory, the Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, should be consulted."

Comments

The Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, has not been provided for review. Some of the information provided to accompany the August 2023 update of YBEMP was decades out-of-date. This is a significant concern. This information, by reference in the Newport Comprehensive Plan, will have an impact on future decisions, and whether proposed uses will be approved or disapproved, for requested estuarine uses.

Actual resource capabilities in the estuary can change over time, so any information collected at one point in time will necessarily be dated and can become outdated over time.

Future decisions should be based on the best, most recent, resource capability information available at the time the decisions are made.

Requests

The resource inventories, referenced in the Comprehensive Plan, must be provided for review and comment before they are incorporated by reference into the Newport Comprehensive Plan.

Under the heading "Resource Inventories," revise the last sentence, and add additional language, as follows (with deletions shown with strikethrough and addition shown in italics):

- "The rationale for ~~permitted use decisions and~~ management *unit* classifications is contained in these brief factual base summaries. For detailed resource information and a bibliography of documents included in the inventory, *as of July 15, 2024,* the Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, should be consulted. *When more up-to-date and more accurate resource information is available, the most up-to-date and accurate resource information should be used to inform decisions about resource capabilities of each management unit.*"

Consistent with the requested revision under the heading "Resource Inventories," and for the same reasons, add a new Policy under the heading "Goals and Policies: Yaquina Bay and Estuary" as follows:

- Policy [enter policy number]: *Up-To-Date Information to Inform Decisions. Review of proposed projects and alterations, and permit decisions for activities proposed for the estuary and for shoreline adjacent to the estuary, should be informed by the most recent, up-to-date, accurate, and relevant information, and informed by the most relevant scientific studies. This includes resource capability information, and the likely impact that any proposed activity might have on the resource capabilities of the estuary. Relevant information provided by, and studies conducted by, subject matter experts should be given careful consideration. Historical information can also be reviewed as relevant information, providing it is identified as historical information.*

WATER INTAKE AND OUTFALLS AT HATFIELD MARINE SCIENCE CENTER (HMSC)

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background

The Hatfield Marine Science Center (HMSC) salt water intake and salt water outfalls are not mentioned in the August 2023 update of YBEMP nor in the proposed revisions to the Newport Comprehensive Plan. HMSC intakes salt water from Yaquina Bay for its research labs, including Federal and State agency labs, and for exhibits at the visitor center. After use, water is released through three outfalls on the HMSC campus. The facilities on the Hatfield campus use approximately 1 million gallons of salt water per day. This use is subject to numerous government regulations, and the facilities have received numerous regulatory approvals.

The HMSC water intake facility is located at the east end of Management Unit 7 at the HMSC small boat pier. MU 7 extends east to, and includes, the small boat pier.

HMSC Intake Facility

After use and treatment, water is released through three outfalls into the estuary. One is located in MU 7 on the north side of the HMSC campus, one is near the boundary of MU 8 and MU 9 at the northwest corner of Idaho Flat, and one is at the west edge of MU 9.

Proposed revisions to the Newport Comprehensive Plan include a Special Policy in MU 9 for the water outfall from the Oregon Coast Aquarium, but no mention is made for HMSC.

HMSC Water Outfall at Shoreline
At Northwest Corner of Idaho Flat

Recommendation: In the Newport Comprehensive Plan, add a Special Policy to each of Management Units 7, 8 and 9 that permits outright the water intake from Yaquina Bay in Management Unit 7, and permits outright the three water outfalls into the estuary in Management Units 7, 8 and 9, for the Hatfield Marine Science Center.

PRIVATE OWNERSHIP OF TIDELAND IN MANAGEMENT UNIT 9

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background:

- DLCD's proposed update to the YBEMP (August 2023) includes the following Special Policy: "Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged."
- This refers to privately-owned tideland in Kings Slough, adjacent to the mouth of Kings Slough, and upstream. Between 10 and 11 acres are inside the Newport City Limits.
- This Special Policy is a repetition of the Special Policy in the 1982 YBEMP.
- This Special Policy from 1982 is repeated in the proposed Newport Comprehensive Plan.
- When the 1982 YBEMP was adopted, this tideland was owned by companies in the business of harvesting timber, using dredged tideland for log storage, and using tideland for the transportation of logs. The tideland is no longer being used for log storage or log transportation.
- The August 2023 update of YBEMP did not update the policy to reflect changes that occurred after 1982 including changes in ownership and the current activities in Management Unit 9.
- After extensive water quality testing, the middle and northern portions of Kings Slough, including the mouth of Kings Slough, have been designated by the Oregon Department of Agriculture (ODA) as an "Approved Area" for growing shellfish for human consumption.
- Tideland owned by the Yakona Nature Preserve, upstream from the mouth of Kings Slough, was included in a conservation easement that the Yakona Nature Preserve granted to McKenzie River Trust. Yakona Nature Preserve still owns the tideland.
- In 2024, the City of Newport sold its small parcels of tideland, including a parcel in Management Unit 9, to the Yakona Nature Preserve, a private non-profit corporation.

Request:

- DELETE THE FOLLOWING 1982 SPECIAL POLICY: "Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged."

- REPLACE WITH THE FOLLOWING SPECIAL POLICY: "Uses in Management Unit 9 should be restricted to activities consistent with preservation of critical natural resources and maintaining excellent water quality necessary for growing shellfish for human consumption."

Reasons:

- The current owners of this tideland support conservation principles, "best practice" shellfish aquaculture, and/or research. These benefit the estuary. One of the owners (Yakona Nature Preserve) granted an easement to a conservancy. (The next page has a table showing the largest owners of tideland in Management Unit 9.)
- During the past 42 years, no public agency has acquired this tideland.
- The City of Newport has no City funding allotted to purchase tideland.
- The Newport City Council in January 2024 approved proceeding with the conveyance of a small, 3-acre tideland parcel in MU 9 to the Yakona Nature Preserve. The conveyance was recorded in July 2024. (Information is provided on following pages.)
- Preservation of natural resources can be accomplished through the permitting process.

MAP OF PRIVATELY-OWNED TIDELAND IN MANAGEMENT UNIT 9

Privately-owned tideland is outlined in red, including over 10 acres inside the Newport City Limits adjacent to Idaho Point. Yellow is City of Newport tideland parcel in Kings Slough that was sold to the Yakona Nature Preserve.

Largest Privately-Owned Tideland Parcels in Management Unit 9
(Note: Several smaller tideland parcels are not shown)

Taxlot(s)	Tideland Acres	Owner in 1982	Owner in 2024
11-11-22-B0-00100	70.52	Geogia-Pacific Corp.	Yakona Nature Preserve (a private foundation)
11-11-15-00-01400 11-11-16-00-00200 11-11-21-00-00500	44.80 88.35 6.00	Geogia-Pacific Corp.	Kings Estuary Shellfish LLC (owned by Mark L. Arnold)
Part of 11-11-21-00-00600	62.95	The Times Mirror Company	Yaquina Bay Kings Shellfish LLC (owned by Mark, Brian & Jonathan Arnold)
Part of 11-11-21-00-00700	Significant amount of tideland in southern Kings Slough. Tideland acreage not identified by Assessor's Office.	Geogia-Pacific Corp.	Emery Investments, Inc.

The situation in 1982: Tideland used for log storage and transportation. Dredging adversely affected ecology of tideland.

- These tideland lots were owned by Georgia-Pacific Corporation, a timber company, and The Times Mirror Company, which harvested timber for use in producing paper for publishing.
- Previously, dredging was done in early 1950s on the Times Mirror parcel for log storage and transportation. This parcel was adjacent to a log dump. Dredged material was deposited as fill in the estuary.
- The 1982 YBEMP sought to restrict dredging in tideland for log storage and transportation.

The situation in 2024: Current owners support conservation, "best practice" aquaculture, and research.

- Yakona Nature Preserve granted a conservation easement to the McKenzie River Trust.
- Mark Arnold (Kings Estuary Shellfish LLC and Yaquina Bay Kings Shellfish LLC) wants some of his tideland to be used for "best practice" shellfish aquaculture and research, with remaining tideland conserved.
- Emery Investments has done nothing with its tideland and supports conservation.

NEWPORT
OREGON

STAFF REPORT
CITY COUNCIL AGENDA ITEM

Date: January 2, 2024

Title: Public Hearing to Consider a Purchase and Sale Agreement Setting Out the Terms of Sale of Certain City-Owned Tidelands to the Yakona Nature Preserve

Prepared by: Derrick I. Tokos, AICP, Community Development Director

Recommended Motions: I move to approve the purchase and sale agreement with the Yakona Nature Preserve for city-owned tidelands described in a warranty deed recorded in Book 311, at Page 119 of the Lincoln County Book of Records, and authorize the City Manager to execute the necessary documents to complete the transaction, subject to review and approval by the City Attorney.

Background Information: At its December 4, 2023 meeting, the City Council determined that the subject tidelands, totaling 9.23 acres, are no longer needed for public use and that it is in the public interest to sell the property. Further, the Council directed the City Manager to coordinate the preparation of land conveyance documents with the Yakona Nature Preserve, and schedule a public hearing for Council consideration of the documents.

Enclosed is a draft purchase and sale agreement that includes a draft form of the deed that would be used to convey the property and a draft conservation easement with the McKenzie River Trust to preserve the tidelands in a natural state. If approved, the purchase and sale agreement will be provided to Western Title and Escrow to facilitate the transaction. The sales price is $5,870, which is equivalent to the real market that the Lincoln County Assessor's Office has established for the property. Mr. Barton has indicated that the Yakona Nature Preserve is comfortable with that figure, and has further indicated that they are prepared to cover the closing costs and escrow fees.

The City acquired the tideland property from Jack and Lily Stocker, who donated them in December of 1995 (ref: Warranty Deed, Book 311, Page 119, Lincoln County Book of Records). The City Council at the time viewed the tidelands as having potential mitigation value, or value as future inventory land that the City could trade. In 2008 the City conveyed one of the parcels to the Central Coast Land Conservancy (Ref: Deed Instrument #200803360). The property is adjacent to other land owned by the Conservancy and was provided as match for North American Wetlands Conservation Fund funds pursuant to a grant agreement between the Conservancy and U.S. Fish and Wildlife Service. A deed restriction was placed on the conveyed parcel requiring that it be conserved in order to protect the ecological values of the salt marsh and fish and wildlife species that depend upon it. Bill Barton, on behalf of the Yakona Nature Preserve, approached the City to acquire the remaining four parcels with the intent of placing them into a conservancy similar to what was done in 2008.

Newport Municipal Code (NMC) Chapter 2.25 sets out the process the City must follow for the potential sale of the property. The tidelands qualify as "substandard undeveloped property," which are defined as lots or parcels without structures that are not of minimum buildable size for

the zone in which they are located or that cannot be developed for other reasons (NMC 2.25.020(A)). The City Council held the first of two required hearings on December 4, 2023, determining that the tidelands are surplus to the public need and should be sold to the Yakona Nature Preserve so that they can be placed into a conservancy. This second public hearing is required so that the public can review and provide comment on the negotiated purchase and sale agreement (NMC 2.25.030(C)).

The four tideland parcels are identified as Tax Lots 11-11-21-00-01190-00, 11-11-22-C0-04200-00, 11-11-27-00-03100-00, and 11-11-28-00-00201-00. Tax Lot 1190 is rectangular in shape on the west side of the Yakona Nature Preserve, extending into King Slough. The other three parcels are located immediately east of the Preserve along the Yaquina River. These tideland properties are situated along the bank of the river between the mean low and mean high water lines.

Fiscal Notes: There are no fiscal impacts associated with this agenda item. If the property is sold, then the proceeds would be directed to the City land account for future land purchases, unless an alternative use of the funds is identified by Council.

Alternatives: Move forward with the potential sale, seek changes to the sales agreement, hold off on pursuing a potential sale, or as suggested by Council.

Attachments:
Draft Purchase and Sale Agreement
Vesting Deed
Tidelands Map
Yakona Backgrounder
Hearing Notice

WT0261659-AMM
RECORDING COVER SHEET

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon and does NOT affect the instrument. ORS 205.234

After recording return to: ORS 205.234(1)(c)
JoAnn Barton
Yakona Nature Preserve, an Oregon non-profit corporation
214 SW Coast Hwy
Newport, OR 97365

Lincoln County, Oregon
07/08/2024 01:56:01 PM **2024-04567**
DOC-BSD Cnt=1 Pgs=3 Stn=9
$15.00 $11.00 $10.00 $60.00 $7.00 $103.00
I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.
Amy A Southwell, Lincoln County Clerk

1. **Title(s) of the transaction(s)** ORS 205.234(1)(a)

   Statutory Bargain and Sale Deed

2. **Direct party(ies) / grantor(s)** Name(s) ORS 205.234(1)(b)

   City of Newport, an Oregon municipal corporation

3. **Indirect party(ies) / grantee(s)** Name(s) ORS 205.234(1)(b)

   Yakona Nature Preserve, an Oregon non-profit corporation

4. **True and actual consideration:**

   ORS 205.234(1)(d) Amount in dollars or other

   $5,870.00

   Other: _____

5. **Send tax statements to:** ORS 205.234(1)(e)

   Yakona Nature Preserve, an Oregon non-profit corporation
   214 SW Coast Highway
   Newport, OR 97365

6. **Satisfaction of lien, order, or warrant:**
   Check one (if applicable) ORS 205.234(1)(f)

   ☐ FULL ☐ PARTIAL

7. **The amount of the monetary obligation imposed by the lien, order, or warrant:** ORS 205.234(1)(f)

   $0.00

8. **Previously recorded document reference:** _____

9. **If this instrument is being re-recorded, complete the following statement:** ORS 205.244(2)

   Re-recorded at the request of: _____

   To correct: _____

   Previously recorded in Book/Reel _____ and Page _____, or as Fee/Instrument Number _____.

LOT02616561-AMM

Space above this line for Recorder's use.

After recording, return to:
Yakona Nature Preserve
Attn: Bill Barton, Secretary
214 SW Coast Highway
Newport, Oregon 97365

STATUTORY BARGAIN AND SALE DEED

City of Newport, an Oregon municipal corporation, Grantor, conveys to Yakona Nature Preserve, an Oregon nonprofit corporation, Grantee, subject to the reservations set forth below, the following described real property (the "Property"):

PARCEL I:

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL II:

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL III:

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

PARCEL IV:

Tidelands lying within the northwest quarter of the southeast quarter in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, being adjacent to that tract described by instrument recorded June 14, 1995, in Book 301, page 884. Film Records to Alan S. Crandall, et ux, and adjacent to that portion of the northwest quarter of the southeast quarter described in instrument recorded February 23, 1967, in Book 275, page 264. Deed Records to William E. Rowe, et ux.

RELEASE AND WAIVER OF CLAIMS: Grantee acknowledges that it has examined the Property to its own satisfaction and has formed its own opinion as to its condition (including environmental condition) and value. Grantee has not relied on any statements or representations from Grantor or any person acting on behalf of Grantor concerning any of the following:

(i) the size or area of the Property;
(ii) the location of corners or boundaries of the Property;
(iii) the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other

governmental requirements;

(iv) the availability of services to the Property;

(v) the ability of Grantee to use the Property or any portion of it for any intended purpose; or

(vi) any other matter affecting or relating to the Property or any portion of it.

Grantee is acquiring the Property, both above surface and below surface, in the condition existing at the time of conveyance, AS IS, with all defects, if any. Effective on delivery, Grantee waives, releases and forever discharges Grantor and Grantor's officers and employees, of and from all claims, actions, causes of action, fines, penalties, damages, costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. This waiver and release shall run with the land as to the Property and be binding on Grantee and Grantee's successors and assigns.

The true and actual consideration for this conveyance is $5,870.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated June 28, 2024.

The City of Newport,
an Oregon municipal organization

By: _____

as its: City Manager

STATE OF OREGON)
) SS.
County of Lincoln)

On this 28th day of June 2024, before me personally appeared Spencer Nebel, who being duly sworn stated that he is the City Manager of the City of Newport, and acknowledged the foregoing instrument to be the voluntary act, and that he executed the foregoing instrument on behalf of the City of Newport, acting under authority granted to him by the Newport City Council.

OFFICIAL STAMP
AMANDA GAYLE MADDOX
NOTARY PUBLIC - OREGON
COMMISSION NO. 1039276
MY COMMISSION EXPIRES AUGUST 22, 2027

Amanda G Maddox
NOTARY PUBLIC FOR OREGON
My Commission Expires: August 22, 2027

POLICY 18: USES PERMITTED OUTRIGHT:
INCLUDING SCIENTIFIC RESEARCH ACTIVITIES THAT DO NOT REQUIRE A STRUCTURE

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN
(GOALS AND POLICIES, YAQUINA BAY AND ESTUARY)

Background

As proposed, Policy 18 reads as follows:

- "Policy 18: Uses Permitted Outright. New development or redevelopment that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as uses permitted outright that do not require estuarine review."

Comments

Scientific research activities can provide useful information about the ecology of the estuary, including monitoring changes to the estuary as a result of climate and other environmental changes. This information can inform government officials, other decision-makers, people undertaking activities in the estuary, and the general public about what is happening to the ecology of the estuary.

Some types of research activities can have as little impact as the ones already proposed to be permitted outright.

It would be helpful to facilitate scientific research activities that will lead to increased knowledge about the estuary.

Request

Revise Policy 18 to include additional language shown in italics:

- "Policy 18: Uses Permitted Outright. New development or redevelopment, *and scientific research activities (besides those requiring new structures),* that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment *or research activity* is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as uses permitted outright that do not require estuarine review."

DEFINITION OF RESTORATION

REQUESTED REVISION TO NEWPORT ZONING ORDINANCE (NMC 14.01.020 Definitions)

Background: YBEMP definition of "restoration"

The draft Yaquina Bay Estuary Management Plan (YBEMP), August 2023, uses the following definitions for "restoration":

RESTORATION: Revitalizing, returning or replacing original attributes and amenities, such as natural biological productivity, which have been diminished or lost by past alterations, activities or catastrophic events.

ACTIVE RESTORATION: The use of specific remedial action such as removing fills, breaching dikes, removing tide gates etc. to restore or replace original estuarine attributes (see RESTORATION)

PASSIVE RESTORATION: The use of natural processes, sequences or timing to bring about restoration after removal or reduction of adverse stresses. (See Restoration)

(Excerpts from "Appendix: Definitions," pages 143, 145, and 146.)

In addition, the draft YBEMP, August 2023, provides the following "Estuarine Use Standard" for "Restoration":

Restoration

Definition: Replacing or restoring original attributes or amenities such as natural biological productivity or cultural and aesthetic resources which have been diminished or lost by past alterations or activities. Active restoration involves the use of specific remedial action such as removing dikes, installing water treatment facilities, etc. Passive restoration is the use of natural processes, sequences or timing to bring about restoration after the removal or reduction of adverse stresses.

1. Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

2. All restoration projects shall be designed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation and recreation.

(Excerpt from "Part V – Estuarine Use Standards," page 45.)

Background: Proposed Newport Comprehensive Plan definition of "restoration"

The proposed Newport Comprehensive Plan definition of "restoration" adds the following restriction:

- "A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began."

This restriction is part of the proposed definition of "Restoration (estuary)." There are additional definitions for "Active restoration" and "Passive restoration" but, as written, they appear to be subordinate definitions that explain two types of "Restoration (estuary)."

Concerns

The restriction in this sentence applies to some, but not all, types of restoration projects. The restriction may be a relevant criterion for some grant programs, but it does not apply to all possible requests for estuary use permits for restoration projects.

For example, one type of Olympia oyster restoration project uses commercial oyster grow-out bags, with recycled Pacific oyster shells inserted in the bags, stacked on wooden pallets in order to create an artificial substrate. Oyster larvae and juvenile oysters can attach to the artificial substrate and grow in areas where the natural substrate is too soft for oysters to grow on the bottom naturally without sinking in the mud.

Photo of bagged oyster shells on pallet.
(Source: "Comparison of Habitat Restoration and Enhancement Methods for Olympia Oysters (*Ostrea lurida*) in Yaquina Bay, Oregon," by Karen H. Law, a thesis submitted to Oregon State University, 2018.)

Goal 16 Language

In addition, the "Goal 16 Estuarine Resources" rule refers to "restoration" as follows:

- "Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation."

The Goal 16 concept of "restoration" is much broader than the removal of dikes or other physical impediments in order to transfer dry land back into the estuary.

City of Newport Comprehensive Plan

Policy 8 reads as follows:

- "Policy 8. All restoration projects should serve to revitalize, return, replace or otherwise improve estuarine ecosystem characteristics. Examples include restoration of biological productivity, fish or wildlife habitat, other natural or cultural characteristics or resources, or ecosystem services that have been diminished or lost by past alterations, activities or catastrophic events. In general, beneficial restoration of estuarine resources and habitats, consistent with Statewide Planning Goal 16, should be facilitated through implementing measures."

As with Goal 16, the Policy 8 concept of "restoration" is much broader than the removal of dikes or other physical impediments in order to transfer dry land back into the estuary.

Request

- Delete the following sentence from the definition proposed for the Newport Zoning Ordinance: "A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began."

- After the deletion, the definition would be compatible with the YBEMP definitions of "Restoration," "Active Restoration," and "Passive Restoration" (on pages 143-146 of the August 2023 draft YBEMP), compatible with the Estuarine Use Standard for "Restoration" (on page 45 of the August 2023 draft YBEMP), compatible with Goal 16, and compatible with Newport Comprehensive Plan Policy 8.

ADDITIONAL REQUESTED EDITS AND REVISIONS
TO PROPOSED NEWPORT COMPREHENSIVE PLAN

For Management Unit 5, add a reference to the Embarcadero Marina under "Description" and add a Special Policy as follows: "*The Embarcadero Marina is permitted as a condominium where some moorage slips are privately owned, with owners paying real estate taxes and condominium fees, while other moorage slips are owned by the condominium owners association and rented to others.*"

For Management Unit 9, under the heading "Description" in paragraph 5, revise the beginning of the first sentence by adding the words in italics: "Nearly all of the intertidal flat area *in Idaho Flat* is in public ownership (State of Oregon Board of Higher Education)…." This is a minor edit so the sentence is accurate.

For Management Unit 10, revise the first Special Policy (strikethrough for deletion and italics for new language) so it is more accurate and consistent with the "Description": "Because ~~this unit is~~ *some areas* are suitable for native oyster re-establishment and restoration efforts are underway, significant adverse impacts to existing Olympia oyster beds shall be avoided."

Under the heading "Areas Especially Suited for Water-Dependent Uses," item 3, revise the beginning of the first sentence (strikethrough for deletion and italics for new language) so it is accurate: "On the south side of the bay, the OSU Marine Science Center's dock facilities, ~~the Ore-Aqua commercial salmon hatchery~~ *the NOAA dock facilities*, and the land immediately adjacent to the South Beach Marina are especially suited for water-dependent uses…."

Sherri Marineau

From: Derrick Tokos
Sent: Monday, July 22, 2024 3:34 PM
To: Sherri Marineau
Subject: FW: Brief requests for consideration at Work Session
Attachments: Requested Revision re Private Ownership of Tideland.pdf; Proposed policies, requested additions to Comp Plan.pdf; Requested revision to definition of restoration.pdf

Please forward to the Commission.

Derrick

From: Mark Arnold [redacted]
Sent: Monday, July 22, 2024 3:32 PM
To: Derrick Tokos [redacted]
Subject: Brief requests for consideration at Work Session

[WARNING] This message comes from an external organization. Be careful of embedded links.

Derrick,

Hi. As you know, there is a lot of material on the agenda for the Work Session. I prepared 3 short papers with focused requests for revisions or additions to the Comp Plan or Zoning Ordinance. They are attached for your review in advance of the meeting. I would appreciate your guidance about how best to deal with my requests in the context of the meeting. For example, you could summarize my requests. Or, I could bring a dozen copies of each paper to provide as hand-outs at the meeting. If it's possible for you to consider the requests after the Work Session, before finalizing documents for the Public Hearing, I can meet with you to discuss them. If for some reason it would be better for me to wait until the Public Hearing, I could re-submit at that time. I assume you and the Planning Commission Members won't want to spend more time than necessary to consider the requests. I just thought it might be more efficient to address them sooner instead of later.

Mark

Mark Arnold
[redacted]

PRIVATE OWNERSHIP OF TIDELAND IN MANAGEMENT UNIT 9

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background:

- DLCD's proposed update to the YBEMP (August 2023) includes the following Special Policy: "Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged."
- This refers to privately-owned tideland in Kings Slough, adjacent to the mouth of Kings Slough, and upstream. Between 10 and 11 acres are inside the Newport City Limits. (A map is attached.)
- This Special Policy is a repetition of the Special Policy in the 1982 YBEMP.
- This Special Policy is repeated in the Newport Comprehensive Plan.
- When the 1982 YBEMP was adopted, this tideland was owned by companies in the business of harvesting timber, using dredged tideland for log storage, and using tideland for the transportation of logs. The tideland is no longer being used for log storage or log transportation.
- The August 2023 update of YBEMP did not update the policy to reflect changes that occurred after 1982 including changes in ownership and the current activities in Management Unit 9.

Request:

- Delete this Special Policy. After deletion, the Newport Comprehensive Plan would make no statements about who should own tideland in the estuary.

Reasons:

- The current owners of this tideland support conservation principles, "best practice" shellfish aquaculture, and/or research. These benefit the estuary. One of the owners (Yakona Nature Preserve) granted an easement to a conservancy. (Attached is a table showing the largest owners of tideland in Management Unit 9.)
- During the past 42 years, no public agency has acquired this tideland.
- The City of Newport has no City funding allotted to purchase tideland.
- Instead of purchasing tideland, the Newport City Council in January 2024 approved in concept the conveyance of a small, 3-acre tideland parcel in Management Unit 9 to the Yakona Nature Preserve.
- Preservation of natural resources can be accomplished through the permitting process.

PRIVATE OWNERSHIP OF TIDELANDS: BACKGROUND AND MAP

Pursuant to Oregon laws adopted in 1874, 1878, and 1885, and to an Oregon Supreme Court Decision in 1912 (Corvallis & Eastern R. Co. v. Benson, 61 OR 359), all tide and marsh land in Benton County (subsequently transferred to Lincoln County) was granted into private ownership (except for a small portion granted to the City of Newport at the Bayfront).

In subsequent years, some of the tideland parcels were conveyed to public entities including the Port of Newport and the Oregon Board of Higher Education. However, there may be 350 or more acres of privately-owned tideland in Management Unit 9 in Kings Slough, adjacent to the mouth of Kings Slough, and upstream. The private tideland owners are knowledgeable about their portion of the estuary and are stakeholders in the estuary.

Privately-owned tideland is outlined in red, including over 10 acres inside the Newport City Limits adjacent to Idaho Point. Yellow is City of Newport tideland parcel in Kings Slough.

Largest Privately-Owned Tideland Parcels in Management Unit 9
(Note: Several smaller tideland parcels are not shown)

Taxlot(s)	Tideland Acres	Owner in 1982	Owner in 2024
11-11-22-B0-00100	70.52	Geogia-Pacific Corp.	Yakona Nature Preserve (a private foundation)
11-11-15-00-01400 11-11-16-00-00200 11-11-21-00-00500	44.80 88.35 6.00	Geogia-Pacific Corp.	Kings Estuary Shellfish LLC (owned by Mark L. Arnold)
Part of 11-11-21-00-00600	62.95	The Times Mirror Company	Yaquina Bay Kings Shellfish LLC (owned by Mark, Brian & Jonathan Arnold)
Part of 11-11-21-00-00700	Significant amount of tideland in southern Kings Slough. Tideland acreage not identified by Assessor's Office.	Geogia-Pacific Corp.	Emery Investments, Inc.

The situation in 1982: Tideland used for log storage and transportation. Dredging adversely affected ecology of tideland.

- These tideland lots were owned by Georgia-Pacific Corporation, a timber company, and The Times Mirror Company, which harvested timber for use in producing paper for publishing.
- Previously, dredging was done in early 1950s on the Times Mirror parcel for log storage and transportation. This parcel was adjacent to a log dump. Dredged material was deposited as fill in the estuary.
- The 1982 YBEMP sought to restrict dredging in tideland for log storage and transportation.

The situation in 2024: Current owners support conservation, "best practice" aquaculture, and research.

- Yakona Nature Preserve granted a conservation easement to the McKenzie River Trust.
- Mark Arnold (Kings Estuary Shellfish LLC and Yaquina Bay Kings Shellfish LLC) wants some of his tideland to be used for "best practice" shellfish aquaculture and research, with remaining tideland conserved.
- Emery Investments has done nothing with its tideland and supports conservation.

PROPOSED POLICIES

RE[redacted]STED ADDITIONS TO NEWPORT COMPREHENSIVE PLAN

Scientific Research Projects. Scientific research projects that include minor and temporary alterations, where the scale and scope of the alteration is so small that its impact on the aquatic area is negligible, may be classified in the Newport Zoning Ordinance as exempt from estuarine review.

Up-To-Date Information to Inform Decisions: Review of proposed projects and alterations, and permit decisions for activities proposed for the estuary and for shoreline adjacent to the estuary, should be based on the most recent, up-to-date, accurate, and relevant information, and based on the most relevant scientific studies. This includes resource capability information, and the likely impact that any proposed activity might have on the resource capabilities of the estuary. Relevant information provided by, and studies conducted by, subject matter experts should be given careful consideration.

Alterations that Benefit the Ecology of the Estuary: Proposed projects and alterations can be allowed in Natural and Conservation Management Units when they preserve the biological resources and enhance the biological capabilities of the estuary, providing the benefits they provide to the ecology of the estuary more than offset any other ecological impacts.

Conservation Easements: Conservation easements cannot be imposed without the consent of property owners. Instead, government agencies must comply with the requirements of Oregon Revised Statutes (ORS) 271.715 through 271.795.

Keeping Structures in State of Good Repair: Maintenance of, and repairs to, existing structures in the estuary should be allowed and encouraged. It's important to prevent structural deterioration that could become trash in the estuary, adversely affecting water quality and/or interfering with navigation.

DEFINITION OF RESTORATION

REQUESTED REVISION TO PROPOSED NEWPORT ZONING ORDINANCE

Background:

The proposed Zoning Ordinance (14.01.020) has the following definition:

Restoration (estuary). Revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

Active restoration involves the use of specific remedial actions such as removing fills or dikes, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas, etc.

Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

Request:

- Delete the following sentence from the definition: "A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began."

Reasons:

- The restriction in this sentence applies to some, but not all, types of restoration projects. The restriction may be a relevant criterion for some grant programs, but it does not apply to all possible requests for estuary use permits for restoration projects.
- After the deletion, the definition would be compatible with the YBEMP definitions of “Restoration,” “Active Restoration,” and “Passive Restoration” (on pages 143-146 of the August 2023 draft YBEMP) and compatible with the Estuarine Use Standard for “Restoration” (on page 45 of the August 2023 draft YBEMP).

REQUESTED EDITS TO MANAGEMENT UNIT 9

NOTE:
Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 9: YAQUINA BAY

Description
Management Unit 9 includes the Idaho Flat tideflat between the Marine Science Center and Idaho Point, all of King Slough, and the intertidal area [~~upriver~~] *upstream* from the mouth of King Slough known as [~~Racoon~~] *Raccoon* Flat (see Figure 15).

More than 600 acres of tideland are estimated to be included in Management Unit 9. This includes 250 acres at Idaho Flat, 235 acres in King Slough and at the mouth of King Slough, and over 120 acres upstream from the mouth of King Slough. Of this total, about 260 acres are inside the Newport City Limits, most notably Idaho Flat and a smaller area just east of Idaho Flat.

This is one of the largest tideflats in the estuary with a number of natural resource values of major significance, including eelgrass beds, shellfish beds, low salt marsh, fish spawning and nursery areas and waterfowl habitat.

The area is used [~~extensively~~] for recreational purposes, [~~primarily angling, clamming and waterfowl hunting~~] *with significant recreational clamming in Idaho Flat (accessed primarily from the Hatfield Marine Science Center location) and occasional angling and waterfowl hunting.* [~~*A private boat ramp (formerly the site of a small marina) is present at Idaho Point*~~.] *There are several private boat ramps, including one at Idaho Point (formerly the site of a small marina).*

[~~The~~] *Nearly all of the Idaho Flat* intertidal flat area [~~west of Idaho Point is in public ownership (~~] *is owned by the* State of Oregon Board of Higher Education, *and considered to be part of the OSU Hatfield Marine Science Center campus. [~~)~~]. There is significant potential for OSU to use this area in support of research and education, especially as OSU implements an expansion of the OSU Hatfield marine sciences program, an expansion already underway. A much smaller area of tideland is leased by the Port of Newport to the Oregon Coast Aquarium.*

Most of the intertidal area of King Slough is privately owned and was used historically for log storage. *Log storage will no longer be done in this area. Instead, current owners of most of the tideland in the middle and northern portions of King Slough and adjacent to the mouth of King Slough have done extensive water quality testing, received Oregon Department of Agriculture approval to grow and harvest shellfish for human consumption, and have started a small-scale*

oyster farm using equipment where oysters are grown in the water column, which minimizes adverse impacts to organism growing in the mud flats. There is potential to expand aquaculture activities in the future using methods and equipment consistent with protecting the ecology of the estuary. The NOAA Office of Aquaculture issued a Fact Sheet in 2022 "Aquaculture Provides Beneficial Ecosystem Services" explaining that shellfish, and in particular oysters, filter water and improve water quality as well as improve habitat for small crustaceans and small fish. [~~There is a small, low intensity aquaculture operation (tipping bag system) on the east side of King Slough~~.]

[~~A substantial portion of the Racoon Flat intertidal area along the west shore above the mouth of King Slough is owned~~] *The intertidal area upstream from King Slough (Raccoon Flat) is privately-owned, with the area closest to King Slough having the same owner as tideland in King Slough. A larger area upstream* is owned by the Yakona Nature Preserve [~~and Learning Center~~], *an Oregon-registered charitable organization, which also owns adjacent forested upland, with the stated purpose "To develop and maintain a sanctuary for flora and fauna native to the Oregon central coast and to create an educational space in which people can learn about the natural environment and the Native American history of the area encompassing the preserve."*

Alteration to the unit is minimal, with a few scattered pilings and limited areas of riprapped shoreline."

<u>Classification: Natural</u>
[~~As a major tract of tideflat, this unit has been classified natural in order to preserve the natural resources of the unit~~.]
Management Unit 9 has very large tideflats with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds.

<u>Resource Capability</u>

Management Unit 9 is a very large area, with more than 600 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources.

There is a sizable clam bed at Idaho Flat with cockles, gaper, butter and littleneck clams. This flat shifts from sand to mud, moving west to east. The access point from shore is at the Hatfield Marine Science Center at the west. Idaho Flat is a very popular recreational clamming area at minus tide levels. In addition, there is a clam bed at Raccoon Flat, with cockles most prevalent and, less common, gaper and littleneck clams. However, the clam bed at Raccoon Flat is inaccessible, except by boat, and located on privately owned tideland and is not used by recreational clammers.

Native eelgrass (Zostera marina) provides a significant ecological benefit when used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods

until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, there were relatively small areas of native eelgrass, most notably along the northern edge of Idaho Flat adjacent to the main channel of Yaquina Bay, and small area near the mouth of King Slough. It has been reported there was a loss of eelgrass in Idaho Flat in 2021, compared with 2011.

There are no significant populations of native Olympia oysters (Ostrea lurida) in Management Unit 9. Native Olympia oysters grow naturally in subtidal areas on solid substrate; these characteristics are missing from Management Unit 9. After a feasibility study considering locations in the main channel of King Slough, a research biologist concluded that any native oysters and spat would be covered and smothered by silt flowing in the channel.

A portion of Management Unit 9 has a unique biological capability for growing shellfish for human consumption, as determined by extensive and ongoing water quality testing. As a result, the Oregon Department of Agriculture (ODA) has classified an area in the middle and north portions of King Slough, and at the mouth of King Slough, as an "Approved Area" for growing shellfish for human consumption. This area is the only ODA "Approved Area" in the entire Yaquina Bay estuary for growing shellfish for human consumption (while Management Units 16 and 17 are in an ODA "Conditionally Approved Area" for growing shellfish for human consumption). The "Approved Area" is an area of special biological productivity, with important resource value.

In addition, this area is ideal for research, scientific studies, and demonstration projects to learn about the estuary and environmental trends affecting it, explore feasible and desirable approaches to protect and enhance a balanced ecology, and demonstrate best practices. This is especially appropriate because the Oregon Board of Higher Education owns 250 acres of Idaho Flat tideland that is adjacent to the Hatfield Marine Science Center.

Management Unit 9 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. In order to maintain resource values, alterations (*besides scientific studies, active restoration projects, and shellfish aquaculture)* in the unit shall be kept to a minimum. Minor alterations which result in temporary disturbances (e.g., limited dredging for submerged crossings) are consistent with resource values in this area; other more permanent alterations will be reviewed individually *for consistency with the resource capabilities of the area.*

<u>Management Objective</u>

[~~Management Unit 9 shall be managed to preserve and protect natural resources and values~~.]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are

also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 9. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 9. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds, and should only be allowed with permission by the tideland owners.

Special Policies

1. [~~Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or the establishment of new marina uses is not permitted~~.]
2. [~~Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area by severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged~~.]

1. *City of Newport Special Policy: "Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system."*
2. *City of Newport Special Policy: "A cobble/pebble dynamic revetment for shoreline stabilization may be authorized … for protection of public facilities (such as the Hatfield Marine Science Center facilities)."*
3. *A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.*
4. *Special Policy for Research Projects, Scientific Demonstration Projects, and Educational Activities. Research projects, scientific demonstration projects, and educational activities are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 5 Scientific Measurement Devices; and any applicable requirements of the Oregon Department of State Lands (DSL); the Oregon Department of Environmental Quality (DEQ); and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
5. *Special Policy for Active Restoration Projects. "Active restoration of fish and wildlife habitat or water quality and estuarine enhancement" projects are permitted providing*

permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."

6. *<u>Special Policy for Shellfish Aquaculture</u>. Shellfish aquaculture activities (for oysters, clams and/or mussels) "which does not involve dredge or fill or other estuarine alteration other than" (a) "incidental dredging for harvest of benthic species" or (b) "removable in-water structures" are permitted providing permission is granted by the tideland owner and they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 48 Commercial Shellfish Mariculture Activities; the Oregon Department of Agriculture (ODA) Commercial Shellfish Management Program; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If an activity satisfies these regulatory requirements, then the activity satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*

BACKGROUND/EXPANATORY NOTES:

The owner of tideland is opposed to the owner of upland dredging the tideland. The tideland owner considers any such dredging, without permission of the tideland owner, to be trespass. If the upland owner previously requested and received government dredging permits without notifying the government agencies that the tideland had different ownership, then the upland owner may have made significant omissions from permit applications.

When the 1982 YBEMP was adopted, there were different owners of tideland in Management Unit 9. In 1982, the privately-owned tideland in Management Unit 9 was owned by Georgia-Pacific Corporation and by Times Mirror Land and Timber Company, both corporations interested in harvesting and using timber. Times Mirror owned the property with the log dump on the west side of King Slough. In 1982, there was substantial public concern about use of the estuary for dumping, storing and transporting logs and a public desire to limit those practices.

The current private owners of tideland in Management Unit 9 are opposed to the past log storage and transportation practices, and those practices are now disallowed. Instead, the current tideland owners are concerned about the ecology of the estuary. One owner, Yakona Nature Preserve, a non-profit owning forested upland along with tideland upstream from the mouth of King Slough, is dedicated to preserving the natural environment. Owners of tideland in the middle and north portions of King Slough, and adjacent to the mouth of King Slough, are interested is shellfish aquaculture using "best practices" compatible with preserving the natural environment. The current owner of tideland at the south portion of King Slough, along with owning significant forested upland, has undertaken no activities in the estuary after purchasing the property in 1992.

Besides research and scientific studies, the only commercial activity planned for Management Unit 9 is shellfish aquaculture using "best practices." Even if this tideland were to be placed in a conservancy, under Oregon conservancy law (ORS 271.715), a conservation preservation easement may include conserving real property for a variety of desirable purposes including agriculture, and aquaculture is categorized as agriculture. So, aquaculture can be retained as a desirable purpose under a conservancy agreement.

REQUESTED EDITS TO MANAGEMENT UNIT 10

NOTE:
Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 10: YAQUINA BAY

Description
Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel (see Figure 16). [~~Much of this unit is owned by the Port of Newport~~.] A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases out another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to McLean Point are inside the Newport City Limits. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become much smaller over time, indicating a significant loss of habitat. Eelgrass and associated habitat make this area extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region, which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.

Uses in this area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant *at McLean Point* on the west side and Coquille Point to the east. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the southern corner).

The Port of Newport's 2019 Strategic Business Plan Update supports research and aquaculture: "The marine research and education sectors are well established in Newport; an estimated 300 people work at the Hatfield Marine Science Center, including OSU faculty, graduate students, researchers, and staff from other agencies...."
"Aquaculture is a rapidly growing sector of the international economy and represents an opportunity for development in Newport as well."
"Opportunities for growing aquaculture in the Newport area include the expansion of existing operations, as well as the development of new ones."
"Oyster cultivation could be expanded in Yaquina Bay. There is demand for intertidal land for oyster cultivation with the appropriate characteristics (soil conditions and water quality, etc.)"

Classification: Natural

[~~As a major tract of tideflat with eelgrass beds, this unit has been classified natural in order to preserve natural resources in the unit~~.]

Sally's Bend is a very large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds. The small area with Olympia oysters should also be protected.

Resource Capability

Sally's Bend is a very large area, with 550 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources.

There is a sizable clam bed with cockles and, less common, littleneck and gaper clams. The area is very muddy so recreational clammers need to be cautious. The access points from shore are at the McLean Point on the west and at Coquille Point on the east side of Sally's Bend.

Native eelgrass (Zostera marina) provides a significant ecological benefit when used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, native eelgrass was located in a portion of the middle of Sally's Bend and the area closest to the main channel of Yaquina Bay and along the main channel of Yaquina Bay. It has been reported there is less density of eelgrass at Sally's Bend in 2021 than 2011.

Native Olympia oysters (Ostrea lurida) grow naturally in subtidal areas on solid substrate; these characteristics are missing from much of the Sally's Bend tideflat area. However, some limited areas of subtidal channels at Sally's Bend, or subtidal areas along the boundary of the tideflats and the main channel of Yaquina Bay, may be feasible for active Olympia oyster restoration projects with the addition of solid material to compensate for areas with inadequate natural solid substrate, providing the oysters do not get covered in silt.

Significant portions of the Sally's Bend tideflat do not have the sufficient water depth or solid substrate necessary for native eelgrass or for native Olympia oysters. These areas can support other biological resources that are beneficial to the estuary.

Water characteristics including salinity level, and nearly complete tidal exchange of water during each tide cycle, can support shellfish aquaculture. Clams could be cultivated to use as crab bait by the Dungeness crab fleet, while satisfactory water quality testing is needed before Oregon Department of Agriculture (ODA) would give approval for growing shellfish for human consumption. However, shellfish aquaculture activities should avoid any significant adverse impact on native eelgrass or native Olympia oysters.

Close proximity to Hatfield Marine Science Center facilitates scientific studies of the estuary that are beneficial to the estuary as well as supportive of research and education programs

Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, *besides scientific studies, active restoration projects, and shellfish aquaculture,* permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerges crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

<u>Management Objective</u>

[~~Management Unit 10 shall be managed to preserve and protect natural resources and values.~~]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 10. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 10. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds.

Special Policies

1. Because [~~this unit is~~] *some subtidal areas may be* suitable for native oyster re-establishment and restoration efforts are underway, impact to existing Olympia oysters shall be avoided.
2. Deepening and widening of the federal navigation channel and turning basin into this management unit, which would impact the significant ecosystems within Sally's Bend, shall be avoided.
3. *A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.*
4. *Special Policy for Research Projects, Scientific Demonstration Projects, and Educational Activities. Research projects, scientific demonstration projects, and educational activities are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 5 Scientific Measurement Devices; and any applicable requirements of the Oregon Department of State Lands (DSL); the Oregon Department of Environmental Quality (DEQ); and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
5. *Special Policy for Active Restoration Projects. "Active restoration of fish and wildlife habitat or water quality and estuarine enhancement" projects are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
6. *Special Policy for Shellfish Aquaculture. Shellfish aquaculture activities (for oysters, clams and/or mussels) "which does not involve dredge or fill or other estuarine alteration other than" (a) "incidental dredging for harvest of benthic species" or (b) "removable in-water structures" are permitted providing permission is granted by the tideland owner and they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 48 Commercial Shellfish Mariculture Activities; the Oregon Department of Agriculture (ODA) Commercial Shellfish Management Program; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If an activity satisfies these regulatory requirements, then the activity satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*

C. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY FOR MAKING DETERMINATIONS ABOUT NATURAL RESOURCES, NATURAL RESOURCE VALUES, AND NATURAL RESOURCE CAPABILITIES OF INDIVIDUAL NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO IDENTIFY SOURCE(S) OF INFORMATION

For maps and other sources of information about the location and extent of "natural resources," "natural resource values," and/or "natural resource capabilities," the original source(s) of the information must be identified along with the date(s) the information was collected and the methodology used to collect the information. It is insufficient to show a map of aquatic flora and/or fauna without identifying the original source(s), date(s) and methodology used as the basis for the map. This information must be readily available to anyone seeking this information about the estuary, including people considering new uses and activities in the estuary and applicants requesting new uses and activities in the estuary.

ADDITIONAL RESOURCE MAPS

Besides the maps provided to accompany the August 2023 "final draft" YBEMP, the following additional resource maps should be provided:

- Historical extent of oyster beds.
- Oregon Department of Agriculture (ODA) map of Yaquina Bay Shellfish Management Area showing "Approved Areas" and "Conditionally Approved Areas" for growing shellfish for human consumption. 1908 SURVEY ON FILE WITH COUNTY SURVEYOR.

NEED TO PROVIDE "DUE PROCESS" TO APPLICANTS MAKING REQUESTS FOR NEW ESTUARINE USES AND ACTIVITIES IN NATURAL AND CONSERVATION MANAGEMENT UNITS

When an applicant makes an application for a new use or activity, and when the planning office or other entity reviewing the application compares the application with the "natural resources," "natural resource values," and/or "natural resource capabilities" of the applicable Management Unit, the planning office or other entity must provide the applicant with the basis for comparison along with documentation about the basis of comparison. The applicant must be given an opportunity to provide comments for the record about the maps and/or other information used by the planning office or other entity; and the applicant must be given an opportunity to provide additional information that may include, but not be limited to, more recent information about the Management Unit's "natural resources," "natural resource values," and/or "natural resource capabilities."

BACKGROUND/EXPLANATORY NOTES:

As part of the YBEMP update, DLCD's contractor posted on the YBEMP Update web site a series of maps about the Yaquina Bay estuary.

The contactor's YBEMP Update web site says:

"Estuary management plans rely on data and information that describe the physical, biological, social and economic conditions of the estuarine area, and define the boundaries of individual management units. This information has been mapped ...." The web site then has a link to YBEMP maps posted by the contractor for use by local planning agencies and others.

None of the maps showing the flora and fauna and other physical and biological features identifies the original source(s) of information, the date(s) the information was collected, nor the methodology used to collect the information.

By failing to identify key information, including the date(s) the information was collected, and by providing this information as part of the current update, the implication is that the information is recent and relevant to current and future decisions about the estuary.

However, as an example, one of the maps ("Eelgrass extent, PMEP") was based on out-of-date information that was collected using an approach that would no longer be considered acceptable by current scientific standards. [PMEP is a reference to The Pacific Marine and Estuarine Fish Habitat Partnership.]

The "Eelgrass extent, PMEP" map used for the YBEMP update is the same as a map published jointly by The Nature Conservancy and The Pacific Marine and Estuarine Fish Habitat Partnership in "Eelgrass Habitats on the U.S. West Coast: State of the Knowledge of Eelgrass Ecosytem Services and Eelgrass Extent" (2018), a compendium of all information that PMEP was able to compile including all available previously published information. That publication provided:

- A map of "Maximum Observed Extent" of eelgrass in the Yaquina Bay estuary (page 83).
- An explanation that the secondary source of information for the map was The Oregon "Estuary Plan Book" (page 22), published in 1987 by the Department of Land Conservation and Development.
- The relevant map and description of habitat classification was provided previously on pages 86 and 87 of The Oregon "Estuary Plan Book." The identified "habitat," described subsequently as eelgrass, was previously described in The Oregon "Estuary Plan Book" as "seagrass" or "seagrass/algae." There was no further scientific identification about what constituted "seagrass" and whether it included native eelgrass (*Zostera marina*), invasive Japanese eelgrass (*Zostera japonica*) and/or other species. There was no identification of "algae" or whether this category was limited to macroalgae attached to the substate or also included additional, floating algae that appears seasonally.

- The primary source of information, used for The Oregon "Estuary Plan Book," was based on "aerial photographs ... interpreted for habitat classification by the Oregon Department of Fish and Wildlife (ODFW). (page 22)
- The date provided for the aerial photographs, interpreted by ODFW, was 1978 (page 23).

So, DLCD's contractor, to accompany the YBEMP "final draft" update, provided a map of "eelgrass extent" based on aerial photographs taken forty-five years previously, in 1978, and where the description of the aquatic vegetation was not limited to native eelgrass (*Zostera marina*), the type of eelgrass most significant for providing habitat for fish spawning and nursery areas.

Although other maps provided to accompany the YBEMP update are presumably based on much more recent information, the original source(s), date(s) and methodology must be provided for each map in order for the information to be useful to planners and applicants, and to provide "due process" to applicants so applicants can review this information, provide comments about the relevance of the information, and provide more recent information as part of the application review and approval/disapproval process.

B. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY TO FACILITATE AND ENCOURAGE A BALANCE OF ECOLOGICALLY-BENEFICIAL ORGANISMS IN NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO FACILITATE AND ENCOURAGE USES AND ACTIVITIES THAT BENEFIT THE ECOLOGY OF THE ESTUARY

Nature, by itself, cannot restore the pre-existing natural environment after it was siginificantly altered by human activities.

Instead of pursuing an approach of "protecting the existing situation," the preferred approach should be "to seek a balance of ecologically-beneficial organisms to preserve the biological resources and where possible, enhance the biological capabilities" of Natural and Conservation Management Units.

The preferred approach would facilitate and encourage scientific studies to explore how to facilitate a "balance of ecologically-beneficial organisms," active restoration projects that would enhance having a "balance of ecologically-beneficial organisms," and shellfish aquaculture that improves water quality and enhances habitat for other organisms where aquaculture would be compatible with having a "balance of ecologically-beneficial organisms."

In effect, Natural Management Units should really be considered as "areas reserved for protecting and enhancing biological productivity," and Conservation Management Units should be considered as "biological areas with limited, grandfathered past practices."

BACKGROUND/EXPLANATORY NOTES:

Some past practices have caused significant degradation to the previously existing "natural" environment in Natural and Conservation Management Units, in addition to many modifications in Development Management Units.

Most of the original native Olympia oyster beds were destroyed. The destruction was summarized in a scientific article published in 1931. ("The Yaquina Oyster Beds of Oregon," by Dr. Nathan Fasten, Professor of Zoology at Oregon State College, published in The American Naturalist, September-October issue, 1931.)

1. *Early Period*. [About 1860 to 1870.] "... during this period large numbers of schooners came up the Yaquina River and dredged out tremendous quantities of oysters, virtually taking them out by scow loads, and transporting them by boat to the San Francisco markets for consumption. No thought was given at this time to conservation ..."

2. *Middle Period*. [About 1870 to 1923.] "... during this time the beds were worked heavily and continuously, and no thought was given to replenishing the supply. Many of the beds became so depleted that they were virtually exhausted."

3. Recent Period. [This dates from the year 1923 up until publication of the article in 1931.] "When this concern [the company that took over private leases and leased the State's natural oyster beds] got control of them they were already in a dangerous state of depletion. Instead of surveying them carefully for purposes of applying measures which would build them up and conserve the fast diminishing supply of oysters, they rather increased the damage by their heavy dredging and tonging operations. Many of the beds which were in a state of partial depletion were practically wiped out by such methods...."

"Since 1923, there has been no let-up and the exploitation of the oyster beds has increased...."

"In order to increase yields, many of the adult oysters with spat were dredge and tonged up from the natural beds...."

"... transferring them [adult oysters with young growing spat on their shells] on to depleted areas in the main channel of the stream is decidedly bad, for the oysters are soon covered in mud and silt to an extent where they are virtually buried. The result is that many of them are either killed off or their normal growth is greatly interfered with. Finally, when mud and silt cover the shells they no longer serve as cultch, for this debris makes it impossible for the free-swimming larvae to come in contact with the clean surfaces of the shells in order to affix themselves."

Historical activities in Natural Management Unit 9 have been very detrimental to the pre-existing natural conditions. These activities included:

- Building a railroad pier, starting at a railroad terminal at Idaho Point and extending 2,340 feet into the estuary where a log dump was built at the edge of the main channel of Yaquina Bay. The end of the pier appears to be at the south edge of Management Unit 8, adjacent to Management Unit 9. Construction of the railroad, railroad terminal, and pier was undertaken during World War I, and use continued until 1935 when the railroad line was shut down and equipment and the pier removed. Before the pier was removed, a train engine ran off the end of the pier and sank into the mud, presumably at the south edge of Management Unit 8, and never recovered.

- Construction of a log dump along the west bank of King Slough in 1951. The construction included dredging an estimated 30,500 cubic yards of material from the mud flat and dumping it at other locations in King Slough.

- Logging on some hillsides adjacent to the estuary, where large logs were pulled down the hills by large metal cables into the estuary. Each log brought with it a substantial amount of soil into the estuary.

The creation of log dumps and log storage areas, and pulling logs down hillsides into the estuary, was done in many locations in the Yaquina Bay estuary, changing the substrate and the physical and biological characteristics of the estuary forever.

Because these, and other, past activities have significantly modified the natural environment of the estuary, it is impossible for nature, left to its own devices, to restore what was previously destroyed. Instead, to provide a desirable ecological environment for the future, actions need to be taken pro-actively to compensate for the past destruction.

REQUESTED EDITS TO MANAGEMENT UNIT 9

NOTE:
Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 9: YAQUINA BAY

Description
Management Unit 9 includes the Idaho Flat tideflat between the Marine Science Center and Idaho Point, all of King Slough, and the intertidal area [~~upriver~~] *upstream* from the mouth of King Slough known as [~~Racoon~~] *Raccoon* Flat (see Figure 15).

More than 600 acres of tideland are estimated to be included in Management Unit 9. This includes 250 acres at Idaho Flat, 235 acres in King Slough and at the mouth of King Slough, and over 120 acres upstream from the mouth of King Slough. Of this total, about 260 acres are inside the Newport City Limits, most notably Idaho Flat and a smaller area just east of Idaho Flat.

This is one of the largest tideflats in the estuary with a number of natural resource values of major significance, including eelgrass beds, shellfish beds, low salt marsh, fish spawning and nursery areas and waterfowl habitat.

The area is used [~~extensively~~] for recreational purposes, [~~primarily angling, clamming and waterfowl hunting~~] *with significant recreational clamming in Idaho Flat (accessed primarily from the Hatfield Marine Science Center location) and occasional angling and waterfowl hunting.* [~~*A private boat ramp (formerly the site of a small marina) is present at Idaho Point*~~.] *There are several private boat ramps, including one at Idaho Point (formerly the site of a small marina).*

[~~The~~] *Nearly all of the Idaho Flat* intertidal flat area [~~west of Idaho Point is in public ownership (~~] *is owned by the* State of Oregon Board of Higher Education, *and considered to be part of the OSU Hatfield Marine Science Center campus. [~~)~~]. There is significant potential for OSU to use this area in support of research and education, especially as OSU implements an expansion of the OSU Hatfield marine sciences program, an expansion already underway. A much smaller area of tideland is leased by the Port of Newport to the Oregon Coast Aquarium.*

Most of the intertidal area of King Slough is privately owned and was used historically for log storage. *Log storage will no longer be done in this area. Instead, current owners of most of the tideland in the middle and northern portions of King Slough and adjacent to the mouth of King Slough have done extensive water quality testing, received Oregon Department of Agriculture approval to grow and harvest shellfish for human consumption, and have started a small-scale*

oyster farm using equipment where oysters are grown in the water column, which minimizes adverse impacts to organism growing in the mud flats. There is potential to expand aquaculture activities in the future using methods and equipment consistent with protecting the ecology of the estuary. The NOAA Office of Aquaculture issued a Fact Sheet in 2022 "Aquaculture Provides Beneficial Ecosystem Services" explaining that shellfish, and in particular oysters, filter water and improve water quality as well as improve habitat for small crustaceans and small fish. [~~There is a small, low intensity aquaculture operation (tipping bag system) on the east side of King Slough~~.]

[~~A substantial portion of the Racoon Flat intertidal area along the west shore above the mouth of King Slough is owned~~] *The intertidal area upstream from King Slough (Raccoon Flat) is privately-owned, with the area closest to King Slough having the same owner as tideland in King Slough. A larger area upstream* is owned by the Yakona Nature Preserve [~~and Learning Center~~], *an Oregon-registered charitable organization, which also owns adjacent forested upland, with the stated purpose "To develop and maintain a sanctuary for flora and fauna native to the Oregon central coast and to create an educational space in which people can learn about the natural environment and the Native American history of the area encompassing the preserve."*

Alteration to the unit is minimal, with a few scattered pilings and limited areas of riprapped shoreline."

Classification: Natural

[~~As a major tract of tideflat, this unit has been classified natural in order to preserve the natural resources of the unit~~.]

Management Unit 9 has very large tideflats with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds.

Resource Capability

Management Unit 9 is a very large area, with more than 600 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources.

There is a sizable clam bed at Idaho Flat with cockles, gaper, butter and littleneck clams. This flat shifts from sand to mud, moving west to east. The access point from shore is at the Hatfield Marine Science Center at the west. Idaho Flat is a very popular recreational clamming area at minus tide levels. In addition, there is a clam bed at Raccoon Flat, with cockles most prevalent and, less common, gaper and littleneck clams. However, the clam bed at Raccoon Flat is inaccessible, except by boat, and located on privately owned tideland and is not used by recreational clammers.

Native eelgrass (Zostera marina) provides a significant ecological benefit when used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods

until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, there were relatively small areas of native eelgrass, most notably along the northern edge of Idaho Flat adjacent to the main channel of Yaquina Bay, and small area near the mouth of King Slough. It has been reported there was a loss of eelgrass in Idaho Flat in 2021, compared with 2011.

There are no significant populations of native Olympia oysters (Ostrea lurida) in Management Unit 9. Native Olympia oysters grow naturally in subtidal areas on solid substrate; these characteristics are missing from Management Unit 9. After a feasibility study considering locations in the main channel of King Slough, a research biologist concluded that any native oysters and spat would be covered and smothered by silt flowing in the channel.

A portion of Management Unit 9 has a unique biological capability for growing shellfish for human consumption, as determined by extensive and ongoing water quality testing. As a result, the Oregon Department of Agriculture (ODA) has classified an area in the middle and north portions of King Slough, and at the mouth of King Slough, as an "Approved Area" for growing shellfish for human consumption. This area is the only ODA "Approved Area" in the entire Yaquina Bay estuary for growing shellfish for human consumption (while Management Units 16 and 17 are in an ODA "Conditionally Approved Area" for growing shellfish for human consumption). The "Approved Area" is an area of special biological productivity, with important resource value.

In addition, this area is ideal for research, scientific studies, and demonstration projects to learn about the estuary and environmental trends affecting it, explore feasible and desirable approaches to protect and enhance a balanced ecology, and demonstrate best practices. This is especially appropriate because the Oregon Board of Higher Education owns 250 acres of Idaho Flat tideland that is adjacent to the Hatfield Marine Science Center.

Management Unit 9 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. In order to maintain resource values, alterations (*besides scientific studies, active restoration projects, and shellfish aquaculture)* in the unit shall be kept to a minimum. Minor alterations which result in temporary disturbances (e.g., limited dredging for submerged crossings) are consistent with resource values in this area; other more permanent alterations will be reviewed individually *for consistency with the resource capabilities of the area.*

<u>Management Objective</u>

[~~Management Unit 9 shall be managed to preserve and protect natural resources and values~~.]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are

also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 9. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 9. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds, and should only be allowed with permission by the tideland owners.

Special Policies

1. [~~Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or the establishment of new marina uses is not permitted~~.]
2. [~~Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area by severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged~~.]

1. *City of Newport Special Policy: "Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system."*
2. *City of Newport Special Policy: "A cobble/pebble dynamic revetment for shoreline stabilization may be authorized … for protection of public facilities (such as the Hatfield Marine Science Center facilities)."*
3. *A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.*
4. *Special Policy for Research Projects, Scientific Demonstration Projects, and Educational Activities. Research projects, scientific demonstration projects, and educational activities are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 5 Scientific Measurement Devices; and any applicable requirements of the Oregon Department of State Lands (DSL); the Oregon Department of Environmental Quality (DEQ); and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
5. *Special Policy for Active Restoration Projects. "Active restoration of fish and wildlife habitat or water quality and estuarine enhancement" projects are permitted providing*

permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."

6. *<u>Special Policy for Shellfish Aquaculture</u>. Shellfish aquaculture activities (for oysters, clams and/or mussels) "which does not involve dredge or fill or other estuarine alteration other than" (a) "incidental dredging for harvest of benthic species" or (b) "removable in-water structures" are permitted providing permission is granted by the tideland owner and they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 48 Commercial Shellfish Mariculture Activities; the Oregon Department of Agriculture (ODA) Commercial Shellfish Management Program; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If an activity satisfies these regulatory requirements, then the activity satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*

BACKGROUND/EXPANATORY NOTES:

The owner of tideland is opposed to the owner of upland dredging the tideland. The tideland owner considers any such dredging, without permission of the tideland owner, to be trespass. If the upland owner previously requested and received government dredging permits without notifying the government agencies that the tideland had different ownership, then the upland owner may have made significant omissions from permit applications.

When the 1982 YBEMP was adopted, there were different owners of tideland in Management Unit 9. In 1982, the privately-owned tideland in Management Unit 9 was owned by Georgia-Pacific Corporation and by Times Mirror Land and Timber Company, both corporations interested in harvesting and using timber. Times Mirror owned the property with the log dump on the west side of King Slough. In 1982, there was substantial public concern about use of the estuary for dumping, storing and transporting logs and a public desire to limit those practices.

The current private owners of tideland in Management Unit 9 are opposed to the past log storage and transportation practices, and those practices are now disallowed. Instead, the current tideland owners are concerned about the ecology of the estuary. One owner, Yakona Nature Preserve, a non-profit owning forested upland along with tideland upstream from the mouth of King Slough, is dedicated to preserving the natural environment. Owners of tideland in the middle and north portions of King Slough, and adjacent to the mouth of King Slough, are interested is shellfish aquaculture using "best practices" compatible with preserving the natural environment. The current owner of tideland at the south portion of King Slough, along with owning significant forested upland, has undertaken no activities in the estuary after purchasing the property in 1992.

Besides research and scientific studies, the only commercial activity planned for Management Unit 9 is shellfish aquaculture using "best practices." Even if this tideland were to be placed in a conservancy, under Oregon conservancy law (ORS 271.715), a conservation preservation easement may include conserving real property for a variety of desirable purposes including agriculture, and aquaculture is categorized as agriculture. So, aquaculture can be retained as a desirable purpose under a conservancy agreement.

REQUESTED EDITS TO MANAGEMENT UNIT 10

NOTE:
Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 10: YAQUINA BAY

Description
Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel (see Figure 16). [~~Much of this unit is owned by the Port of Newport~~.] A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases out another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to McLean Point are inside the Newport City Limits. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become much smaller over time, indicating a significant loss of habitat. Eelgrass and associated habitat make this area extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region, which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.

Uses in this area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant *at McLean Point* on the west side and Coquille Point to the east. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the southern corner).

The Port of Newport's 2019 Strategic Business Plan Update supports research and aquaculture: "The marine research and education sectors are well established in Newport; an estimated 300 people work at the Hatfield Marine Science Center, including OSU faculty, graduate students, researchers, and staff from other agencies...."
"Aquaculture is a rapidly growing sector of the international economy and represents an opportunity for development in Newport as well."
"Opportunities for growing aquaculture in the Newport area include the expansion of existing operations, as well as the development of new ones."
"Oyster cultivation could be expanded in Yaquina Bay. There is demand for intertidal land for oyster cultivation with the appropriate characteristics (soil conditions and water quality, etc.)"

Classification: Natural

[~~As a major tract of tideflat with eelgrass beds, this unit has been classified natural in order to preserve natural resources in the unit.~~]

Sally's Bend is a very large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds. The small area with Olympia oysters should also be protected.

Resource Capability

Sally's Bend is a very large area, with 550 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources.

There is a sizable clam bed with cockles and, less common, littleneck and gaper clams. The area is very muddy so recreational clammers need to be cautious. The access points from shore are at the McLean Point on the west and at Coquille Point on the east side of Sally's Bend.

Native eelgrass (Zostera marina) provides a significant ecological benefit when used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, native eelgrass was located in a portion of the middle of Sally's Bend and the area closest to the main channel of Yaquina Bay and along the main channel of Yaquina Bay. It has been reported there is less density of eelgrass at Sally's Bend in 2021 than 2011.

Native Olympia oysters (Ostrea lurida) grow naturally in subtidal areas on solid substrate; these characteristics are missing from much of the Sally's Bend tideflat area. However, some limited areas of subtidal channels at Sally's Bend, or subtidal areas along the boundary of the tideflats and the main channel of Yaquina Bay, may be feasible for active Olympia oyster restoration projects with the addition of solid material to compensate for areas with inadequate natural solid substrate, providing the oysters do not get covered in silt.

Significant portions of the Sally's Bend tideflat do not have the sufficient water depth or solid substrate necessary for native eelgrass or for native Olympia oysters. These areas can support other biological resources that are beneficial to the estuary.

Water characteristics including salinity level, and nearly complete tidal exchange of water during each tide cycle, can support shellfish aquaculture. Clams could be cultivated to use as crab bait by the Dungeness crab fleet, while satisfactory water quality testing is needed before Oregon Department of Agriculture (ODA) would give approval for growing shellfish for human consumption. However, shellfish aquaculture activities should avoid any significant adverse impact on native eelgrass or native Olympia oysters.

Close proximity to Hatfield Marine Science Center facilitates scientific studies of the estuary that are beneficial to the estuary as well as supportive of research and education programs

Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, *besides scientific studies, active restoration projects, and shellfish aquaculture,* permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerges crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

<u>Management Objective</u>

[~~Management Unit 10 shall be managed to preserve and protect natural resources and values.~~]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. Beneficial biological resources include submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 10. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 10. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds.

Special Policies

1. Because [~~this unit is~~] *some subtidal areas may be* suitable for native oyster re-establishment and restoration efforts are underway, impact to existing Olympia oysters shall be avoided.
2. Deepening and widening of the federal navigation channel and turning basin into this management unit, which would impact the significant ecosystems within Sally's Bend, shall be avoided.
3. *A Special Policy is to facilitate and encourage a balance of ecologically-beneficial organisms to preserve and enhance biological productivity of this area.*
4. *Special Policy for Research Projects, Scientific Demonstration Projects, and Educational Activities. Research projects, scientific demonstration projects, and educational activities are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 5 Scientific Measurement Devices; and any applicable requirements of the Oregon Department of State Lands (DSL); the Oregon Department of Environmental Quality (DEQ); and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
5. *Special Policy for Active Restoration Projects. "Active restoration of fish and wildlife habitat or water quality and estuarine enhancement" projects are permitted providing permission is granted by the tideland owner and, when applicable, they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If a project satisfies these regulatory requirements, then the project satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*
6. *Special Policy for Shellfish Aquaculture. Shellfish aquaculture activities (for oysters, clams and/or mussels) "which does not involve dredge or fill or other estuarine alteration other than" (a) "incidental dredging for harvest of benthic species" or (b) "removable in-water structures" are permitted providing permission is granted by the tideland owner and they comply with regulatory requirements of the U.S. Army Corps of Engineers (Corps) including Corps Nationwide Permit (NWP) 48 Commercial Shellfish Mariculture Activities; the Oregon Department of Agriculture (ODA) Commercial Shellfish Management Program; and any applicable requirements of the Oregon Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). If an activity satisfies these regulatory requirements, then the activity satisfies the Goal 16 requirement that the activity be "consistent with the resource capabilities of the area and the purposes of this management unit."*

C. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY FOR MAKING DETERMINATIONS ABOUT NATURAL RESOURCES, NATURAL RESOURCE VALUES, AND NATURAL RESOURCE CAPABILITIES OF INDIVIDUAL NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO IDENTIFY SOURCE(S) OF INFORMATION

For maps and other sources of information about the location and extent of "natural resources," "natural resource values," and/or "natural resource capabilities," the original source(s) of the information must be identified along with the date(s) the information was collected and the methodology used to collect the information. It is insufficient to show a map of aquatic flora and/or fauna without identifying the original source(s), date(s) and methodology used as the basis for the map. This information must be readily available to anyone seeking this information about the estuary, including people considering new uses and activities in the estuary and applicants requesting new uses and activities in the estuary.

ADDITIONAL RESOURCE MAPS

Besides the maps provided to accompany the August 2023 "final draft" YBEMP, the following additional resource maps should be provided:

- Historical extent of oyster beds.
- Oregon Department of Agriculture (ODA) map of Yaquina Bay Shellfish Management Area showing "Approved Areas" and "Conditionally Approved Areas" for growing shellfish for human consumption. 1908 SURVEY ON FILE WITH COUNTY SURVEYOR.

NEED TO PROVIDE "DUE PROCESS" TO APPLICANTS MAKING REQUESTS FOR NEW ESTUARINE USES AND ACTIVITIES IN NATURAL AND CONSERVATION MANAGEMENT UNITS

When an applicant makes an application for a new use or activity, and when the planning office or other entity reviewing the application compares the application with the "natural resources," "natural resource values," and/or "natural resource capabilities" of the applicable Management Unit, the planning office or other entity must provide the applicant with the basis for comparison along with documentation about the basis of comparison. The applicant must be given an opportunity to provide comments for the record about the maps and/or other information used by the planning office or other entity; and the applicant must be given an opportunity to provide additional information that may include, but not be limited to, more recent information about the Management Unit's "natural resources," "natural resource values," and/or "natural resource capabilities."

BACKGROUND/EXPLANATORY NOTES:

As part of the YBEMP update, DLCD's contractor posted on the YBEMP Update web site a series of maps about the Yaquina Bay estuary.

The contactor's YBEMP Update web site says:

"Estuary management plans rely on data and information that describe the physical, biological, social and economic conditions of the estuarine area, and define the boundaries of individual management units. This information has been mapped ...." The web site then has a link to YBEMP maps posted by the contractor for use by local planning agencies and others.

None of the maps showing the flora and fauna and other physical and biological features identifies the original source(s) of information, the date(s) the information was collected, nor the methodology used to collect the information.

By failing to identify key information, including the date(s) the information was collected, and by providing this information as part of the current update, the implication is that the information is recent and relevant to current and future decisions about the estuary.

However, as an example, one of the maps ("Eelgrass extent, PMEP") was based on out-of-date information that was collected using an approach that would no longer be considered acceptable by current scientific standards. [PMEP is a reference to The Pacific Marine and Estuarine Fish Habitat Partnership.]

The "Eelgrass extent, PMEP" map used for the YBEMP update is the same as a map published jointly by The Nature Conservancy and The Pacific Marine and Estuarine Fish Habitat Partnership in "Eelgrass Habitats on the U.S. West Coast: State of the Knowledge of Eelgrass Ecosytem Services and Eelgrass Extent" (2018), a compendium of all information that PMEP was able to compile including all available previously published information. That publication provided:

- A map of "Maximum Observed Extent" of eelgrass in the Yaquina Bay estuary (page 83).
- An explanation that the secondary source of information for the map was The Oregon "Estuary Plan Book" (page 22), published in 1987 by the Department of Land Conservation and Development.
- The relevant map and description of habitat classification was provided previously on pages 86 and 87 of The Oregon "Estuary Plan Book." The identified "habitat," described subsequently as eelgrass, was previously described in The Oregon "Estuary Plan Book" as "seagrass" or "seagrass/algae." There was no further scientific identification about what constituted "seagrass" and whether it included native eelgrass (*Zostera marina*), invasive Japanese eelgrass (*Zostera japonica*) and/or other species. There was no identification of "algae" or whether this category was limited to macroalgae attached to the substate or also included additional, floating algae that appears seasonally.

- The primary source of information, used for The Oregon "Estuary Plan Book," was based on "aerial photographs ... interpreted for habitat classification by the Oregon Department of Fish and Wildlife (ODFW). (page 22)
- The date provided for the aerial photographs, interpreted by ODFW, was 1978 (page 23).

So, DLCD's contractor, to accompany the YBEMP "final draft" update, provided a map of "eelgrass extent" based on aerial photographs taken forty-five years previously, in 1978, and where the description of the aquatic vegetation was not limited to native eelgrass (*Zostera marina*), the type of eelgrass most significant for providing habitat for fish spawning and nursery areas.

Although other maps provided to accompany the YBEMP update are presumably based on much more recent information, the original source(s), date(s) and methodology must be provided for each map in order for the information to be useful to planners and applicants, and to provide "due process" to applicants so applicants can review this information, provide comments about the relevance of the information, and provide more recent information as part of the application review and approval/disapproval process.

B. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY TO FACILITATE AND ENCOURAGE A BALANCE OF ECOLOGICALLY-BENEFICIAL ORGANISMS IN NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO FACILITATE AND ENCOURAGE USES AND ACTIVITIES THAT BENEFIT THE ECOLOGY OF THE ESTUARY

Nature, by itself, cannot restore the pre-existing natural environment after it was siginificantly altered by human activities.

Instead of pursuing an approach of "protecting the existing situation," the preferred approach should be "to seek a balance of ecologically-beneficial organisms to preserve the biological resources and where possible, enhance the biological capabilities" of Natural and Conservation Management Units.

The preferred approach would facilitate and encourage scientific studies to explore how to facilitate a "balance of ecologically-beneficial organisms," active restoration projects that would enhance having a "balance of ecologically-beneficial organisms," and shellfish aquaculture that improves water quality and enhances habitat for other organisms where aquaculture would be compatible with having a "balance of ecologically-beneficial organisms."

In effect, Natural Management Units should really be considered as "areas reserved for protecting and enhancing biological productivity," and Conservation Management Units should be considered as "biological areas with limited, grandfathered past practices."

BACKGROUND/EXPLANATORY NOTES:

Some past practices have caused significant degradation to the previously existing "natural" environment in Natural and Conservation Management Units, in addition to many modifications in Development Management Units.

Most of the original native Olympia oyster beds were destroyed. The destruction was summarized in a scientific article published in 1931. ("The Yaquina Oyster Beds of Oregon," by Dr. Nathan Fasten, Professor of Zoology at Oregon State College, published in The American Naturalist, September-October issue, 1931.)

1. *Early Period*. [About 1860 to 1870.] "... during this period large numbers of schooners came up the Yaquina River and dredged out tremendous quantities of oysters, virtually taking them out by scow loads, and transporting them by boat to the San Francisco markets for consumption. No thought was given at this time to conservation ..."

2. *Middle Period*. [About 1870 to 1923.] "... during this time the beds were worked heavily and continuously, and no thought was given to replenishing the supply. Many of the beds became so depleted that they were virtually exhausted."

3. Recent Period. [This dates from the year 1923 up until publication of the article in 1931.] "When this concern [the company that took over private leases and leased the State's natural oyster beds] got control of them they were already in a dangerous state of depletion. Instead of surveying them carefully for purposes of applying measures which would build them up and conserve the fast diminishing supply of oysters, they rather increased the damage by their heavy dredging and tonging operations. Many of the beds which were in a state of partial depletion were practically wiped out by such methods...."

"Since 1923, there has been no let-up and the exploitation of the oyster beds has increased...."

"In order to increase yields, many of the adult oysters with spat were dredge and tonged up from the natural beds...."

"... transferring them [adult oysters with young growing spat on their shells] on to depleted areas in the main channel of the stream is decidedly bad, for the oysters are soon covered in mud and silt to an extent where they are virtually buried. The result is that many of them are either killed off or their normal growth is greatly interfered with. Finally, when mud and silt cover the shells they no longer serve as cultch, for this debris makes it impossible for the free-swimming larvae to come in contact with the clean surfaces of the shells in order to affix themselves."

Historical activities in Natural Management Unit 9 have been very detrimental to the pre-existing natural conditions. These activities included:

- Building a railroad pier, starting at a railroad terminal at Idaho Point and extending 2,340 feet into the estuary where a log dump was built at the edge of the main channel of Yaquina Bay. The end of the pier appears to be at the south edge of Management Unit 8, adjacent to Management Unit 9. Construction of the railroad, railroad terminal, and pier was undertaken during World War I, and use continued until 1935 when the railroad line was shut down and equipment and the pier removed. Before the pier was removed, a train engine ran off the end of the pier and sank into the mud, presumably at the south edge of Management Unit 8, and never recovered.

- Construction of a log dump along the west bank of King Slough in 1951. The construction included dredging an estimated 30,500 cubic yards of material from the mud flat and dumping it at other locations in King Slough.

- Logging on some hillsides adjacent to the estuary, where large logs were pulled down the hills by large metal cables into the estuary. Each log brought with it a substantial amount of soil into the estuary.

The creation of log dumps and log storage areas, and pulling logs down hillsides into the estuary, was done in many locations in the Yaquina Bay estuary, changing the substrate and the physical and biological characteristics of the estuary forever.

Because these, and other, past activities have significantly modified the natural environment of the estuary, it is impossible for nature, left to its own devices, to restore what was previously destroyed. Instead, to provide a desirable ecological environment for the future, actions need to be taken pro-actively to compensate for the past destruction.

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Friday, April 19, 2024 2:04 PM
To: Public comment
Subject: Written comments submitted for Newport Planning Commission Regular Session, 4/22/24
Attachments: Written comments submitted to Planning Commission for regular session on 4_22_24.pdf; Selected Excerpts from Goal 16 and Comments.pdf; ODA Yaquina Bay Commercial Shellfish Management Area, October 2020.pdf; Reasons to allow shellfish aquaculture & research projects in Management Units 9 and 10.pdf; Major Changes to Yaquina Bay in Newport.pdf

[WARNING] **This message comes from an external organization. Be careful of embedded links.**

Hi. I am submitting written comments to include in "Agenda Item 3 Citizen/Public Comment" at the Planning Commission Regular Session to be held on April 22, 2024.

These comments relate to the Yaquina Bay Estuary Management Plan (YMEMP) and are provided so the Commission may have them in advance of the next meeting scheduled for May 13, 2024.

The comments are provided in the following files:

- Written comments submitted to Planning Commission for regular session on 4-22-24
- Selected Excerpts from Goal 16 and Comments
- ODA Yaquina Bay Commercial Shellfish Management Area, October 2020
- Reasons to allow shellfish aquaculture & research projects in Management Units 9 and 10
- Major Changes to Yaquina Bay in Newport
- Historical Information about Management Unit 9 [Note: Due to the file size, I will sent this file attached to a separate email.]

Thank you very much for considering this information.

Mark Arnold
[redacted]

YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)
Written Comments Submitted to Newport Planning Commission, April 22, 2024

My name in Mark Arnold. I live inside the Newport Urban Growth Boundary and own tideland inside and outside the City Limits. I have been helping my son and daughter-in-law start a very small oyster farm in Kings Slough. We have a major interest in the Yaquina Bay Estuary Management Plan (YBEMP).

To support your consideration of the Yaquina Bay Estuary Management Plan, I am submitting the following background material:

- "Selected Excerpts from the Goal 16: Estuarine Resources Rule about Estuary Characteristics to be Reflected in Estuary Management Plans." To comply with the provisions in these excerpts, the YBEMP should reflect the Oregon Department of Agriculture (ODA) map of the Yaquina Bay Commercial Shellfish Management Area.

- The Oregon Department of Agriculture map of the Yaquina Bay Commercial Shellfish Management Area. This map shows Kings Slough as an "Approved Area" for growing shellfish for human consumption, and an area upstream from River Bend as a "Conditionally Approved Area" for growing shellfish for human consumption. (This map was submitted previously to the Planning Commission on January 22, 2024.)

- "Reasons to Allow Shellfish Aquaculture and Research Projects in Natural Management Units 9 and 10." These reasons can be used to support appropriate YBEMP "Estuarine Use Standards" for shellfish aquaculture and research projects and, if needed, used as justification of Goal 16 Exceptions.

- "Historical Information About Major Changes to Lower Yaquina Bay Estuary." This information includes major changes in the Newport area that have had an impact on Idaho Flat (in Management Unit 9) and Sally's Bend (Management Unit 10), and may have impacted additional areas of the estuary, so that much of the estuary is no longer a pristine, untouched "natural" area.

- "Historical Information About Management Unit 9." This information includes major activities that occurred in Kings Slough and at the mouth of Kings Slough which impacted this area of Management Unit 9 so it is no longer a pristine, untouched "natural" area.

In addition to this information, on January 22, 2024, I submitted a copy of the NOAA Fact Sheet "Aquaculture Provides Beneficial Ecosystem Services" which describes how shellfish aquaculture (and oyster farming in particular) benefit the estuary, for example, by filtering water and capturing carbon.

Thank you for giving me the opportunity to present this information.

SELECTED EXCERPTS FROM THE GOAL 16: ESTUARINE RESOURCES RULE
ABOUT ESTUARY CHARACTERISTICS TO BE REFLECTED IN ESTUARY MANAGEMENT PLANS

NOTE: Pursuant to Oregon Revised Statutes, rules and state-wide goals are adopted by the Land Conservation and Development Commission, not DLCD.

IMPLEMENTATION REQUIREMENT 3

"3. State and federal agencies shall review, revise and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls."

Comments

This requirement applies to DLCD as well as to other State agencies. DLCD is required to support actions to maintain water quality. The State of Oregon, in statute, assigned responsibility to the Oregon Department of Agriculture for identifying areas suitable for commercial shellfish aquaculture. The ODA approved areas are based on extensive water quality testing, and only a few areas in Oregon's estuaries satisfy the stringent ODA water quality requirements. DLCD should acknowledge the areas in estuaries that ODA has identified as having a high level of water quality necessary for growing and harvesting shellfish for human consumption. Goal 16 Implementation Requirement 3 requires DLCD to be supportive of ODA determinations about water quality, not to ignore nor undermine the ODA determinations.

Even if DLCD is non-compliant with Implementation Requirement 3, local governments still need to follow Implementation Requirement 3, should acknowledge the ODA water quality determinations as part of their estuary management plans, and be supportive of maintaining a high level of water quality where it exists.

IMPLEMENTATION REQUIREMENT 8

"8. State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. … "

Comments

The Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers should have records of permits issued for dredge and fill in estuaries. The DLCD's August draft update to the Yaquina Bay Estuary Management Plan mentions that extensive dredge and fill have occurred in some areas of the estuary but provides no detailed information about the location and amount of dredge and fill nor about the potentially adverse impact that past dredge and fill activities may have had on the estuarine ecosystem, including adjacent "natural" areas.

Even if DLCD and other State and federal agencies do not provide detailed information about past dredge and fill activities, information from other available sources should be taken into consideration. The failure of DLCD to obtain and provide this information does not mean the impact of past dredge and fill activities can, nor should, be ignored.

In locations impacted by past dredge and fill activities, the intent of Implementation Requirement 8 is that activities be allowed, even encouraged, to improve the biological productivity of the ecosystem.

GUIDELINES: A. INVENTORIES

"… the inventories for estuarine features should include:
"1. Physical characteristics
…
"b. Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen."

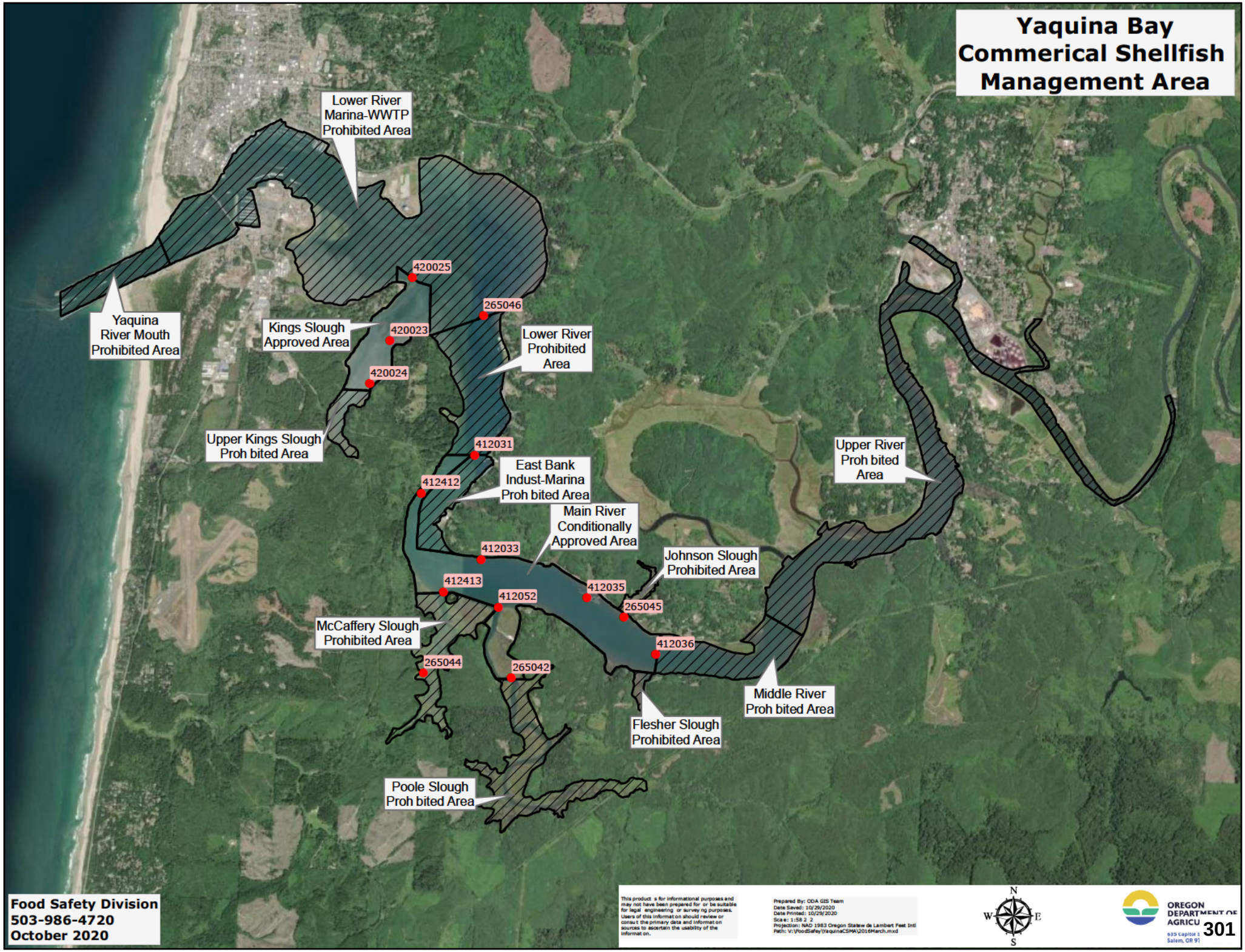
"2. Biological
…
"h. Areas presently in commercial aquaculture."

"3. Social and economic characteristics—Location, Description, and Extent of:
"a. The importance of the estuary to the economy of the area;
"b. Existing land uses surrounding the estuary;
"c. Man-made alterations of the natural estuarine system;
"d. Water-dependent industrial and/or commercial enterprises; …"

Comments

The inventories should include the Oregon Department of Agriculture map of the Yaquina Bay Commercial Shellfish Management Area showing locations in the estuary that are an "Approved Area" or a "Conditionally Approved Area" for growing and harvesting shellfish for human consumption. The ODA determination is based on water quality. The ODA map is relevant to Inventory Requirement 1.b. Water characteristics; Inventory Requirement 2.h. Areas presently in commercial aquaculture; and Inventory Requirement 3.d. Water-dependent … commercial enterprises. Also, locally-grown shellfish are relevant to Inventory Requirement 3.a. The importance of the estuary to the economy of the area.

In addition, the Yaquina Bay Estuary Management Plan should take into consideration existing land uses adjacent to Management Units 9 and 10 (Inventory Requirement 3.b.) and past man-made alterations to the natural estuarine system that have an impact on Management Units 9 and 10 (Inventory Requirement 3.c).


Yaquina Bay
Commerical Shellfish
Management Area
Lower River
Marina-WWTP
Prohibited Area
Yaquina
River Mouth
Prohibited Area
Kings Slough
Approved Area
420025
265046
420023
420024
Lower River
Prohibited
Area
Upper Kings Slough
Proh bited Area
412031
East Bank
Indust-Marina
Proh bited Area
412412
Main River
Conditionally
Approved Area
412033
Johnson Slough
Prohibited Area
412413
412052
412035
265045
McCaffery Slough
Prohibited Area
412036
265044
265042
Upper River
Proh bited
Area
Middle River
Proh bited Area
Flesher Slough
Prohibited Area
Poole Slough
Proh bited Area
Food Safety Division
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October 2020
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REASONS TO ALLOW SHELLFISH AQUACULTURE AND RESEARCH PROJECTS
IN NATURAL MANAGEMENT UNITS 9 AND 10

BACKGROUND

Oregon Coast Classification System

In the Oregon Estuary Classification System, there are four types of estuaries:
"Natural estuaries"
"Conservation estuaries"
"Shallow-draft development estuaries"
"Deep-draft development estuaries"
(OAR 660-017-0010)

Yaquina Bay is a Deep-draft Development Estuary

Under "Major Estuary Classification," Yaquina Bay is classified as a "Deep-draft Development Estuary." Of the 22 major Oregon estuaries, Yaquina Bay is only one of three estuaries in the State that are classified as a "Deep-draft Development Estuary." The other two are Coos Bay, on the south coast, and Columbia River at the north boundary of Oregon. (OAR 660-017-0015)

"'Deep-draft development estuaries': Estuaries with maintained jetties and a main channel maintained by dredging at deeper than 22 feet." (OAR 660-017-0010(4))

Characteristics of "Natural estuaries" and "Conservation estuaries"

"'Natural estuaries': Estuaries lacking maintained jetties or channels, and which are usually little developed for residential, commercial, or industrial uses. They may have altered shorelines, provided that these altered shorelines are not adjacent to an urban area. Shorelands around natural estuaries are generally used for agricultural, forest, recreations, and other rural uses." (OAR 660-017-0010(1))

"'Conservation estuaries': Estuaries lacking maintained jetties or channels, but which are within or adjacent to urban areas which have altered shorelines adjacent to the estuary." (OAR 660-017-0010(2))

REASONS TO ALLOW SHELLFISH AQUACULTURE AND RESEARCH PROJECTS IN NATURAL MANAGEMENT UNITS 9 and 10

Management Units 9 and 10 are no longer pristine, untouched "natural" areas.

Both Management Units 9 and 10 consist of large tracts of tideland. However, both Management Units 9 and 10 have some characteristics of "Natural estuaries" and some characteristics of "Conservation estuaries." Both estuaries have some limited shoreline adjacent to the City of Newport. Both estuaries have some limited shoreline with riprap.

Management Unit 9 has significant shoreline adjacent to a residential area and a forest area inside the Urban Growth Boundary as well as shoreline outside the Urban Growth Boundary adjacent to a forest area. Management Unit 10 has all its shoreline adjacent to developed areas. None of the shoreline of Management Unit 10 is adjacent to forest or agricultural land.

Significant changes made to the lower Yaquina Bay estuary have created an estuary where tidelands are no longer pristine, untouched "natural areas." The tidelands in Management Unit 9 (Idaho Flat, King Slough, and upstream) and Management Unit 10 (Sally's Bend) no longer have all the characteristics of a "natural estuary" as defined by DLCD's regulation for Classifying Oregon Estuaries (OAR 660-017). (See "Historical Information About Major Changes Made to Lower Yaquina Bay Estuary" and "Historical Information About Management Unit 9".)

<u>Most other Management Units are not approved for growing shellfish for human consumption</u>.

Growing shellfish for human consumption is appropriate for portions of Management Unit 9 that have been classified by the Oregon Department of Agriculture (ODA) Commercial Shellfish Program as the only "Approved Area" in the Yaquina Bay estuary for growing shellfish for human consumption. Another area (in Management Units 16 and 17) is classified by ODA as a "Conditionally Approved Area" but that area is already being used by an oyster farm in existence for a century and is not available for anyone else starting a new oyster farm. These are the only areas in the entire Yaquina Bay estuary where ODA has granted approval for growing shellfish for human consumption, based on extensive and favorable water quality testing. If extensive water quality testing is done in the future in another area, and if the results are favorable, it may be possible in the future for another area to be opened up. In addition, it may be possible to grow clams commercially at Sally's Bend that can be made available to the commercial fishing fleet to use as crab bait. At this time, however, Management Unit 9 has the only ODA "Approved Area" in the estuary. (See ODA map "Yaquina Bay Commercial Shellfish Management Area".)

<u>Research projects should be allowed in proximity to the OSU Hatfield campus</u>.

Conducting research projects (more than simple observation) is appropriate for Management Units 9 and 10 due to their proximity to the OSU's Hatfield Marine Science Center. In addition, a portion of Management Unit 9 (Idaho Flat) is owned by the Oregon Board of Higher Education, considered as part of the campus of OSU's Hatfield Marine Science Center, and adjacent to the Hatfield location. OSU researchers should be allowed to use OSU tideland to conduct research projects, and they should be allowed to conduct research projects on nearby tideland with the approval of the tideland owners.

<u>Oysters are beneficial (not detrimental) to the ecology of the estuary</u>.

Growing oysters commercially, using "best practices," is beneficial to the ecology of the estuary, encouraged by the Federal Government (NOAA Fact Sheet "Aquaculture Provides Beneficial Ecosystem Services"), and supported by The Nature Conservancy. In addition, the development of commercial oyster aquaculture is a priority of the State of Oregon.

To implement State policy to enhance shellfish production in the Yaquina Bay estuary, it is necessary to grow shellfish in areas with excellent water quality and sufficient salinity.

The State of Oregon has a shellfish policy that includes seeking opportunities to expand commercial shellfish production:
"ORS 622.015 Shellfish policy. (1) The Legislative Assembly finds and declares that it is the policy of the State of Oregon to seek opportunities to:
"(a) Enhance and expand cultivated shellfish production;
"(b) Conserve, protect and restore wild populations of native shellfish; and
"(c) Improve water quality and the health of aquatic and marine habitats.
"(2) In furtherance of the policy declared by this section, it is the intent of the Legislative Assembly that the state develop and adopt a shellfish initiative to prioritize and implement strategies for achieving protection of native shellfish and the enhancement of shellfish production. [2015 c. 814 section 1]"
….

The only areas where it is feasible to expand shellfish aquaculture in the Yaquina Bay estuary, consistent with the State of Oregon shellfish policy, are Natural Management Units with high levels of water quality that meet ODA requirements and sufficient levels of salinity. Regulations prohibit growing shellfish for human consumption in areas where bacteria levels exceed stringent standards and areas where there is a risk of even very low levels of toxins entering the water. In general, this prohibits growing shellfish in the vicinity of marinas, boat mooring areas, boat-works, sewage treatment plant outfalls, or other areas in Development Management Units and some Conservation Management Units. In addition, oysters grow on tidelands having water with sufficient salinity, which precludes growing oysters in upstream areas of the Yaquina Bay estuary that are too far from the Pacific Ocean.

Growing shellfish and conducting research projects are compatible with adjacent areas.

Conducting research projects and "best practice" shellfish aquaculture are compatible with uses along the adjacent shoreline. For Management Unit 9, the shoreline at the west of Idaho Flat includes an area inside the Newport City Limits used for the Hatfield Marine Science Center, the Oregon Coast Aquarium, a commercial area, and a townhouse complex. Also, for Management Unit 9, a significant amount of shoreline starting at the Newport City Limits and extending east along the south shore of Idaho Flat and then extending for 1/2 mile along the west shore of King Slough is an area zoned R-1 residential and inside the Newport Urban Growth Boundary. The remainder of the west shore of King Slough is forest land inside the Newport Urban Growth Boundary. The east shoreline of King Slough and the shoreline upstream from King Slough is forest zone T-C Timber-Conservation. For Management Unit 10 (Sally's Bend), the west shore is adjacent to McLean Point which has the NW Natural storage tank and other facilities and is inside the Newport City Limits. The remaining shoreline of Sally's Bend, outside the City Limits includes an area inside the Urban Growth Boundary zoned residential R-1 and an area outside the Urban Growth Boundary zoned residential RR-2.

Additional information provided:

- Historical Information About Major Changes to Lower Yaquina Bay Estuary.
- Historical Information About Management Unit 9.

HISTORICAL INFORMATION ABOUT
MAJOR CHANGES MADE TO LOWER YAQUINA BAY ESTUARY

Official United States Land Surveys

The United States General Land Office conducted official land surveys of the State of Oregon (as well as for many other states) that were subsequently used as the basis for issuing United States grants, including land patents, of the public lands. As part of this activity, the General Land Office conducted land surveys in Lincoln County, Oregon. The land surveys conducted in the vicinity of Newport for Township 11 South, Range 11 West, Willamette Meridian, showed the Yaquina Bay waterway and tideland granted by the United States to the State of Oregon, and as well as showing adjacent surveyed sections where public lands could be granted by the United States by land patents or other means to private individuals and other recipients.

United States General Land Office survey maps were drawn in 1867 and 1870 and certified by the Surveyor General of Oregon as consistent with the official land surveys. The 1870 certification reads: "The above map of T 11 S & R 11 West Will Mer Oregon is strictly conformable to original field notes of the survey thereof on this Office which have been examined and approved.
"Surveyor Generals Office
"Eugene City Oct. 25 1870
"E L Applegate, Surveyor General of Oregon"

United States Coast Survey

In the late 1860s, the United States Government surveyed the Pacific coast.

Detail from 1868 U.S. Coast Survey Chart Showing Part of Lower Yaquina Bay

Source: 1868 U.S. Coast Survey of "Yaquinna River Entrance" Oregon

Initial Construction of South and North Jetties

A sign at the South Beach State Park reports:

> "The U.S. Army Corps of Engineers began building the south jetty in 1881. "Building the jetty was quite a feat of engineering for its day. The rocks arrived in Newport by barge, then were hauled out to the jetties on railroad cars. Some of the rocks weigh 30 to 40 tons each."

Reported in the *Lincoln County Leader* in 1894:

"In 1881 a jetty project was adopted to construct a low-tide level stone jetty on the south side of the Yaquina bar at a cost of about $465,000. The jetty was built from a tramway begun at the high-tide line and had been built to a length of about 4000 feet. Then in 1888, a jetty project was to raise the south jetty to a high-tide level without extending it, and to build a mid-level jetty about 2300 feet on the north side of the bar. The cost of this project was about $755,600. This project was modified in 1892 to make the north jetty a high-tide jetty." (Source: Steam Towards The Sunset, The Railroads of Lincoln County, by Lloyd M. Palmer, published by Lincoln County Historical Society, Third Edition 2003, page 143.)

Work continued in subsequent years on the jetties. The *Lincoln County Leader* reported about additional work being done on the jetties, and stone being quarried for the jetties, from 1918 through 1939. (Source: Steam Towards The Sunset, The Railroads of Lincoln County, by Lloyd M. Palmer, published by Lincoln County Historical Society, Third Edition 2003.)

US Army Corps Projects

Following is the summary of US Army Corps of Engineers projects in Yaquina Bay, as summarized on the Corps' Portland District Office web site:

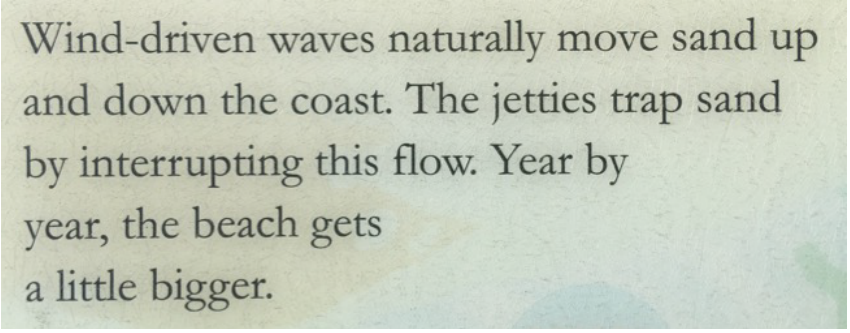
> One of the Corps' oldest navigation projects on Oregon's coast, Yaquina includes two jetties, several channels, turning and boat basins, and a breakwater.
>
> Yaquina's north jetty was constructed from 1889 to 1896 to a length of 7,000 feet, extended in 1966 and repaired in 1978, 1988 and 2001. The 8,600 foot south jetty was completed in 1896 and extended 1,800 feet in 1972. Since its construction five groins have been added to the south jetty as well as an 800-foot spur jetty. A breakwater for a small-boat basin on the north shore (a timber structure 2,650 feet long) was authorized in 1946, to protect commercial fishing boats. Congress last modified the project's authorization in 1958, allowing for extending the jetties: a 40-foot-deep, 400-foot-wide entrance channel; a 30-foot-deep, 300-foot-wide bay channel leading to a turning basin at Newport; an 18-foot-deep, 200-foot-wide, 4.5-mile-long channel from Newport to Yaquina; two small-boat basins at Newport; two small-boat turning basins at Newport; and a 1,300-foot-long breakwater to protect the Newport South Beach Marina.

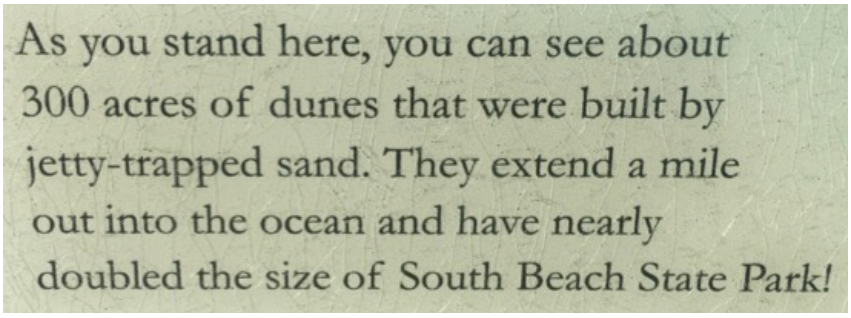
Impact on the Pacific coast and Yaquina Bay

The jetties had a significant impact on water flowing at the mouth and into Yaquina Bay. Consequently, they changed the hydraulic processes along the nearby Pacific coast, and the jetties and other Corps projects changed the hydraulic processes in the lower Yaquina Bay from what would otherwise have occurred naturally.

The impact along the coast has been described by signs at South Beach State Park:

> "The beach building of the jetties was just a side effect of their intended purpose of getting ships in and out of the harbor safely. Late nineteenth century sailing ships wishing to enter the bay had to navigate the constantly shifting sandbars along the river delta. A jetty was needed!"





In addition to moving along the coast, prior to construction of the jetties, some of the sand deposited at South Beach State Park might have entered Yaquina Bay, resulting in an estuary with a greater proportion of sand, and a smaller proportion of mud, in the tideflats of lower Yaquina Bay.

Historical shoreline locations as shown on a path at South Beach State Park

“1890 SHORELINE WAS HERE”

“1940 SHORELINE WAS HERE”

“1974 SHORELINE WAS HERE”

The jetties today, as viewed from below the north end of the Yaquina Bay Bridge.

Historic Newport Bayfront

Newport Bayfront, June 1923
(Oregon Historical Society collection. Photo Castle Studio, photographers)

Title: AERIAL VIEW OF FRONT STREET IN NEWPORT, OR., WATERFRONT BUSINESSES HERE, YAQUINA BAY IN BACKGROUND

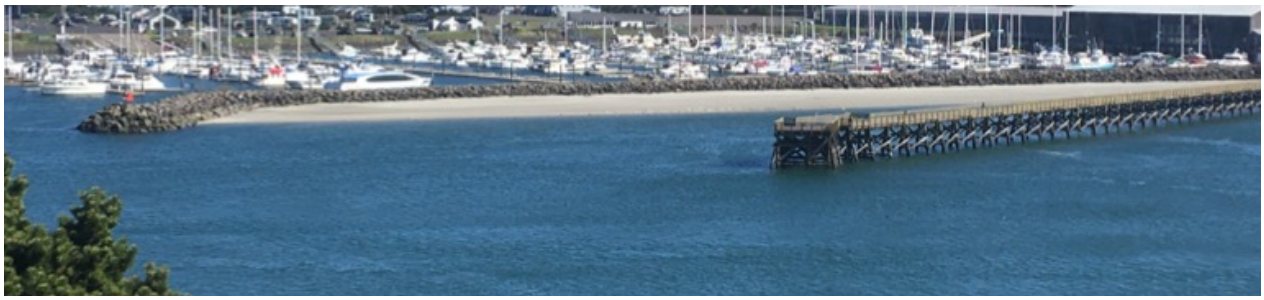
Filling tidelands to create usable upland

As part of the development of Newport, there was some dredging and substantial filling of tidelands in lower Yaquina Bay. The changes over time can be seen on recent aerial images with the 1912 tideland area shown as the area between the 1912 MHWL (mean high water line) and the 1912 MLWL (mean low water line). Major areas of fill, and major alteration to Yaquina Bay, occurred at South Beach and McLean Point. Additional areas of fill and dredging took place between the Newport Bayfront and McLean Point.

Filling these tidelands had a major impact on water flowing from the Pacific Ocean into Yaquina Bay, channeling the incoming tide water around the South Beach and McLean Point fill areas, instead of flowing more directly into tideflats at Idaho Flat and Sally's Bend.

The channeling of incoming tide water may have reduced the amount of sand flowing with the tide into Idaho Flat and Sally's Bend. Instead, more sand may be deposited in the navigation channel, where it is dredged out routinely and returned to the sea. If occurring, this dynamic would result in less sand in the entire lower Yaquina Bay estuary, resulting in tideflats with a greater proportion of mud than had been the natural condition before development of Yaquina Bay. This is a permanent alteration of the estuary including the ecology of the tideflats.

Sand collecting against breakwater at South Beach Marina



NOAA facility and dock at South Beach

Hatfield Marine Science Center facility is behind the South Beach Marina.

This area was built on fill placed on the tideland. The created upland now blocks the flow of incoming tidewater from going more directly into Idaho Flat. Idaho Flat is part of Management Unit 9 in the Yaquina Bay Estuary Management Plan.

South Beach Marina and Hatfield Marine Science Center
2021 Aerial Image with 1912 MHWL and MLWL Shown

The area between the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL) was surveyed as tideland in the 1912 tideland survey. The filled area includes the Hatfield Marine Science Center, the NOAA facility, and the South Beach Marina upland and parking area. An area of tideland was dredged for the South Beach Marina small boat basin.

Note: 1912 Mean High Water Line (MHWL) was shown on Lincoln County Survey C.S. 2326. Extensions of the 1912 MHWL and MLWL, shown above, are identified on Lincoln County survey maps of Section 17 and adjacent Section 16 (Township 11 South, Range 11 West, Willamette Meridian).

Port of Newport's Commercial Boat Dock
2021 Aerial Image with 1912 MHWL and MLWL Shown

The land-based support area was built on fill placed on tideland, between the 1912 High Water Line (HWL) and Low Water Line (LWL).

Embarcadero Condominium Complex
2021 Aerial Image with 1912 MHWL and MLWL Shown

1912 MHWL and MLWL drawn approximately as shown on Lincoln County survey map for Section 9 (Township 11 South, Range 11 West, Willamette Meridian).

International Terminal, Port of Newport
2021 Aerial Image with 1912 MHWL and MLWL Shown

1912 MHWL and MLWL drawn approximately as shown on Lincoln County survey map for Section 9 (Township 11 South, Range 11 West, Willamette Meridian).

McLean Point, with Port of Newport, Rondys Inc.,
And Northwest Natural Gas Co. Properties
2021 Aerial Image with 1912 MHWL and MLWL Shown

1912 MHWL and MLWL drawn approximately as shown on Lincoln County survey map for Section 9 (Township 11 South, Range 11 West, Willamette Meridian).

NW Natural Storage Tank at McLean Point

This NW Natural storage tank and other facilities at McLean Point were built on fill placed on the tideland. The created upland now blocks the flow of incoming tidewater from going more directly into Sally's Bend. Sally's Bend is Management Unit 10 in the Yaquina Bay Estuary Management Plan.

Entrance to Yaquina Bay, 2021 aerial image

After construction of the jetties that extend into the Pacific Ocean, and after extensive sand trapped north of the north jetty and south of the south jetty for more than a century, the landscape at the entrance to Yaquina Bay looks very different now than it was shown on the U.S. Coast Survey done in 1868 and the official U.S. Government land survey done in 1870.

The red dashed line is the location of the original shoreline as surveyed in the official U.S. Government land survey done in 1870.

Portion of lower Yaquina Bay, 2021 aerial image

The area of tideland filled at South Beach, now used for the South Beach Marina and the Hatfield Marine Science Center, and the area of tideland filled at McLean Point used for the NW Natural storage tank and other facilities, is substantial. Both fill areas significantly reduced the width of Yaquina Bay at their respective locations. Both fill areas interrupt direct water flows of ocean water into Idaho Flat and Sally's Bend, re-direct the inflowing and outflowing tides, and impact the previously more natural, direct interaction between these tideland areas and the Pacific Ocean. Besides reducing sand flowing into Idaho Flat and Sally's Bend, and affecting the substrate in these areas, there may be other possible, but unidentified, impacts.

The red dashed line is the location of the original shoreline as surveyed in the official U.S. Government land survey done in 1870.

National Oceanic & Atmospheric Administration (NOAA), Newport support of Pacific Fleet

NOAA located a major operations center, in support of its Pacific fleet of research vessels, in Newport near the Hatfield Marine Science Center in South Beach. From the NOAA web site:

Marine Operations Center - Pacific

The NOAA Marine Operations Center Pacific (MOC-P) in Newport, Oregon serves as the homeport for two NOAA ships on the West Coast and provides logistical, engineering, electronics, maintenance and administrative support to all the ships in NOAA's Pacific fleet. This includes the following NOAA research and survey ships:

- *Bell M. Shimada* (homeported in Newport, Oregon)
- *Fairweather* (homeported in Ketchikan, Alaska)
- *Oscar Dyson* (homeported in Kodiak, Alaska)
- *Rainier* (homeported in Newport, Oregon)
- *Reuben Lasker* (homeported in San Diego, California)

MOC-P is one of three marine operation centers for NOAA's fleet. The fleet currently includes 15 multi-purpose oceanographic research vessels, fisheries survey vessels, and hydrographic survey vessels.

The ships in NOAA's Pacific fleet collect data essential to protecting marine mammals, coral reefs and historic shipwrecks, managing commercial fisheries, understanding climate change, and producing nautical charts that help keep mariners safe.

NOAA ships also deploy and help maintain buoys that gather oceanographic and weather information and warn of tsunamis. The center and ships are an operational component of NOAA Marine and Aviation Operations, which is staffed by civilians and NOAA Corps officers. The NOAA Corps is one of the eight uniformed services of the United States.

Oregon State University (OSU) and other research vessels that use Newport as a port

OSU's Ship Operations Center has a large dock, adjacent to the NOAA dock and next to the Hatfield Marine Science Center, that is used as home port for OSU research vessels as well as a port for visiting research vessels in the U.S. academic research fleet in the Pacific Ocean. OSU's R/V Oceanus is being replaced by a new, state-of-the-art research vessel, R/V Taani, designed by OSU's College of Earth, Ocean and Atmospheric Science and now under construction.

Photo of an oyster farmer and his grandson after delivering oysters to sailors on R/V Sikuliaq.

R/V Sikuliaq is 261-foot oceanographic research vessel operated by the University of Alaska, used for scientific research in the Pacific Ocean and polar regions, owned by the National Science Foundation, and part of the University-National Oceanographic Laboratory System. This research vessel and other university-operated research vessels in the University-National Oceanographic Laboratory System use Newport as a port.

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Friday, April 19, 2024 2:21 PM
To: Public comment
Subject: Additional file to accompany "Written comments submitted for Newport Planning Commission Regular Session, 4/22/24"
Attachments: Historical Information about Management Unit 9.pdf

[WARNING] **This message comes from an external organization. Be careful of embedded links.**

Hi. This email follows up the email just sent to submit written comments to include in "Agenda Item 3 Citizen/Public Comment" at the Planning Commission Regular Session to be held on April 22, 2024.

Attached is the sixth, and last, file listed in the previous email:

- Historical Information about Management Unit 9

Thank you very much for including this information.

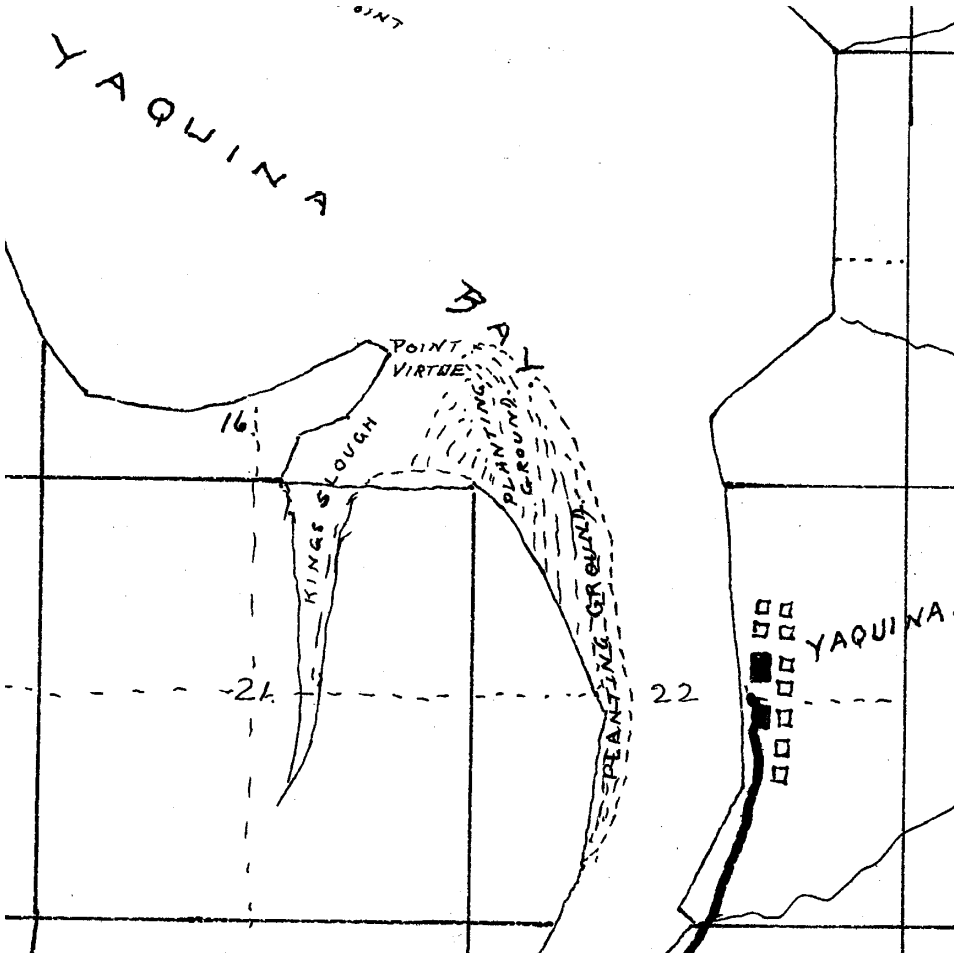
Mark Arnold
[redacted]

HISTORICAL INFORMATION ABOUT MANAGEMENT UNIT 9
(Idaho Flat, Kings Slough, and Tideland Upstream from Kings Slough)

Oyster farming

In 1908, oysters were grown commercially at the mouth and upstream from Kings Slough, as shown on a "Map of the Survey of the Oyster Grounds on Yaquina Bay" prepared by Morris Wygant, Civil Engineer, City Engineer, and U.S. Deputy Surveyor. His note on the map said the survey was approved by the Yaquina Bay Oystermen's Association, the Governor of Oregon, and the State Board of Fisheries. It was filed as Lincoln County Survey C.S. 3208.

Detail from Wygant Map of the Survey of the Oyster Grounds on Yaquina Bay, 1908
(Filed as Lincoln County Survey C.S. 3208)



Note that oyster "planting grounds" are shown at the mouth of Kings Slough and adjacent to the mouth of Kings Slough. Because oysters are "planted" in these oyster beds, these are not natural oyster beds, but are cultivated oysters. The natural oyster beds were located further upstream in the bay, from Oneatta Point upstream east of Riverbend to Boones Point.

State grant of tideland into private ownership as incentive for construction of railroad from Willamette Valley to Yaquina Bay

The publication Oregon Estuaries was published in June 1973 by the State of Oregon, State Land Board (Tom McCall, Governor; Clay Myers, Secretary of State; James A. Redden, Treasurer, comprising the Board), Division of State Lands. The Oregon Estuaries publication gave the following explanation about ownership of tideland in the Alsea Bay and Yaquina Bay estuaries:

> "In 1874, the Oregon Legislature granted the Alsea Bay and Yaquina Bay tidelands to the Willamette Valley and Coast Railway Company. In return for the tideland and other conveyances, a rail line between Corvallis and Newport was completed. The railroad changed hands a number of times prior to 1900 and finally went into bankruptcy. The tideland is now held by the counties, local ports, and private owners." [Note: any tideland held by the County at the time of this publication may have been subsequently conveyed.]

Portions of the relevant Oregon laws are summarized below.

- Section 1 of the 1874 Act (approved October 24, 1874) said, in part, "That there is hereby granted to the Willamette Valley and Coast Railroad Company, or its assigns, all the tide and marsh lands situated in said County of Benton…" As provided by the Act, the grant was subject to the terms and conditions of the Act for "the construction of a railroad line from Corvallis, in Benton county, Oregon, to tide water on Yaquina Bay in said county…" (The descriptive title of the Act was "AN ACT to Provide for the Construction of the Willamette Valley and Coast Railroad." Oregon General Laws for 1874, starting on page 51.)

- The 1878 Act (approved October 14, 1878) amended some of the terms and conditions of the grant and extended the deadline for construction of the railroad line. (The descriptive title of the 1878 Act was "AN ACT to amend an act to provide for the construction of the Willamette Valley and Coast Railroad, approved October 24, 1874." Oregon General Laws for 1878, starting on page 3.)

- Section 3 of the 1885 act (approved February 8, 1885) said, in part, "That the title of said railroad company to lands mentioned in said acts [the 1874 and 1878 acts] be, and the same is ratified and confirmed…" However, the tide and marsh lands granted to the railroad excluded tide and marsh lands where land patents had been issued by the United States or the State of Oregon, and excluded tide and overflowed lands granted to the City of Newport. (The descriptive title of the 1885 Act was "AN ACT to re-enact and amend an Act approved October 24, 1874, entitled an Act to provide for the construction of the Willamette Valley and Coast Railroad as amended by the Act approved October 14, 1878, entitled 'An Act to amend an Act entitled an Act to provide for the Construction of the Willamette Valley and Coast railroad, approved October 24, 1874,' and to confirm the Rights of the said Railroad Company under the said Acts." Oregon General Laws for 1885 starting on page 5.)

There were three components of the grant of tidelands provided in Section 3 of the 1885 Act:

- Grant of tidelands to the railroad that were not granted previously by United States or State of Oregon land patents, nor granted to the City of Newport.
- State of Oregon confirming and, if necessary, granting ownership of tidelands previously granted by United States or State of Oregon land patents.
- Grant of tidelands to the City of Newport. From recent aerial maps, the tide and overflow lands granted to the City of Newport appear to include significant portions of the current Bayfront, between the U.S. Coast Guard Station and the Port of Newport commercial boat docks.

Lincoln County was established on February 20, 1893.

In 1912, the Oregon Supreme Court ruled that the State of Oregon tide land grants were valid as confirmed by Section 3 of the 1885 Act. (Oregon Supreme Court decision in *Corvallis & Eastern R. Co. v. Benson*, 61 OR 359, 121 Pac. 418.). In the Court's decision, it referred to its understanding of tidelands as "tidelands laid bare, and anon flooded by the sea as it ebbs and flows…"

In its decision, Oregon Supreme Court decreed:

- "The State under the constitution, can no more exercise authority over property not its own, except through some recognized process, such as the right of eminent domain, than an individual." (61 OR 382)

- "Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation…". (61 OR 382)

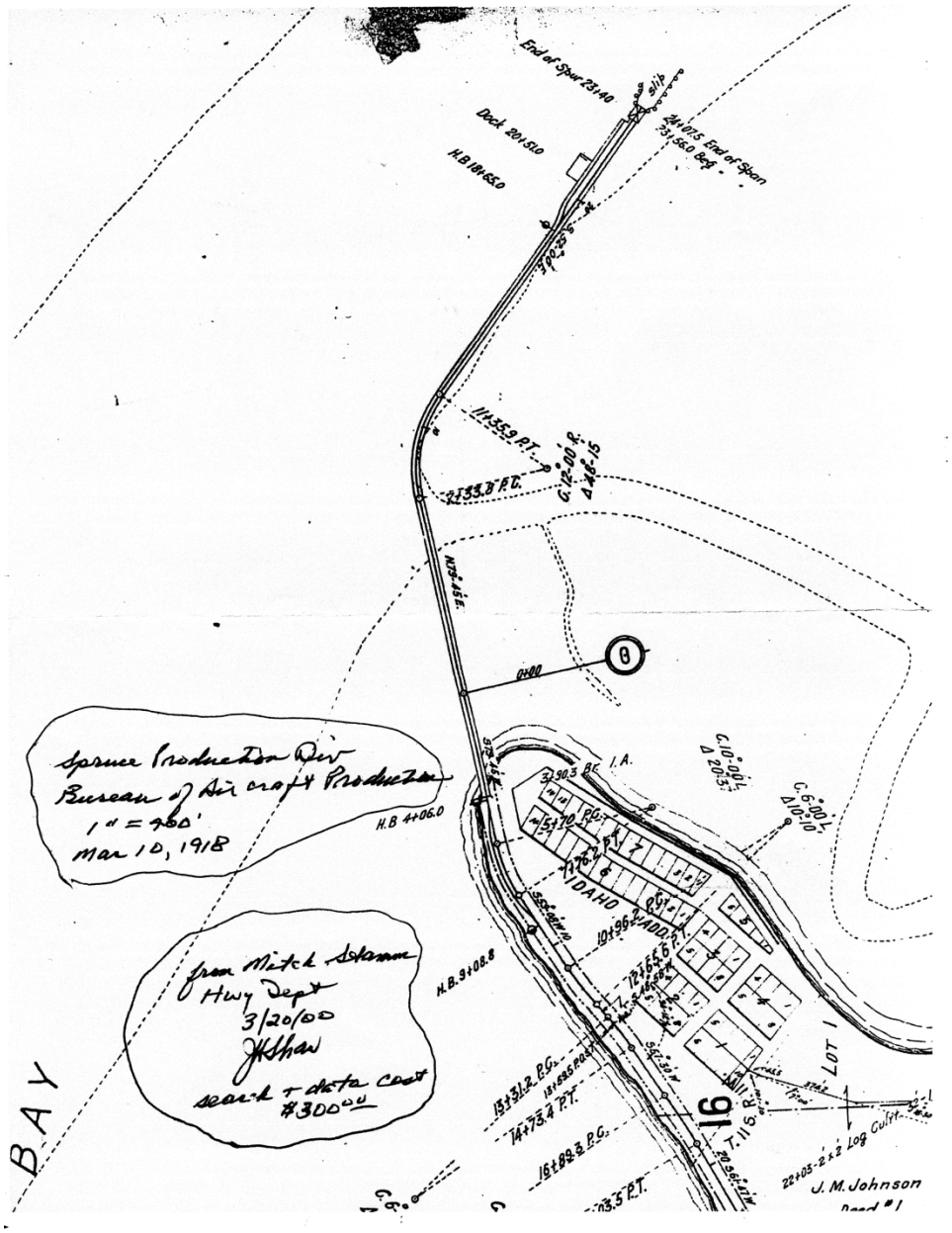
- "Having once deliberately granted away the title to the land in question, the State cannot recall the grant, except by the exercise of eminent domain, with provisions for compensation, any more than an individual can deliberately avoid his free act and deed. Neither can the legislature arbitrarily take the property of one individual and give or sell it to another." (61 OR 383)

<u>Lincoln County actions</u>

Based in part on a Yaquina Bay tideland survey done in 1912, Lincoln County recorded deeds for tideland property granted by the 1885 Act as confirmed by the 1912 Oregon Supreme Court Decision. In addition, deeds were recorded for land patents containing tideland.

Building railroad to South Beach terminal at Idaho Point

During World War I, railroads were built in Lincoln County to facilitate the transportation of logs used for construction to support America's role in the war effort. In particular, Sitka spruce trees were harvested to be used in the construction of airplanes. Douglas-fir and other trees were harvested to use for other construction. One railroad line (Spruce Production Railroad No. 12) was also called the Alsea Southern because it connected Yaquina Bay to Alsea Bay and south. It brought logs to Idaho Point at South Beach where there was a pier extending 2,340 feet into the tide flats and the edge of Yaquina Bay, where there was a log dump. A map dated 1918 shows the railroad line extending from Idaho Point into the tide flats and Yaquina Bay.



TEN CARS OF LONG-LENGTH SITKA SPRUCE AND OLD GROWTH YELLOW DOUGLAS FIR LOGS AT THE DUMPING WATERS AT SOUTHBEACH, OREGON, LOOKING OUTWARD FROM THE SHORE WITH LOCOMOTIVE PUSHING THEM INTO PROPER PLACE FOR DUMPING

THE ABOVE VIEW SHOWS THE FINAL DUMPING SPOT AT OR NEAR THE END OF THE GREAT DOCK WHERE THE LOGS ARE UNLOADED THAT COME FROM HEADQUARTERS CAMP 1

THIS VIEW SHOWS THE LOGS AT THE DUMP FROM THE OUTER END WHERE THEY ARE THROWN INTO YAQUINA BAY AND ALSO THE UNLOADING SHED AND ELEVATED "PILE" WHICH CARRIES THE LINE ABOVE THE LOGS

Photos from Pacific Spruce Corporation and Its Subsidiaries, reprint of 1924 publication published by Lincoln County Historical Society

After World War I, the railroad was transferred into private ownership and continued to operate until 1935 or shortly afterwards. In 1935, a train engine accidentally ran off the end of the pier into the edge of the main channel of Yaquina Bay and was never recovered.

No.	Type	Builder	C/N	Date	Remarks	Year
#7	2-4-2T	Baldwin?	9743	1/1889	a) Southern California Motor Road #15 b) Southern Pacific R.R. Co. #15 c) Independence & Monmouth R.R. Co. #15 d) Sunset Lbr. Co. e) Coast Range Lbr. Co. #15 f) Manary Logging Co. #7 g) C. D. Johnson Lbr. Co. #7 Leased to Balderee-Ritner Logging Co. 1927-1930. Ran off end of log dump into Yaquina Bay in 1935 and was never recovered.	1905

Source: Steam Towards the Sunset, the Railroads of Lincoln County, by Lloyd M. Palmer, Page 188, published by Lincoln County Historical Society

Lincoln County selling tideland to private owners

In subsequent years, many tideland parcels were transferred to Lincoln County ownership as a result of tax delinquencies, and Lincoln County sold them to private owners.

A significant number of tideland parcels conveyed previously by grant to the railroad, along with other land with property tax delinquencies, were sold to Lincoln County on January 5, 1922, following "a public sale of real estate … pursuant to a real estate tax judgment and decree of the Circuit Court of the State of Oregon for the County of Lincoln." Lincoln County paid for the tideland and other property, and the conveyance was recorded on January 9, 1922, in Lincoln County Deed Book 41 on pages 463 through 480.

The tideland parcels conveyed to Lincoln County in 1922 were then sold at auction to private owners in 1923.

On June 16, 1923, a Deed (A 3103) was recorded for the sale of two large tideland parcels, one in Section 15 and the other in Section 16, conveyed by Lincoln County to the Pacific Spruce Corporation (Lincoln County Deed Book 43, Pages 420-421). After subsequent property conveyances, the parcel in Section 15 and a portion of the parcel in Section 16 are still owned by private owners, while over 250 acres of tideland in Section 16 is now owned by the Oregon Board of Higher Education and considered part of the OSU Hatfield Marine Science Center campus.

On June 20, 1923, a Deed (A 3117) was recorded for the sale of two tideland parcels, a very small tideland parcel in Section 21 and a larger parcel in Section 22, conveyed by Lincoln County to the Pacific Spruce Corporation (Lincoln County Deed Book 43, Pages 436-437). After subsequent property conveyances, these parcels are still owned by private owners.

Twenty years later, on October 20, 1943, as a result of a subsequent tax delinquency, Lincoln County Deed (A 51871) was recorded for the sale of property in Section 21, containing about 63 acres of tideland and 13 acres of upland, by Lincoln County to a private owner. This property is still owned privately.

At the time of these sales of tideland in 1923 and 1943, "Lincoln County was governed by a commissioner's court, which consisted of two commissioners and a county judge." (Lincoln County History, Oregon Secretary of State web site.). The sales were made with judicial approval.

Logging and use of Kings Slough for log dump and log storage

In 1951, construction was done in King Slough for a log dump and log storage facility that required extensive dredging and then dumping of the dredged material into King Slough. Following is an excerpt from the U.S. Army Corps of Engineers, Portland District, Public Notice dated November 7, 1951:

PUBLIC NOTICE

Application has been made to the Department of the Army by Mr. H. F. Effenberger, 401 Shelton Street, Dalas, Oregon, for a permit to construct a log dump, to drive piling for a log storage pocket and log raft moorage, and to dredge and dump in King Slough of Yaquina Bay near Newport, Oregon as follows:

1. The log dump will be located approximately 2400 feet upstream (south) from Hinton Point on the West side (left bank) of the slough and will consist of a pile bulkhead and riprapped fill. The channelward limit of the log dump will be approximately 20 feet from the mean high water line.

2. A log storage facility, located immediately channelward of the log dump, beginning 125 feet upstream (north) of the dump and extending downstream (south) approximately 378 feet. The channelward limit of the piling will be approximately 165 feet from the face of the dump.

3. Dredge said log storage facility to a depth of not more than 6 feet below mean lower low water, the dredged material to be deposited landward from the mean lower low water line.

4. Dredge a 50 foot relocation channel for small boats on the east side of the proposed log storage facility. Said relocation channel to be approximately 1000 feet long and to be dredged to a depth of not more than 4½ feet below mean lower low water, the dredged material to be deposited landward from the mean lower low water line.

5. A log raft moorage consisting of a single row of piles, spaced at 60 foot intervals, running in an easterly direction from the easterly limits of the relocation channel to the mean high water line on the east or right bank.

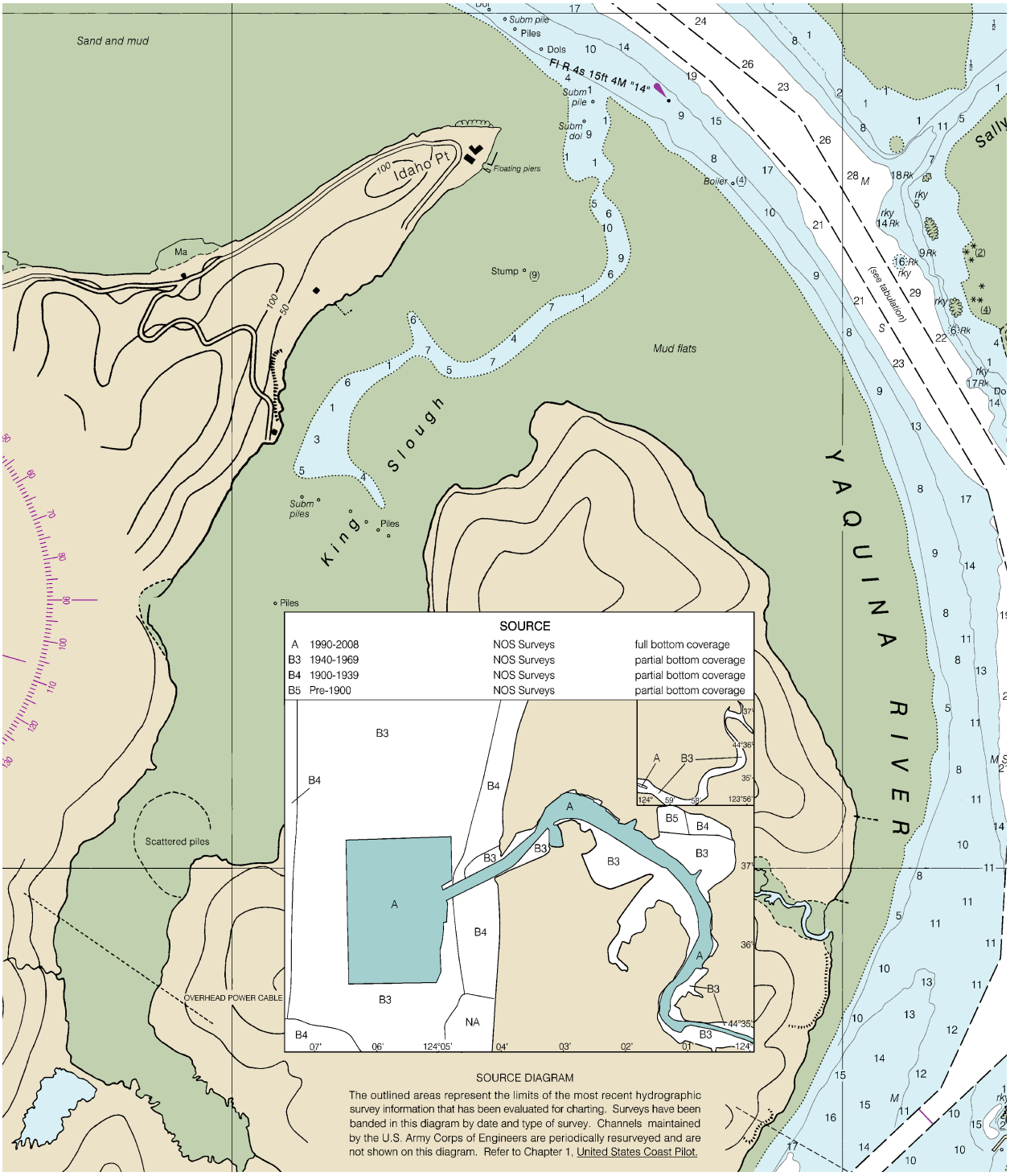
Maps and plans for the work are on file and may be seen in this office.

When this plan was implemented, over 30,500 cubic yards of material was dredged from the tide flats and dumped elsewhere in Kings Slough. In addition, a row of pilings was installed that extended across most of Kings Slough.

Logging

In the mid-twentieth century, additional logging was done on some forest property adjacent to Kings Slough where logs were dragged down the hill into Kings Slough by metal cables. Metal cables used for this purpose have been observed with diameters in the range of 7/8 inch to 1-3/8 inch. This type of logging most likely occurred in the 1950s and 1960s. When each large log was pulled down the hillside, it brought with it a substantial amount of soil, with much of this soil probably dragged into Kings Slough along with the logs. Scraping the hillsides of soil, along with dredging and dumping dredged material into the slough, resulted in a lot of loose mud in high mud flats. These practices may have significantly altered the previous natural characteristics of Kings Slough.

Excerpt from NOAA Navigation Chart for Yaquina Bay and Yaquina River
Kings Slough and Vicinity



Comments: Past alterations include piles in Kings Slough, a dolphin and pile at the mouth of Kings Slough, and a "boiler" at the edge of the main channel of Yaquina Bay. The "boiler" may be the boiler from the train engine that ran off the end of the railroad pier in 1935. The piles are evidence of previous, extensive use of Kings Slough for log storage.

Private campground on west side of Kings Slough

In 1947, Ivan Leek bought property on the west side of Kings Slough. He and his wife subsequently opened a campground with a boat ramp and small dock. The current owners of the property still use the boat ramp as a private boat ramp.

Boat Ramp Used by Current Owners

PUD high voltage power line

High voltage power transmission lines to bring power to PUD's South Beach facility were built across the southern portion of Kings Slough.

Idaho Point Marina

The 1982 Yaquina Bay Estuary Management Plan allowed continued operation of a marina at Idaho Point and dredging in the mud flats to provide access from the main channel of Yaquina Bay. The docks at the marina were not maintained and fell into disrepair.

Photos of dilapidated docks in September 2016. They were removed in 2018. The boat ramp remains, is not used, but could be repaired and used as a private boat ramp.

Dock on east side of Kings Slough

In 1996, Lincoln County, the State Department of Land Conservation and Development, and the U.S. Army Corps of Engineers granted approvals for a dock to be installed on the east side of Kings Slough (tax lot 11-11-21-00600). According to the application and supporting documents that were reviewed and approved, the dock replaced a previous dock built in 1912 that was damaged by a storm on 12/24/1994.

The U.S. Army Corps issued Permit No. 96-686 on August 14, 1996, subject to concurrence by the Oregon Department of Land Conservation and Development (DLCD). DLCD provided its concurrence on September 13, 1996.

Excerpt from Lincoln County Department of Planning and Development
Letter of Approval Dated May 16, 1996

We have reviewed the Affidavit submitted by Charles A. Denison, dated April 29, 1996, and the enclosed Exhibits (A) through (E) documenting the history of a private dock located on property identified on Lincoln County Assessor's map 11-11-21 as tax lot #600. As a result of this review, the Lincoln County Planning Division is prepared to recognize a "dock" on this property as a lawful nonconforming use.

Excerpts from Department of Land Conservation and Development
Letter of Concurrence Dated September 13, 1996

Findings

•The statewide planning goals do not apply directly in this case. The goals are implemented through the applicable local comprehensive plan and ordinances.

•Lincoln County has an acknowledged comprehensive plan. The County reviewed the proposed project and determined that the project is consistent with the local comprehensive plan and implementing ordinances.

•As less than 50 cy of fill or removal in waters of the State is proposed, the project is not subject to the Oregon Removal - Fill Law.

•The Department of Environmental Quality (DEQ) pre-certified Nationwide permit #3 as being in compliance with the Oregon Water Quality Standards as required under Section 401 of the federal Clean Water Act.

DLCD therefore concurs with the applicant's certification that the proposal is consistent with the Oregon Coastal Management Program.

U.S. Army Corps permit conditions require that any authorized structure shall be properly maintained. By 2016, it was apparent to the new owners of the property that repairs needed to be made to the dock. The U.S. Army Corps granted approval in 2017 for the deck and ramps to be replaced pursuant to Nationwide Permit No. 3 Maintenance (Permit NWP-1996-1). This work required no fill, no dredging, and no new alterations to the estuary. Instead of letting the old deck and ramps deteriorate further, potentially damaging the estuary, it was preferable to replace them with newer ones meeting higher environmental standards. The environmental improvements included using encased Styrofoam floats, so Styrofoam could not break off and pollute the waterway, and using deck and ramp grating that allows sunlight to pass through to reach the surface of the water. The Corps considered this work to be a major repair.

Oregon Department of Agriculture (ODA) approved area for growing and harvesting shellfish for human consumption

After extensive water quality testing, the Oregon Department of Agriculture (ODA) categorized the northern and middle sections of Kings Slough, including the area at the mouth of Kings Slough, as an “Approved” area for growing and harvesting shellfish for human consumption. As a result of having excellent water in the growing area and meeting all other requirements, ODA granted licenses to Oyster Bluff Shellfish (a small, family-owned oyster farm) using tideland owned by two other family-owned LLCs.

ODA Approved Area for Growing and Harvesting Shellfish for Human Consumption

ODA Issued Licenses

Form 1014 Rev 04/19
OREGON DEPARTMENT OF AGRICULTURE
635 CAPITOL ST NE, STE 100
SALEM, OR 97301-2532
(503) 986-4550

POST IN A CONSPICUOUS PLACE

OYSTER BLUFF SHELLFISH LLC
E JORDAN, B ARNOLD AND M ARNOLD
1095 SE 36TH ST
SOUTH BEACH OR 97366

BUSINESS LOCATION

OYSTER BLUFF SHELLFISH LLC
1095 SE 36TH ST
SOUTH BEACH OR 97366

LICENSE NUMBER	DATE ISSUED	DATE EXPIRES	LICENSE
AG-L1039991SDSW	12/22/2023	12/31/2024	Shellfish Dist., Shipper, Wholesaler Shellfish Number: OR490SS
AG-L1039992SG	12/22/2023	12/31/2024	Shellfish Grower Shellfish Number: OR490GR

Printed: 12/26/2023

YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)
Comments Submitted to Newport Planning Commission, March 11, 2024

My name in Mark Arnold. I live inside the Newport Urban Growth Boundary and own tideland inside and outside the City Limits. I have been helping my son and daughter-in-law start a very small oyster farm in Kings Slough. We have a major interest in the Yaquina Bay EMP.

The YBEMP "Needs and Gaps Assessment" (September 2022, page 5):

- Recommended developing a "Policy to Support Aquaculture Industry."
- Recommended revision of "Estuarine Use Standards."
- Categorized these actions as "Tier 2."
- Said Tier 2 actions "would accomplish desirable modernization objectives but ... would be impractical to complete within the limits of resources and/or time constraints of the current update process."

In addition, the YBEMP Project Team provided responses to a number of public comments. In these responses, the Project Team said:

"Updating any Tier 2 or 3 recommendations from the Needs & Gaps Assessment ... will need to be performed by the local jurisdictions of Lincoln County and the Cities of Newport and Toledo. ...[T]he Project Team has included a recommendation that Tier 2 and 3 recommendations be completed." (Part of response to "Email #1" and responses to many other comments.)

In other words, the Project Team has acknowledged the August 2023 "final draft" is an incomplete update, and has said local jurisdictions need to complete the work.

I can understand why the Project Team was unable to provide an update for aquaculture. No one on the project team has any educational or job experience related to aquaculture.

By helping start an oyster farm, I have learned a lot about oyster farming over the last 10 years. My son is a biologist with significant knowledge about the ecology of the estuary and about shellfish aquaculture, including experience at Hatfield.

Based on our experience, and additional research, I have written needed updates about aquaculture and about our area of the estuary.

I am requesting updates to the EMP and providing my requests at this time, so you can consider them in advance of your future work sessions.

It is essential that people who have knowledge about the ecology of the estuary, and about shellfish aquaculture, be allowed to participate in writing an up-to-date, usable EMP.

Thank you for your consideration.

MARK ARNOLD'S REQUEST FOR ADDITIONS AND EDITS TO THE AUGUST 2023 "FINAL DRAFT" UPDATE TO THE YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)

Submitted by Mark Arnold
March 11, 2024

MARK ARNOLD'S REQUEST FOR ADDITIONS AND EDITS
TO THE AUGUST 2023 "FINAL DRAFT" UPDATE TO
THE YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)

TABLE OF CONTENTS

PREFACE

Why it is necessary to make revisions to the YBEMP so it will be updated to 2024.

The proposed "update" of the Yaquina Bay Estuary Management Plan (YBEMP) is only a partial update. (The plan submitted to local jurisdictions was the "draft final" YBEMP with a cover date of August 2023.)

The August 2023 draft update was based on a "Needs and Gaps Assessment" written in September 2022. The "Executive Summary" explains that, "Each modernization need and corresponding recommended action was assigned a priority .... Some of the specific updates of the YBEMP have constraints (e.g., time and capacity) that make some of the recommended actions infeasible for completion with this planning process." (YBEMP Needs and Gaps Assessment, September 8, 2022, page 4.)

"The priority categories are:

- "Tier 1: Actions that can and should be accomplished through the current update process. ....
- "Tier 2: Actions that would accomplish desirable modernization objectives but which, due to their scope and/or complexity, would be impracticable to complete within the limits of resources and/or time constraints of the current update process."
- "Tier 3: Actions that cannot be practicably achieved through local planning processes without additional policy support and/or technical assistance from outside agencies." (Needs and Gaps Assessment, pages 4-5.)

The following categories were excluded from the August 2023 update and deferred until future consideration as Tier 2 activities:

- Revise Part V Estuarine Use Standards
- Revise Part IX Future Development Sites
- Develop Policy to Support Aquaculture Industry

(Needs and Gaps Assessment, page 5.)

The following category was excluded as a Tier 3 activity:

- Develop State-Wide Estuarine Climate Change Policy

(Needs and Gaps Assessment, page 5.)

Instead, a major "modernization objective" was to:

"Further Goal 16 [Statewide Goal 16 Estuarine Resources] or local policy objectives. Actions that revise or add to substantive content of the plan needed to fulfill Goal 16 requirements or local policy objectives." (Needs and Gaps Assessment, page 4.)

However, the Department of Land Conservation and Development (DLCD) has not made any substantive revisions to its Goal 16 Estuarine Resources rule after 1984.

- "Goal 16 has been only nominally amended since the original development of the YBEMP...; these amendments are technical in nature and have not changed overall policy .... The lone exception to this is the amendment to Goal 16 ... that was adopted in 1984." (Needs and Gaps Assessment, page 15.)

So, a stated purpose of the proposed current "update" is to implement the 1984 rule that has not been updated in 40 years.

Instead of bringing aquaculture policies into the twenty-first century, the 2023 "update" is a move backwards from the 1982 YBEMP because it:

- Deleted Lincoln County's statement in the 1982 Estuary Management Plan in support of the potential for future development of aquaculture in Yaquina Bay. (This statement was deleted when the update deleted Part IX Future Development Sites.)

- Deleted all the tables (matrices) that showed aquaculture activities that were approved or conditionally approved for individual Management Units within the estuary. These tables provided substantial clarity about what aquaculture activities could, and could not, be undertaken for each Management Unit.

- Failed to revise Part V Estuarine Use Standards to bring them up-to-date. Bringing these standards up-to-date could provide clarity about what aquaculture activities can, and cannot, be undertaken and, by doing so, provide needed standards to replace the clarity lost when the matrices were deleted.

Instead of moving into the future, DLCD and its contractor, in the "update," have supported reversion to the pre-1982 practice of dredging for oysters below mean low tide in Yaquina Bay, tide levels suitable for native eelgrass and native oyster restoration projects, and excluded more modern shellfish aquaculture "best practices" in other areas of the estuary.

By DLCD and its contractor adhering to the Goal 16 rule, not updated following 1984, they ignored important policies in support of aquaculture by the Federal government, State of Oregon, local entities, and conservation groups.

FEDERAL POLICY IN SUPPORT OF AQUACULTURE: NOAA

NOAA Marine Aquaculture Policy (2011):
"It is the policy of NOAA, within the context of its marine stewardship missions and its strategic goals with respect to healthy oceans and resilient coastal communities and economies, to:
"1. Encourage and foster sustainable aquaculture development that provides domestic jobs, products, and services and that is in harmony with healthy, productive, and resilient marine ecosystems, compatible with other uses of the marine environment..."
....

"Aquaculture Provides Beneficial Ecosystem Services" (Fact Sheet 2022), NOAA Fisheries Office of Aquaculture:

- "Shellfish and seaweed aquaculture can increase food production, create economic opportunities in coastal areas, and enhance natural harvests."
- "These aquatic crops provide important ecosystem services that can improve water quality around farm sites."
- "Aquaculture farms can also provide habitat for fish and crustaceans, benefitting wild populations."

In this fact sheet, under "Removing Nitrogen, Improving Water Quality":

- "Nitrogen is an essential nutrient, but too much of it in water -- often from excess fertilizer in runoff -- boosts the growth of algae. Algae overwhelms water bodies and reduces oxygen levels, killing fish, crabs, lobsters, and other aquatic life. Fortunately, shellfish aquaculture has emerged as a promising, low-cost tool to help improve water quality."

- "Around the nation, shellfish and seaweed farms (many of which are family-owned) are providing sustainable seafood and improving the surrounding environment. These farms are described as 'low-to-no input,' because feed, fresh water, and fertilizer typically aren't necessary for their crops. By raising shellfish and seaweed, farms improve access to local seafood and mitigate the harmful effects of excess nitrogen, ocean acidification, and habitat loss."

- "As shellfish filter feed, they remove excess nitrogen by incorporating it into their shells and tissues. An adult oyster can filter up to 50 gallons of water a day... A farm with 100,00 oysters per acre can potentially filter up to 5,000,000 gallons of water per day."

STATE OF OREGON SHELLFISH POLICY

Although shellfish production has been long established in the state and has been a priority, the State added an official policy statement to Oregon Revised Statutes (ORS):

"ORS 622.015 Shellfish policy. (1) The Legislative Assembly finds and declares that it is the policy of the State of Oregon to seek opportunities to:
"(a) Enhance and expand cultivated shellfish production;
"(b) Conserve, protect and restore wild populations of native shellfish; and
"(c) Improve water quality and the health of aquatic and marine habitats.
"(2) In furtherance of the policy declared by this section, it is the intent of the Legislative Assembly that the state develop and adopt a shellfish initiative to prioritize and implement strategies for achieving protection of native shellfish and the enhancement of shellfish production. [2015 c. 814 section 1]"
....

In addition, in statute, the State of Oregon assigned jurisdiction for aquaculture to the Oregon Department of Agriculture (ODA):

"ORS 622.220 Jurisdiction; rules; violations. (1) The commercial cultivation of oysters, clams and mussels is declared to be an agricultural activity subject to the regulatory authority of the State Department of Agriculture. The department shall be the lead agency responsible for state administration of programs and policies relating to the commercial cultivation of oysters, clams and mussels."
....
"ORS 622.240 Classifying lands for cultivation. The State Department of Agriculture shall investigate and classify those state lands that are suitable for oyster, clam or mussel cultivation...."

STATE OF OREGON LAW ASSIGNING RESPONSIBILITY TO DLCD FOR PROVIDING SHELLFISH MARICULTURE RECORDS

"ORS 274.945 Collection of shellfish mariculture records. (1) The Department of Land Conservation and Development shall receive, consolidate and organize the public records of federal, state or local government, special government bodies or other public bodies related to shellfish mariculture in this state. The department shall establish an electronic system to store and share the public record information. ....

(2) The department shall organize data and other material contained in the public records stored by the electronic system into formats suitable for access by governments, industry groups, public interest groups and other stakeholders.

(3) Except as provided in this subsection, the department shall make output from the electronic system publicly accessible. .... [2019 c.654 §1]

PORT OF NEWPORT SUPPORT FOR AQUACULTURE

In addition to Lincoln County's support for aquaculture in its 1982 YBEMP, the Port of Newport has included aquaculture and aquaculture research in its Strategic Business Plan.

The Port of Newport's 2019 Strategic Business Plan Update supports research:
"The marine research and education sectors are well established in Newport; an estimated 300 people work at the Hatfield Marine Science Center, including OSU faculty, graduate students, researchers, and staff from other agencies.... The marine research and education sectors and growth opportunities [include] .... aquaculture."

The Port of Newport's 2019 Strategic Business Plan Update supports aquaculture:
"Aquaculture is a rapidly growing sector of the international economy and represents an opportunity for development in Newport as well."
"Opportunities for growing aquaculture in the Newport area include the expansion of existing operations, as well as the development of new ones."
"Oyster cultivation could be expanded in Yaquina Bay. There is demand for intertidal land for oyster cultivation with the appropriate characteristics."

THE NATURE CONSERVANCY'S SUPPORT FOR AQUACULTURE

Excerpts from "Perspectives: The Aquaculture Opportunity," by The Nature Conservancy, September 24, 2017 (posted online on The Nature Conservancy's website, www.nature.org).

"When practiced well, aquaculture is one of most low-impact, resource-efficient ways of producing food. In fact, some forms of aquaculture, such as oyster cultivation, can actually help to restore coastal ecosystems."

"This offers a reason for hope. We'll likely see another 3 billion people on the planet by 2050, leading to a massive increase in demand for food, land and water. We have to find ways to feed the planet without increasing pressure on both terrestrial and marine habitats. Aquaculture, done well, offers a huge potential not just for producing food for a growing planet, but to provide livelihoods to coastal communities and, in the case of shellfish or seaweed culture, help recover lost ecosystem services. If we get it right, aquaculture could be our best hope to sustainably feed the planet."

[There is mention of poor practices with some finfish farming and shrimp ponds in the past, and improved practices that have subsequently been developed.]

"All forms of food production can have environmental impact, of course, including aquaculture. But new technology and lessons from the last forty years have led to better practices that are being adopted by substantial segments of the industry."

"Shellfish and seaweed are even more efficient feeders [than finfish] – they rarely require any additional inputs, feeding instead on ambient phytoplankton and nutrients. And in some cases, shellfish and seaweed don't just require minimal inputs – they can actually improve the health of their immediate environment by removing impurities. Oysters can filter 50 gallons of water

a day. Seaweed, too, is incredibly efficient at removing excess nutrients from the water, which can improve the health of eutrophic estuaries, like many in the United States, as well as carbon dioxide, which can mitigate ocean acidification in localized areas. Shellfish and seaweed farms also provide habitat for wild fish species and increase diversity of species in sea beds, as can other forms of aquaculture infrastructure."

[Note: Definitions: "eutrophication: the process by which a body of water becomes enriched in dissolved nutrients (such as phosphates) that stimulate growth of aquatic plant life usually resulting in the depletion of dissolved oxygen."
"eutrophic: characterized by the state resulting from eutrophication."]

"**Benefits of Aquaculture:**

1. "**Mitigate Pollution**. Shellfish and seaweed aquaculture can improve water quality by extracting nitrogen and phosphorous from coastal waterways. As filter feeders, bi-valve shellfish can improve water clarity. These factors can lessen the symptoms of eutrophication, which effects 415 estuaries worldwide."

2. "**Habitat Provision**. 85 percent of native oyster populations have been lost worldwide and many seaweed communities are similarly in decline. Shellfish and seaweed aquaculture can provide some of the benefits of these lost habitats."

3. "**Support Fish Populations**. Shellfish and seaweed aquaculture gear provides refuge for macro-fauna including fish, crustaceans, and other invertebrates."

4. "**Reduce Local Climate Change Impacts**. Seaweed aquaculture can reduce carbon dioxide and oxygenate waterways, and thereby locally mitigate the effects of ocean acidification. Through increased water clarity, shellfish aquaculture may promote the growth of eelgrass beds, a carbon sink."

"Bringing these efforts to scale, though, will require influencing a booming aquaculture industry."

NEED TO REVISE THE YAQUINA BAY ESTUARY MANAGEMENT PLAN

<u>To reflect Federal government, the State of Oregon, and local policies to support aquaculture, and especially shellfish aquaculture, it is necessary to revise the August 2023 "final draft" YBEMP. In addition, revisions are needed to incorporate knowledge gained by research over the past forty years and to reflect aquaculture "best practices" recommended by NOAA and environmental groups.</u>

A. Reasons for requested additions and edits.

REASONS FOR REQUESTED ADDITIONS (APPENDICES) AND EDITS
TO THE AUGUST 2023 "FINAL DRAFT" YAQUINA BAY ESTUARY MANAGEMENT PLAN

A lot of work has been done to date to prepare the Update to the Yaquina Bay Estuary Management Plan (YBEMP). However, the current YBEMP update is based on DLCD's Goal 16 Estuarine Resources rule that has not been updated since 1984. (See note.)

Because the plan is so comprehensive, and the update so ambitious, the August 2023 "final draft" update YBEMP can still be, and should be, improved so it can incorporate additional important considerations, including:

- Changes that have occurred in the Newport area and the Yaquina Bay estuary since the current plan was adopted in 1982 that, so far, have not been included in the update.
- Additional US Army Corps Nationwide Permit (NWP) regulations including NWP requirements for commercial shellfish, seaweed, and finfish aquaculture.
- The leadership role of NOAA for conducting research and for making "best practice" recommendations about estuaries, fisheries, aquaculture, and climate change.
- The most recent and ongoing scientific research about estuaries and their ecology, including interactions of physical characteristics and aquatic biological species, and about coordinated management of ecologically-beneficial organisms.
- The potential of the lower Yaquina Bay estuary (and in particular, Sally's Bend, Idaho Flat, and King Slough) for supporting research and scientific studies about the estuary and its ecology, about enhancing biological productivity, and about developing "best practice" shellfish aquaculture compatible with a balanced ecology of the estuary.
- Engagement of owners of tideland who know more about their portion of the estuary than anyone else.
- The role of the Oregon Department of Agriculture (ODA) in regulating shellfish aquaculture in estuaries including Yaquina Bay.
- Opening a new ODA "Approved Area" for growing and harvesting shellfish for human consumption. This supports desirable goals for improving water quality, increasing carbon capture in oyster shells, providing locally available seafood to consumers, and supporting the local economy.

Note: "Goal 16 has been only nominally amended since the original development of the YBEMP...; these amendments are technical in nature and have not changed overall policy .... The lone exception to this is the amendment to Goal 16 ... that was adopted in 1984." (YBEMP Needs and Gaps Assessment, September 8, 2022, page 15.)

B. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY TO FACILITATE AND ENCOURAGE A BALANCE OF ECOLOGICALLY-BENEFICIAL ORGANISMS IN NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO FACILITATE AND ENCOURAGE USES AND ACTIVITIES THAT BENEFIT THE ECOLOGY OF THE ESTUARY

Nature, by itself, cannot restore the pre-existing natural environment after it was permanently destroyed by human activities.

Instead of pursuing an approach of "protecting the existing situation," the preferred approach should be "to seek a balance of ecologically-beneficial organisms to preserve the biological resources and where possible, enhance the biological capabilities" of Natural and Conservation Management Units.

The preferred approach would facilitate and encourage scientific studies to explore how to facilitate a "balance of ecologically-beneficial organisms," active restoration projects that would enhance having a "balance of ecologically-beneficial organisms," and shellfish aquaculture that improves water quality and enhances habitat for other organisms where aquaculture would be compatible with having a "balance of ecologically-beneficial organisms."

In effect, Natural Management Units should really be considered as "areas reserved for protecting and enhancing biological productivity," and Conservation Management Units should be considered as "biological areas with limited, grandfathered past practices."

BACKGROUND/EXPLANATORY NOTES:

Some past practices have caused significant degradation to the previously existing "natural" environment in Natural and Conservation Management Units, in addition to many modifications in Development Management Units.

Most of the original native Olympia oyster beds were destroyed. The destruction was summarized in a scientific article published in 1931. ("The Yaquina Oyster Beds of Oregon," by Dr. Nathan Fasten, Professor of Zoology at Oregon State College, published in The American Naturalist, September-October issue, 1931.)

1. *Early Period*. [About 1860 to 1870.] "... during this period large numbers of schooners came up the Yaquina River and dredged out tremendous quantities of oysters, virtually taking them out by scow loads, and transporting them by boat to the San Francisco markets for consumption. No thought was given at this time to conservation ..."

2. *Middle Period*. [About 1870 to 1923.] "... during this time the beds were worked heavily and continuously, and no thought was given to replenishing the supply. Many of the beds became so depleted that they were virtually exhausted."

3. Recent Period. [This dates from the year 1923 up until publication of the article in 1931.] "When this concern [the company that took over private leases and leased the State's natural oyster beds] got control of them they were already in a dangerous state of depletion. Instead of surveying them carefully for purposes of applying measures which would build them up and conserve the fast diminishing supply of oysters, they rather increased the damage by their heavy dredging and tonging operations. Many of the beds which were in a state of partial depletion were practically wiped out by such methods...."

"Since 1923, there has been no let-up and the exploitation of the oyster beds has increased...."

"In order to increase yields, many of the adult oysters with spat were dredge and tonged up from the natural beds...."

"... transferring them [adult oysters with young growing spat on their shells] on to depleted areas in the main channel of the stream is decidedly bad, for the oysters are soon covered in mud and silt to an extent where they are virtually buried. The result is that many of them are either killed off or their normal growth is greatly interfered with. Finally, when mud and silt cover the shells they no longer serve as cultch, for this debris makes it impossible for the free-swimming larvae to come in contact with the clean surfaces of the shells in order to affix themselves."

Historical activities in Natural Management Unit 9 have been very detrimental to the pre-existing natural conditions. These activities included:

- Building a railroad pier, starting at a railroad terminal at Idaho Point and extending 2,340 feet into the estuary where a log dump was built at the edge of the main channel of Yaquina Bay. The end of the pier appears to be at the south edge of Management Unit 8, adjacent to Management Unit 9. Construction of the railroad, railroad terminal, and pier was undertaken during World War I, and use continued until 1935 when the railroad line was shut down and equipment and the pier removed. Before the pier was removed, a train engine ran off the end of the pier and sank into the mud, presumably at the south edge of Management Unit 8, and never recovered.

- Construction of a log dump along the west bank of King Slough in 1951. The construction included dredging an estimated 30,500 cubic yards of material from the mud flat and dumping it at other locations in King Slough.

- Logging on some hillsides adjacent to the estuary, where large logs were pulled down the hills by large metal cables into the estuary. Each log brought with it a substantial amount of soil into the estuary.

The creation of log dumps and log storage areas, and pulling logs down hillsides into the estuary, was done in many locations in the Yaquina Bay estuary, changing the substrate and the physical and biological characteristics of the estuary forever.

Because these, and other, past activities have forever modified the natural environment of the estuary, it is impossible for nature, left to its own devices, to restore what was previously destroyed. Instead, to provide a desirable ecological environment for the future, actions need to be taken pro-actively to compensate for the past destruction.

C. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICY FOR MAKING DETERMINATIONS ABOUT NATURAL RESOURCES, NATURAL RESOURCE VALUES, AND NATURAL RESOURCE CAPABILITIES OF INDIVIDUAL NATURAL AND CONSERVATION MANAGEMENT UNITS

NEED TO IDENTIFY SOURCE(S) OF INFORMATION

For maps and other sources of information about the location and extent of "natural resources," "natural resource values," and/or "natural resource capabilities," the original source(s) of the information must be identified along with the date(s) the information was collected and the methodology used to collect the information. It is insufficient to show a map of aquatic flora and/or fauna without identifying the original source(s), date(s) and methodology used as the basis for the map. This information must be readily available to anyone seeking this information about the estuary, including people considering new uses and activities in the estuary and applicants requesting new uses and activities in the estuary.

NEED TO PROVIDE "DUE PROCESS" TO APPLICANTS MAKING REQUESTS FOR NEW ESTUARINE USES AND ACTIVITIES IN NATURAL AND CONSERVATION MANAGEMENT UNITS

When an applicant makes an application for a new use or activity, and when the planning office or other entity reviewing the application compares the application with the "natural resources," "natural resource values," and/or "natural resource capabilities" of the applicable Management Unit, the planning office or other entity must provide the applicant with the basis for comparison along with documentation about the basis of comparison. The applicant must be given an opportunity to provide comments for the record about the maps and/or other information used by the planning office or other entity; and the applicant must be given an opportunity to provide additional information that may include, but not be limited to, more recent information about the Management Unit's "natural resources," "natural resource values," and/or "natural resource capabilities."

BACKGROUND/EXPLANATORY NOTES:

As part of the YBEMP update, DLCD's contractor posted on the YBEMP Update web site a series of maps about the Yaquina Bay estuary.

The contactor's YBEMP Update web site says:

"Estuary management plans rely on data and information that describe the physical, biological, social and economic conditions of the estuarine area, and define the boundaries of individual management units. This information has been mapped …." The web site then has a link to YBEMP maps posted by the contractor for use by local planning agencies and others.

None of the maps showing the flora and fauna and other physical and biological features identifies the original source(s) of information, the date(s) the information was collected, nor the methodology used to collect the information.

By failing to identify key information, including the date(s) the information was collected, and by providing this information as part of the current update, the implication is that the information is recent and relevant to current and future decisions about the estuary.

However, as an example, one of the maps ("Eelgrass extent, PMEP") was based on out-of-date information that was collected using an approach that would no longer be considered acceptable by current scientific standards. [PMEP is a reference to The Pacific Marine and Estuarine Fish Habitat Partnership.]

The "Eelgrass extent, PMEP" map used for the YBEMP update is the same as a map published jointly by The Nature Conservancy and The Pacific Marine and Estuarine Fish Habitat Partnership in "Eelgrass Habitats on the U.S. West Coast: State of the Knowledge of Eelgrass Ecosytem Services and Eelgrass Extent" (2018), a compendium of all information that PMEP was able to compile including all available previously published information. That publication provided:

- A map of "Maximum Observed Extent" of eelgrass in the Yaquina Bay estuary (page 83).
- An explanation that the secondary source of information for the map was The Oregon "Estuary Plan Book" (page 22), published in 1987 by the Department of Land Conservation and Development.
- The relevant map and description of habitat classification was provided previously on pages 86 and 87 of The Oregon "Estuary Plan Book." The identified "habitat," described subsequently as eelgrass, was previously described in The Oregon "Estuary Plan Book" as "seagrass" or "seagrass/algae." There was no further scientific identification about what constituted "seagrass" and whether it included native eelgrass (*Zostera marina*), invasive Japanese eelgrass (*Zostera japonica*) and/or other species. There was no identification of "algae" or whether this category was limited to macroalgae attached to the substate or also included additional, floating algae that appears seasonally.
- The primary source of information, used for The Oregon "Estuary Plan Book," was based on "aerial photographs ... interpreted for habitat classification by the Oregon Department of Fish and Wildlife (ODFW). (page 22)
- The date provided for the aerial photographs, interpreted by ODFW, was 1978 (page 23).

So, DLCD's contractor, to accompany the YBEMP "final draft" update, provided a map of "eelgrass extent" based on aerial photographs taken forty-five years previously, in 1978, and where the description of the aquatic vegetation was not limited to native eelgrass (*Zostera marina*), the type of eelgrass most significant for providing habitat for fish spawning and nursery areas.

Although other maps provided to accompany the YBEMP update are presumably based on much more recent information, the original source(s), date(s) and methodology must be provided for each map in order for the information to be useful to planners and applicants, and to provide "due process" to applicants so applicants can review this information, provide comments about the relevance of the information, and provide more recent information as part of the application review and approval/disapproval process.

D. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

POLICIES FOR ALL NEW ESTUARINE USES AND ACTIVITIES
IN NATURAL MANAGEMENT UNITS

NAVIGATION AIDS (beacons, buoys, etc.) ARE PERMITTED.

NAVIGATION AIDS FOR AQUACULTURE EQUIPMENT SHOULD USE THE FOLLOWING GUIDELINES:

- Corners and the perimeter of shellfish plats should be marked when they are located in areas used for navigation. The U.S. Coast Guard recommends use of yellow "special marks" to alert boat operators to a special feature in an area used for navigation. Yellow is used so they are not confused with U.S. Coast Guard navigation markers.

- In other areas not typically used for navigation, but used occasionally by small boats, when shellfish are grown using equipment in the water column or on the surface of the water, and the equipment is not readily visible, the shellfish equipment should be identified by buoys or floats. This is not needed for shellfish grown on the bottom. Yellow buoys or floats are preferred to white because yellow is more easily visible.

NEW MARINA AND PORT FACILITIES (harbor, boat basin, moorage dockage) ARE DISALLOWED.

NEW STRUCTURES ARE DISALLOWED:

- New dock
- New pier
- New wharf
- New piling
- New dolphin
- New jetty
- New groin
- New pile dike
- New breakwater

NEW STRUCTURES CONDITIONALLY ALLOWED:

- Sturdy, durable end-posts, used to secure ends of long-lines, can be conditionally permitted for shellfish aquaculture.

MAINTENANCE AND REPAIR OF EXISTING STRUCTURES ARE PERMITTED.

NEW DIKES ARE DISALLOWED. MAINTENANCE AND REPAIR OF EXISTING FUNCTIONAL DIKES ARE PERMITTED.

DREDGING, DREDGED MATERIAL DISPOSAL, EXCAVATION, AND MINERAL AND AGGREGATE EXTRACTION ARE DISALLOWED:

- Dredging, except when necessary for maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures
- Dredged material disposal in estuarine areas of shorelands
- Excavation shorelands to create new estuarine surface area
- Mineral and aggregate extraction

DREDGING, when necessary for maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures, IS PERMITTED.

FILL (the placement of material in the estuary to create new shoreland area) IS DISALLOWED.

NEW SHORELINE STABILIZATION STRUCTURES (rip rap or bulkheads) ARE DISALLOWED, <u>except</u> where active erosion threatens existing permitted uses or structures. However, THEY MAY BE CONDITIONALLY ALLOWED TO PROTECT EXISTING PERMITTED USES OR STRUCTURES. MAINTENANCE ARE REPAIR OF EXISTING SHORELAND STABILIZATION STRUCTURES ARE PERMITTED.

NEW OUTFALLS (including sanitary sewer discharges, storm drainage facilities, and industrial waste discharges) ARE DISALLOWED, <u>except</u> in the following situation. ESTUARINE WATER WITHDRAWN FROM THE ESTUARY FOR USE IN ONSHORE AQUACULTURE ACTIVITES MAY BE CONDITIONALLY APPROVED FOR RELEASE BACK INTO THE ESTUARY IF IT MEETS ALL APPLICABLE OREGON DEPARTMENT OF AGRICUTURE (ODA) AND OTHER WATER QUALITY STANDARDS.

SUBMERGED CROSSINGS (power, telephone, water, sewer, gas or other transmission lines which cross the estuary, usually embedded into the bottom of the estuary) MAY BE CONDITIONALLY ALLOWED.

WATER HANDLING OF LOGS (log dumping, storage, transportation by floating in estuary) IS DISALLOWED.

PASSIVE RESTORATION PROJECTS (replacing or restoring original estuarine attributes by planting vegetation or other natural biological means) ARE PERMITTED.

ACTIVE RESTORATION PROJECTS (replacing or restoring original estuarine attributes by remedial actions such as installing artificial oyster reefs, removing existing dikes, or other physical alterations) MAY BE CONDITIONALLY ALLOWED.

AQUACULTURE ACTIVITIES ARE SUBJECT TO SPECIAL POLICIES FOR INDIVIDUAL NATURAL MANAGEMENT UNITS.

BACKGROUND/EXPLANATORY NOTES:

The 1982 YBEMP included a one-page detailed matrix that identified specific uses and activities that were permitted, conditionally allowed, or disallowed for each individual Management Unit. These matrices provided substantial clarity to planning officials, potential applicants requesting new uses in the estuary, and other users of the YBEMP.

The August 2023 YBEMP "final draft" update deleted every single matrix for every Management Unit. This deleted the substantial clarity that existed previously in the 1982 plan.

In place of the deleted matrices, policies are provided above for Natural Management Units for each potential use or activity described in YBEMP Part V – Estuarine Use Standards.

E. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

RESEARCH ACTIVITIES, SCIENTIFIC STUDIES, AND DEMONSTRATION PROJECTS
SPECIAL POLICY FOR MANAGEMENT UNITS 9, 10, 18 and 19
(Future YBEMP amendments may extend this policy to additional Management Units)

GOAL 16 EXCEPTION TO ALLOW RESEARCH ACTIVITIES, SCIENTIFIC STUDIES, AND DEMONSTRATION PROJECTS

Permitted research activities, scientific studies and demonstration projects

Besides research and educational observation, additional research activities, scientific studies, and demonstration projects are allowed and hereby permitted by this Exception to:

- Provide educational opportunities,
- Increase knowledge about the estuary,
- Develop environmentally-desirable and ecologically-balanced approaches to:
    - Offset past human activities detrimental to the estuary,
    - Enhance the biological productivity of the estuary,
    - Prevent undesirable invasive species from crowding out desirable native species, and
    - Identify science-based approaches to increase the biological resiliency of the estuary to respond to current, ongoing, and anticipated climate and other environmental changes.

To encourage and support a desirable ecologically-balanced estuary, the allowed research activities, scientific studies, and demonstration projects include co-management of biological resources including submerged aquatic vegetation, fish, and shellfish. In addition, this Exception allows the use of equipment and active restoration.

To qualify for this Exception, the research activities, scientific studies and demonstration projects must satisfy the following requirements.

Requirements:

- Do not interfere with navigation or commerce.

- Conducted under programs of, or approved by, Oregon State University's Hatfield Marine Science Center, other educational institutions, Federal Government or State of Oregon Government agencies, the Confederated Tribes of Siletz Indians, or other organizations approved by the appropriate local government. These organizations are sponsoring organizations for the projects.

- Permission is granted by the owner of the tideland or, if the tideland is leased, by the lessee of the tideland with the owner's and lessor's permission(s), or if the Oregon

Department of State Lands (DSL) has authority over unleased State submerged or submersible land, by the Oregon Department of State Lands.

- The sponsoring organizations accept all liability for the projects and release the tideland owner(s), lessor(s) and lessee(s) of any and all liability for the projects.

- The sponsoring organizations become familiar with, and comply with, any applicable requirements of U.S. Army Corps of Engineers, Oregon Department of State Lands, Oregon DEQ, and other applicable Federal or State regulations. Depending on the nature of the project, consideration should be given to whether any of the following U.S. Army Corps of Engineers Nationwide Permits (NWP) are applicable to an individual project, along with other possible NWPs not listed below:

  - NWP 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
  - NWP 5 Scientific Measurement Devices
  - NWP 6 Survey Activities
  - NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities
  - NWP 48 Commercial Shellfish Mariculture Activities
  - NWP 54 Living Shorelines
  - NWP 55 Seaweed Mariculture Activities

F. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

CERTAIN SHELLFISH AQUACULTURE ACTIVITIES
SPECIAL POLICY FOR MANAGEMENT UNITS 9 AND 10

GOAL 16 EXCEPTION TO ALLOW CERTAIN SHELLFISH AQUACULTURE ACTIVITIES

Permitted commercial shellfish aquaculture activities under this Exception

Shellfish aquaculture activities are allowed and hereby permitted using methods to minimize adverse impacts on desirable levels of beneficial organisms in the estuary, when they meet the requirements specified below. (Note: Invasive nuisance organisms are not beneficial.)

Permitted aquaculture activities include the following:

- Growing oysters in the water column including use of stakes, racks, trays, cages, baskets, tubes, mesh "grow-out" bags, and similar equipment. Similarly, oysters can be grown in cages or "grow-out" bags floating on or near the surface of the water. In addition, use of buoys, floats, and long-lines (where cages or grow-out bags are suspended from lines held up by poles inserted in the mud/tide flats) are permitted.

- Commercial harvesting of mussels when grown on aquaculture equipment suspended in the water column.

- Commercial harvesting of cultivated clams using commonly-accepted growing methods (such as beach culture or in-ground bag culture), equipment (such as trays, predator exclusion netting and/or in-ground mesh bags), and harvesting methods (such as using clam rakes and/or clam forks to rake the top layer of the tide flats), providing natural clam beds are not depleted.

Existing pilings, docks and/or other in-water structures, if previously or newly permitted by the U.S. Army Corps and approved by Lincoln County, can continue to be used, maintained and repaired.

Maintenance and repair of existing boat ramps are allowed, however, additional dredging or fill (beyond the boat ramp) for navigational access is not permitted under this Exception. Existing boat ramps do not need to be available for public use.

This Special Policy and Exception does not permit harvesting "on bottom" oysters by large mechanical dredges or large mechanical tongs that drag or dig into tide flats and mud flats, because these techniques are not now used nor anticipated in Management Units 9 and 10.

Conditionally permitted commercial shellfish aquaculture activities under this Exception

Use of existing pilings, docks and/or other in-water structures not previously approved by Lincoln County.

If meeting U.S. Army Corps of Engineers and other government requirements, and if used solely as part of aquaculture growing operations, sturdy, durable end-posts (more substantial than easily removable poles or stakes) can be conditionally permitted for the purpose of securing the ends of long-lines in order to hold them in place.

Onshore aquaculture support facilities, located in upland adjacent to tideland, can be conditionally allowed providing they comply with applicable Oregon Department of Agriculture (ODA), environmental, and other government regulations including the applicable County or City Code including any conditional use requirements.

When onshore tanks are used for shellfish, onshore facilities can intake estuarine water for the shellfish and return estuarine water to the estuary, providing it is done in compliance with all applicable ODA, environmental, and other government regulations.

A boat ramp suitable for a small boat, canoe, and/or kayak can be conditionally permitted for aquaculture use providing it has the approval of both the owner of the upland and the owner of the tideland, does not extend lower than mean low tide, does not require additional dredging or fill (beyond the boat ramp) for navigational access, and complies with U.S. Army Corps Nationwide Permit (NWP) No. 36 Boat Ramps. It does not need to be available for public use.

Requirements to qualify for this Exception

Implemented on tideland by the owner of the tideland or with the permission of the owner of the tideland or, in the situation where management of tideland is delegated to the Oregon Department of Agriculture (ODA), on tideland leased by ODA for aquaculture, or implemented on tideland in other situations where the operator has a lease to use the tideland.

It is not sufficient for commercial clam harvesters to have an Oregon Department of Fish and Wildlife (ODFW) commercial clam harvesting permit; commercial clam harvesters who do not own nor lease tideland cannot harvest clams on tideland owned or leased by others without the additionally required permission(s) from owners and/or lessees.

Satisfy requirements of U.S. Army Corps of Engineer Nationwide Permit (NWP) No. 48 Shellfish Aquaculture, and other applicable Corps requirements, and relevant Corps Nationwide Permit General Conditions, including:

- No activity may substantially disrupt the necessary life cycle movements of species of aquatic life indigenous to the waterbody including species that normally migrate through the area.

- Activities in fish spawning areas during spawning season must be avoided to the maximum extent practicable.

- Activities in waters that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

- No activities may disrupt native shellfish (Ostrea conchaphila) restoration projects.

Satisfy additional U.S. Army Corps of Engineers Portland District Regional Conditions, including:

- Additional Regional Conditions for Nationwide Permit (NWP) No. 48 Shellfish Aquaculture.

- A pre-construction notification to the Portland District Engineer if activities affect an "Aquatic Resource of Special Concern" including native eelgrass (Zostera marina) beds, and compliance with the District Engineer's determination.

Considerations about ecological impacts shall be based on the current situation in the estuary and the best available scientific research. This includes impacts (beneficial, detrimental, and no significant impacts) including seasonal impacts on aquatic life including fish migrations, fish spawning areas, breeding areas for migratory birds, native shellfish, and native eelgrass.

No "fill" material is placed in the estuary according to the Yaquina Bay Estuary Management Plan definition of "fill" as "The placement of material in estuarine areas to create new shoreland or raise the elevation of land." This definition is consistent with the regulatory definition of "fill material" issued by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency pursuant to Section 404 of the U.S. Clean Water Act: "material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States." This allows installation, management, and removal of aquaculture equipment and cultivated shellfish in the water column.

No "dredging" is done in the estuary according to the Yaquina Bay Estuary Management Plan definition of "dredging" as "The removal of sediment or other material from a water body, usually for the purpose of deepening a channel, mooring basin or other navigation area," except when a conditional permit is provided for a small boat ramp to use for aquaculture purposes. This allows installation, management, and removal of aquaculture equipment and cultivated shellfish in the water column.

The shellfish grower must comply with regulations of the Oregon Department of Fish and Wildlife (ODFW) related to shellfish health certificates, shellfish transport permits, and restrictions on species importation.

Before commercial harvesting of shellfish for human consumption, the shellfish grower must meet all applicable requirements issued by the Oregon Department of Agriculture (ODA) for growing and harvesting shellfish for human consumption, including having the necessary ODA license(s). In addition, the operator must satisfy applicable requirements of the National Shellfish Sanitation Program (NSSP) and its "Guide for the Control of Molluscan Shellfish" issued by the U.S. Food and Drug Administration.

G. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

SEAWEED AQUACULTURE/MARICULTURE
SPECIAL POLICY FOR MANAGEMENT UNITS 7, 9 AND 10

(NO GOAL 16 EXCEPTION REQUIRED, PROVIDING ALL SEAWEED FACILITIES ARE LOCATED ONSHORE AND MEET ALL THE SPECIAL POLICY REQUIREMENTS)

Prerequisites Before Local Jurisdictions Will Consider Any Request for a Conditional Permit

State of Oregon regulatory policies and programs must be established for the regulation of seaweed mariculture. At a minimum, there must be regulatory programs in place to require:

- No introduction of new species not already in the estuary.
- No introduction of aquatic nuisance species into the estuary.
- No introduction of pathogens into the estuary.
- No degradation of water quality, including no increase in bacteria levels, in the estuary.
- Any seaweed grown for human consumption must be an allowable type of seaweed for human consumption and must meet all Federal and State requirements for growing seaweed for human consumption.

After the Above Prerequisites Are Satisfied, Seaweed Mariculture Activities May Be Permitted Conditionally

Seaweed mariculture is permitted conditionally, providing it meets the following requirements:

Seaweed mariculture facilities, including tanks for growing seaweed commercially, are located on upland adjacent to tideland or submerged land. The facilities must be located higher than mean higher high tide.

All intake of water from the Yaquina Bay estuary, and all release of water from growing tanks back into the estuary, must meet all applicable Federal and State laws and regulations, including but not limited to:

- U.S. Army Corps of Engineers Nationwide Permit (NWP) No. 7, Outfall Structures and Associated Intake Structures
- U.S. Army Corps of Engineers Nationwide Permit (NWP) No. 55 Seaweed Mariculture Activities
- U.S. EPA Clean Water Act Section 401 Water Quality Certification
- Oregon Department of Agriculture (ODA) regulations
- Oregon Department of Fish and Wildlife (ODFW) regulations
- Oregon Department of Environmental Quality (DEQ) regulations
- All applicable City Code and County Code requirements, including FEMA-stipulated standards for new construction in the 100-year flood plain.

No seaweed may be grown commercially in the Yaquina Bay estuary, lower than the level of mean higher high tide. The depth of water in the Yaquina Bay estuary is not deep enough to grow seaweed commercially except in areas in the main channel reserved for navigation.

H. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

SPECIAL POLICY FOR FINFISH AQUACULTURE
APPLICABLE TO THE YAQUINA BAY ESTUARY

(NO GOAL 16 EXCEPTION REQUIRED)

No commercial finfish aquaculture can be undertaken in the Yaquina Bay estuary. The Yaquina Bay estuary is too shallow to facilitate current "best practices" for finfish aquaculture.

NOAA's current approach for identifying appropriate locations for finfish farms is to identify "off-shore" locations a suitable distance from shore with sufficient water depth and appropriate water circulation to support finfish aquaculture, while preventing any adverse impacts on protected species (e.g., marine mammals), protected habitats, existing fisheries, and other users of ocean waters such as shipping.

I. Requested new appendix so YBEMP will include policies relevant for 2024 and the future.

SPECIAL POLICY FOR CONSERVATION AND SCENIC PRESERVATION EASEMENTS APPLICABLE TO THE YAQUINA BAY ESTUARY

(NO GOAL 16 EXCEPTION REQUIRED)

Conservation and scenic preservation easements are a property right. The ability to grant them is retained by the property owner until, at its discretion, the property owner makes an agreement to grant an easement.

The Yaquina Bay Estuary Management Plan does not provide any authority to State or local governments to assert conservation or scenic preservation easements over tideland or adjacent upland. Of course, such easements may be allowed but are not required.

The policy for conservation and scenic preservation easements is governed by Oregon Revised Statutes (ORS) 271.715 through 271.795.

ORS 271.715 provides definitions as follows:

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property, ensuring its availability for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(2) "Highway scenic preservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of property.

(3) "Holder" means:

(a) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district … acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;

(b) A charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property; or

(c) An Indian tribe as defined in ORS 97.740.

(4) "Third-party right of enforcement" means a right provided in a conservation easement or highway scenic preservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, that, although eligible to be a holder, is not a holder.

ORS 271.725 reads in part:

271.725 Acquisition and creation of conservation or highway scenic preservation easement. (1) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district … may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within their respective jurisdictions wherever and to the extent that a state agency or the governing body of the county, metropolitan service district, soil and water conservation district, city, park and recreation district … determines that the acquisition will be in the public interest.

(2) Except as otherwise provided in ORS 271.715 to 271.795, a conservation easement or highway scenic preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(3) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district … may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain unless specifically authorized by law, highway scenic preservation easements in land within 100 yards of state, county or city highway rights of way. These easements may be acquired only in lands that possess significant scenic value in themselves and contribute to the overall scenic beauty of the highway.

(4) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement or highway scenic preservation easement before its acceptance by the holder and recordation of the acceptance.

(5) Except as provided in ORS 271.755 (2), a conservation easement or highway scenic preservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(6) An interest in real property in existence at the time a conservation easement or highway scenic preservation easement is created is not impaired by it unless the owner of the interest is a party to or consents to the conservation easement or highway scenic preservation easement

Additional provisions also apply as written in ORS 271.729 through 271.795.

J. Requested edits to apply policies relevant for 2024 to the situation in the estuary in 2024.

EDITS TO SALLY'S BEND SUB-AREA: SUB AREA POLICIES
(Bottom of page 23 and top of page 24 of August 2023 "final draft")

NOTE:
Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Sub-Area Policies

1. The primary objective in the Sally's Bend sub-area shall be *to encourage a balance of ecologically beneficial organisms,* to preserve and protect natural resources, *and to enhance the biological capabilities of the area.*
2. *Due to the size and proximity to the Hatfield Marine Science Center, this area is ideal for research and scientific studies to learn about the estuary and environmental trends affecting it, explore feasible and desirable approaches to protect and enhance a balanced ecology, and demonstrate best practices.*
3. It is recognized that some alteration of the sub-area will be required in conjunction with the maintenance and possible expansion and/or deepening of the deep water navigation channel turning basin. Other alterations shall be limited to those that are consistent with the overall protection of natural resource values, or those undertaken in conjunction with restoration projects.
4. [~~To maintain recreational values, commercial shellfish harvest by mechanical means should not be permitted above extreme low water~~.] *Recreational values, in particular, recreational clam harvesting, shall be maintained.*
5. Low intensity land uses which do not adversely impact estuarine natural resource values shall be preferred on adjacent shorelands.
6. Identified areas of important wildlife habitat shall be protected.

BACKGROUND/EXPLANATORY NOTES:

- The reference to mechanical harvesting of shellfish should be deleted. There should be no dredging or similar mechanical harvesting of shellfish below extreme low water. Native eelgrass grows typically in intertidal areas below mean low water and in adjacent subtidal areas. Native eelgrass at this water level of the Sally's Bend Sub-Area should be protected.
- The primary recreational use in the Sally's Bend Sub-Area is recreational clamming at Idaho Flat in Management Unit 9 and Sally's Bend in Management Unit 10.

K. Requested edits to apply policies relevant for 2024 to the situation in the estuary in 2024.

EDITS TO MANAGEMENT UNIT 9

NOTE:

Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 9: YAQUINA BAY

Description

Management Unit 9 includes the Idaho Flat tideflat between the Marine Science Center and Idaho Point, all of King Slough, and the intertidal area [~~upriver~~] *upstream* from the mouth of King Slough known as [~~Racoon~~] *Raccoon* Flat (see Figure 15).

More than 600 acres of tideland are estimated to be included in Management Unit 9. This includes 250 acres at Idaho Flat, 235 acres in King Slough and at the mouth of King Slough, and over 120 acres upstream from the mouth of King Slough. Of this total, about 260 acres are inside the Newport City Limits, most notably Idaho Flat and a smaller area just east of Idaho Flat.

This is one of the largest tideflats in the estuary with a number of natural resource values of major significance, including eelgrass beds, shellfish beds, low salt marsh, fish spawning and nursery areas and waterfowl habitat.

The area is used [~~extensively~~] for recreational purposes, [~~primarily angling, clamming and waterfowl hunting~~] *with significant recreational clamming in Idaho Flat (accessed primarily from the Hatfield Marine Science Center location) and occasional angling and waterfowl hunting.* [~~*A private boat ramp (formerly the site of a small marina) is present at Idaho Point*~~.] *There are several private boat ramps, including one at Idaho Point (formerly the site of a small marina).*

[~~The~~] *Nearly all of the Idaho Flat* intertidal flat area [~~west of Idaho Point is in public ownership (~~] *is owned by the* State of Oregon Board of Higher Education, *and considered to be part of the OSU Hatfield Marine Science Center campus. [~~)~~]. There is significant potential for OSU to use this area in support of research and education, especially as OSU implements an expansion of the OSU Hatfield marine sciences program, an expansion already underway. A much smaller area of tideland is leased by the Port of Newport to the Oregon Coast Aquarium.*

Most of the intertidal area of King Slough is privately owned and was used historically for log storage. *Log storage will no longer be done in this area. Instead, current owners of most of the tideland in the middle and northern portions of King Slough and adjacent to the mouth of King Slough have done extensive water quality testing, received Oregon Department of Agriculture approval to grow and harvest shellfish for human consumption, and have started a small-scale*

oyster farm using equipment where oysters are grown in the water column, which minimizes adverse impacts to organism growing in the mud flats. There is potential to expand aquaculture activities in the future using methods and equipment consistent with protecting the ecology of the estuary. The NOAA Office of Aquaculture issued a Fact Sheet in 2022 "Aquaculture Provides Beneficial Ecosystem Services" in part because shellfish, and in particular oysters, filter water and improve water quality as well as improve habitat for small crustaceans and small fish. [~~There is a small, low intensity aquaculture operation (tipping bag system) on the east side of King Slough~~.]

[~~A substantial portion of the Racoon Flat intertidal area along the west shore above the mouth of King Slough is owned~~] *The intertidal area upstream from King Slough (Raccoon Flat) is privately-owned, with the area closest to King Slough having the same owner as tideland in King Slough. A larger area upstream* is owned by the Yakona Nature Preserve [~~and Learning Center~~], *an Oregon-registered charitable organization, which also owns adjacent forested upland, with the stated purpose "To develop and maintain a sanctuary for flora and fauna native to the Oregon central coast and to create an educational space in which people can learn about the natural environment and the Native American history of the area encompassing the preserve."*

Alteration to the unit is minimal, with a few scattered pilings and limited areas of riprapped shoreline."

Classification: Natural

[~~As a major tract of tideflat, this unit has been classified natural in order to preserve the natural resources of the unit~~.]

Management Unit 9 has very large tideflats with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds.

Resource Capability

Management Unit 9 is a very large area, with more than 600 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources

There is a sizable clam bed at Idaho Flat with cockles, gaper, butter and littleneck clams. This flat shifts from sand to mud, moving west to east. The access point from shore is at the Hatfield Marine Science Center at the west. Idaho Flat is a very popular recreational clamming area at minus tide levels. In addition, there is a clam bed at Raccoon Flat, with cockles most prevalent and, less common, gaper and littleneck clams. However, the clam bed at Raccoon Flat is inaccessible, except by boat, and located on privately owned tideland and is not used by recreational clammers.

Native eelgrass (Zostera marina) provides a significant ecological benefit when is used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods

until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, there were relatively small areas of native eelgrass, most notably along the northern edge of Idaho Flat adjacent to the main channel of Yaquina Bay, and small area near the mouth of King Slough. It has been reported there was a loss of eelgrass in Idaho Flat in 2021, compared with 2011.

There are no known populations of native Olympia oysters (Ostrea lurida) in Management Unit 9. Native Olympia oysters grow naturally in subtidal areas on solid substrate; these characteristics are missing from Management Unit 9. After a feasibility study considering locations in the main channel of King Slough having sufficient water depth, a research biologist concluded that any native oysters and spat would be covered and smothered by silt flowing in the channel.

A portion of Management Unit 9 has a unique biological capability for growing shellfish for human consumption, as determined by extensive and ongoing water quality testing. As a result, the Oregon Department of Agriculture (ODA) has classified an area in the middle and north portions of King Slough, and at the mouth of King Slough, as an "Approved Area" for growing shellfish for human consumption. This area is the only ODA "Approved Area" in the entire Yaquina Bay estuary for growing shellfish for human consumption (while Management Units 16 and 17 comprise an ODA "Conditionally Approved Area" for growing shellfish for human consumption). At this time, shellfish cannot be grown for human consumption in the other 31 Management Units, although it is possible several other areas could be re-classified if there is satisfactory water quality testing. As such, this "Approved Area" is an area of special biological productivity, with important resource value.

In addition, this area is ideal for research, scientific studies, and demonstration projects to learn about the estuary and environmental trends affecting it, explore feasible and desirable approaches to protect and enhance a balanced ecology, and demonstrate best practices. This is especially appropriate because the Oregon Board of Higher Education owns 250 acres of Idaho Flat tideland that is adjacent to the Hatfield Marine Science Center.

Management Unit 9 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. In order to maintain resource values, *besides scientific studies and shellfish aquaculture,* alterations in the unit shall be kept to a minimum. Minor alterations which result in temporary disturbances (e.g., limited dredging for submerged crossings) are consistent with resource values in this area; other more permanent alterations will be reviewed individually *for consistency with the resource capabilities of the area.*

<u>Management Objective</u>

[~~Management Unit 9 shall be managed to preserve and protect natural resources and values~~.]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. There should be knowledgeable, coordinated management of beneficial biological

resources including submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Where beneficial, limited commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 9. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 9. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds, and should only be allowed with permission by the tideland owners.

<u>Special Policies</u>

1. [~~Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or the establishment of new marina uses is not permitted~~.]
2. [~~Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area by severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged~~.]

1. *Policy to facilitate and encourage a balance of ecologically-beneficial organisms in natural and conservation management units.*
2. *Policy for making determinations about natural resources, natural resource values, and natural resource capabilities of individual Natural and Conservation Management Units.*
3. *Policies for all new estuarine uses and activities in Natural Management Units.*
4. *City of Newport Special Policy: "Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system."*
5. *City of Newport Special Policy: "A cobble/pebble dynamic revetment for shoreline stabilization may be authorized ... for protection of public facilities (such as the Hatfield Marine Science Center facilities)."*
6. *Special Policy and Goal 16 Exception to allow research activities, scientific studies, and demonstration projects in specified Management Units.*
7. *Special Policy and Goal 16 Exception to allow certain shellfish aquaculture activities in specified Management Units.*
8. *Special Policy for seaweed aquaculture/mariculture (that requires that State of Oregon regulatory program(s) be implemented as a prerequisite before consideration of any conditional permit applications) in specified Management Units.*

9. *Special Policy for finfish aquaculture (to prohibit commercial finfish aquaculture in the Yaquina Bay estuary).*
10. *Special Policy for conservation and scenic preservation easements.*

BACKGROUND/EXPANATORY NOTES:

The owner of tideland is opposed to the owner of upland dredging the tideland. The tideland owner considers any such dredging, without permission of the tideland owner, to be trespass. If the upland owner previously requested and received government dredging permits without notifying the government agencies that the tideland had different ownership, then the upland owner may have made significant omissions from permit applications.

When the 1982 YBEMP was adopted, there were different owners of tideland in Management Unit 9. In 1982, the privately-owned tideland in Management Unit 9 was owned by Georgia-Pacific Corporation and by Times Mirror Land and Timber Company, both corporations interested in harvesting and using timber. Times Mirror owned the property with the log dump on the west side of King Slough. In 1982, there was substantial public concern about use of the estuary for dumping, storing and transporting logs and a public desire to limit those practices.

The current private owners of tideland in Management Unit 9 are opposed to the past log storage and transportation practices, and those practices are now disallowed. Instead, the current tideland owners are concerned about the ecology of the estuary. One owner, Yakona Nature Preserve, a non-profit owning forested upland along with tideland upstream from the mouth of King Slough, is dedicated to preserving the natural environment. Owners of tideland in the middle and north portions of King Slough, and adjacent to the mouth of King Slough, are interested is shellfish aquaculture using "best practices" compatible with preserving the natural environment. The current owner of tideland at the south portion of King Slough, along with owning significant forested upland, has undertaken no activities in the estuary after purchasing the property in 1992.

Besides research and scientific studies, the only commercial activity planned for Management Unit 9 is shellfish aquaculture using "best practices." Even if this tideland were to be placed in a conservancy, under Oregon conservancy law (ORS 271.715), a conservation preservation easement may include conserving real property for a variety of desirable purposes including agriculture, and aquaculture is categorized as agriculture. So, aquaculture can be retained as a desirable purpose under a conservancy agreement.

L. Requested edits to apply policies relevant for 2024 to the situation in the estuary in 2024.

EDITS TO MANAGEMENT UNIT 10

NOTE:

Language included in August 2023 update, "final draft" YBEMP is edited as follows:
[~~Deletion~~] = Language deleted from the "final draft" is shown by brackets and strikethrough.
Insertion = Language to be inserted is shown in italics.

Management Unit 10: YAQUINA BAY

Description

Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and bounded on the south by the authorized federal navigation channel (see Figure 16). [~~Much of this unit is owned by the Port of Newport~~.] A number of minor alterations are present, including pilings and riprap along the shoreline.

There are 550 acres of tideland at Sally's Bend. The Port of Newport owns 503 acres and leases out another 16 acres, the Oregon Board of Higher Education owns 16 acres, and others own 15 acres. Of the total, 43 acres adjacent to McLean Point are inside the Newport City Limits. In addition to this tideland, Management Unit 10 includes a subtidal area between the tideflat and the federal navigation channel.

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. The historically large eelgrass meadow present in MU 10 has become much smaller over time, indicating a significant loss of habitat. Eelgrass and associated habitat make this area extremely important for Endangered Species Act (ESA) listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region, which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.

Uses in this area are limited to shallow draft navigation, recreational use, and some minor commercial harvest of clams. The Sally's Bend recreational clamming area in this unit is the largest in Yaquina Bay. There are no public boat launches or other recreational infrastructure to access the water via boat, but public access is available at the NW Natural Gas plant *at McLean Point* on the west side and Coquille Point to the east. An Olympia oyster restoration project was initiated by ODFW in 2021, on the state-owned tidelands region of MU 10 (on the southern corner).

The Port of Newport's 2019 Strategic Business Plan Update supports research:
"The marine research and education sectors are well established in Newport; an estimated 300 people work at the Hatfield Marine Science Center, including OSU faculty, graduate students, researchers, and staff from other agencies.... The marine research and education sectors and growth opportunities [include] .... aquaculture."

The Port of Newport's 2019 Strategic Business Plan Update supports aquaculture:
"Aquaculture is a rapidly growing sector of the international economy and represents an opportunity for development in Newport as well."
"Opportunities for growing aquaculture in the Newport area include the expansion of existing operations, as well as the development of new ones."
"Oyster cultivation could be expanded in Yaquina Bay. There is demand for intertidal land for oyster cultivation with the appropriate characteristics (soil conditions and water quality, etc.)"

Classification: Natural
[~~As a major tract of tideflat with eelgrass beds, this unit has been classified natural in order to preserve natural resources in the unit~~.]
Sally's Bend is a very large tideflat with various water depths (shallow intertidal areas, deeper intertidal areas, and subtidal channels) and some variation of substrate (sand, mud, unconsolidated substrate) that naturally support a variety of organisms beneficial to the estuary. The most significant natural resources to be preserved are eelgrass and clam beds. The small area with Olympia oysters should also be protected.

Resource Capability

Sally's Bend is a very large area, with 550 acres. As a large area, it is capable of supporting a diversity of beneficial biological resources.

There is a sizable clam bed with cockles and, less common, littleneck and gaper clams. The area is very muddy so recreational clammers need to be cautious. The access points from shore are at the McLean Point on the west and at Coquille Point on the east side of Sally's Bend.

Native eelgrass (Zostera marina) provides a significant ecological benefit when is used by forage fish, most notably Pacific herring, as a spawning "structure" and habitat for herring egg broods until the larval herring emerge. Native eelgrass prefers growing on substrate where it can root and in deeper intertidal water, below mean low tide, and adjacent subtidal water where is it not susceptible to desiccation (drying out) at low tide. In 2012, native eelgrass was located in a portion of the middle of Sally's Bend and the area closest to the main channel of Yaquina Bay and along the main channel of Yaquina Bay. It has been reported there is less density of eelgrass at Sally's Bend in 2021 than 2011.

Native Olympia oysters (Ostrea lurida) grow naturally in subtidal areas on solid substrate; these characteristics are missing from much of the Sally's Bend tideflat area. However, some limited areas of subtidal channels at Sally's Bend, or subtidal areas along the boundary of the tideflats

and the main channel of Yaquina Bay, may be feasible for active Olympia oyster restoration projects with the additional of solid material to compensate for areas with inadequate natural solid substrate, providing the oysters do not get covered in silt.

Significant portions of the Sally's Bend tideflat do not have the sufficient water depth or solid substrate necessary for native eelgrass or for native Olympia oysters. These areas can support other biological resources that are beneficial to the estuary.

Water characteristics including salinity level, and nearly complete tidal exchange of water during each tide cycle, support shellfish aquaculture. However, it is important that any commercial clamming or shellfish aquaculture activities not have a significant adverse impact on native eelgrass or native Oylmpia oysters.

Close proximity to Hatfield Marine Science Center facilitates scientific studies of the estuary that are beneficial to the estuary as well as supportive of research and education programs

Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, *besides scientific studies, active restoration projects, and shellfish aquaculture,* permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerges crossings have been located in this area). More permanent alterations will be reviewed individually for consistency with the resource capabilities of the area.

<u>Management Objective</u>

[~~Management Unit 10 shall be managed to preserve and protect natural resources and values.~~]
The primary objective shall be to seek a balance of ecologically-beneficial organisms to preserve the biological resources and, where possible, enhance the biological capabilities of this large area. There should be knowledgeable, coordinated management of beneficial biological resources including submerged aquatic vegetation, fish and crab spawning and nursery areas, natural clam beds, and compatible shellfish aquaculture. The preservation of one species or organism does not preclude other species or organisms that are also beneficial to the ecology of the estuary. For example, cultivated oysters provide many of the same ecosystem benefits as native Olympia oysters, grow in areas of tideflats where Olympia oysters will not grow, and are less susceptible to die-offs from summer heat waves or temporary winter sub-freezing temperatures. Where beneficial, limited commercial aquaculture, that is not detrimental to other desirable estuarine resources, is compatible with the management objective of this Management Unit 10. Similarly, scientific studies that may include some limited, temporary alterations, are compatible with this management objective, because the studies increase knowledge about the estuary, its organisms, approaches for enhancing future biological productivity of the estuary, future "best practices" for managing the estuary, and approaches for responding to future climate and other environmental changes. Recreational clamming has a limited impact on the clam beds and is consistent with maintaining the biological capabilities of Management Unit 10. However, commercial clam harvesting should be monitored and managed to prevent overharvesting from natural clam beds.

Special Policies

1. *Policy to facilitate and encourage a balance of ecologically-beneficial organisms in natural and conservation management units.*
2. *Policy for making determinations about natural resources, natural resource values, and natural resource capabilities of individual Natural and Conservation Management Units.*
3. Because [~~this unit is~~] *some subtidal areas may be* suitable for native oyster re-establishment and restoration efforts are underway, impact to existing Olympia oysters shall be avoided.
4. Deepening and widening of the federal navigation channel and turning basin into this management unit, which would impact the significant ecosystems within Sally's Bend, shall be avoided.
5. *Policies for all new estuarine uses and activities in Natural Management Units.*
6. *Special Policy and Goal 16 Exception to allow research activities, scientific studies, and demonstration projects in specified Management Units.*
7. *Special Policy and Goal 16 Exception to allow certain shellfish aquaculture activities in specified Management Units.*
8. *Special Policy for seaweed aquaculture/mariculture (that requires that State of Oregon regulatory program(s) be implemented as a prerequisite before consideration of any conditional permit applications) in specified Management Units.*
9. *Special Policy for finfish aquaculture (to prohibit commercial finfish aquaculture in the Yaquina Bay estuary).*
10. *Special Policy for conservation and scenic preservation easements.*

CONCERNS ABOUT DELETING CLARITY FROM 1982 YBEMP

Submitted by Mark Arnold
March 11, 2024

CONCERNS ABOUT DELETING MATRICES FROM 1982 YBEMP AND REPLACING THEM WITH PROPOSED GENERAL ZONING LANGUAGE

The August 2023 YBEMP "final draft" made two major changes, and the result was to delete specific guidance in the 1982 YBEMP and replace it with general language lacking specificity, creating uncertainty, and subject to arbitrary decision-making.

- The 1982 plan included a one-page matrix for each Management Unit that provided substantial clarity about what activities were permitted, could be allowed conditionally, or were disallowed in each individual Management Unit. <u>All the matrices in the 1982 plan were removed, leaving no clarity in their place for individual Management Units</u>.

- Proposed Zoning Code language was added. <u>The proposed Code language reads like a policy statement, without clear criteria, so different users can reach different conclusions about whether the Code requirements have, or have not, been satisfied</u>.

Under the proposed Zoning Code language, decisions about allowable uses are based on the following concepts:

- "Aquatic area alteration"
- "Public trust rights"
- "Consistent with the Management Unit objective"
- "Consistent with the purposes of the Management Unit classification"
- "Consistent with the resource capabilities of the area"

BUT:

- There is no definition of what constitutes an "aquatic area alteration.
- There is no definition of "public trust rights" nor criteria to determine how to balance them with other allowable, beneficial activities.
- There are no criteria to determine consistency with the Management Unit objective.
- There are no criteria to determine consistency with the Management Unit classification.
- There are no criteria to determine consistency with the resource capabilities of the area.

<u>This means the substantial clarity in the 1982 plan, which was thrown out, was replaced by proposed, imprecise Code language. This means the burden of proof may be placed on anyone making a proposal to do anything in the estuary: the burden is to prove the proposed use complies with the Code language. But, it is impossible to prove consistency with undefined concepts where there is no criteria.</u>

The following pages provide more detailed information about the 1982 matrices, the proposed replacement Zoning language, and concerns about the lack of clarity in the proposed Zoning language.

ALTERATIONS FOR AQUACULTURE IN INDIVIDUAL NATURAL MANAGEMENT UNITS
AS SHOWN IN PERMITTED USE MATRICES IN 1982 YAQUINA BAY ESTUARY MANAGEMENT PLAN
(INCLUDED IN THE 1982 LINCOLN COUNTY ESTUARY MANAGEMENT PLAN)

When interpreting the 1982 YBEMP, prior to initiation of the YBEMP update, Lincoln County planners referred to the matrices for individual Management Units to provide guidance about what alterations to the estuary were permitted, conditionally allowed, or disallowed for each individual Management Unit.

At the top of the matrix, there are identified the alterations of concern to Lincoln County:

- Shoreline stabilization (structural)
- Dikes (new)
- Fill
- New Dredging
- Maintenance Dredging
- Navigation Aids (beacons, buoys, etc.)
- Breakwaters
- Pile Dikes
- Groins
- Wharves
- Piers
- Docks
- Pilings
- Dolphins
- Special Policy (a category allowing for identification of other concerns for an individual Management Unit, as written under the "Special Policies" heading for the Management Unit)

Under types of activities listed, on the left side of each matrix, one of the activities is "Aquaculture Facilities." In the matrix for each individual Management Unit, there is identification of which aquaculture alterations are permitted, conditionally allowed, or disallowed for that Management Unit.

The matrices in the 1982 YBEMP provided clear guidance to planners, and to those affected by decisions of the planners, about what aquaculture alterations could be undertaken in each Management Unit.

Following is the 1982 YBEMP matrix for Management Unit 9 which includes the tideflats between the Marine Science Center and Idaho Point (Idaho Flat), King Slough, and an intertidal area at the mouth of, and upstream from, King Slough.

PERMITTED USE MATRIX

Management Unit No. Yaquina 9
Classification Natural

P = Permitted w/standards
C = Conditional
N = Not Allowed
X = Not Applicable

		Shoreline stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Pile Dikes	Groins	Wharves	Piers	Docks	Pilings	Dolphins	Special Policy
	Commercial /Recreational															
N	Water dependent															
N	Water related															
N	Non-water related															
N	Marina	N	N	N	N	C	N	N	N	N	N	N	N	N	N	2
N	Boat launching															
	Industrial															
N	Log dumping															
N	Log storage															
N	Mining															
N	Oil or Gas Extraction															
N	Industrial outfalls															
N	Marine ways															
N	Water dependent industrial															
N	Water related industrial															
N	Non-water related industrial															
	Public															
N	Overhead crossings															
P	Submerged crossings	N	N	N	P	N	P	N	N	N	N	N	N	N	N	1
N	Bridge crossings															
N	Storm water outfall															
N	Sanitary outfall															
	Port Facilities															
N	Deep draft (over 23')															
N	Medium draft (10'-22')															
N	Shallow draft (0-9')															
P	Navigation improvement	N	N	N	N	N	P	N	N	N	N	N	N	N	N	
C	Aquaculture Facilities	N	N	N	N	N	P	N	N	N	N	N	N	C	C	
	Restoration															
C	Active	C	N	N	C	C	N	N	N	N	N	N	N	N	N	
P	Passive	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

Following is the 1982 YBEMP matrix for Management Unit 10, Sally's Bend.

PERMITTED USE MATRIX

Management Unit No. Yaquina 10
Classification Natural

P = Permitted w/standards
C = Conditional
N = Not Allowed
X = Not Applicable

		Shoreline stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Pile Dikes	Groins	Wharves	Piers	Docks	Pilings	Dolphins	Special Policy
	Commercial /Recreational															
N	Water dependent															
N	Water related															
N	Non-water related															
N	Marina															
N	Boat launching															
	Industrial															
N	Log dumping															
N	Log storage															
N	Mining															
N	Oil or Gas Extraction															
N	Industrial outfalls															
N	Marine ways															
N	Water dependent industrial															
N	Water related industrial															
N	Non-water related industrial															
	Public															
N	Overhead crossings															
P	Submerged crossings	N	N	N	P	N	P	N	N	N	N	N	N	N	N	X
N	Bridge crossings															
N	Storm water outfall															
N	Sanitary outfall															
	Port Facilities															
N	Deep draft (over 23')															
N	Medium draft (10'-22')															
N	Shallow draft (0-9')															
P	Navigation improvement	N	N	N	N	N	P	N	N	N	N	N	N	N	N	
C	Aquaculture Facilities	N	N	N	N	N	P	N	N	N	N	N	N	C	C	
	Restoration															
C	Active	C	N	N	C	C	N	N	N	N	N	N	N	N	N	
P	Passive	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

For the August 2023 "final draft" YBEMP update, the Project Team decided to delete the matrices from that 1982 plan and replace them with proposed zoning ordinance language. Language is highlighted in yellow that relates to research, aquaculture, and restoration.

APPENDIX F - ESTUARY ZONING DISTRICTS

New appendix proposed as part of the 2023 update

The following is template language for the adoption of Natural, Conservation and Development estuary zoning districts into the zoning code for Lincoln County, the City of Newport, and the City of Toledo.

Section XXX Estuary Natural Zone E-N

In an E-N zone the following regulations shall apply:

1. **Application:**
   The provisions of the E-N zone shall apply to those estuarine aquatic areas within the boundaries of Natural Management Units as designated in the Lincoln County Estuary Management Plan. As used in this section, "estuarine aquatic area" means estuarine waters, submerged lands, tidelands and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.
2. **Uses Permitted Outright:**
   The following uses and their accessory uses are permitted subject to the Special Policies of the applicable Management Unit and the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, and 1.1901 to 1.1999:
   (a) Undeveloped low intensity recreation requiring no aquatic area alteration.
   (b) Research and educational observations requiring no aquatic area alteration.
   (c) Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources requiring no aquatic area alteration.
   (d) Passive restoration requiring no aquatic area alteration.
   (e) Bridge crossing spans not requiring the placement of support structures within the E-N zone.
3. **Conditional Uses Permitted:**
   The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.1699 and 1.1901 to 1.1999:
   (a) Undeveloped low intensity recreation that requires aquatic area alteration.
   (b) Research and educational observations that requires aquatic area alteration.
   (c) Navigation aids such as beacons and buoys.
   (d) Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources that require aquatic area alteration.
   (e) Passive restoration that requires estuarine aquatic area alteration.
   (f) On-site maintenance of existing functional tidegates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.
   (g) Riprap for the protection of uses existing as of October 7, 1977.
   (h) Riprap for the protection of unique resources, historical and archeological values and public facilities.

4. **Additional Conditional Uses Permitted Subject to Resource Capability Test:**
The following uses and their accessory uses may be permitted subject to the provisions of subsection (7) of this section and the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.1699 and 1.1901 to 1.1999:
   (a) Aquaculture that does not involve dredge or fill or other estuarine aquatic area alteration except that incidental dredging for harvest of benthic species or the use of removable structures such as stakes or racks may be permitted.
   (b) Communication facilities.
   (c) Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.
   (d) Boat ramps for public use not requiring dredge or fill.
   (e) Pipelines, cables and utility crossings including incidental dredging necessary for their installation.
   (f) Installation of tidegates in existing functional dikes.
   (g) Bridge crossing support structures and dredging necessary for their installation.
   (h) Temporary alterations.
5. **Special Standards:**
Dredging, filling or other alterations of the estuary shall be allowed only:
   (a) In conjunction with a use authorized in accordance with subsections (3) and (4) of this section;
   (b) If a need (i.e., a substantial public benefit) is demonstrated;
   (c) The use or alteration does not substantially interfere with public trust rights;
   (d) If no feasible alternative upland locations exist; and
   (e) If adverse impacts are minimized.
6. **Impact Assessment**
All decisions authorizing uses in the E-N zone that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:
   (a) The type and extent of alterations to be authorized;
   (b) The type of resources affected;
   (c) The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
   (d) The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as described in applicable sub-area(s) and management unit (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

i. continued use of the proposed alteration given projected climate change impacts
ii. water quality and other physical characteristics of the estuary,
iii. living resources,
iv. recreation and aesthetic use,
v. navigation, and
vi. other existing and potential uses of the estuary; and

(e) Methods to be employed to avoid or minimize adverse impacts.

7. **Conditional Use Requirements:**
All conditional uses in the E-N zone shall comply with the following standards:
   (a) The use is consistent with the management objective of the individual management unit; and
   (b) The use complies with any applicable Special Policies of the individual management unit.

8. **Additional Requirements for Conditional Uses Subject to Resource Capability Test:**
In addition to all other applicable provisions of this section, conditional uses set forth in subsection (4) of this section are subject to the following requirements:
   (a) The use shall be consistent with the purposes of the Natural Management Unit classification;
   (b) The use shall be consistent with the resource capabilities of the area. A use is consistent with the resource capabilities of the area when:
      i. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
      ii. The resources of the area are able to assimilate the use and its effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity and values for scientific research and education.

Section XXX Estuary Conservation Zone E-C

In an E-C zone the following regulations shall apply:

1. **Application:**
The provisions of the E-C zone shall apply to those estuarine aquatic areas within the boundaries of Conservation Management Units as designated in the Lincoln County Estuary Management Plan. As used in this section, "estuarine aquatic area" means estuarine waters, submerged lands, tidelands and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.

2. **Uses Permitted Outright:**
The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, and 1.1901 to 1.1999 and the Special Policies of the applicable Management Unit:
   (a) Undeveloped low intensity recreation requiring no estuarine aquatic area alteration.

(b) Research and educational observations requiring no estuarine aquatic area alteration.
(c) Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources requiring no estuarine aquatic area alteration.
(d) Passive restoration requiring no estuarine aquatic area alteration.
(e) Bridge crossing spans not requiring the placement of support structures within the E-C zone.

3. **Conditional Uses Permitted:**
The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.1699, and 1.1901 to 1.1999 and the Special Policies of the applicable Management Unit:
(a) Undeveloped low intensity recreation that requires estuarine aquatic area alteration.
(b) Research and educational observations that requires estuarine aquatic area alteration.
(c) Navigation aids such as beacons and buoys.
(d) Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources that require estuarine aquatic area alteration.
(e) Passive restoration that requires estuarine aquatic area alteration.
(f) On-site maintenance of existing functional tidegates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.
(g) Riprap for the protection of uses existing as of October 7, 1977.
(h) Riprap for the protection of unique resources, historical and archeological values and public facilities.
(i) Aquaculture that does not involve dredge or fill or other estuarine aquatic area alteration except that incidental dredging for harvest of benthic species or the use of removable structures such as stakes or racks may be permitted.
(j) Communication facilities.
(k) Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.
(l) Boat ramps for public use not requiring dredge or fill.
(m) Pipelines, cables and utility crossings requiring only incidental dredging.
(n) Installation of tidegates in existing functional dikes.
(o) Bridge crossing support structures and dredging necessary for their installation.

4. **Additional Conditional Uses Permitted Subject to Resource Capability Test:**
The following uses and their accessory uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.1699, and 1.1901 to 1.1999, the Special Policies of the applicable Management Unit, and the provisions of subsection (7) of this section:
(a) High intensity water dependent recreation, including, but not limited to, boat ramps and marinas, and including new and maintenance dredging for such uses.
(b) Other water dependent uses requiring the occupation of estuarine surface area by means other than fill
(c) Minor navigational improvements.
(d) Mining and mineral extraction, including dredging necessary for such extraction.
(e) Aquaculture requiring dredge, fill or other alteration of estuarine aquatic area.

(f) Temporary alterations.

5. **Special Standards**

Dredging, filling or other alterations of the estuary shall be allowed only:

(a) In conjunction with a use authorized in accordance with subsections (3) and (4) of this section;

(b) If a need (i.e., a substantial public benefit) is demonstrated;

(c) If the use or alteration does not substantially interfere with public trust rights;

(d) If no feasible alternative upland locations exist; and

(e) If adverse impacts are minimized.

6. **Impact Assessment**

All decisions authorizing uses in the E-C zone that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:

(a) The type and extent of alterations to be authorized;

(b) The type of resources affected;

(c) The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;

(d) The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as described in applicable sub-area(s) and management (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

i. continued use of the proposed alteration given projected climate change impacts

ii. water quality and other physical characteristics of the estuary,

iii. living resources,

iv. recreation and aesthetic use,

v. navigation, and

vi. other existing and potential uses of the estuary; and

(e) Methods to be employed to avoid or minimize adverse impacts.

7. **Conditional Use Requirements:**

(a) All conditional uses in the E-C zone shall comply with the following standards:

i. The use is consistent with the management objective of the individual management unit; and

ii. The use complies with any applicable Special Policies of the individual Management Unit.

Concerns about deleting clarity from 1982 YBEMP – Page 9

8. **Additional Requirements for Conditional Uses Subject to Resource Capability Test:** In addition to all other applicable provisions of this section, conditional uses set forth in subsection (4) of this section are subject to the following requirements:
   (a) The use shall be consistent with the purposes of the Conservation Management Unit classification;
   (b) The use shall be consistent with the resource capabilities of the area. A use is consistent with the resource capabilities of the area when:
      i. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
      ii. The resources of the area are able to assimilate the use and its effects and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture.

Section XXX Estuary Development Zone E-D

In an E-D zone the following regulations shall apply:

1. **Application:**
   The provisions of the E-D zone shall apply to those estuarine aquatic areas within the boundaries of Development Management Units as designated in the Lincoln County Estuary Management Plan. As used in this section, "estuarine aquatic area" means estuarine waters, submerged lands, tidelands and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.
2. **Conditional Uses Permitted:**
   The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.699, and 1.1901 to 1.1999:
   (a) High intensity water dependent recreational uses including, but not limited to, boat ramps, marinas and similar facilities.
   (b) Water dependent commercial uses.
   (c) Water dependent industrial uses.
   (d) Marine terminals.
   (e) Commercial boat basins and similar moorage facilities.
   (f) Navigation activities and improvements.
   (g) In-water disposal of dredged material
   (h) Water storage of products used in industry, commerce or recreation.
3. **Additional Conditional Uses Permitted Subject to Management Unit Purpose:**
   The following uses and their accessory uses may be permitted subject to the provisions of subsection (8) of this section and the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.599, 1.1601 to 1.699, and 1.1901 to 1.1999:
   (a) Undeveloped low intensity recreation.
   (b) Research and educational observations.
   (c) Navigation aids such as beacons and buoys.

Concerns about deleting clarity from 1982 YBEMP – Page 10

(d) Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources.
(e) Passive restoration.
(f) On-site maintenance of existing functional tidegates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.
(g) Riprap for the protection of uses not permitted in the E-D zone that were existing as of October 7, 1977.
(h) Riprap for the protection of unique resources, historical and archeological values and public facilities.
(i) Communication facilities.
(j) Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.
(k) Pipelines, cables and utility crossings.
(l) Installation of tidegates in existing functional dikes.
(m) Bridge crossings, including support structures and dredging necessary for their installation.
(n) Mining and mineral extraction.
(o) Aquaculture.
(p) Temporary alterations.
(q) Water related and non-water related commercial and industrial uses not requiring dredge or fill.

4. **Aquatic Area Alterations Permitted:**
Subject to the requirements of subsection (5) of this section, the following types of aquatic area alterations may be permitted in conjunction with the development and conduct of uses set forth in subsection (2) and (3) of this section:
(a) Dredging, except that dredging is not permitted in conjunction with water related or non-water related commercial and industrial uses permitted pursuant to subsection (3)(q) of this section.
(b) Fill, except that fill is not permitted in conjunction with water related or non-water related commercial and industrial uses permitted pursuant to subsection (3)(q) of this section.
(c) In-water structures, including but not limited to pilings, dolphins, docks, piers, wharfs, breakwaters, groins, jetties and similar structures.
(d) Shoreline stabilization including riprap, bulkheads and similar structures.

5. **Special Standards:**
Dredging, filling or other alterations of the estuary shall be allowed only:
(a) In conjunction with a use authorized in accordance with subsections (3) and (4) of this section, except that dredging and/or filling is not permitted in conjunction with water related or non-water related commercial and industrial uses permitted pursuant to subsection (3)(q) of this section;
(b) If a need (i.e., a substantial public benefit) is demonstrated;
(c) The use or alteration does not substantially interfere with public trust rights;
(d) If no feasible alternative upland locations exist; and
(e) If adverse impacts are minimized.

Concerns about deleting clarity from 1982 YBEMP – Page 11

6. **Impact Assessment:**
All decisions authorizing uses in the E-D zone that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:
   (a) The type and extent of alterations to be authorized;
   (b) The type of resources affected;
   (c) The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
   (d) The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as described in applicable sub-area(s) and management unit (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:
      i. continued use of the proposed alteration given projected climate change impacts
      ii. water quality and other physical characteristics of the estuary,
      iii. living resources,
      iv. recreation and aesthetic use,
      v. navigation, and
      vi. other existing and potential uses of the estuary; and
   (e) Methods to be employed to avoid or minimize adverse impacts.
7. **Conditional Use Requirements:**
All conditional uses in the E-D zone shall comply with the following standards:
   (a) The use is consistent with the management objective of the individual management unit; and
   (b) The use complies with any applicable Special Policies of the individual management unit.
8. **Additional Requirements for Conditional Uses Subject Management Unit Purpose:**
In addition to all other applicable provisions of this section, conditional uses set forth in subsection (3) of this section are subject to the following requirements:
   (a) The use shall be consistent with the purposes of the Development Management Unit classification;
   (b) The use shall be consistent with the designation of adjacent shorelands, including where such shorelands are reserved for water dependent uses, or designated for waterfront redevelopment.

Concerns about deleting clarity from 1982 YBEMP – Page 12

CONCERNS ABOUT PROPOSED NEW ESTUARY ZONING LANGUAGE FOR NATURAL MANAGEMENT UNITS (PROPOSED NEW ZONE E-N) AND CONSERVATION MANAGEMENT UNITS (PROPOSED ZONE E-C)

There is no definition of "aquatic area alteration." This a major omission because the concept about whether there is or is not an "aquatic area alteration" is used extensively in the proposed zoning language for making most determinations about what is permitted, permitted conditionally, or disallowed for proposed activities in the estuary.

"Special Standards" that must be met to qualify for "Conditionally Use Permitted" and "Additional Conditional Uses Permitted Subject to Resource Capability Test" for Natural Management Units and Conservation Management Units.

- There are no criteria to determine whether a "substantial public benefit" is or is not demonstrated.

- There is no definition of "public trust rights" in the proposed zoning language.

  - Based on some (but not all) legal interpretations, a few people may argue that "public trust rights" include the "right to navigation, commerce, fishing and recreation." People making this argument can argue that nothing can be placed in the water anywhere in the estuary because it would interfere with their "public trust right" to recreational boating. They can sue to block desirable governmental approvals.

  - On the other hand, there are court decisions saying that "public trust rights," as applied in English common law, do not necessarily apply to different situations in the United States. State laws can modify and limit "public trust rights" as previously applied in English common law. And, a claim to a public trust right does not necessarily prevent other desirable activities in the public interest.

  - Unnecessary legal complications and obstacles may be avoided, and desirable zoning decisions defended in court, by deleting language about "public trust rights" from the zoning language.

"Conditional Use Requirements" must be "consistent with the management unit objective of the individual management unit" for Natural Management Units and Conservation Management Units.

- Does this mean the "use" must be specifically mentioned under the heading "Management Objective" for each management unit?

- If specific language is not required under this management unit heading in the YBEMP, then what are the criteria to determine whether or not the use is "consistent"?
- Who decides whether a "use" is consistent or inconsistent?
- If there are no criteria, then this creates an opportunity for arbitrary and capricious application of the YBEMP requirements.

"Conditional Use Requirements" must comply "with any applicable Special Policies of the individual management unit" for Natural Management Units and Conservation Management Units.

- Does this mean that the "use" must be specifically mentioned under the heading "Special Policies" for each management unit?
- Or, does this mean that a "use" must not be contrary to all "Special Policies" for each management unit?

Under "Additional Requirements for Conditional Uses Subject to Resource Capability Test," for Natural Management Units, the proposed zoning language says: "The use shall be consistent with the purposes of the Natural Management Unit classification. Similarly, for Conservation Management Units, the proposed zoning language says: "The use shall be consistent with the purposes of the Conservation Management Unit classification."

- Does this mean that the "use" must be specifically mentioned under the heading "Classification" for each Natural Management unit and each Conservation Management Unit?
- If specific language is not required under this management unit heading in the YBEMP, then what are the criteria to determine whether or not the use is "consistent"?
- Who decides whether a "use" is consistent or inconsistent?
- If there are no criteria, then this creates an opportunity for arbitrary and capricious application of the YBEMP requirements.

Under "Additional Requirements for Conditional Uses Subject to Resource Capability Test," for Natural Management Units and Conservation Management Units, the proposed zoning language says: "The use shall be consistent with the resource capabilities of the area when:

(i) The negative impacts of the use on estuarine species, habitats, biological productivity and waterway quality are not significant; or

(ii) The resources of the area are able to assimilate the use and its effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity and values for scientific research and education.

- Does this mean that the "use" must be specifically mentioned under the heading "Resource Capability" for each Natural Management unit and each Conservation Management Unit?

- <u>If specific language is not included under this management unit heading in the YBEMP, then what are the criteria to determine whether or not the use is "consistent"?</u> What are the prescriptive standards? What are the performance standards? How can a determination be made about whether a use is consistent with the "Resource Capability" of the individual management unit if there are no standards?
- Who decides whether a "use" is consistent or inconsistent?
- If there are no criteria, then this creates an opportunity for arbitrary and capricious application of the YBEMP requirements.

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Tuesday, January 02, 2024 9:59 AM
To: Public comment; Erik Glover
Subject: Public Comment, City Council Agenda Item 6C re Sale of City-Owned Tideland
Attachments: Comments from Mark Arnold about sale of City owned tideland, Agenda Item 6C of 1_2_24 City Council Meeting.pdf

[WARNING] **This message comes from an external organization. Be careful of embedded links.**

Hi. I am submitting a public comment about Agenda Item 6C of the City Council Meeting at 6 pm today. This agenda item concerns the prospective sale of City-owned tideland property. I am an owner of adjacent tideland and upland. My comments are attached.

Thank you for your consideration.

Mark Arnold
Member, Kings Forest LLC
Member, Yaquina Bay Kings Shellfish LLC
[redacted]

COMMENTS ABOUT PROPOSED AGREEMENT FOR SALE OF CITY-OWNED TIDELAND PARCELS
(Comments by Mark Arnold on 1/2/2024)

I live inside the Newport Urban Growth Boundary and own tideland inside and outside the City limits.

I recommend the City Council delay final consideration of the proposed sale.

First, the planned Yakona-McKenzie conservation easement is only a partial draft agreement, not provided in final form for review. A final agreement may affect adjacent property owners who have access over Yakona property.

Second, the title report is not yet available for public review and comment. The City should retain authority to disapprove it. Several previously recorded deeds have language about tidelands that is contrary to Oregon law and Oregon Supreme Court decisions.

- Language that says all tideland in estuaries is subject to the Oregon "Beach Bill" is contrary to law. (The "Beach Bill" only applies to beaches directly facing the Pacific Ocean.)

- Language that says the State has title to all tideland below mean high tide is contrary to Oregon law. (Oregon law adopted in 1885 and confirmed by an Oregon Supreme Court decision in 1912 provided a grant of all tideland in the Yaquina Bay estuary, including Kings Slough, into non-State ownership.)

Third, documents proposed for recording are not yet available for public review and comment.

In addition, section 10.9.2 can be simplified so it focuses solely on the four tidal parcels.

- Instead of incorporating Exhibit C by reference, which is outside the scope of this hearing, this section can be rewritten simply to say that one of the items to be provided prior to closing is "a duly executed and acknowledged conservation easement, as defined in ORS 271.715(1), with a holder of the conservation easement, as defined in ORS 271.715(3), for the Property described in Exhibit A." (See attached ORS provisions.)

- The proposed Yakona-McKenzie easement would satisfy these provisions.

- There is no need for the City Council to approve all the details in Exhibit C that are outside the purview of the City and outside the scope of this hearing.

Final documents should be made available for public review and comment before the City signs the deed. As a property owner of tideland and upland, and on behalf of other owners of tideland, filled tideland and upland, I am asking the City to provide "due process" and to preserve, not damage, existing property rights.

Chapter 271 — Use and Disposition of Public Lands Generally; Easements
2021 EDITION

USE OF PUBLIC LANDS; EASEMENTS
PUBLIC LANDS
CONSERVATION AND HIGHWAY SCENIC PRESERVATION EASEMENTS

(Excerpt)

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Highway scenic preservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of property.

(3) "Holder" means:

(a) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;

(b) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or

(c) An Indian tribe as defined in ORS 97.740.

(4) "Third-party right of enforcement" means a right provided in a conservation easement or highway scenic preservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder. [1983 c.642 §1; 1985 c.160 §1; 1997 c.249 §78; 1999 c.208 §1; 2001 c.708 §12; 2001 c.907 §2; 2003 c.467 §1; 2005 c.368 §1]

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Monday, January 22, 2024 12:01 PM
To: Public comment
Subject: Written comments submitted for Newport Planning Commission Regular Session, 1/22/24
Attachments: Mark Arnold Comments for Newport Planning Commission, 1_22_24.pdf; NOAA Fact Sheet, Aquaculture Provides Beneficial Ecosystem Services.pdf

[WARNING] **This message comes from an external organization. Be careful of embedded links.**

Hi. I am submitting written comments to include in "Agenda Item 3 Citizen/Public Comment" at the Planning Commission Regular Session to be held this evening, January 22.

There are 2 files for my comments:
Mark Arnold Comments for Newport Planning Commission, 1.22.24
NOAA Fact Sheet, Aquaculture Provides Beneficial Ecosystem Services

I am submitting the NOAA Fact Sheet in a separate file so it will be more readable, instead of incorporating it as the final two pages of my written comments.

Thank you.

Mark Arnold
[redacted]

YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)
Comments Submitted to Newport Planning Commission, January 22, 2024

My name is Mark Arnold. I live inside the Newport Urban Growth Boundary, own tideland inside and outside the City limits, and our family has a small oyster farm.

I understand you will soon be reviewing the proposed update to the YBEMP.

I would like to make a few comments, and submit some background information, before you start consideration of the Department of Land Conservation & Development (DLCD) proposal.

Existing Municipal Code provisions about Yaquina Bay estuary are good.

- It would be timely to provide several updates for Management Unit 9 (Idaho Flats, Kings Slough and an area upstream) and Management Unit 10 (Sally's Bend).
- No major revisions are needed at this time.
- Future amendments to the Code can be considered as desired.

DLCD's proposed update to the YBEMP has a lot of problems.

- Does not recognize that shellfish aquaculture benefits the estuary.
- Is detrimental to expansion of desirable oyster aquaculture using best practices.
- Is detrimental to desirable active restoration projects.
- Permits research "observations" but it makes it difficult to have any additional research.

DLCD is requesting that the entire estuary be re-zoned.

If the City proposes amending land use plans, re-zoning, or changing permissible uses, each owner of land in the estuary needs to be mailed a written notification in advance of public hearings. The notification needs to explain, in understandable detail, how the changes will affect permissible uses of the property.

In 1885, Oregon law confirmed a previous law that granted all marshland and tideland in the Yaquina Bay estuary into non-State ownership. Over the years, some large parcels have been re-conveyed to public owners like the Port of Newport and the Oregon Board of Higher Education. There are numerous owners of tideland.

If DLCD has not provided a detailed list of changes that their current proposal would make to the 1982 plan, then DLCD has not provided the details needed to notify property owners.

If DLCD cannot provide the needed details, I recommend that you consider making a limited number of timely updates to the existing Code.

If you are interested in having an advisory group to review or suggest possible updates to existing Code provisions about the Yaquina Bay estuary, I am willing to participate.

ADDITIONAL INFORMATION

DLCD'S PROPOSED UPDATE TO THE YBEMP IS DETRIMENTAL TO AQUACULTURE

DLCD's "final draft" Yaquina Bay Estuary Management Plan, with a cover date of August 2023 (but not available for review online until early October 2023), disregards the importance of aquaculture in general, and oyster farming in particular. The 2023 "final draft":

- Deleted Lincoln County's statement in the 1982 Estuary Management Plan in support of the potential for future development of aquaculture in Yaquina Bay. (Lincoln County Estuary Management Plan, issued September 1982, page 162.)

- Deleted all the tables (matrices) that showed aquaculture activities that were approved or conditionally approved for individual Management Units within the estuary.

  In the 1982 plan, of 13 "Natural Management Units," 11 provided conditional approval for aquaculture, with some major alterations to the estuary permitted while others were conditionally allowed or prohibited. Each Management Unit had a matrix clearly showing what was allowed for each of 14 types of major alterations (e.g., navigation aids, pilings, etc.) Besides these categories of major alteration, there was no discussion about low-impact, removable "in water" aquaculture equipment that does not require any major physical changes. These matrices were deleted from the 2023 plan.

- In DLCD's proposal, there was a statement saying aquaculture could be conditionally approved for "Natural Management Units," but <u>only if</u> there was language for each individual Management Unit in support of aquaculture. Then the proposed plan <u>systematically excluded the necessary</u> language from every individual Natural Management Unit except for one reference to a project proposed in 1982 that was never implemented.

  See table on next page.

This means the general statement, appearing to say aquaculture could be conditionally permitted, was in fact misleading. Instead, DLCD's proposed municipal code language is asking for zoning restrictions that would prohibit all future new and expanded aquaculture in Natural Management Units. But, to comply with Oregon Department of Agriculture (ODA) and US FDA requirements, commercial shellfish aquaculture may need to be developed in Natural Management Units that have excellent water quality and are not in proximity to prohibited activities in Development Management Units. As a result, the DLCD's proposal, if approved without significant revision, would prohibit new development of aquaculture in the Yaquina Bay Estuary.

PROPOSED RESOURCE CAPABILITIES, MANAGEMENT OBJECTIVES, AND POLICIES FOR INDIVIDUAL NATURAL MANAGEMENT UNITS IN 2023 FINAL DRAFT YAQUINA BAY ESTUARY MANAGEMENT PLAN

	Is aquaculture specifically allowed or conditionally allowed under each heading?			
Natural Management Unit	Classification: Natural	Resource Capability	Management Objective	Special Policies
1a. Intertidal & subtidal area west of Yaquina Bay Bridge along north shore	No	No	No	No
9. Idaho Flats, all of Kings Slough, and intertidal area upstream	No	No	No	No
10. Sally's Bend	No	No	No	No
15. Parker Slough	No	No	No	No
18. McCaffery Slough intertidal & tidal marsh	No	No	No	No
19. Poole's Slough including tidal marsh	No	No	No	Yes, see note
20. Winant Slough & Johnson Slough including tidal marshes	No	No	No	No
21. Flescher Slough including tidal marsh	No	No	No	No
22. Blind Slough & Busher Flats including tidal marsh	No	No	No	No
23. Tidal marsh known as Grassy Point	No	No	No	No
24. Area along north shore from Grassy Point to Critestar's Moorage	No	No	No	No
27. Large tidal marsh from Nute Slough upstream to Port of Toledo paddle park	No	No	No	No
28. Three small sloughs on south shore	No	No	No	No
33. Major tract of tidal marsh north of Toledo Airport	No	No	No	No

Notes: Unit 1a. is a new "Natural" management unit proposed for 2023 Estuary Management Plan. Table excludes several new "Natural" management units in vicinity of Georgia-Pacific plant, Toledo and upstream with unlikely potential for aquaculture.

Poole's Slough and tidal marsh: Management Unit 19, under the Special Policies heading, there is reference to a Goal 16 Exception in the 1982 Estuary Management Plan for a large "out of bay" oyster culture facility in tidal marsh that was never built.

STATE OF OREGON SHELLFISH POLICY

Although shellfish production has been long established in the state and has been a priority, the State recently added an official policy statement to Oregon Revised Statutes (ORS):

"ORS 622.015 Shellfish policy. (1) The Legislative Assembly finds and declares that it is the policy of the State of Oregon to seek opportunities to:
"(a) Enhance and expand cultivated shellfish production;
"(b) Conserve, protect and restore wild populations of native shellfish; and
"(c) Improve water quality and the health of aquatic and marine habitats.
"(2) In furtherance of the policy declared by this section, it is the intent of the Legislative Assembly that the state develop and adopt a shellfish initiative to prioritize and implement strategies for achieving protection of native shellfish and the enhancement of shellfish production. [2015 c. 814 section 1]"
….

In addition, in statute, the State of Oregon assigned jurisdiction for aquaculture to the Oregon Department of Agriculture:

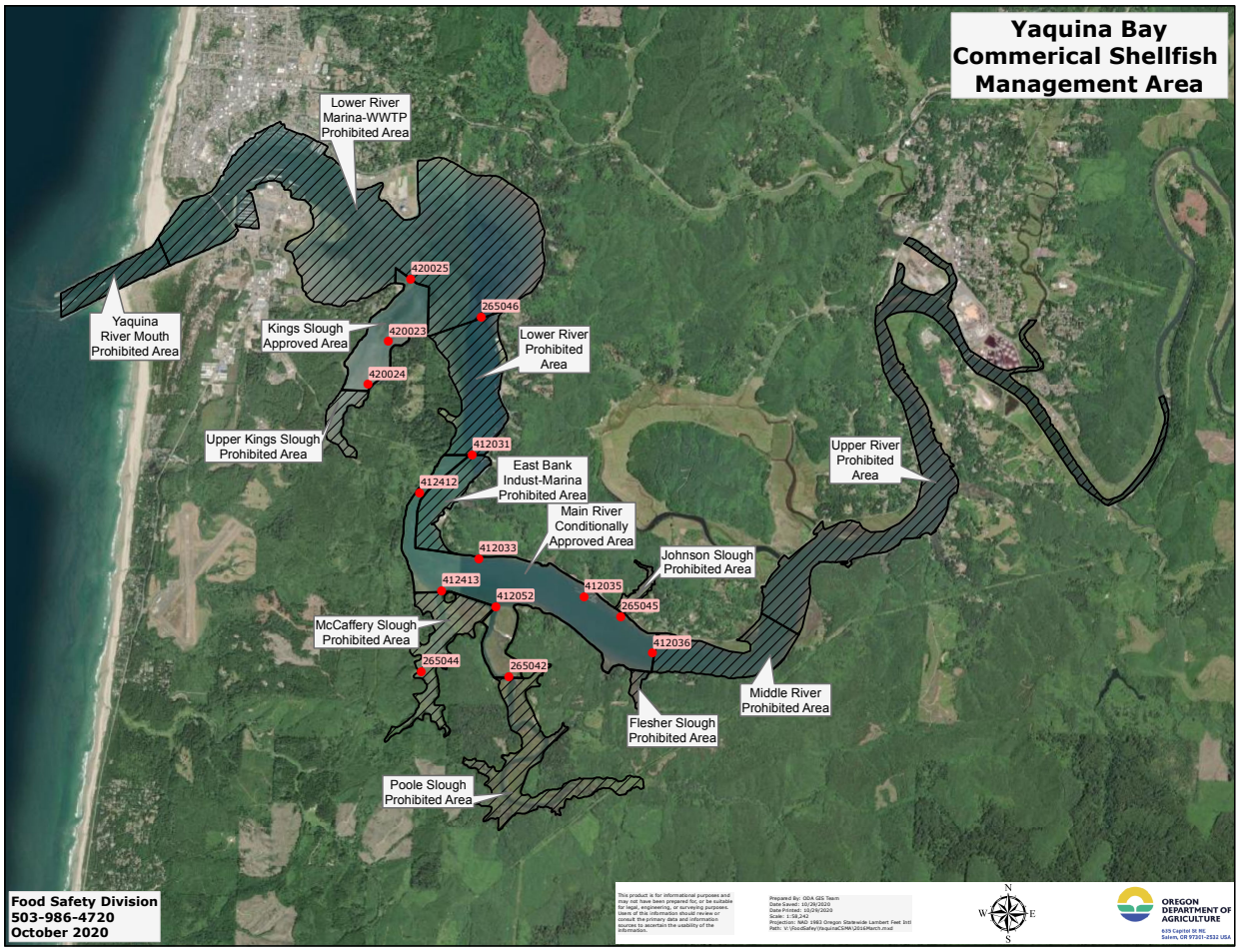
"ORS 622.220 Jurisdiction; rules; violations. (1) The commercial cultivation of oysters, clams and mussels is declared to be an agricultural activity subject to the regulatory authority of the State Department of Agriculture. The department shall be the lead agency responsible for state administration of programs and policies relating to the commercial cultivation of oysters, clams and mussels."
….
"ORS 622.240 Classifying lands for cultivation. The State Department of Agriculture shall investigate and classify those state lands that are suitable for oyster, clam or mussel cultivation…."

In Oregon statute, ORS Chapter 780 Improvement and Use of Navigable Streams, there is a prohibition against improvements that would interfere with oyster production:

"ORS 780.060 Construction not to interfere with oyster production. Nothing in this chapter authorizes the construction of a wharf, dock, pier, moorage or similar structure at any place where its construction and operation will substantially impair or interfere with the cultivation and taking of oysters subject to the provisions of ORS 622.210 to 622.300 and 622.320. [Note: ORS Chapter 622 is "Shellfish" and provides authorizations for the State Department of Agriculture with regard to shellfish production.]

OREGON DEPARTMENT OF AGRICULTURE (ODA)
YAQUINA BAY COMMERCIAL SHELLFISH MANAGEMENT AREA

The Oregon Department of Agriculture has identified 13 distinct areas in the Yaquina Bay Estuary. Of these 13 areas, only one is designated as an "Approved Area" for growing and harvesting shellfish for human consumption, and one additional area is designated as a "Conditionally Approved Area" for growing and harvesting shellfish for human consumption. All other 11 areas have the designation of being a "Prohibited Area" for growing and harvesting shellfish for human consumption. In the future, it might be possible, based on adequate water quality testing, for some locations in currently Prohibited Areas to be re-classified.



ODA'S "KINGS SLOUGH APPROVED AREA"
FOR GROWING SHELLFISH FOR HUMAN CONSUMPTION
IN MIDDLE AND NORTHERN, AND AT THE MOUTH OF, KINGS SLOUGH

The north end of the approved area includes over 10 acres of tideland inside the Newport City Limits adjacent to Idaho Point.

PRIVATE OWNERSHIP OF TIDELANDS

Pursuant to Oregon laws adopted in 1874, 1878, and 1885, and to an Oregon Supreme Court Decision in 1912 (Corvallis & Eastern R. Co. v. Benson, 61 OR 359), all tide and marsh land in Benton County (subsequently transferred to Lincoln County) was granted into private ownership (except for a small portion granted to the City of Newport at the Bayfront).

In subsequent years, some of the tideland parcels were conveyed to public entities including the Port of Newport and the Oregon Board of Higher Education. However, there may be 350 or more acres of privately-owned tideland in Management Unit 9 in Kings Slough, adjacent to the mouth of Kings Slough, and upstream. The private tideland owners are knowledgeable about their portion of the estuary and are stakeholders in the estuary.

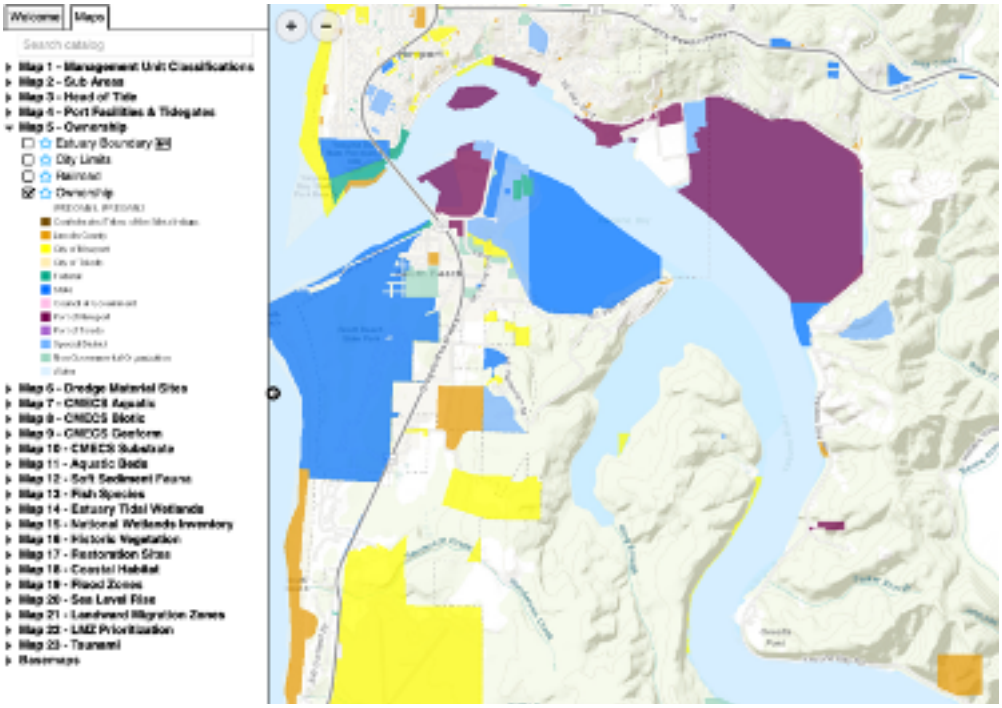
Privately-owned tideland is outlined in red, including over 10 acres inside the Newport City Limits adjacent to Idaho Point. Yellow is City of Newport tideland parcel in Kings Slough.

DLCD has a “Map Viewer” tool with a set of maps to accompany the 2023 “final draft” YBEMP. The maps are provided to inform government officials and other interested persons about the Yaquina Bay estuary. Besides “water,” the ownership map identifies tideland and upland owned by 11 ownership categories:

Confederated Tribes of the Siletz Indians
Lincoln County
City of Newport
City of Toledo
Federal
State
Council of Governments
Port of Newport
Port of Toledo
Special District
Non-Government Organization
Water

However, privately-owned tidelands are <u>not</u> identified at all. Instead, privately-owned tidelands are mistakenly identified as just “water.” This can mislead government officials and others into thinking there is no privately-owned tideland and, instead, that the privately-owned tideland is a publicly-owned waterway.

Portion of DLCD OCMP’s Ownership Map to Accompany YBEMP Update



Fact Sheet 2022

NOAA FISHERIES

Office of Aquaculture

Shellfish and seaweed aquaculture can increase food production, create economic opportunities in coastal areas, and enhance natural harvests.

These aquatic crops provide important ecosystem services that can improve water quality around farm sites.

Aquaculture farms can also provide habitat for fish and crustaceans, benefiting wild populations.

Learn more:
fisheries.noaa.gov/aquaculture

Aquaculture Provides Beneficial Ecosystem Services

Freshly harvested oysters. Credit: NOAA Fisheries.

Removing Nitrogen, Improving Water Quality

Nitrogen is an essential nutrient, but too much of it in water—often from excess fertilizer in runoff—boosts the growth of algae. Algae overwhelms water bodies and reduces oxygen levels, killing fish, crabs, lobsters, and other aquatic life. Fortunately, shellfish aquaculture has emerged as a promising, low-cost tool to help improve water quality.

Around the nation, shellfish and seaweed farms (many of which are family-owned) are providing sustainable seafood and improving the surrounding environment. These farms are described as 'low-to-no input,' because feed, fresh water, and fertilizer typically aren't necessary for their crops. By raising shellfish and seaweed, farms improve access to local seafood and mitigate the harmful effects of excess nutrients, ocean acidification, and habitat loss.

As shellfish filter feed, they remove nitrogen by incorporating it into their shells and tissues. An adult oyster can filter up to 50 gallons of water a day, while a large quahog can clean about 24 gallons of water a day. A farm with 100,000 oysters per acre can potentially filter up to 5,000,000 gallons of water per day, per acre.

NOAA scientists are studying the nitrogen removal that shellfish aquaculture can provide to coastal communities. Coastal communities are increasingly adding shellfish aquaculture to help meet water quality goals. Waterfronts along the Chesapeake Bay and on Cape Cod are looking into seeding and growing shellfish as a way to reduce excess nitrogen in their local waters.

WHY FARM SEAFOOD?

Today, the United States ***imports between 70-85% of the seafood we eat*** *by value–more than any other country. Global and domestic demand for seafood continues to grow. Even as we maintain and rebuild our wild harvest fisheries, we cannot meet increasing domestic demand for seafood through wild-caught fisheries alone.*

Marine aquaculture provides a domestic source of economically and environmentally sustainable seafood that complements and supports our wild fisheries production.

Learn more:
fisheries.noaa.gov/aquaculture

LOW-TO-NO INPUT SHELLFISH AND SEAWEED FARMS

Around the nation, shellfish and seaweed farms, many of which are family-owned, are providing sustainable seafood and improving the surrounding environment. Shellfish and seaweed are often referred to as 'low-to-no input' farms, meaning that no feed, fresh water, or fertilizer are typically required to grow these crops. For many forms of bivalve shellfish aquaculture, production of juvenile shellfish 'seed' occurs within a hatchery where they are fed cultured algae until they reach a suitable size for planting on farms where they eat naturally available algae. As these farms improve access to local seafood, they are also mitigating impacts of excess nutrients, ocean acidification, and habitat loss.

KELP FARMS REDUCE EFFECTS OF OCEAN ACIDIFICATION

Our oceans are absorbing carbon dioxide from the atmosphere, which in turn makes the oceans more acidic and alters their chemistry. Many marine animals such as oysters, clams, sea urchins, corals, and some plankton, use calcium carbonate to build and maintain their shells and other vital structures. Ocean acidification reduces the available calcium carbonate in the water, making it harder for animals to survive and grow.

Many seaweeds, including kelp, are capable of growing in acidic ocean waters. They pull carbon dioxide from their environment, reducing its availability and potential to form carbonic acid—the main perpetrator of ocean acidification. This reduction can provide a localized buffering effect that benefits many marine species that utilize calcium carbonate. Additionally, seaweeds produce oxygen which can mitigate low-oxygen areas known as 'dead zones' at a local scale, while reducing excess nutrients and improving habitat for marine species.

AQUACULTURE FARMS STIMULATE DIVERSITY

Wild oyster reefs provide important habitat for fish and crustaceans. Species like mussels, barnacles, and sea anemones settle on them, providing abundant food resources. Reefs also provide nursery habitat for commercially valuable species including anchovies, blue crab, flounder, and herring.

However, wild oyster populations are at historic lows as prior overharvest and a steady decline in water quality have diminished oyster reef habitat on all of our coasts. In response, the NOAA Fisheries Northeast and Northwest Science Centers are studying the beneficial effects that oyster farms may provide for wild species. Researchers placed GoPro cameras on oyster farm gear in Connecticut and Washington to document species interactions. The footage shows that commercially and recreationally important species like black sea bass, scup, and tautog use the shellfish aquaculture gear for shelter from predators, to feed on algae on the gear, and even for courting mates.

To further these efforts, the Northeast Fisheries Science Center's Milford Laboratory maintains a guide for farmers who wish to install their own GoPro cameras. NOAA Fisheries is also advising partners in Massachusetts, New Jersey, and Maryland on similar projects. This valuable data will help shape farming practices that can increase biodiversity and support aquatic ecosystems.

City of Newport
Draft Planning Commission Work Session Minutes
July 22, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:26 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Beth Young, Community Development Dept.
Commissioner Gary East	
Commissioner Braulio Escobar (by video)	**PUBLIC MEMBERS PRESENT**
Commissioner John Updike	Meg Reed, DLCD (by video)
Citizen Advisory Member Dustin Capri (absent, excused)	Annie Merrill, OR Shores Conservation Coalition (by video)
Citizen Advisory Member Greg Sutton (absent)	Aaron Bretz, Port of Newport
	Gil Sylvia, Port of Newport Commission
	Mark Arnold

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
CONTINUED DISCUSSION ON COMPREHENSIVE PLAN AND ZONING ORDINANCE AMENDMENTS TO IMPLEMENT THE UPDATED YAQUINA BAY ESTUARY MANAGEMENT PLAN. a. Staff report	Mr. Tokos provided an overview of the amendments to implement the updated Yaquina Bay Estuary Management Plan. He reviewed the additional comments received from the Oregon Shores Conservation Coalition, the Port of Newport, and Mark Arnold.
b. Commission feedback	Commission gave their thoughts on the estuary boundary map colors; retaining Management Unit 10 and the turn basins in the document; mining and mineral extractions; moving the maps of the management units next to the text; and general edits to text of document. Hanselman requested the deadline for public comment to be submitted be at least two business days before the meeting instead of hours before.

	Tokos reminded that the Commission wouldn't be making decisions at work session meetings, and hard to make a deadline for public hearings due to the public needing to be able to provide testimony at the hearings. Tokos suggested the discussion be carried into another work session meeting to talk about setting a submission schedule. Commissioners requested that the changes are noted for both the items that are incorporated from the public comments, and items that weren't added. Annie Merrill with the Oregon Shores Conservation Coalition thought that the phrase "to the extent practical" was added unnecessarily throughout the document, and would make it difficult to enforce the standards within the zoning code. They thought recommended that "to the extent practical" should be minimized, eliminated where it wasn't necessary, or further defined for better implementation outcomes in the document. Merrill thought it was important to provide clarity on what a resource capability test was, how it was applied, and why it was needed. They supported changes the exemption language to permitted outright uses for greater clarity. Gil Sylvia with the Port Commission gave his thoughts on the turning basin issues. He requested flexibility in the concept for a working bay and for the language to not be overly constrained. Mark Arnold, Newport spoke about his concerns on the private ownership of tidelands. Berman wanted the Urban Growth Boundary added to the map, and a reference to sea levels rising.
UPDATED SCHEDULE FOR SOUTH BEACH ISLAND ANNEXATION PROJECT.	Mr. Tokos provided an update on the South Beach island annexation project. He reported that the scheduled had to be rescheduled to meet the timeline, and engaging local government law groups. The Seal Rock Water District debt had been paid by property owners along with paying city water service. This needed a final accounting to make sure it the debt was paid. The Commission discussed what the annexation meant to the current short-term rental licenses in the County, and what system development rebates would be available for properties connecting to city services.

PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____
Sherri Marineau, Executive Assistant

City of Newport
Draft Planning Commission Work Session Minutes
June 24, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:15 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman (absent, excused)	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Beth Young, Community Development Dept.
Commissioner Gary East	
Commissioner Braulio Escobar	PUBLIC MEMBERS PRESENT
Commissioner John Updike	Meg Reed, DLCD
Citizen Advisory Member Dustin Capri	Aaron Bretz, Port of Newport
Citizen Advisory Member Greg Sutton (absent)	Gil Sylvia, Port of Newport Commission
	Kent Doughty (by video)
	Kelly Chang (by video)
	Mark Arnold

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
SECOND REVIEW OF AMENDMENTS TO IMPLEMENT THE UPDATED YAQUINA BAY ESTUARY MANAGEMENT PLAN. a. Staff report	Mr. Tokos provided an overview of the amendments to implement the updated Yaquina Bay Estuary Management Plan. Commission discussed policy document amendments that included maps that weren't included in the draft document; management units; nonwater-related uses; descriptive language additions; management objectives; and cobble/pebble dynamic revetment
b. Commission feedback	Commission feedback included thoughts on changing the document so "Hatfield" was used as the official name throughout; recognizing shellfish beds and the rearing, nursery, and spawning areas near the vicinity of dredging; and being consistent with terminology. Gil Sylvia, Port of Newport Commission, reviewed the public comments he submitted for the Port Commission and what was important for them in the Plan. He acknowledged that the Port was owners of tidelands located in Unit 10, Sally's Bend. They had

	future plans for the property that included aquaculture, and the Plan would help guide the development of their property. Aaron Bretz, Port of Newport, reported that any Port dredging project had to meet requirements that were set up through a joint permit through the Army Corp. He thought the wording on definitions was really important in the Plan, and expressed concerns on adding more protections to areas that could limit the Port from doing projects. Mark Arnold acknowledged the public comments he submitted on the draft Plan. He felt that Management Units 9 and 10 were different than a lot of the other activities,. Arnold wanted to see alterations on the Plan to include commercial aquaculture, active restoration projects, and diversity of activities in large natural areas. He expressed concerns that the resource maps were outdated and incorrect in the Plan. Tokos reviewed the updates to NMC Chapter 14.01.020 that included definitions; estuary development uses; new language for exempt uses; general standards additions for minimizing adverse impacts and significant adverse impacts; public access to estuaries; special standards; changes to conditional use standards by zone; and procedural requirements.
RFP FOR WATER SYSTEM MASTER PLAN.	None.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____
Sherri Marineau, Executive Assistant

City of Newport
Planning Commission Work Session Minutes
May 13, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 6:53 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East	
Commissioner Braulio Escobar (absent, excused)	**PUBLIC MEMBERS PRESENT**
Commissioner John Updike	Meg Reed (by video)
Citizen Advisory Member Dustin Capri (absent, excused)	Annie Merrill (by video)
Citizen Advisory Member Greg Sutton (absent)	Mark Arnold

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
INITIAL REVIEW OF DRAFT ZONING AMENDMENTS TO IMPLEMENT THE UPDATED YAQUINA BAY ESTUARY MANAGEMENT PLAN. a. Staff report b. Discussion on amendments	Mr. Tokos provided an overview of the draft set of amendments to the Yaquina Bay and Estuary section of the Newport Comprehensive Plan. The Commission held discussions on newly added definitions; establishment and intent of the zone districts; estuary uses table; estuarine use standards; dredging schedules and regulations; impact assessments; supplemental estuary conditional use standards; dredge material disposal standards; management unit specialty policies; procedural requirements; and the estuary zoning map. Tokos acknowledged the public comments received by Annie Merrill from the Oregon Shores Conservation Collation. He noted the Estuary Plan was addressed in Goal 16 for shorelands but there weren't resources to update Goal 17 at that time. Berman requested that the shoreland maps be updated and he volunteered to help with the update. Updike thought a resiliency grant could help with funding. Tokos explained that these grants were staff intensive and the city needed to be

	consciences on the time it would take. Berman questioned if the city could revisit the Estuary Plan in five years. Tokos clarified that this was something to be done when there was cause to review, not just for the sake of revising.
c. Commission feedback	Branigan pointed out that the statement in Section 14.04.070(B), concerning how disposal sites should be well constructed, was vague and needed to be revised. The Commission was in general agreement with the general structure of the Plan. Tokos reported he would work with the stakeholders to fill in details and address comments received to date. Branigan wanted the Port to offer their thoughts on the plan. Annie Merrill spoke to the Commission and asked for clarification on how resource capability tests were conducted and how adverse impacts were proven. Tokos would provide further information and clarity on this at another meeting. Merrill questioned what would warrant a need for future updates to the plan, and asked if building more resiliency to climate change in the Estuary Management Plan would warrant this. Tokos explained there would be other estuary plans and climate resiliency that would be worked on. If the climate resiliency proved to be insufficient, and a better model was developed, they would then want to take a look at moving forward with an amendment.
IMPLEMENTATION OF ADJUSTMENT PROVISIONS OF GOVERNOR'S HOUSING BILL.	Mr. Tokos provided an overview of the implementation of adjustment provisions of the Governor's Housing Bill. He reviewed an email sent to Carrie Connelly requesting legal assistance related to the implementation of SB 1537.
NEXT STEPS WITH THE CITY CENTER REVITALIZATION PLANNING PROCESS.	Mr. Tokos reported that the first kick off meeting would happen around May 31st.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: Sherri Marineau

Sherri Marineau, Executive Assistant

City of Newport
Planning Commission Work Session Minutes
March 25, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:29 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan (by video)	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East (absent, excused)	**PUBLIC MEMBERS PRESENT**
Commissioner Braulio Escobar	Meg Reed
Commissioner John Updike	Mark Arnold
Commissioner Marjorie Blom	Kent Doughty (by video)
Citizen Advisory Member Dustin Capri (absent, excused)	Annie Merrill (by video)
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL	
a. Roll Call	None.
REVIEW OF DRAFT COMPREHENSIVE PLAN AMENDMENTS TO IMPLEMENT THE ESTUARY MANAGEMENT PLAN.	
a. Staff report	Mr. Tokos provided an overview of a draft set of amendments to the Yaquina Bay and Estuary section of the Newport Comprehensive Plan. Meg Reed, with the Department of Land Conservation and Development, was present to answer Commissioner's questions.
b. Discussion on amendments	The Commission held discussions on Yaquina Bay Estuary Regularity Boundary management units; resource inventories; climate change vulnerabilities; estuary management sub-areas; Yaquina Bay sub-areas; estuary unit maps; Newport subareas; policy visual for the LCEM Plan; conservation management plan; development management units; mitigation and restoration; procedural elements and exceptions; Yaquina Bay Shorelands; and goals and policies.
c. Commission feedback	Branigan suggested they reference the 1,000 to 10,000-year floods in the Comprehensive Plan. Berman thought the tsunami inundation zones be referenced as well. Tokos recommended the document speak to the relationship between the flood insurance program and its regulations in the climate change vulnerabilities section. Updike pointed out the

	reference to the FEMA flood insurance rate map was to effect at April 15, 1980 and needed to be updated. Berman requested an index map for all sub areas. Updike wanted to see the subarea boundaries added to the map. Berman requested all 10 estuary management unit maps be added as reference. Berman thought the list of items permitted in Natural Management Units needed to be updated or changed to two separate lines. Mark Arnold (Newport) spoke concerning shellfish aquiculture and research on the estuary. He wanted to see Hatfield researchers that were strictly limited to observation be able to put equipment in the water or trying out new techniques. Arnold wanted the Plan to specify criteria for what was allowed and what wasn't. Escobar requested the Commission hear from Gilbert Silva and Paula Miranda from the Port of Newport before the next draft of the amendments were presented.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: Sherri Marineau

Sherri Marineau, Executive Assistant

Oregon's Statewide Planning Goals & Guidelines

GOAL 16: ESTUARINE RESOURCES

OAR 660-015-0010(1)

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Comprehensive management programs to achieve these objectives shall be developed by appropriate local, state, and federal agencies for all estuaries.

To assure diversity among the estuaries of the State, by June 15, 1977, LCDC with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration which may be allowed to occur within each estuary. After completion for all estuaries of the inventories and initial planning efforts, including identification of needs and potential conflicts among needs and goals and upon request of any coastal jurisdiction, the Commission will review the overall Oregon Estuary Classification.

Comprehensive plans and activities for each estuary shall provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification, as well as with the biological economic, recreational, and aesthetic benefits of the estuary. Estuary plans and activities shall protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality.

The general priorities (from highest to lowest) for management and use of estuarine resources as implemented through the management unit designation and permissible use requirements listed below shall be:

1. Uses which maintain the integrity of the estuarine ecosystem;
2. Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification;
3. Water-related uses which do not degrade or reduce the natural estuarine resources and values;
4. Nondependent, nonrelated uses which do not alter, reduce or degrade estuarine resources and values.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for designating estuary uses and policies. These inventories shall provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of exceptional potential for development.

State and federal agencies shall assist in the inventories of estuarine resources. The Department of Land Conservation and Development, with assistance from local government, state and federal agencies, shall establish common inventory standards and techniques, so that inventory data collected by different agencies or units of government, or data between estuaries, will be comparable.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, the limits imposed by the overall Oregon Estuary Classification, and needs identified in the planning process, comprehensive plans for coastal areas shall:

1. Identify each estuarine area:
2. Describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;
3. Classify the estuary into management units; and
4. Establish policies and use priorities for each management unit using the standards and procedures set forth below.
5. Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections.

MANAGEMENT UNITS

Diverse resources, values, and benefits shall be maintained by classifying the estuary into distinct water use management units. When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

1. Adjacent upland characteristics and existing land uses;
2. Compatibility with adjacent uses;
3. Energy costs and benefits; and
4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.

As a minimum, the following kinds of management units shall be established:

1. ***Natural*** -- in all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.

Permissible uses in natural management units shall include the following:

a. undeveloped low-intensity, water-dependent recreation;
b. research and educational observations;
c. navigation aids, such as beacons and buoys;
d. protection of habitat, nutrient, fish, wildlife and aesthetic resources;
e. passive restoration measures;
f. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;

g. riprap for protection of uses existing as of October 7, 1977, unique natural resources, historical and archeological values; and public facilities; and

h. bridge crossings.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

a. aquaculture which does not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;

b. communication facilities;

c. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;

d. boat ramps for public use where no dredging or fill for navigational access is needed; and,

e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation.

f. installation of tidegates in existing functional dikes.

g. temporary alterations.

h. bridge crossing support structures and dredging necessary for their installation.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.

2. ***Conservation*** -- In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above, and recreational or commercial oyster and clam beds not included in (1) above. Areas that are partially altered and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

Permissible uses in conservation management units shall be all uses listed in (1) above except temporary alterations.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

a. High-intensity water-dependent recreation, including boat ramps, marinas and new dredging for boat ramps and marinas;

b. Minor navigational improvements;

c. Mining and mineral extraction, including dredging necessary for mineral extraction;

d. Other water dependent uses requiring occupation of water surface area by means other than dredge or fill;

e. Aquaculture requiring dredge or fill or other alteration of the estuary;

f. Active restoration for purposes other than those listed in 1(d).

g. Temporary alterations.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values and aquaculture.

3. ***Development*** -- in estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alterations of the estuary not included in (1) and (2) above.

Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

As appropriate the following uses shall also be permissible in development management units:

a. Dredge or fill, as allowed elsewhere in the goal;

b. Navigation and water-dependent commercial enterprises and activities;

c. Water transport channels where dredging may be necessary;

d. Flow-lane disposal of dredged material monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

e. Water storage areas where needed for products used in or resulting from industry, commerce, and recreation;

f. Marinas.

Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill; mining and mineral extraction; and activities identified in (1) and (2) above shall also be appropriate.

In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

IMPLEMENTATION REQUIREMENTS

1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake

or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

a. The type and extent of alterations expected;

b. The type of resource(s) affected;

c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and

d. The methods which could be employed to avoid or minimize adverse impacts.

2. Dredging and/or filling shall be allowed only:

a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and,

b. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and

c. If no feasible alternative upland locations exist; and,

d. If adverse impacts are minimized.

Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met. All or portions of these requirements may be applied at the time of plan development for actions identified in the plan. Otherwise, they shall be applied at the time of permit review.

3. State and federal agencies shall review, revise, and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls.

Existing programs which shall be utilized include:

a. The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610-527.730 and 527.990 and the Forest Lands Goal;

b. The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for Agricultural Lands Goal;

c. The nonpoint source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL92-500); and

d. The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 - 541.665.

4. The State Water Policy Review Board, assisted by the staff of the Oregon Department of Water Resources, and the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Division of State Lands, and the U.S. Geological Survey, shall consider establishing minimum fresh-water flow rates and standards so that resources and uses of the estuary, including navigation, fish and wildlife

characteristics, and recreation, will be maintained.

5. When dredge or fill activities are permitted in intertidal or tidal marsh areas, their effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained. Comprehensive plans shall designate and protect specific sites for mitigation which generally correspond to the types and quantity of intertidal area proposed for dredging or filling, or make findings demonstrating that it is not possible to do so.

6. Local government and state and federal agencies shall develop comprehensive programs, including specific sites and procedures for disposal and stock-piling of dredged materials. These programs shall encourage the disposal of dredged material in uplands or ocean waters, and shall permit disposal in estuary waters only where such disposal will clearly be consistent with the objectives of this goal and state and federal law. Dredged material shall not be disposed in intertidal or tidal marsh estuarine areas unless part of an approved fill project.

7. Local government and state and federal agencies shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.

8. State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation.

9. State agencies with planning, permit, or review authorities affected by this goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. In estuarine areas the following authorities are of special concern:

Division of State Lands

Fill and Removal Law ORS 541.605-541.665

Mineral Resources ORS 273.551; ORS 273.775 - 273.780

Submersible and Submerged Lands ORS 274.005 - 274.940

Economic Development Department

Ports Planning ORS 777.835

Water Resources Department

Appropriation of Water ORS 37.010-537.990; ORS 543.010-543.620

Department of Geology and Mineral Industries

Mineral Extraction ORS 520.005-

Oil and Gas Drilling ORS 520.095

Department of Forestry

Forest Practices Act ORS 527.610-527.730

Department of Energy

Regulation of Thermal Power and Nuclear Installation ORS 469.300-469.570

Department of Environmental Quality

Water Quality ORS 468.700-468.775

Sewage Treatment and Disposal Systems ORS 454.010-454.755

GUIDELINES

The requirements of the Estuarine Resources Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to estuarine areas and implementation of the Estuarine Resources Goal.

Because of the strong relationship between estuaries and adjacent coastal shorelands, the inventories and planning requirements for these resources should be closely coordinated. These inventories and plans should also be fully coordinated with the requirements in other state planning goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Recreational Needs; Transportation; and Economy of the State.

A. INVENTORIES

In detail appropriate to the level of development or alteration proposed, the inventories for estuarine features should include:

1. Physical characteristics

a. Size, shape, surface area, and contour, including water depths;

b. Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen. Data should reflect average and extreme values for the months of March, June, September, and December as a minimum; and

c. Substrate mapping showing location and extent of rock, gravel, sand, and mud.

2. Biological characteristic--Location, Description, and Extent of:

a. The common species of benthic (living in or on bottom) flora and fauna;

b. The fish and wildlife species, including part-time residents;

c. The important resting, feeding, and nesting areas for migrating and resident shorebirds, wading birds and wildlife;

d. The areas important for recreational fishing and hunting, including areas used for clam digging and crabbing;

e. Estuarine wetlands;

f. Fish and shellfish spawning areas;

g. Significant natural areas; and

h. Areas presently in commercial aquaculture.

3. Social and economic characteristics--Location, Description, and Extent of:

a. The importance of the estuary to the economy of the area:

b. Existing land uses surrounding the estuary;

c. Man-made alterations of the natural estuarine system;

d. Water-dependent industrial and/or commercial enterprises;

e. Public access;

f. Historical or archaeological sites associated with the estuary; and

g. Existing transportation systems.

B. HISTORIC, UNIQUE, AND SCENIC WATERFRONT COMMUNITIES

Local government comprehensive plans should encourage the maintenance and enhancement of historic, unique, and scenic waterfront communities, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

C. TRANSPORTATION

Local governments and state and federal agencies should closely coordinate and integrate navigation and port needs with shoreland and upland transportation facilities and the requirements of the Transportation Goal. The cumulative effects of such plans and facilities on the estuarine resources and values should be considered.

D. TEMPORARY ALTERATIONS

The provision for temporary alterations in the Goal is intended to allow alterations to areas and resources that the Goal otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal.

Application of the resource capabilities test to temporary alterations should ensure:

1. That the short-term damage to resources is consistent with resource capabilities of the area; and

2. That the area and affected resources can be restored to their original condition.

Attachment "X"
File 1-CP-24/1-Z-24

NOTICE OF A PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, August 26, 2024, at 7:00 p.m. in the City Hall Council Chambers to review and make a recommendation to the Newport City Council on Comprehensive Plan text and map amendments implementing the 2023 Yaquina Bay Estuary Management Plan (File No. 1-CP-24). The proposed legislative text amendments are a rewrite of the "Yaquina Bay and Estuary Section" of "The Bay Area" element of the Newport Comprehensive Plan. The revisions incorporate the Estuary Management Plan's technical elements and policies. Land use standards in Newport Municipal Code Chapter 14 that implement the updated estuary related Comprehensive Plan policies are also being amended (File No. 1-Z-24). The map amendments apply to the in-water development, conservation and natural estuary management units, with the changes being largely a refinement of the existing management unit boundaries. A public hearing before the City Council will be held at a later date, and notice of that hearing will also be provided. The Newport Comprehensive Plan Section entitled "Administration of the Plan" requires findings regarding the following for such amendments: A. Data, Text, Inventories or Graphics Amendment: 1) New or updated information. B. Conclusions Amendment: 1) Change or addition to the data, text, inventories, or graphics which significantly affects a conclusion that is drawn for that information. C. Goal and Policy Amendments: 1) A significant change in one or more conclusions; or 2) A public need for the change; or 3) A significant change in community attitudes or priorities; or 4) A demonstrated conflict with another plan goal or policy that has a higher priority; or 5) A change in a statute or statewide agency plan; and 6) All the Statewide Planning Goals. D. Implementation Strategies Amendments: 1) A change in one or more goal or policy; or 2) A new or better strategy that will result in better accomplishment of the goal or policy; or 3) A demonstrated ineffectiveness of the existing implementation strategy; or 4) A change in the statute or state agency plan; or 5) A fiscal reason that prohibits implementation of the strategy. For the new estuary related land use standards, Newport Municipal Code (NMC) Section 14.36.010 requires findings that the amendments to the Zoning Ordinance are required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from proponents, testimony from opponents, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Material related to the proposed amendment may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above). Please note that this is a legislative public hearing process and changes to the proposed amendment may be recommended and made through the public hearing process and those changes may also be viewed or a copy purchased. Contact Derrick Tokos, AICP, Newport Community Development Director, (541) 574-0626, email address d.tokos@newportoregon.gov (mailing address above).

(For Publication Once on Wednesday, August 14, 2024)

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Sell your household items.
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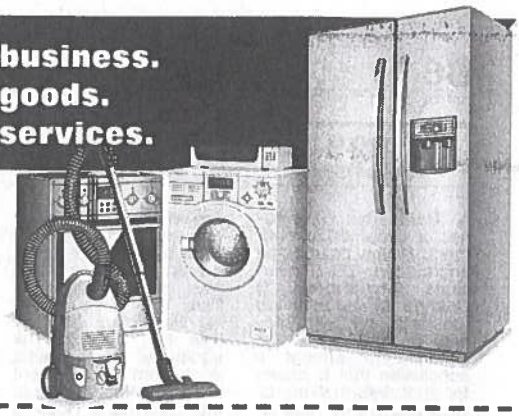
Sell your business.
Sell your goods.
Sell your services.



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Misc Services

Stroke and Cardiovascular disease are leading causes of death, according to the American Heart Association. Screenings can provide peace of mind or early detection! Contact Life Line Screening to schedule your screening. Special offer - 5 screenings for just $149. Call 1-844-655-0972.

104
Landscaping

HI, GOD BLESS YOU! YARD WORKER & MAINTENANCE AT YOUR SERVICE!

*Lawn Care *Brush Removal *Garbage Pick-up *Trimming *Bushes *Blackberry Removal AND MORE! — Please Call for FREE ESTIMATES 541-992-2245 I will be happy to work for you. Thanks!

MARTINEZ LANDSCAPE & CONSTRUCTION LLC. AFFORDABLE RATES & FREE ESTIMATES

Full roof and repairs, maintenance and yard cleanups, new landscape, Fence, patio, decking, retaining walls, installation drain systems, Interior/Exterior painting, roofing and sewer. 541-270-2157 CCB# 225051

302

502
Help Wanted

THE GALLEY KITCHEN SHOP ON NEWPORT BAYFRONT

Looking for someone who is outgoing, loves selling, and has knowledge of kitchen tools. Part time, year round. Competitive wage plus bonuses. Fun work environment. Employee discount. Please email resume to thegalleykitchenshop@gmail.com or drop off at 420 SW Bay Blvd. Newport, OR 97365

550
Work Wanted

DOMESTIC ASSISTANT CAREGIVER AVAILABLE

Call or text to: 541.250.2009 joyacatani@gmail.com

700
Bargain Corner

1990 TOYOTA SEABREEZE MOTORHOME

21', easy to drive, fair condition. $5,000 OBO. 1989 Nissan pickup, fair condition, needs work. OBO. Call 541- 444-9022.

702
Garage Sales

MULTI FAMILY GARAGE

Sale Aug.16th 9am - 4pm Aug.17th 9am - 3pm Lots of clothing, shoes, handbags,

902
Homes for Sale

OR 97365 (800) 365-6638 (541) 265-6638 WEBSITE: www.drellc.us RENTAL & SALES Residential, Commercial & Multi Family Office Hours: Open by appointment only. Available via phone and email Monday-Friday 10AM to 4PM. loren@drellc.us. Closed weekends Equal Housing Opportunity

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Public Notices

LCL24-3051 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LINCOLN COUNTY

Case No. 24PB04313 NOTICE TO INTERESTED PERSONS in the matter of the Estate of Lawrence Melvin Patchen, Jr, Deceased. NOTICE IS HEREBY GIVEN that Ronald L. Sperry III has qualified and been appointed as the Personal Representative of the estate. All persons having claims against the estate are hereby required to present them, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the Personal Representative, Ronald L. Sperry III, c/o DC Law, McKinney & Sperry, PC, P.O. Box 1265, Roseburg, OR 97470, or the claims may be barred. Dated and first published this 14th day of August, 2024. Personal Representative: Ronald L. Sperry III, OSB #091525 DC Law McKinney & Sperry PC PO Box 1265 Roseburg, OR 97470 Telephone: 541-673- 4451 Fax: 541-673-1202

LCL24-3052 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LINCOLN COUNTY PACIFIC SHORES RV RESORT OWNER'S

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Public Notices

are hereby required to appear and defend the Second Amended Complaint filed against you in the above-entitled case within 30 days from the date of service of this Summons upon you; and if you fail to appear and defend, for want thereof, the Plaintiffs will apply to the court for the relief demanded therein. The object of the Complaint and the demand for relief are: The "Property" subject to this action is legally described as follows: Lot 66, OUTDOOR RESORTS MOTORCOACH RESORT, in Lincoln County, Oregon, corrected by Affidavit of Correction recorded May 17, 2000 in Book 402, Page 494 and recorded July 13, 2000 in Book 404, Page 2067, Microfilm Records of Lincoln County, Oregon. Title to Property was conveyed to Defendants by deed. The Property and owners are subject to the CC&Rs, Bylaws, and rules and regulations of the Pacific Shores RV Resort Owners' Association. Defendants are alleged to have defaulted on their obligation to timely pay assessments and fees. As of May 31, 2024, the balance owed on the lien for assessments, late fees, and interest, not including attorney fees and costs, is $15,101.48, subject to continuing assessments, late fees and an interest rate of 12% per year. Plaintiff is entitled to foreclose its

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Public Notices

lien and cause the Property to be sold to pay all amounts owed under the lien. Plaintiff is also entitled to recovery of reasonable attorney fees pursuant to the CC&Rs. NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The motion or answer or reply must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee. It must be in proper form and have proof of service on the Plaintiff's attorney or, if the Plaintiff does not have an attorney, proof of service on the Plaintiff. If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. LUVAAS COBB Andrew M.J. Pinchin, OSB # 134548, apinchin@luvaascobb.com Of Attorneys for Plaintiff Trial Attorney. First Publication Date: August 14, 2024.

LCL24-4000 NOTICE

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Public Notices

OF A PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, August 26, 2024, at 7:00 p.m. in the City Hall Council Chambers to review and make a recommendation to the Newport City Council on Comprehensive Plan text and map amendments implementing the 2023 Yaquina Bay Estuary Management Plan (File No. 1-CP-24). The proposed legislative text amendments are a rewrite of the "Yaquina Bay and Estuary Section" of "The Bay Area" element of the Newport Comprehensive Plan. The revisions incorporate the Estuary Management Plan's technical elements and policies. Land use standards in Newport Municipal Code Chapter 14 that implement the updated estuary related Comprehensive Plan policies are also being amended (File No. 1-Z-24). The map amendments apply to the in-water development, conservation and natural estuary management units, with the changes being largely a refinement of the existing management unit boundaries. A public hearing before the City Council will be held at a later date, and notice of that hearing will also be provided. The Newport Comprehensive Plan Section entitled "Administration of the Plan" requires findings regarding the following for such amendments:

999 Public Notices

A. Data, Text, Inventories or Graphics Amendment: 1) New or updated information. B. Conclusions Amendment: 1) Change or addition to the data, text, inventories, or graphics which significantly affects a conclusion that is drawn for that information. C. Goal and Policy Amendments: 1) A significant change in one or more conclusions; or 2) A public need for the change; or 3) A significant change in community attitudes or priorities; or 4) A demonstrated conflict with another plan goal or policy that has a higher priority; or 5) A change in a statute or statewide agency plan; and 6) All the Statewide Planning Goals. D. Implementation Strategies Amendments: 1) A change in one or more goal or policy; or 2) A new or better strategy that will result in better accomplishment of the goal or policy; or 3) A demonstrated ineffectiveness of the existing implementation strategy; or 4) A change in the statute or state agency plan; or 5) A fiscal reason that prohibits implementation of the strategy. For the new estuary related land use standards, Newport Municipal Code (NMC) Section 14.36.010 requires findings that the amendments to the Zoning Ordinance are required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from proponents, testimony from opponents, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Material related to the proposed amendment may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above). Please note that this is a legislative public hearing process and changes to the proposed amendment may be recommended and made through the public hearing process and those changes may also be viewed or a copy purchased. Contact Derrick Tokos, AICP, Newport Community Development Director, (541) 574-0626, email address d.tokos@newportoregon.gov (mailing address above).

LCL24-4001 CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Monday, August 26, 2024, at 7:00 p.m. in the City Hall Council Chambers to consider further amendments to draft Ordinance #2222, which was prepared to remove code barriers to housing construction consistent with recommendations from the City's Housing Production Strategy (File No. 3-Z-23). The additional amendments implement adjustment provisions contained in the Governor's Housing Bill (SB1537). Revisions are being made to Newport Municipal Code (NMC) Chapters 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 and 14.52, and a new Chapter 14.51 has been developed to implement SB 1537. Pursuant to Newport Municipal Code (NMC) Section 14.36.010, the Commission must find that the change is required by public necessity and the general welfare of the community in order for it to make a recommendation to the City Council that the amendments be adopted. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (address above).

LCL24-4002 PERSUENT TO ORS CHAPTER 819

Notice is hereby given that the following vehicle will be Sold, for cash to the highest bidder, on 8/27/2024 The sale will be held at 10:00am by Car Care Tow Pro 2795 SE 23rd Dr, Lincoln City, OR 2016 GMC Sierra VIN#1GT42YEG0GF21198-2 Amount due on lien $6045.00 Reputed owner(s) ADAMS, MICHAEL OREGON STATE CU

LCL24-4005 SELF STORAGE PUBLIC SALE

Safe-Lock Storage 3639 SE Ash St South Beach, Oregon 97366 Saturday, 8/31/2024 @ 10:00am L27 - Tonya Coronado, L38 - Jose Garcia Villanueva, C06 - Rich Rouske, Sale Subject to Cancellation. Safe-Lock Storage reserves the Right to refuse any and all bids.

LCL24-3053 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

In the Matter of the Estate of COLLEEN JAE BULLIS, aka COLLEEN CLEGHORN, Deceased. Case No. 24PB05562 NOTICE TO INTERESTED PERSONS NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative. All persons having claims against the estate are required to present them, with vouchers attached, to the undersigned personal representative by and through their attorney at PO Box 1987, Newport, OR 97365, within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the Court, the personal representative, or the lawyers for the personal representative, Traci P. McDowall. Dated and first published on August 14, 2024. Traci P McDowall, OSB #184063 Attorney for Personal Representative. PERSONAL REPRESENTATIVE: Mike Callies, 968 Capri Rd, Enchinitas, CA 92024, (760) 518-4509. LAWYER FOR PERSONAL REPRESENTATIVE: Traci P. McDowall, OSB #184063, PO Box 1987, Newport, OR 97365, (541) 272-5500, traci@yaquinalaw.com

LCL24-4005 PUBLIC MEETING NOTICE

COMMUNITY SERVICES CONSORTIUM (CSC) OREGON CASCADES WEST COUNCIL OF GOVERNMENTS (OCWCOG) EXECUTIVE DIRECTOR RECRUITMENT COMMITTEE MEETING CSC and OCWCOG Joint Executive Director Recruitment Committee meeting will be held Thursday, August 15, 2024 at 5:30 pm via Microsoft Teams. The purpose of the meeting is to develop a strategy and final budget to fill the newly created Executive Director position for adoption by each organizations' Board. The meeting is open to the public; all interested persons are welcome to join. Connection information is available by emailing eday@communityservices.us.

LCL24-4004 SALE OF TIMBER, SILETZ INDIAN

RESERVATION

Olalla Logging Unit is located in Govt. Lot 1 of Section 20, T10S, R10W, W.M. in Lincoln County, Oregon. SEALED BIDS, in duplicate, on forms provided therefore, marked outside, "Proposal for Timber. Olalla Logging Unit", addressed to the Confederated Tribes of Siletz Indians, ATTN. Natural Resources Director, P.O. Box 549, Siletz, Oregon, 97380 will be received until 1:00 PM, Local Time, on September 17, 2024. Sealed bids may be submitted by personal delivery to the Confederated Tribes of Siletz Indians Administration Building at 201 SE Swan Avenue, Siletz, OR 97380 until 1:00 PM, local time, on the day of bid opening. Sealed bids may also be submitted via FedEx or UPS to the above address or by USPS at P.O. Box 549, Siletz, OR 97380, but must be received at the Natural Resources Department office by 1:00 PM the day of the bid opening. All sealed bids must be submitted along with an acceptable form of bid deposit. THERE WILL BE NO ORAL BIDDING. The Olalla Logging Unit contains approximately 330 thousand board feet (MBF) of standing timber. There is an estimated 295 MBF of Douglas-fir and Other Conifers comprised of 216 MBF of Douglas-fir; 67 MBF of Western Hemlock; 12 MBF of Sitka Spruce; 35 MBF of Red Alder and Other Hardwoods; and an undetermined volume of All Conifer and Hardwood Species Wood Logs. The above stated volumes are estimates and are not guaranteed. Each bidder must state the price per thousand board feet, Scribner Log Scale that will be paid for timber cut and scaled from this unit. Douglas-fir and Other Conifers is the only biddable item. No bid per thousand board feet of less than $253.00 for Douglas-fir and Other Conifers will be considered. No bidding will be permitted on Red Alder and Other Hardwoods or All Conifer and Hardwood Species Wood Logs. Red Alder and Other Hardwoods will be paid for at a predetermined cash value of one thousand two hundred thirty dollars and twenty five cents ($1,230.25). All Conifer Species Wood Logs, removed at the Purchaser's option, will be purchased at the rate of $75.00 per thousand board feet gross scale. Timber from this sale IS NOT subject to log export or substitution restrictions. A Bid Deposit in the form of a cashier's check drawn payable to the order of the Confederated Tribes of Siletz Indians in the amount of seven thousand six hundred dollars and no cents ($7,600.00) must accompany each sealed bid. The Bid Deposit of the apparent high bidder, and of others who submit written requests to have their bids considered for acceptance, will be retained, pending acceptance or rejection of the bids. All other deposits will be returned. The deposit of the apparent high bidder will be applied as part of the purchase price against timber cut on this unit, or retained as liquidated damages if the bidder fails to execute the contract and furnish a satisfactory performance bond in the amount of eleven thousand four hundred and no cents ($11,400.00) within thirty (30) days of acceptance of the bid. An acceptable performance bond will be in the form of a cashier's check drawn payable to the Confederated Tribes of Siletz Indians. The right to waive technical defects and to reject any or all bids is reserved. A prospectus and sample timber contract are available upon request. Complete information concerning the timber, the condition of sale, and submission of bids can be obtained from the Natural Resources Director, P.O. Box 549, Siletz, Oregon 97380, Telephone 541-444- 8232.

LCL24-4006 SELF-STORAGE PUBLIC SALE

On Tuesday 8/27/24 ending at 12:05pm an auction will be held online at StorageTreasures.com by Safe & Sound Storage 833 NE 3rd Street Newport OR 97365 for unit C6-Ryan Darr

LCL24-3050

Port of Toledo (Owner) is requesting Bids for the construction of the following project: Port of Toledo Sewer Connection Expansion Project - Bids for the construction of the Project will be received at Port of Toledo located at 496 NE Hwy 20, Unit 1, Toledo, OR 97391 until September 6, 2024, at 2:00 PM local time. Bids may also be mailed to the following address: Debbie Scacco, Port Manager Port of Toledo, 496 NE Hwy 20, Unit 1, PO BOX 428, Toledo, OR, 97391, USA. The envelope shall plainly identify (1) the Project name, (2) the Bidder name, and (3) the Bidders contractor's license number. To ensure your bid is accepted in its entirety, please combine all documents into a single pdf file attached to your email. Bidders shall be responsible for calling the Port of Toledo at (541) 336-5207 before the proposal deadline to confirm the bid was received. Scanned documents attached to the email shall include the Bid Form (C-410) and all forms identified in Article 2.01 of the bid Form. A scanned copy of the fully executed bid bond is acceptable for bid submission. Bids and all associated documents must be received by the Port of Toledo by 2 PM. At that time the Bids received will be publicly opened and read. The Port of Toledo is requesting bids for a sanitary sewer and washdown system as follows: The project consists of three pump stations and a pressure sewer force main connecting to the city sewer on Business Highway 20 and a concrete washdown pad with pump station and treatment. Schedule 1 Part A - Will include PS-03 a OneLift pump station at the industrial park, gravity sewer and connection to the city sewer. Part B - Two small, packaged pump stations PS-01 & 02 will pump to the main pump station PS-03 at the industrial park on the west side of Yaquina Bay Road. Schedule 2 - A 45,000 SF concrete pad will be installed south of the main boathouse building. Boats in dry dock for hull refurbishing will be located on the pad. Debris from the boat hull work will be swept and removed and the pad rinsed and washdown water pumped to a treatment tank using biochar for metals reduction. Treated water will flow by gravity to PS-02. Flow limits are an integral part of this design. Once the pad is cleaned and washdown water removed a separate drainage system will be opened for stormwater runoff. Schedule 1 - Sewer System - Part A - Industrial Park and connection to city sewer - Part B - Boatyard sewer system Schedule 2 - 45,000 SF concrete washdown pad and water treatment. Obtaining the Bidding Documents - Information and Bidding Documents for the Project can be found at the following designated website: https://www.civilwest.com/bidding. Bidding Documents may be viewed at no cost from the designated website. Please refer to eBid Project #9251988. Documents may be downloaded for $20.00. Prospective Bidders are addenda, if any, obtained from sources other than the designated website. For assistance with the bidding website, please contact QuestCDN at 952-233-1632 or info@questcdn.com. The Issuing Office for the Bidding Documents is: Civil West Engineering Services, Inc., 409 SW 10th Street, Newport, OR 97365, Ph: (541) 264-7040. Prospective Bidders may obtain or examine the Bidding Documents at the Issuing Office by appointment only on Monday through Friday between the hours of 8am-5pm and may obtain copies of the Bidding Documents from the Issuing Office as described below. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the designated website or Issuing Office. Optional printed copies of the Bidding Documents may be obtained from the Issuing Office by paying a nonrefundable price of $140.00 for each set. Please make checks for Bidding Documents payable to Civil West Engineering Services and send to 486 E Street, Coos Bay, OR 97420. Questions regarding this solicitation can be addressed to: Chris Janigo, PE, Project Manager Civil West Engineering Services, Inc. cjanigo@civilwest.net | 541- 982-4137. Pre-bid Conference - A non-mandatory pre-bid conference for the Project will be held on 8-21-2024 at 10:00 a.m. at the Port of Toledo, Oregon, Shipyard Office 1000 S.W. Altree Lane, Toledo, OR 97391. Attendance at the pre- bid conference is not required but is recommended. Instructions to Bidders. For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents. The Port of Toledo encourages disadvantaged, minority, and women-owned consultant firms to respond. This Advertisement is issued by: Owner: Port of Toledo By: Debbie Scacco Title: Port Manager, Date: 8-7- 2024

LCL24-3049 PUBLIC LIEN SALE: U-STORE SELF STORAGE

Auction to be held online at storageauctions.com Auction will run from: 8/13/24 10am & ends 8/23/24 10am, 105 NE 73rd St Newport, OR 97365 Jennifer Ann Plaggmier, 301; Lynda Pruefit, 247,306 GOODS OF EVERY DESCRIPTION SOLD BY STORAGE LOT. CASH & CREDIT CARD ONLY

LCL24-3047 NOTICE OF SHERIFF'S SALE

#24-0633 On September 17, 2024, at the hour of 10:00 a.m., at the Lincoln County Courthouse, 225 W Olive St, Room 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 431 NE Alder St, Yachats, Oregon 97498. The court case number is 23CV39889, U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST, plaintiff(s) vs. KATRINA MIRIAH PETERSON AKA KATRINA M. PETERSON AKA KATRINA PETERSON; THE UNKNOWN HEIRS AND DEVISEES OF MICHAEL TERRY LAIWA AKA MICHAEL T. LAIWA AKA MICHAEL a deceased individual; SANDRA B. FELLER, as claiming successor of DONALD BRUCKSTEIN; WILLIAM BISHOPRICK, an individual; WILLIAM BISHOPRICK AND DINA J. CARTER as CO-TRUSTEES OF THE WILLIAM BISHOPRICK LIVING TRUST DATED MAY 9, 2023; THE INN AT OTTER CREST; and ALL OTHER UNKNOWN PARTIES CLAIMING ANY RIGHT, TITLE, LIEN OR INTEREST IN THE REAL PROPERTY COMMONLY KNOWN AS 301 OTTER CREST LOOP #128-129, OTTER ROCK, OREGON 97369, Defendants. CASE NO.: 24CV13346 SUMMONS FOR PUBLICATION To: ALL UNKNOWN HEIRS AND DEVISEES OF DONALD BRUCKSTEIN, a deceased individual; SANDRA B. FELLER, as claiming successor of DONALD BRUCKSTEIN TO THE DEFENDANT/RESPONDENT(S) ABOVE NAMED: You are hereby directed and required to appear in, and defend against, this legal action within 30 days after the first date of publication of summons, which is the 7th day of August, 2024, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff WATERFALL VICTORIA GRANTOR TRUST II SERIES G, and serve a copy of your answer upon the undersigned attorneys for plaintiff, ZBS LAW, LLP, at their office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. This is a Complaint for Suit for Partition of Real Property and Reformation of Legal Description; Declaratory Action. You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 in the Portland metropolitan area. If you are a veteran of the armed forces, assistance may be available from a county veterans' service officer or community action agency. Contact information for a local county veterans service officer and community action agency may be obtained by calling a 2- 1-1 information service. DATED: July 25, 2024 ZBS LAW, LLP By: /s/ Dirk Schouten Dirk Schouten, OSB# 115153 Amber L. Labrecque, OBS No. 094593 dschouten@zbslaw.com alabrecque@zbslaw.com Attorneys for Plaintiff

LCL24-3042 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

Probate Dept. Case No. 24PB06035 NOTICE TO INTERESTED PERSONS In the Matter of the Estate of EDWARD CARLOS ECHEVARRIA, Deceased. NOTICE IS HEREBY GIVEN that Michele Wayman has been appointed as the personal representative of the above estate. All persons having claims WIDE HOME LOANS INC. , Beneficiary of the security Instrument, it successors and assigns dated as of November 11, 2005 and recorded on November 22, 2005 as Instrument No. 200518774 and the beneficial interest was assigned to The Bank of New York Mellon as Trustee for CWABS, Inc. Asset-Backed Certificates, Series 2005-17 and recorded September 1, 2023 as Instrument Number 2023-06105 of official records in the Office of the Recorder of Lincoln County, Oregon to-wit: APN: R302065 LOT 15, BLOCK 3 EAGLE POINT, IN THE CITY OF LINCOLN CITY COUNTY OF LINCOLN AND STATE OF OREGON. Commonly known as: 303 SE NEPTUNE AVE, LINCOLN CITY, OR 97367-2929 Both the Beneficiary, The Bank of New York Mellon as Trustee for CWABS Inc. Asset-Backed Certificates, Series 2005-17, and the Trustee, Nathan F. Smith, Esq. OSB #120112, have elected to sell the said real property to satisfy the obligations secured by said Trust Deed and notice has been recorded pursuant to Section 86.752(3) of Oregon Revised Statutes. The default for which the foreclosure is made is the Grantor's failure to pay: Failed to pay payments which became due Monthly Payment(s): 12 Monthly Payment(s) from 02/01/2022 to 01/30/2023 at $797.16 7 Monthly Payment(s) from 02/01/2023 to 08/31/2023 at $833.77 10 Monthly Payment(s) from 09/01/2023 to 06/30/2024 at $925.68 By this reason of said default the Beneficiary has declared all obligations secured by said Trust Deed immediately due and payable, said sums being the following, to-wit: The sum of $74,122.83 together with interest thereon at the rate of 4.75000% per annum from January 1, 2022 until paid; plus all accrued late charges thereon; and all Trustee's fees, foreclosure costs and any sums advanced by the Beneficiary pursuant to the terms of said Trust Deed. Wherefore, notice is hereby given that, the undersigned Trustee will on November 13, 2024 at the hour of 10:00 AM, Standard of Time, as established by Section 187.110, Oregon Revised Statues, at the south entrance of the Lincoln County Courthouse, 225 W Olive St, Newport, OR 97365 County of Lincoln, sell at public auction to the highest bidder for cash the interest in the said described real property which the Grantor had or had power to convey at the time of the execution by him of the said Trust Deed, together with any interest which the Grantor or his successors in interest acquired after the execution of said Trust Deed, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the Trustee. Notice is further given that any person named in Section 86.778 of Oregon Revised Statutes has the right to have the foreclosure proceeding dismissed and the Trust Deed reinstated by payment to the Beneficiary of the entire amount then due (other than such portion of said principal as would not then be due had no default occurred), together with the costs, Trustee's or attorney's fees and curing any other default complained of in the Notice of Default by tendering the performance required under

LCL24-3008 TRUSTEE'S NOTICE OF SALE TS No.: 122325-OR Loan No.: ******7545

Reference is made to that certain trust deed (the "Deed of Trust") executed by EUGENE CORLISS, AND RUTH A CORLISS, HUSBAND AND WIFE AS JOINT TENANTS, as Grantor, to FIDELITY NATIONAL TITLE INSURANCE CO, as Trustee, in favor of BANK OF AMERICA, N.A., as Beneficiary, dated 9/23/2010, recorded 10/8/2010,

Derrick Tokos

From: DLCD Plan Amendments <plan.amendments@dlcd.oregon.gov>
Sent: Thursday, July 18, 2024 7:21 PM
To: Derrick Tokos
Subject: Confirmation of PAPA Online submittal to DLCD

[WARNING] This message comes from an external organization. Be careful of embedded links.

> You don't often get email from plan.amendments@dlcd.oregon.gov. Learn why this is important

Newport

Your notice of a proposed change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.
Local File #: 1-CP-24/1-Z_24
DLCD File #: 002-24
Proposal Received: 7/18/2024
First Evidentiary Hearing: 8/26/2024
Final Hearing Date: 9/16/2024
Submitted by: dtokos

If you have any questions about this notice, please reply or send an email to plan.amendments@dlcd.oregon.gov.

City of Newport

Community Development Department

Memorandum

To: Planning Commission

From: Derrick Tokos, Community Development Director

Date: August 23, 2024

Re: Public Hearing on an Updated Draft of Ordinance No. 2222

Attached to this memo is an updated version of draft Ordinance No. 2222, with new language addressing the adjustment section of the Governor's Housing Bill (SB 1537). The redlined changes are highlighted in yellow, with the exception of new Chapter 14.51. Staff explanations for each change are included in the draft ordinance. The Planning Commission and City Council reviewed these materials at work sessions on June 10, 2024 and July 15, 2024, respectively. The SB 1537 adjustment process will become effective on January 1, 2025, and it is important that the City have implementing language in place by that date so that there is a clear and understandable process for applicants to follow.

As a bit of background, Ordinance No. 2222 was put together to implement the City's recently adopted Housing Production Strategy. The intent behind it is to provide greater flexibility to housing developers struggling to meet certain dimensional land use standards, building height limitations, and parking requirements. The revisions also allow transitional housing as a community service use in commercial and industrial zoned areas. The amendments were developed with Planning Commission input at work sessions on December 11, 2023 and January 8, 2024, and the Commission recommended their adoption following a public hearing on February 26, 2024.

The Newport City Council held a work session on March 4, 2024, at which they asked staff to clarify some of the proposed changes. A public hearing on a further revised version of the amendments (i.e. Ordinance No. 2222) was held on March 18, 2024. The Governor's Housing Bill, SB1537, was approved by the Oregon Legislature on March 4, 2024 and signed into law on April 4, 2024. The City Council, concerned about the interplay and potential compounding effect of the new law as it relates to the proposed amendments, elected to table Ordinance No. 2222. The City then hired the services of the Local Government Law Group to provide legal guidance on how to best implement SB 1537 given the various incentives and regulatory changes it has been developing to promote housing construction. A memo from the Local Government Law Group, dated May 22, 2024 (attached), responds to a series of SB 1537 related questions. Taking their feedback, staff made additional revisions to Ordinance No. 2222 that create a process and criteria for evaluating SB 1537 adjustment applications and clarify the relationship between those adjustments and City initiated housing regulatory changes and financial incentive programs.

Provisions in the Governor's Housing Bill related to limited land divisions, which is a different section from adjustments, will be addressed in a separate package of legislative amendments.

This is a legislative action whereby the City Council, after considering a recommendation by the Newport Planning Commission, must determine that the changes to the Newport Municipal Code (NMC) are necessary and further the general welfare of the community (NMC 14.36.010).

The Department of Land Conservation & Development was provided notice of the proposed legislative amendment on July 18, 2024. Notice of the Planning Commission hearing was published in the Lincoln County Leader on August 14, 20-24 (enclosed).

The Planning Commission should review the proposed amendments and make a recommendation to the City Council as to whether or not they are necessary and further the general welfare of the community (ref: NMC 14.36.010). This would be done by motion and vote of the Commission members present. In making a motion the Commission should specifically reference the policy options or any other revisions they wish to see incorporated as part of their recommendation. If the Commission is not prepared to make a recommendation, or desires additional information or code revisions before it does so, then it may continue the hearing to a date certain.

Attachments:
Draft Ordinance No. 2222
SB 1537 – City Code Amendment Comparison
5.22.24 Memo from Attorney Carrie Connelly, Local Government Law Group;
6.10.24 Planning Commission Minutes
SB 1537 (enrolled)
Public Hearing Notice

CITY OF NEWPORT

ORDINANCE NO. 2222

AN ORDINANCE AMENDING CHAPTERS 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 AND 14.52, AND A NEW CHAPTER 14.51, OF TITLE XIV OF THE NEWPORT MUNICIPAL CODE TO PROMOTE THE CONSTRUCTION OF NEEDED HOUSING

(Newport File No. 3-Z-23)

Findings:

1. On May 15, 2023 the Newport City Council approved Resolution No. 3978, adopting the 2023 Newport Housing Production Strategy (HPS). The strategy sets out 13 action items the City has committed to pursuing in order to promote the construction and/or availability of needed housing. One of the action items, Item "C", calls for the City to evaluate its development codes to reduce barriers to housing development.

2. At its June 12, 2023 work session, the Planning Commission considered topic areas outlined in the Housing Production Strategy (HPS) as potential barriers to the construction of needed housing. Following that discussion, the Commission expressed its interest in seeing a draft set of code amendments that respond to those concerns. Draft amendments were developed with the Commission's input at work sessions on December 11, 2023 and January 8, 2024.

3. During its regular meeting on January 8, 2024, the Planning Commission chose to initiate the process of amending Newport Zoning Ordinance, codified as Title XIV of the Newport Municipal Code consistent with the process set out in Newport Municipal Code (NMC) Chapter 14.36.

4. The Newport Planning Commission held a public hearing on February 26, 2024 to consider testimony and comment on the draft amendments and, at the conclusion of the hearing, passed a motion recommending the City Council adopt the changes. In making its recommendation, the Commission concluded that the amendments satisfy the City's requirement that legislative amendments be necessary and further the general welfare of the community because they ensure that the Municipal Code provisions that the City enforces align with new state law. The specific amendments forwarded by the Commission for the City Council's consideration are summarized as follows:

    a. NMC 14.01.020, Definitions, is being revised to clarify the definition of "affordable housing." The new definition aligns with the definition of the same term in NMC Chapter 3.20, making it clear that a housing development with at least half of the units being available to own or rent to families at or below 60 percent of median income qualify as "affordable."

b. NMC 14.03.060 and 070 are being amended to allow transitional housing as a "community service" use when operated by a public or non-profit entity as defined in ORS 197.746. Tenancy is limited to a period of time that is not to exceed 30 days. This amendment adds an additional housing option in commercial and industrial zoned areas and addresses a code barrier issue identified in the HPS.

c. NMC 14.06.060, which sets out the requirements for constructing recreational vehicle parks, has been substantially re-written for clarity and ease of use. Relevant provisions of OAR Chapter 918, Division 650, which govern the construction of recreational vehicle parks, have been incorporated into the code. Some of the changes will help reduce construction costs and others address services needed to support long term occupancy, both of which were focus areas in the HPS. The amendments allow gravel roads, limit areas where perimeter fencing/screening is required, and reduce the size requirements for RV spaces. A prohibition on outdoor storage has also been removed. Requirements that spaces be fully served, and that washer/dryer facilities be provided, are being retained recognizing that tenants could be at the parks for extended periods of time.

d. NMC 14.11.020, relating to required outdoor recreational areas, has been updated to note that the square footage requirements can be combined into a single, usable space. This is consistent with how the provision has been applied. The requirement that the recreational areas be enclosed is also being removed, as it is not value additive. This will also save on costs.

e. NMC 14.11.030 clarifies the City's garage setback requirements. The new language establishes that, within rights-of-way, the boundary of the access street from which the setback is measured is the curb line or, where curbs are absent, the edge of the asphalt or other boundary of the travel surface. This will provide additional flexibility in siting dwellings.

f. NMC 14.13.020 sets out the height limitations for buildings within the City. The existing maximum building height in the City's medium and high density multi-family zone districts is 35-feet. That limit is being increased to 40-feet for multi-family buildings that have a 4:12 or steeper roof pitch. This addresses a concern raised in the HPS that multi-family projects cannot achieve three full floors of units under the existing height limits.

g. NMC 14.14.030 stipulates the amount of off-street parking required for new development projects. It is being revised to include a parking ratio for Single Room Occupancy (SRO) uses, which the City added as a new development type to comply with mandates from the 2023 Oregon legislative session. The parking ratio will also apply to boarding houses, a use type that has been in the City's land use code for a number of years. Boarding houses are a short-term tenancy equivalent of SROs.

h. NMC 14.14.030 is further amended to include new on-street parking credit language. The HPS points out that a requirement that off-street parking be constructed with new residential development contributes to higher housing costs. Due to terrain and existing development patterns, Newport has a number of narrow roadways that cannot safely accommodate on-street parking; therefore, this amendment only allows developers relief from off-street parking in circumstances where there is capacity to accommodate parking demand on both sides of a public street.

i. NMC 14.33.020 includes language that describes the types of standards that the City allows to be modified through an adjustment or variance procedure. It is being amended to remove the prohibition on adjustments or variances that would increase densities in residential zones. This will give applicants the opportunity to pursue minimum lot size adjustments that would allow land divisions resulting in lots or parcels that fall short of minimum lot sizes. This will result in additional residential development opportunities, particularly in infill areas.

j. NMC 14.33.030 identifies who at the City has the authority to approve adjustments and variances. It is being amended to add a new process that allows the Community Development Director to approve a deviation less than or equal to 10% of a numerical standard if it will allow more dwelling units than would otherwise be achievable through strict adherence to the numerical standard. The granting of such a City offered deviation, as opposed to a SB 1537 adjustment, is to be a ministerial action, avoiding the time and uncertainty associated with a land use decision making process.

k. NMC 14.52.030 is a section of the City's land use procedural requirements that identifies who the approval authorities are for various application types. It is being amended to clarify that it is the Community Development Director, or designee, that is responsible for carrying out ministerial actions. Common types of ministerial actions are also listed.

5. The City Council held a work session on March 4, 2024 regarding the question of the proposed amendments and, after due deliberation, requested changes to clarify the scope of certain amendments, as follows:

a. NMC 14.11.030 has been further revised to note that the garage must adhere to the standard building setbacks from property lines listed in NMC 14.13.020, Table A. This is how the code has been interpreted, and the change makes that interpretation explicitly clear.

b. NMC 14.33.030 has been further revised to note that the 10% ministerial adjustment to building height does not apply to building height limits at or above 40-feet in height. The amendment to NMC 14.13.020 allows multi-family developments to be increased to 40-feet in height to ensure projects can construct three floors of housing. Buildings above forty feet in height may require public review available

through land use decision making processes given the potential impact to fire services and solar access on nearby properties.

6. Statewide Planning Goal 10, and its implementing statutes and administrative rules, are designed to ensure that there is (a) an opportunity within a city for the provision of adequate numbers of needed housing units, (b) the efficient use of buildable land within urban growth boundaries, and (c) to provide greater certainty in the development process so as to reduce housing costs. The amendments, summarized above, respond to the last point by allowing modest adjustments to land use requirements in a ministerial manner, eliminating the need for discretionary land use decision-making processes where there is uncertainty as to whether or not an applicant will be successful. Changes like the on-street parking credit might also help reduce costs. Accordingly, the proposed amendments are consistent with these stated objectives of Statewide Planning Goal 10.

7. The City Council held a public hearing on March 18, 2024 regarding the question of the proposed amendments, and, after considering the recommendation of the Planning Commission and evidence and argument in the record, elected to table the ordinance so that additional amendments could be made to implement housing adjustment provisions contained in SB 1537, approved by the legislature on March 4, 2024 and signed by the governor on April 4, 2024.~~adopted the ordinance, concluding that it is necessary and furthers the general welfare of the community.~~

8. Work sessions were held by the Newport Planning Commission on June 10, 2024, and City Council on June 17, 2024, to consider the following addition changes to implement SB1537, as codified in ORS Chapter 197A:

    a. NMC 3.25.030, Program Requirements, specifies that housing projects utilizing adjustments authorized by SB 1537 will be not be eligible to receive a multiple use property exemption.

    b. NMC 3.30.030, Eligibility Requirements, specifies that housing projects utilizing adjustments authorized by SB 1537 will be not be eligible to receive a multiple use property exemption.

    c. NMC 14.13.020(Table "A"), Density Limitations, is being amended to note that the additional 5-feet of height allowance for multi-family construction is an alternative to, and cannot be paired with, adjustments authorized by SB 1537.

    d. NMC 14.14.030, Number of Parking Spaces Required, is being amended to note that the new on-street parking credit standards are an alternative to, and cannot be paired with, adjustments authorized by SB 1537.

    e. NMC 14.33.010, Purpose, is being amended to make a distinction between established City adjustment and variance processes and the standards and

procedures the City will be putting in place for adjustment authorized by SB 1537, as codified in ORS Chapter 197A.

f. NMC 14.44.060, Streets, Accessways, and Trails, is being amended to note that the yield and shared street standards available in low volume residential areas may not be used if adjustments are being sought to off-street parking requirements as authorized by SB 1537, and implemented in new Chapter 14.51.

g. NMC Chapter 14.51, SB 1537 Housing Adjustments, is a new Chapter that is being added to the Title XIV of the Newport Municipal Code that includes application requirements, criteria, and procedural provisions that the City will use to review adjustment applications authorized by SB 1537.

9. The Newport Planning Commission held a public hearing on _____ to consider testimony and comment on this updated draft of Ordinance No. 2222 and, at the conclusion of the hearing, passed a motion recommending the City Council adopt the changes. In making its recommendation, the Commission concluded that the amendments satisfy the City's requirement that legislative amendments be necessary and further the general welfare of the community because they ensure that the Municipal Code provisions that the City enforces align with new state law.

10. The City Council held a public hearing on _____ regarding the question of the proposed amendments, and, after considering the recommendation of the Planning Commission and evidence and argument in the record, adopted the ordinance, concluding that it is necessary and furthers the general welfare of the community.

~~8~~11. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Findings. The findings set forth above are hereby adopted in support of the amendments to Chapters 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 and 14.52, and new Chapter 14.51, of Title XIV of the Newport Municipal Code adopted by Section 2 of this Ordinance.

Section 2. Municipal Code Amendment. Chapters 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 and 14.52, and new Chapter 14.51, of Title XIV of the Newport Municipal Code are hereby amended as set forth in Exhibit "A".

Section 3. Effective Date. This ordinance shall take effect 30 days after adoption.

Date adopted and read by title only: _____

Signed by the Mayor on _____, 2024.

_____
Jan Kaplan, Mayor

ATTEST:

_____
Erik Glover, Asst. City Manager/City Recorder

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Highlighted revisions were added in response to Council feedback at the 3/4/24 work session. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 3.25 MULTIPLE UNIT HOUSING PROPERTY TAX EXEMPTION (MUPTE)

***

3.25.030 Program Requirements

In order to be considered for an exemption under this Chapter, an applicant must establish that the project meets the following program requirements:

***

B. Project eligibility.

1. Projects must be located within the taxing jurisdiction of the City of Newport and:

   i. Within ¼ mile of fixed route transit service.

   ii. Within an R-3 Zone or an R-4 Zone or a C-1 or C-3 Zone south of NE 4th St.

   iii. Entirely outside of known hazard areas, including Active Erosion Hazard Zones, Active Landslide Hazard Zones, High Risk Bluff Hazard Zones, High Risk Dune Hazard Zones, Other Landslide Hazard Zones, and the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013.

2. The project will be housing which is completed on or before the date specified in ORS 307.637 (Deadlines for actions required for exemption).

3. The project is not utilizing adjustments authorized under ORS Chapter 197A, and implemented in NMC Chapter 14.51.

Staff: This addresses concerns raised by the Planning Commission and City Council that the City should not be subsidizing housing projects that are working around land use standards that have been carefully crafted with community input.

CHAPTER 3.30 NON-PROFIT CORPORATION LOW-INCOME HOUSING TAX EXEMPTION

***

3.30.030 Eligibility Requirements

A. Properties that satisfy the following requirements are eligible for tax exemption:

1. The property is owned or being purchased by a corporation that qualifies as an "eligible organization," as described in 3.30.020 Subsection (2) of this Chapter, that is exempt from income taxation under 501(a) of the Internal Revenue Code.

2. The property is:

   i. Occupied by low-income persons; or

   ii. Held for the purpose of developing low-income housing for a period of not more than three years. If the corporation requires additional time to develop the property for low-income housing and still seeks an exemption under this chapter, the corporation shall seek approval from the Community Development Director for an extension of time in the manner described in 3.30.060.

3. The property or portion of the property receiving the exemption is actually and exclusively used in a manner authorized by Section 501(c)(3) or (4) of the Internal Revenue Code.

4. The corporation:

i. Is not presently debarred, suspended, proposed for debarment, or declared ineligible by any Federal or State agency;

ii. Has not, within the three-year period preceding the application, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; or been convicted of any Federal or State statutes of embezzlement, theft, forgery, bribery, falsification, destruction of records, making false statements, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty; and

iii. Is not presently indicted for or otherwise criminally or civilly charged by a Federal, State, or local government entity with commission of any of the offenses enumerated in Subsection (A)(4)(II) of this Section.

5. The project is not utilizing adjustments authorized under ORS Chapter 197A, and implemented in NMC Chapter 14.51.

Staff: This addresses concerns raised by the Planning Commission and City Council that the City should not be subsidizing housing projects that are working around land use standards that have been carefully crafted with community input.

CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS**

***

14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

Affordable Housing. Means residential property in which:

A. Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or

B. ~~The average of all~~At least half of the units on the property ~~is~~ are made available to own or rent to families with incomes of 60 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development.

Affordability under either of the above metrics is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

Staff: This change is being made for clarity, and it aligns with a change the Planning Commission recommended at its November 13, 2023 meeting to the same definition contained in NMC Chapter 3.20, relating to the Affordable Housing Construction Excise Tax.

***

Ministerial Action. A decision that does not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. The review of a ministerial action requires no notice to any party other than the applicant and agencies that the Community Development Director, or designee, determines may be affected by the decision. A ministerial action does not result in a land use decision, as defined in ORS 197.015(10).

Staff: No change. Definition for ministerial action is listed because it relates to proposed changes to NMC Chapter 14.52.

CHAPTER 14.03 ZONING DISTRICTS

***

14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

***

E. Institutional and Civic Use Categories

***

3. Community Services

   a. Characteristics. Public, non-profit or charitable organizations that provide local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. Services are ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join. Uses may include shelter or housing for periods of less than one month when operated by a public or non-profit agency, including transitional housing pursuant to ORS 197.746, or emergency shelters pursuant to ORS 197.782. Uses may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

   b. Examples. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, police stations, religious institutions/places of worship, fire and ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, soup kitchens, and surplus food distribution centers.

   c. Exceptions.

      i. Private lodges, clubs, and private commercial athletic or health clubs are classified as Entertainment and Recreation. Commercial museums (such as a wax museum) are in Retail Sales and Service.

         Staff: This change provides for transitional housing as a "community service" use when operated by a public or non-profit entity as defined in ORS 197.746. Tenancy is

as currently listed, which is for a period of time that is less than one month. Attached is a copy of the statute. This amendment adds an additional housing option in commercial and industrial zoned areas and addresses a code barrier issue listed on page 34 of the Housing Production Strategy (HPS).

***

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.
"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2[1]	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P[2]	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	C	X	P	P	P	X
5.	Self-Service Storage [6]	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service [6]	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities [3]	P	P	P	P	P	P
13.	Utility Corridors	C	C	C	C	C	C
14.	Community Service [7,8]	P	C	P	P	C	X
15.	Family Child Care Home	P	P	P	X	X	X
16.	Child Care Center	P	P	P	P	P	X
17.	Educational Institutions						

	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
18.	Hospitals	C	C	C	X	X	X
19.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
20.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
21.	Communication Facilities [4]	P	X	P	P	P	P
22.	Residences on Floors Other than Street Grade	P	P	P	X	X	X
23.	Affordable Housing [5]	P	P	P	P	X	X
24.	Transportation Facilities	P	P	P	P	P	P

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as set forth in Section 14.30.100.

2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.

4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.

5. Permitted as outlined in Chapter 14.15 or, in the case of hotels/motels, the units may be converted to affordable housing provided they are outside of the Tsunami Hazard Overlay Zone defined in NMC Chapter 14.50.

6. Self-service storage use; salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; and auto and truck salvage and wrecking are prohibited within the South Beach Transportation Overlay Zone, as defined in Section 14.43.020.

7. Subject to the requirements of ORS 197.782. An emergency shelter proposed within a C-2 or I-2 zone district shall be subject to a public hearing before the Newport City Council.

8. Transitional housing as defined in ORS 197.746 must be operated by a public or non-profit entity, with residential tenancy limited to a period of time that is not more than 30 days.

Staff: This is a companion change to the one above, pointing out that transitional housing is allowed, subject to limitations. Reference to "month" changed to not more than 30 days to be more precise (per public comment from Cheryl Connell, dated 2/22/24.

CHAPTER 14.06 MANUFACTURED DWELLINGS, PREFABRICATED STRUCTURES, SMALL HOMES AND RECREATIONAL VEHICLES

14.06.010 Purpose

The purpose of this section is to provide criteria for the placement of manufactured dwellings and recreational vehicles within the City of Newport. It is also the purpose of this section to provide for dwelling units other than site-built structures.

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14.06.060 Recreational Vehicle Parks

Recreational vehicle parks are allowed conditionally in an R-4 or I-2 zone district, and conditionally if publicly owned in the P-1 and P-2 zoning districts (excluding those P-1 properties within the Historic Nye Beach Design Review District), subject to subsections A through D below and in accordance with Section 14.52, Procedural Requirements. Recreational vehicle parks are allowed outright in C-1, C-2, C-3, and I-1 zoning districts (excluding those C-2 properties within the Historic Nye Beach Design Review District), subject to the subsections A through D as follows:

A. A building permit(s) shall be obtained demonstrating that the recreational vehicle park ~~The park~~ complies with the standards contained in ~~state statutes and~~Chapter 918, Division 650 of the Oregon Administrative Rules.

Staff: The existing language is vague. Staff confirmed with Richard Baumann, the Oregon Building Codes Division Recreational Parks and Camps Specialist, that provisions relevant to RV Park construction are all contained in OAR Chapter 918, Division 650. This division of the OARs is adopted by reference in the building codes chapter of the Newport Municipal Code (Chapter 11.05).

B. The developer of the park ~~obtains a permit from the state~~ obtains verification from Lincoln County Environmental Health that the recreational vehicle park satisfies applicable Oregon Health Authority Rules.

Staff: The existing language is no longer needed because review of recreational vehicle park projects for compliance with state laws has been delegated to local governments. The City of Newport, through its building services program, evaluates projects for compliance with construction standards listed in OAR Chapter 918, Division 650. The other local government that is involved is Lincoln County Environmental Health. They are responsible for ensuring the project complies with Oregon Health Authority Rules listed in OAR Chapter 333, Division 31. Those rules are focused on safety and sanitation, as opposed to construction. This provision of the City's Municipal Code is being amended to point out to a prospective park developer that they will need to coordinate with Lincoln County Environmental Health.

C. The developer provides a ~~map~~ plan of the proposed park ~~to the City Building Official~~that contains the following.

1. A cover sheet that includes:

    a. The name of the recreation park and a vicinity map identifying its location;

    b. The name of the owner;

    c. The name of the operator;

    d. The name of the person who prepared or submitted the plans; and

    e. A key identifying the symbols used on the plan.

2. The plot plan (on a separate sheet) that includes:

a. Proposed and existing construction; and

b. A scale drawing of the general layout of the entire recreation park showing property survey monuments in the area of work and distances from park boundaries to public utilities located outside the park (indicated by arrows without reference to scale).

c. For work that involves an addition to, or a remodeling of, an existing recreation park, the plot plan must show the facilities related to the addition and/or the facilities to be remodeled.

d. The following features must be clearly shown and identified on the plot plan:

   i. The footprint of permanent buildings, including dwellings, mobile homes, washrooms, recreation buildings, and similar structures;

   ii. Any fixed facilities that are to be constructed in each space, such as tables, fire pits, or patios;

   iii. Property line boundaries and survey monuments in the area of work;

   iv. The location and designation of each space by number, letter or name; **and**

   v. Plans for combination parks must also show the portions of the park that are dedicated to each activity (e.g. camp ground, organizational camp, mobile home park, picnic park, recreational vehicle park, etc.).

3. Park utility systems must be clearly shown and identified on a separate sheet that contains the following information:

a. Location of space sewer connections, space water connections and service electrical outlets;

b. The location of the public water and wastewater lines from which service is to be obtained, including the location and size of the water meter;

c. The location, type and size of private water and wastewater lateral lines that are to be constructed internal to the park;

d. Street layout and connections to public street(s);

e. Disposal systems, such as septic tanks and drain fields, recreational vehicle dump stations, gray water waste disposal sumps, washdown facilities, sand filters, and sewer connections;

f. Fire protection facilities, such as fire hydrants, fire lines, tanks and reservoirs, hose boxes and apparatus storage structures;

g. The location of trash enclosures and receptacles; and

h. Placement of electrical transformers, electrical lines, gas lines, and Liquid Petroleum Gas (LPG) tank placement within the park.

4. Existing and finished grade topography for portions of the property where the park is to be located, if existing grades exceed five percent.

Staff: The above list replicates plan requirements listed in OAR 918-650-0035. The language has been adjusted for clarity, and it has been streamlined somewhat since this chapter of the Municipal Code applies only to RV parks.

D. The park complies with the following provisions (in case of overlap with a state requirement, the more restrictive of the two requirements shall apply):

1. The space provided for each recreational vehicle shall not be less than ~~600~~ 400 square feet, exclusive of any space used for common areas (such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles, and landscaped areas). The number of recreational vehicles shall be limited to a maximum of 22 per gross acre.

Staff: OAR Chapter 918, Division 650 provides some flexibility on sizing spaces as it covers camps in addition to recreational; vehicle parks. The definition for RV's limits them to a maximum of 400 sq. ft. gross floor area in setup mode. At its 1/8/24 work session, the Planning Commission elected to reduce the

minimum area requirement for a recreational vehicle space to 400 sq. ft. The Commission reviewed the existing density limit, and confirmed that it is reasonable, being roughly equivalent to high density multi-family residential construction in the city (e.g. Wyndhaven Ridge).

2. One-way roadways shall be a minimum of 12-feet in width and two-way ~~Roadways~~ roadways shall not be less than ~~30~~ 20 feet in width. ~~if~~ If parking is permitted on the margin of the roadway, then the parking area must be a minimum of 10-feet in width. ~~or less than 20 feet in width if parking is not permitted on the edge of the roadway, they shall be paved with asphalt, concrete, or similar impervious surface and designed to permit easy access to each recreation vehicle space.~~ Roadways must be designed such that they are capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds, and they may be surfaced with asphalt, concrete, crushed rock, gravel or other similar materials.

   Staff: The above language has been revised to align with the one-way drive isle width limitation set out in NMC 14.46.030(P). As for the overall width of the roadway and parking areas, the code has been amended to comply with the OARs, which are stricter than the City's existing code. At its 1/8/24 work session, the Planning Commission expressed a willingness to allow gravel roads, so that option has been added. Engineering load requirements, draw from Appendix D to the 2019 Oregon Fire Code.

3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide run-off of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an access way to the recreation vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.

4. A recreational vehicle space shall be provided with piped potable water and sewage disposal service. A recreational vehicle staying in the park shall be connected to the water and sewage service provided by the park if the vehicle has equipment needing such service.

5. A recreational vehicle space shall be provided with electrical service.

6. ~~Trash~~ Solid waste, recycling, and compostable receptacles shall adhere to the enclosure and access requirements set forth in NMC 14.11.060(B) and (C), unless an alternative approach is approved, in writing, by the solid waste and recycling service provider. ~~for the disposal of solid waste materials~~ Receptacles ~~shall be provided in convenient locations for the use of guests of the park and located in such number and be of such capacity that there is no uncovered accumulation of trash at any time.~~must have tight-fitting lids, covers or closable tops, and be constructed out of durable, rust-resistant, water tight, rodent-proof and washable material. Receptacles are to be provided at a minimum rate of one 30-gallon container for each four recreational vehicle parking spaces and be located within 300 feet of each recreational vehicle parking space. If the solid waste and recycling service provider indicates, in writing, that larger receptacles and/or tighter spacing is needed, then their recommendation shall be followed.

   Staff: At its 1/8/24 meeting, the Commission asked if the code section could be amended to incorporate the solid waste and enclosure access requirements that the City added to NMC 14.11.060, and that change has been made. The City's discretionary language regarding the placement and sizing of receptacles has also been replaced with specific standards listed in the OARs. Language deferring to the solid waste and recycling provider in terms of the number and size of the required receptacles was added, at the Commission's request, following the 2/26/24 hearing.

7. The total number of off-street parking spaces in the park shall be provided in conformance with Section 14.14.030. Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete, or similar material.

8. The park shall provide toilets, lavatories, and showers for each sex in ~~the following ratios: For each 15 recreational vehicle spaces, or any fraction thereof, one toilet (up to 1/3 of the toilets may be urinals), one lavatory, and one shower for men; and one toilet, one lavatory, and one shower for women~~accordance with Table 14.06.060-A. The toilets and showers shall afford privacy, and the showers shall be provided with private dressing rooms. Facilities for each sex shall be located in

separate buildings, or, if in the same building, shall be separated by a soundproof wall.

Table 14.06.060-A

Parking Spaces	Number of Toilets		Number of Sinks[1]	
	Men's[2]	Women's	Men's	Women's
1-15	1	1	1	1
16-30	1	2	1	2
31 – 60	2	3	2	3
61 - 100[3]	3	4	3	4

1. One additional sink must be provided for each two toilets when more than six toilets are required.

2. Urinals may be acceptable for not more than 1/3 of the required toilets.

3. Recreational parks with more than 100 parking spaces shall provide one additional toilet per sex for each additional 30 spaces or fraction thereof.

Staff: At its 1/8/24 work session, the Planning Commission requested that Table 3-RV be incorporated into the code in lieu of the text explanation. That has been accomplished. The City Comprehensive Plan requires they connect to sewer service if it is within 250-feet of the site. This may be more expensive then vault toilets or privies, but is more sanitary and less likely to create odor issues.

9. The park shall provide one utility building or room containing one clothes washing machine, and one clothes drying machine for each ten recreational vehicle spaces, or any fraction thereof.

10. Building spaces required by Subsection ~~9~~ 8 and ~~10~~ 9 of this section shall be lighted, ~~at all times of the night and day, shall be~~ ventilated, and otherwise designed in accordance with the requirements of the Oregon Structural Specialty Code.~~shall be provided with heating facilities which shall maintain a room temperature of at least 62˚F, shall have floors of waterproof material, shall have sanitary ceilings, floor and wall surfaces, and shall be provided with adequate floor drains to permit easy cleaning.~~

Staff: Per the Commission's request at its 1/8/24 meeting, this section has been amended to cross-reference to the building code.

11. Except for the access roadway~~ into the park~~, ~~the~~ a park that is located within or adjacent to a residentially zoned area shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in height unless modified through ~~either the~~a conditional use permit process as provided in NMC Chapter 14.34 (if a conditional use permit is required for the RV park) or ~~other applicable land use~~an adjustment or variance procedure outlined in NMC Chapter 14.33. Reasons to modify the hedge or fence buffer required by this section may include, but are not limited to, the location of the RV park is such that adequate other screening or buffering is provided to adjacent properties (such as the presence of a grove or stand of trees), the location of the RV park within a larger park or development that does not require screening or has its own screening, or screening is not needed for portions not adjacent to other properties (such as when the RV park fronts a body of water). Any ~~Modifications~~ modifications to the hedge or fence requirement of this subsection ~~shall not act to modify the requirement for a solid wall or~~should factor in any applicable screening and setback requirements ~~fence that may otherwise be required~~ under Section 14.18.020 (Adjacent Yard Buffer) for non-residentially zoned property abutting a residentially zoned property.

Staff: At its 1/8/24 meeting, the Commission asked that the site obscuring hedge or fence requirement be limited to parks located within or adjacent to in residential zoned areas. ~~-~~The language has also been amended to clarify processes for adjusting the screening requirements.

~~12. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest in the park.~~

Staff: At its 1/8/24 meeting, the Commission supported deleting this provision. The City's nuisance code requires that materials stored outside be organized in a neat and tidy manner or that they be screened from view from rights-of-way and adjacent properties.

~~13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.~~

Staff: This is legacy language that was relevant when the State of Oregon handled RV Park permitting. It is being deleted because it is no longer applicable. Adequacy of sanitation services is evaluated at plan review and confirmed through the building inspection process.

12. Each space within a recreational vehicle park shall be provided a minimum of 50 square feet of outdoor area landscaped or improved for recreational purposes as provided in NMC 14.11.020.

Staff: This cross-reference has been added for clarity and to ensure that the requirement is addressed as part of the review (since it is housed in a different part of the code).

CHAPTER 14.11 REQUIRED YARD, SETBACKS, AND SOLID WASTE/RECYCLABLE MATERIALS STORAGE AND ACCESS REQUIREMENTS

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14.11.020 Required Recreation Areas

All multi-family dwellings, hotels, motels, manufactured dwelling parks, trailer parks, and recreational vehicle parks shall provide for each unit/space a minimum of 50 square feet of ~~enclosed~~ outdoor area landscaped or improved for recreation purposes exclusive of required yards such as a patio, deck, or terrace. This landscaping requirement can be combined into a single active or passive recreational area accessible to all occupants of the property.

Staff: This change eliminates the requirement that the area be enclosed, as that typically requires fencing which is expensive. Further, requiring the areas be enclosed is not value additive. The City has interpreted the existing language as allowing the recreational space to be combined for multi-family projects, and the added language memorializes that interpretation.

14.11.030 Garage Setback

The entrance to a garage or carport shall adhere to the required setbacks listed in NMC 14.13.020, Table A, and be set back at least 20 feet from the access street for all residential structures. Within rights-of-way, the boundary of the access street is the curb line or, where curbs are absent, the edge of the asphalt or other boundary of the travel surface.

Staff: This change aligns with how the standard is applied, and provides flexibility for siting housing on small properties. The drawback is that driveways can be rendered substandard if the right-of-way is fully developed in the future. Changed "Within underdeveloped rights-of-way" to "Within rights-of-way" at the request of the Commission during its 12/11/23 work session. At a 3/4/24 work session, the Council asked for clarity on how the garage setback works with the building setbacks. Both apply, and that clarification has been made to the code.

CHAPTER 14.13 DENSITY LIMITATIONS

14.13.010 Density Limitations

A residential building structure or portion thereof hereafter erected shall not exceed the maximum living unit density listed in Table A, as hereinafter set forth, for the zone indicated, except in the case of a lot having less than is required and of record prior to December 5, 1966, which may be occupied by a single-family dwelling unit, providing other requirements of this ordinance are complied with, except to the extent that a higher density may specifically be allowed by any term or provision of this Ordinance.

(BY THIS REFERENCE, THERE IS INCLUDED HEREIN AND MADE A PART HEREOF, A TABLE OF DENSITY AND OTHER REQUIREMENTS, DESIGNATED "TABLE A".)

NMC 14.13.020

Table "A"

Zone District	Min. Lot Area (sf)	Min. Width	Required Setbacks [3, 7]			Lot Coverage (%)	Max. Building Height	Density (Land Area Required Per
			Front/2nd Front [1]	Side	Rear			

								Unit (sf))
R-1	7,500 sf	65-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft & 8-ft	15-ft	54 %	30-ft	SFD - 7,500 sf [2] Duplex - 3,750 sf [2]
R-2	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	57%	30-ft	SFD – 5,000 sf [2] Duplex - 2,500 sf [2] Townhouse - 2,500 sf [3]
R-3	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	60%	35-ft or 40-ft [9]	1,250 sf [3]
R-4 [4]	5,000 sf [3]	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	64%	35-ft or 40-ft [9]	1,250 sf [3, 5]
C-1	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
C-2 [4]	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
C-3	5,000 sf	0	0 or 15-ft from US 101 [8]	0	0	85-90% [6]	50-ft [6]	n/a
I-1	5,000 sf	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
I-2	20,000 sf	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
I-3	5 acres	0	15-ft from US 101	0	0	85-90% [6]	50-ft [6]	n/a
W-1	0	0	0	0	0	85-90% [6]	40-ft [6]	n/a
W-2	0	0	0	0	0	85-90% [6]	35-ft [6]	n/a
MU-1 to MU-10 Mgmt. Units	0	0	0	0	0	100%	40-ft [6]	n/a
P-1	0	0	0	0	0	100%	50-ft	n/a
P-2	0	0	0	0	0	100%	35-ft	n/a
P-3	0	0	0	0	0	100%	30-ft	n/a

[1] Front and second front yards shall equal a combined total of 30-feet. Garages and carports shall be setback at least 20-feet from the access street for all residential structures.

[2] Density limitations apply where there is construction of more than one single-family dwelling (SFD) or duplex on a lot or parcel.

[3] Density limitations for townhouses and cottage clusters is the minimum area required per townhouse or cottage cluster unit; whereas, minimum lot area, minimum lot width, and setbacks, apply to the perimeter of the lot, parcel, or tract dedicated to the townhouse or cottage cluster project.

[4] Special Zoning Standards apply to R-4 and C-2 zoned property within the Historic Nye Beach design Review District as outlined in NMC 14.30.100.

[5] Density of hotels, motels, and non-residential units shall be one unit for every 750 sf of land area.

[6] Height limitations, setbacks, and lot coverage requirements for property adjacent to residential zones are subject to the height and yard buffer requirements of NMC Section 14.18.

[7] Front and 2nd front setbacks for a townhouse project or cottage cluster project shall be 10-feet except that garages and carports shall be setback a distance of 20-feet.

[8] The 15-foot setback from US 101 applies only to land situated south of the Yaquina Bay Bridge.

[9.] The 40-ft height allowance is limited to multi-family uses with pitched roof construction, where the predominate roof pitch is 4:12 or steeper, and where no adjustments are being sought under the provisions of NMC Chapter 14.51.

Staff: This amendment addresses the concern outlined in the HPS that multi-family construction with pitched roofs cannot achieve three full floors of units with a 35-ft maximum building height. Wyndhaven Ridge Phase II is an example, where a 10% adjustment was needed in order for three-story apartment buildings to be constructed (File No. 1-ADJ-22). The roof pitch in that case was 5:12. Setting a roof pitch minimum is reasonable, since one of the purposes behind a building height limit is to ensure neighboring properties have reasonable solar access. Pitched roof construction has less of an impact in that regard as opposed to a building with a flat roof. Further, buildings with a lower roof pitch, or none at all, should be able to achieve three floors of dwelling units with a 35-foot building height limit. Revised roof pitch to 4:12 per the Commission's request at its 12/11/23 work session.

The City's intent is to offer the 40-foot building height allowance for multi-family projects and other changes outlined in this ordinance as a ministerial alternative to the adjustment options outlined in SB 1537, and implementing with a new NMC Chapter 14.51. Additional language, added to Footnote 9, makes it clear that the two are not additive, with applicant's being able to pursue one or the other but not both.

CHAPTER 14.14 PARKING AND LOADING REQUIREMENTS

14.14.010 Purpose

The purpose of this section is to establish off-street parking and loading requirements, access standards, development standards for off-street parking lots, and to formulate special parking areas for specific areas of the City of Newport. It is also the purpose of this section to implement the Comprehensive Plan, enhance property values, and preserve the health, safety, and welfare of citizens of the City of Newport.

***

14.14.030 Number of Parking Spaces Required

A. Off-street parking shall be provided and maintained as set forth in this section. Such off-street parking spaces shall be provided prior to issuance of a final building inspection, certificate of occupancy for a building, or occupancy, whichever occurs first. For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of Section 14.14.050, Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be based on the increase of the new use. Any use requiring any fraction of a space shall provide the entire space. In the case of mixed uses such as a restaurant or gift shop in a hotel, the total requirement shall be the sum of the requirements for the uses computed separately. Required parking shall be available for the parking of operable automobiles of residents, customers, or employees, and shall not be used for the storage of vehicles or materials or for the sale of merchandise. A site plan, drawn to scale, shall accompany a request for a land use or building permit. Such plan shall demonstrate how the parking requirements required by this section are met.

Parking shall be required at the following rate. All calculations shall be based on gross floor area unless otherwise stated.

1.	General Office	1 space/600 sf
2.	Post Office	1 space/250 sf
3.	General Retail (e.g. shopping centers, apparel stores, discount stores, grocery stores, video arcade, etc.)	1 space/300 sf
4.	Bulk Retail (e.g. hardware, garden center, car	1 space/600 sf

	sales, tire stores, wholesale market, furniture stores, etc.)	
5.	Building Materials and Lumber Store	1 space/1,000 sf
6.	Nursery – Wholesale Building	1 space/2,000 sf 1 space/1,000 sf
7.	Eating and Drinking Establishments	1 space/150 sf
8.	Service Station	1 space/pump
9.	Service Station with Convenience Store	1 space/pump + 1 space/ 200 sf of store space
10.	Car Wash	1 space/washing module + 2 spaces
11.	Bank	1 space/300 sf
12.	Watersport/Marine Terminal	20 spaces/berth
13.	General Aviation Airport	1 space/hangar + 1 space/300 sf of terminal
14.	Truck Terminal	1 space/berth
15.	Industrial	1.5 spaces/1000 sf
16.	Industrial Park	1.5 spaces/5,000 sf
17.	Warehouse	1 space/2,000 sf
18.	Mini-Warehouse	1 space/10 storage units
19.	Single-Family Detached Residence	2 spaces/dwelling
20.	Duplex	1 space/dwelling
21.	Apartment	1 space/unit for first four units + 1.5 spaces/unit for each Additional unit
22.	Condominium (Residential)	1.5 spaces/unit
23.	Townhouse	1.5 spaces/unit
24.	Cottage Cluster	1 space/unit
25.	Elderly Housing Project	0.8 space/unit if over 16 dwelling units
26.	Boarding House/Single Room Occupancy	0.5 spaces/guest room or unit
~~26~~27.	Congregate Care/Nursing Home	1 space/1,000 sq. ft.
~~27~~28.	Hotel/Motel	1 space/room + 1 space for the manager (if the hotel/motel contains other uses, the other uses Shall be calculated separately
~~28~~29.	Park	2 spaces/acre
~~29~~30.	Athletic Field	20 spaces/acre
~~30~~31.	Recreational Vehicle Park	1 space/RV space + 1 space/10 RV spaces

~~31~~32.	Marina	1 space/5 slips or berths
~~32~~33.	Golf Course	4 spaces/hole
~~33~~34.	Theater	1 space/4 seats
~~34~~35.	Bowling alley	4 spaces/alley
~~35~~36.	Elementary/Middle School	1.6 spaces/classroom
~~36~~37.	High School	4.5 spaces/classroom
~~37~~38.	Community College	10 spaces/classroom
~~38~~39.	Religious/Fraternal Organization	1 space/4 seats in the main auditorium
~~39~~40.	Day Care Facility	1 space/4 persons of license occupancy
~~40~~41.	Hospital	1 space/bed
~~41~~42.	Assembly Occupancy	1 space/8 occupants (based on 1 occupant/15 sf of exposition/meeting/assembly room conference use not elsewhere specified

Staff: With Ordinance No. 2216, the City implemented land use related mandates from the 2023 Oregon Legislative Session. This included adding Single Room Occupancy (SRO) uses in all residential zones. That set of amendments did not include a set of minimum parking requirements. This revision creates a minimum off-street parking requirement for SRO projects. It is in line with standards from other jurisdictions (see attached Eugene, Medford, and Salt Lake examples). The City allows Boarding Houses, which are effectively the short-term tenancy equivalent of SROs, but never established a minimum parking standard for them. Since the uses are so similar, this change will apply to them as well. This change was added by staff following the 1/8/24 Commission work session.

B. On-Street Credit. A dwelling unit on property zoned for residential use, located outside of special parking areas as defined in NMC 14.14.100, shall be allowed an on-street parking credit that reduces the required number of off-street parking spaces by one off-street parking space for every one on-street parking space abutting the property subject to the following limitations:

1. On-street parking is available on both sides of the street adjacent to the property; and

2. The dwelling unit is not a short-term rental; and

3. Each on-street parking space is 22-ft long by 8-ft wide and parallel to the edge of the street, unless an alternate

configuration has been approved and marked by the City of Newport; and

4. Each on-street parking space to be credited must be completely abutting, and on the same side of the street, as the subject property. Only whole spaces qualify for the on-street parking credit; and

5. On-street parking spaces will not obstruct a clear vision area required pursuant to Section 14.17; and

6. No adjustments are being sought under the provisions of NMC Chapter 14.51; and

7. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street parking spaces are allowed except as authorized by the City of Newport.

Staff: This is the final draft of on-street parking credit language that the Planning Commission considered in 2021, but elected not to implement at that time. It was part of a package of code amendments to address HB 2001 requirements. As noted in the HPS (pg. 34), the requirement that off-street parking be constructed with new residential development contributes to the higher housing costs. This would allow a credit only where there is capacity to accommodate parking demand along a public street. It would not be an option along narrow roads where parking areas do not exist or are limited to one side of the street.

SB 1537 allows an applicant to seek relief from off-street parking requirements and other city residential land use standards through a limited land use decision making process. The above on-street parking credit standards and other changes in this ordinance are intended to serve as a ministerial alternative to the adjustment options outlined in SB 1537, and implementing with a new NMC Chapter 14.51.

The location where parking can occur within the right-of-way was clarified in response to feedback from the Commission at the 12/11/23 work session. The above provisions align with Chapter 6.15, Parking in Rights-of-Way, which provides;

"6.15.005(A) Method of Parking. Parking is permitted only parallel with the edge of the street, headed in the direction of lawful traffic

movement, except where the street is marked or signed for angle parking. Where parking spaces are marked, vehicles shall be parked within the marked spaces. Parking in angled spaces shall be with the front head-in to the curb, except that vehicles delivering or picking up goods may be backed in. Where curbs exist the wheels of a parallel-parked vehicle shall be within 12 inches of the curb, and the front of an angle-parked car shall be within 6 inches of the curb."

CHAPTER 14.33 ADJUSTMENTS AND VARIANCES

14.33.010 Purpose

The purpose of this section is to provide flexibility to numerical development standards in recognition of the wide variation in property size, configuration, and topography within the City of Newport and to allow reasonable and economically practical development of a property. Adjustment and variance options outlined in this Chapter are separate from statutory adjustments listed in ORS Chapter 197A, and codified in Chapter 14.51.

14.33.020 General Provisions

A. Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision-making procedure as provided by Section 14.52, Procedural Requirements, in addition to the provisions of this section.

B. No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located~~, or to increase densities in any residential zone~~.

C. In granting an Adjustment or Variance, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

Staff: This amendment would open the door to minimum lot size adjustments that would allow land divisions resulting in lots or parcels that fall short of the minimum lot size. This could create additional residential development opportunities, particularly in infill areas.

14.33.030 Approval Authority

Upon receipt of an application, the Community Development Director or designate shall determine if the request is to be processed as an Adjustment or as a Variance based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the type of application and decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. A deviation less than or equal to 10% of a numerical standard shall be granted if the Community Development Director determines that it will allow one or more dwelling units than would otherwise be achievable through strict adherence to the numerical standard. The granting of such deviation shall be a ministerial action. This subsection does not apply to building height limitations, where the maximum height allowance is set at or above 40-feet.

~~A~~ B Other deviations ~~of~~ less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community Development Director using a Type I decision-making procedure.

~~B~~C. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

~~C~~D. Deviations of greater than 40% from a numerical standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

Staff: This change is an alternative way of addressing the challenge that three story multi-family projects have with a 35-foot height limit. It would allow staff to authorize adjustments to dimensional standards (up to 10%) in a ministerial fashion if the change results in additional dwelling units. The Wyndhaven Ridge Phase II example, where they needed 38.5 feet of building height, would have benefitted from this change.

Like the parking example, this code change would also get ahead of the new version of HB 3414, which is seeking to mandate that local governments provide small adjustments of this nature when requested by a housing developer.

The language was reworked, at the Planning Commission's request, to clarify that it is the Community Development Director that

determines whether or not the change will allow additional dwelling units. That discussion occurred at the 12/11/23 work session. The Commission also inquired about options if the Director finds the change will not result in additional units. If that occurs, then the applicant would have the option of pursuing the deviation under Subsection (B) which involves an appealable land use decision.

At a 3/4/24 work session, Council members expressed a concern about the potential aggregate impact of the 40-ft height allowance for multi-family and this 10 percent ministerial adjustment. The chance that a multi-family housing developer would seek up to a 10% adjustment to the 40-foot height limit to get an additional fourth floor is slim, but possible. It is a cost factor, as four floor apartments trigger the need for a Secondary access (OSSC Table 504.3) and the fire sprinkler system has to be upgraded, which is costly (OSSC Table 1006.34(1)). That said, , the highlighted language has been added to preclude approval of a second height adjustment as a ministerial act.

CHAPTER 14.44 TRANSPORTATION STANDARDS

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14.44.060 Streets, Pathways, Accessways, and Trails

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B. Travel Lane and On-Street Parking. Travel lanes and on-street parking areas shall be sized in accordance with the standards in Table 14.44.060-B

Table 14.44.060-B. Minimum On-Street Parking and Roadway Widths

Roadway Classification	Arterial Street [1]	Major Collector	Neighborhood Collector	Local Street	Yield_____/ Shared Street [2]
Through Lanes	2 to 4	2	2	2	1
Min. Lane Width	11-12 ft. [3]	10 ft. [4]	10 ft. [4]	10 ft.	12 – 16 ft.
Median/Center Turn Lane	11-14 ft. [6]	11 ft. [7]	11 ft. [7]	None	None
Min. On-Street Parking Width	Context Dependent, 7-8 ft.	8 ft.	8 ft.	7-8 ft. [8]	7-ft one side [8]

1. Although guidance is provided for arterial streets, these are under State jurisdiction. Values presented in this table are consistent with ODOT's urban design guidance. For detailed design recommendations on US 101 and US 20, the identified urban contexts for Newport are provided in the appendix and ODOT's urban design guidance is publicly available.

2. For use along low volume local streets in residential areas only, where no adjustments are being sought to off-street parking requirements as authorized under ORS Chapter 197A, and implemented in NMC Chapter 14.51. Yield streets are an option for new streets, while shared streets are an option for existing streets. Requires intermittent on-street parking on at least one side to allow for vehicle queuing and passing opportunities. For blocks of no more than 300 ft. in length, and with fire access roads at both ends, a 16 ft. width may apply to local streets that carry fewer than 500 vehicles per day, or a 12 ft. width may apply to local streets that carry fewer than 150 vehicles per day. For blocks longer than 300 feet, this also requires 30 ft. long pullouts/no parking zones every 150 ft. to allow for 20 ft. wide clear areas (excluding drainage swales) or 26 ft. wide clear areas near fire hydrants.

3. 11 ft. travel lanes are preferred for most urban contexts within Newport. 11 ft. travel lanes are standard for central business district areas in ODOT's urban design guidance. Adjustments may be required for freight reduction review routes. Final lane width recommendations are subject to review and approval by ODOT.

4. Travel lanes widths of 11-12 ft. are required along designated local truck routes.

5. A minimum 8-ft.-wide pedestrian refuge should be provided at marked crossings. Otherwise, a median can be reduced to a minimum of 4 ft. at midblock locations that are more than 150 ft. from an arterial (i.e., US 101 and US 20), before widening at intersections for left-turn lanes (where required or needed).

6. ODOT's urban design guidance recommends a 14 ft. lane for speeds above 40 mph. Final lane width recommendations are subject to review and approval by ODOT.

7. Center turn lane required at and within 150 ft. of intersections with arterials (i.e., US 101 and US 20). Otherwise, it is optional and should be used to facilitate turning movements and/or street crossings; minimum 8-ft-wide median required where refuge is needed for pedestrian/bicycle street crossings.

8. On-street parking is preferred along all City streets where block spacing, and system connectivity standards are met. An 8 ft. width is required in most areas, with a 7 ft. width only allowed along local streets in residential areas. Local yield/shared streets require intermittent on-street parking on at least one side to allow for vehicle queuing and passing opportunities, with an 8 ft. width required when on only one side, and 7 ft. width allowed when on both sides. Shoulders totaling 8 ft. in collective width may also be provided in lieu of parking.

Staff: This change is being made because these narrow street standards, adopted in part to reduce capital costs for housing development, lack on-street options that other City street sections possess. Consequently, if adjustments to off-street parking requirements were to be granted, these streets would become heavily congested, if not impassible, limiting accessibility and compromising fire ingress and egress and public safety in general.

CHAPTER 14.51 SB 1537 HOUSING ADJUSTMENTS

14.51.005 Purpose

The purpose of this chapter is to allow housing adjustments in accordance with SB 1537(2024) as codified in ORS Chapter 197A.

Staff: A 2024 version of the Oregon revised statutes has not yet been released. The housing adjustment allowances in SB 1537(2024) have been placed in ORS Chapter 197A. The citations listed below will be adjusted to align with changes made as part of the State's codification process.

14.51.010 Criteria to Allow an Adjustment

Applicants submitting applications meeting the requirements of this Chapter 14.51 and all requirements of SB 1537, Section 38(2) may request up to ten (10) "adjustments," as that term is defined and described in SB 1537, Subsections 38(1), (4) and (5) (referred to herein to as "housing adjustments"). Each requested housing adjustment must be justified by at least one of the following criteria:

A. The adjustment will enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations;

B. The adjustment will enable development of housing that reduces the sale or rental prices per residential unit;

C. The adjustment will increase the number of housing units within the application;

D. All of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to moderate income households as defined in ORS 456.270 for a minimum of 30 years;

E. At least 20 percent of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to low- income households as defined in ORS 456.270 for a minimum of 60 years;

F. The adjustments will enable the provision of accessibility or visitability features in housing units that are not otherwise feasible

due to cost or delay resulting from the unadjusted land use regulations; or

G. All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land trusts making them affordable to moderate income households as described in ORS 456.270 to 456.295 for a period of 90 years.

Staff: This is a basic approach, offered by the Local Government Law Group, for folding the SB 1537(2024) housing adjustment provisions into the City's Municipal Code. While the code could be further fleshed out with details contained in the above referenced ORS subsections, that level of effort may not be warranted given that the statutes sunset in 2032.

14.51.015 Application Information

An applicant shall support each requested housing adjustment with a statement explaining how the requested adjustment meets at least one of the criteria established in NMC 14.51.010. Such explanations may include, but are not limited to:

A. Design plans that compare project designs with and without the adjustment showing that the requested adjustment is necessary to increase the number of units within the project.

B. Financial analyses showing the costs of the project with and without the adjustment and showing that the proposed adjustment is either:

1. Essential to ensure the overall project feasibility; or

2. Will meaningfully reduce the sale price and/or rents of the project for future occupants.

C. Where cost savings are proposed, a description of how savings associated with the adjustment will be passed onto future purchasers or renters of the project.

D. Legal documents regarding how the affordability provisions justifying the adjustment will be maintained for the periods listed in Subsection 14.51.010 (4), (5) and (7), if applicable.

Staff: This is a middle of the road approach on requiring an applicant to substantiate its eligibility statement. It can be scaled back to reflect only the statutory language, or it can be enhanced to require more evidentiary support. The legislature intended the process to be expeditious, so the City should be cautious about asking for too much information.

14.51.020 Housing Adjustment Process

A. An application for each requested housing adjustment is required in addition to any other land use application required for the proposed project. Applicants may choose to consolidate one or more housing adjustment applications, including any land use action required for the project.

B. A property owner may initiate a housing adjustment application by submitting:

1. An application on forms provided by the City.

2. A statement identifying the criterion established in NMC 14.51.010 met by the proposal.

3. Submittals satisfying Section 14.51.015 that conclusively demonstrate that the proposed adjustment meets the identified criterion.

4. An application fee, as established by Council resolution.

C. A housing adjustment application shall be processed as a limited land use decision, in accordance with SB 1537, Section 38(3) and ORS 197.195. Such review procedures include, but are not limited to:

1. Written notice to property owners within 100 feet of the subject property.

2. 14-day written comment period prior to decision issuance.

3. Only the applicant may appeal the decision.

4. Any appeal is filed as outlined in Subsection 14.52.100, and shall be heard by the Newport Planning Commission.

5. Housing adjustment appeal hearings shall be consolidated with any associated public hearing required for the project, unless the applicant requests separate hearings.

Staff: SB 1537 includes a modified version of the statutory limited land use decision making process, which has been incorporated above.

14.51.025 No Cumulative Effect

Adjustments to development and design standards, as required by SB 1537 and available under this Chapter, may not be combined with or added to any other adjustment available elsewhere under the provisions of Title XIV of the Newport Municipal Code.

Staff: This language addresses a concern expressed by the Planning Commission and City Council about the potential compounding effect of the City's new ministerial adjustments and those offered through SB 1537. This language makes it clear that applicants must choose one or the other.

14.51.030 Operative Dates

This chapter is operative effective January 1, 2025 through January 2, 2032, unless the sunset date is modified by the Oregon Legislature.

Staff: The operative and sunset dates have been taken from SB 1537.

CHAPTER 14.52 PROCEDURAL REQUIREMENTS

***

14.52.030 Approving Authorities

The approving authority for the various land use and ministerial actions shall be as follows:

***

C. Community Development Director. Land use actions decided by the Director are identified below. A public hearing is not required prior to a decision being rendered. Items with an "*" are subject to Director review as defined in the section of the ordinance containing the standards for that particular type of land use action.

Decisions made by the Community Development Director may be appealed to the Planning Commission.

1. Conditional use permits*.

2. Partitions, minor.

3. Replats, minor.

4. Estuarine review.

5. Adjustments*.

6. Nonconforming use changes or expansions*.

7. Design review*.

8. Ocean shorelands review.

9. Any land use action defined as a Type I or Type II decision for which the Community Development Director is the initial approving authority.

10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Community Development Director where no other modification process is identified.

11. Ministerial actions necessary to implement Title XIV of the Newport Municipal Code, including final plats, property line adjustment conveyance documents, public improvement agreements, temporary uses (unless an alternative process is provided), and confirmation that building permits satisfy clear and objective approval standards.

    Staff: This revision is needed to clarify that it is the Community Development Director, or designee, that is responsible for carrying out ministerial actions. Common types of ministerial actions are also listed.

COMPARISON OF ADJUSTMENTS IN THE GOVERNOR'S HOUSING BILL (SB 1537) AND NEWPORT ORDINANCE NO. 2222, IMPLEMENTING THE CITY'S HOUSING PRODUCTION STRATEGY

		Governor's Housing Bill (SB1537 Enrolled)	Draft Ordinance No. 2222
Scope		Net new housing units	All development types
Maximum Adjustments		10	No limit
Eligibility		Less costly, more timely housing, reduce sales/rental prices, affordable units, and accessibility. Density must be 6 units to the acre.	For housing, additional units
Decision Type		Limited land use (modified process)	Ministerial
Fee		TBD	N/A
Sunset		January 2, 2032	None
Type of Adjustments			
a.	Setbacks	10% to side or rear	10% front, rear or side
b.	Landscaping	25%	10% (no landscape requirement for single family detached/attached)
c.	Parking Minimums	Total waiver	1:1 on-street credit option where parking existing on both sides of a street
d.	Minimum lot size	10% size, width, depth	10% all dimensional provisions
e.	Maximum lot size	10% size, width, depth	10% size
f.	Building coverage	10%	10%
g.	Bike parking stalls	Down to .5 spaces per unit	City standard is below threshold
h.	Bike parking location	Must allow alternate location if lockable and covered	Not regulated
h.	Building height	One-story or 20% of base zoning limit. Applies to manufactured dwelling parks, middle housing, multi-family, mixed-use. Excludes cottage clusters	Increases multi-family height limit to 40-ft (14% increase) if roof pitch is 4:12 or greater. All other buildings 10%.
i.	Unit density maximums	Not more than amount necessary to account for other allowed adjustments. Applies to the same housing types	10%
j.	Mixed-use prohibition ground floor residential	Must allow ground floor residential except one-face of the building that faces the street and is within 20-ft of the street	N/A
k.	Mixed-use prohibition of ground floor non-residential	Must allow non-residential activities on ground floor that support residential uses, like day care, live-work space, offices, exercise facilities, etc. unless alternative uses specifically designated by government in a commercial corridor.	N/A
l.	Design standards	Façade materials, color or pattern, façade articulation, roof forms and materials, entry and garage materials, garage door orientation (unless the building is adjacent to or across from a school or park), window materials (except bird-safe glazing), and window area (up to 30% provided at least 12% of the total façade is window area)	N/A
m.	Building orientation requirements	Must allow for manufactured dwelling parks, middle housing, multi-family housing, and mixed use, unless they are transit street orientation requirements	N/A
n.	Building height transition requirements	Not more than 50%. Same set of housing types	10%
o	Balconies and porches	Must allow adjustment. Same set of housing types	N/A
p.	Recesses and off-sets	Must allow adjustment. Same set of housing types	10%

LOCAL
GOVERNMENT
LAW GROUP
An Oregon Professional Corporation

Memo

To: **City of Newport**

From: **Carrie Connelly, Attorney**

Date: **May 22, 2024**

Re: **SB 1537 Related Questions**

Overview: The City of Newport engaged our office to advise particularly on the impacts of SB 1537 (2024) housing land adjustment provisions[1] on planned City Development Code amendments. Prior to the passage of SB 1537, the City was working on a number of updates to its Development Code to eliminate barriers to housing development. The Planning Commission recommended that the Council adopt a set of amendments authorizing various "adjustments" which differ from those mandated by SB 1537. The City's amendments are now on hold, until the Council determines the impact of the new legislation on its planned amendments.

Question 1: Can the City require developers to choose to lower development costs by requesting either SB 1537 adjustments or otherwise available City financial incentives?

> **Answer 1:** We identified no language in SB 1537, Sections 38 to 41, that prohibits the City from conditioning City offered financial incentives upon compliance with the City Code. Consequently, the City should be able to require an applicant to either: 1) lower development costs by requesting up to ten adjustments under SB 1537; or 2) off-set the cost of complying with the City's unadjusted Code by accessing City funds and other incentive programs.
>
> This conclusion seems consistent with other state land use laws. For example, ORS 197A.400 allows a local government to offer alternative sets of standards and criteria, as long as an applicant can choose between compliant and non-compliant criteria.

Question 2: Must the City allow SB 1537 adjustments to eliminate off-street parking minimums in conjunction with the City's shared street sections, which were developed to

[1] Sections 38 through 41 of SB 1537 take effect January 1, 2025, and sunset on January 2, 2032.

reduce the cost of frontage improvements in areas that are terrain constrained or lack adequate right-of-way.

Answer 2: As concluded above, SB 1537 does not prohibit the City from offering mutually exclusive programs to reduce the cost of housing development. SB 1537, Section 38 specifically authorizes a local government to either " . . . [u]se an existing process, *or* develop and apply a new process, that complies with the requirements of . . ." Section 38. Section 38(3)(a). This should not prohibit a local government from offering two housing programs, one that complies with SB 1537 and another that offers different adjustments. As long as a residential developer has the option to request adjustments which comply with SB 1537, the City need not repeal or otherwise eliminate a preexisting program.

SB 1537 does require that, upon a developer's request, the City must grant up to ten of the specific development and design adjustments set out in Section 38(4) and (5). However, such a request must meet qualifying requirements, and can only request certain "adjustments." The term "adjustment" is defined to exclude "[d]eviations from land use regulations or requirements related to *accessibility*, affordability, *fire ingress or egress, safety* . . . ." Section 38(1)(b)(B) (emphasis added).

To the extent that the City can show that a request adjusts a City regulation or requirement related to accessibility, fire ingress or egress, or public safety, that regulation may not be adjusted. Along this line of reasoning, the City may be able to show that off-street parking minimums are necessary to preserve accessibility, fire ingress or egress, and general public safety where reduced street widths are allowed.

Question 3: How can City fees differ between City offered and SB 1537 required adjustments?

Answer 3: SB 1537, Section 38(3) directs that an application for an adjustment "is a limited land use decision." Land use application fees generally may not exceed the City's actual or average costs to process the application at issue. See, ORS 227.175(1) (authorizing permit application fees); ORS 92.044(3)-(4) and 92.046(4) (authorizing fees for subdivision and partition review).

Assuming that the City already requires fees for other types of limited land use decisions, the City will likely be able to support a similar fee reflecting the City's actual or average costs to process SB 1537 adjustments. On that same rationale, an application that is processed administratively by staff could merit a lower fee.

While the City cannot charge land use fees that are more than its actual or average costs, it can always charge less. Best practices, however, support calculating all land use fees on the same basis (actual or average costs.)

Question 4: Can the City require an applicant to substantiate statements that they are eligible for an SB 1537 adjustment per Section 38(2)(g)?

> **Answer 4:** The referenced section states: "(g) The application *states how* at least one of the following criteria apply . . . ." One interpretation is that a SB 1537 adjustment application need only identify at least one satisfied criterion. However, the plain language of the statute requires an applicant to state "how" at least one criterion applies. For this reason, it seems that *some* explanation of how the claimed criteria will be met is required by Section 38(2)(g).
>
> On the other hand, Section 38 provides no basis for a City to evaluate or measure an applicant's submittal. Once a developer "states how" at least one required criterion is met, the application standard is arguably satisfied. Given this, echoing the statutory language may be the most defensible course of action (i.e. "The application must state how at least one of the following criteria apply . . ."). This approach should meet the statutory requirement, while allowing for some local flexibility and the ability to follow caselaw, as LUBA and Oregon courts interpret this legislation.

Question 5: How should the City structure its review process for deciding SB 1537 adjustments?

> **Answer 5:** To comply with SB 1537, Section 45(6), the City must update its Type II limited land use procedures to reflect the amended definition of that term and adhere to ORS 197.195. To date, the statutory process was optional. As of January 1, 2025, it is mandatory. Once the City's Code is updated, that limited land use process will govern SB 1537 adjustment applications – with the exceptions identified in Section 38(3). Those include: 1) no notice of the decision is required if the application is denied, other than notice to the applicant; and 2) only the applicant is allowed to appeal an adjustment decision.

Question 6: Are coastal shorelands exempt from the SB 1537 adjustment allowance pursuant to Section 38(1)(b)(B)?

> **Answer 6:** Section 38(1)(b)(B) of SB 1537 prohibits:
>
> > "*Deviations from* land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site clean-up, wildlife protection, or *statewide land use planning goals relating to* natural resources, natural hazards, the Willamette River Greenway, estuarine resources, *coastal shorelands*, beaches and dunes or ocean resources." (Emphasis supplied.)

This language does not exempt coastal shorelands from SB 1537 adjustments – unless the requested adjustment requires a deviation from the City development and design standards that implement Goal 17, Coastal Shorelands, or other coastal planning goals.

Question 7: Does the City need to officially designate Nye Beach and Bayfront as commercial corridors, as the term is used in SB 1537, Section 38(4)(g)(D)(ii), to preserve ground floor areas for commercial uses?

Answer 7: SB 1537, Section 38(4)(g)(D)(ii) requires the City to grant an adjustment to:

> "Prohibitions for the ground floor of a mixed-use building, against . . . [n]onresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, *except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments*." (Emphases added.)

For the City to preserve any prohibitions against the above-described nonresidential active uses in any area of the City, that area must be a clearly defined mixed-use area or a clearly defined commercial corridor designated by the City Council. Therefore, if Nye Beach and Bayfront are already designated mixed-use areas, no further Council action is required. If not so designated, as staff anticipates, the Council will need to clearly designate those areas as commercial corridors in order to preserve applicable nonresidential active use prohibitions. SB 1537 does not identify what is required to specifically and clearly designate those commercial corridor areas, but a descriptive overlay zone would likely suffice.

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City of Newport
Planning Commission Work Session Minutes
June 10, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:00 P.M. **Time End:** 7:08 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	Beth Young, Community Development Dept.
Commissioner Gary East	
Commissioner Braulio Escobar	**PUBLIC MEMBERS PRESENT**
Commissioner John Updike (by video)	
Citizen Advisory Member Dustin Capri (absent, excused)	
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
PROGRESS REPORT: THE NEWPORT COMPREHENSIVE PLAN STREAMLINING PROJECT. a. Staff report	Ms. Young provided a progress report on the project to streamline the Comprehensive Plan. Updates included adding colors to the document, making the document more user friendly, and an updating the table of comments
b. Commission feedback	Berman noted an invalid date on Ordinance No. 1723, 1814, 1837 and 1907. He suggested the Historic Section should be moved out of the Comprehensive Plan so they could adjust the list without a Comprehensive Plan amendment. Tokos noted that may not be allowed under state law because there needed to be a public process for historic registries. A discussion ensued regarding how historic buildings are listed in the Comprehensive Plan, what details could be changed, and what needed to be left in for substantive changes. Berman wanted references to specific properties for descriptions updated. Updike asked if anything should be done in the future to make sure the document was compatible with city e-filing initiatives and any website redesigns. Tokos noted they wanted to coordinate closely with the City Manager's Office.

	Berman questioned if municipal code software could be used to update the Comprehensive Plan as well as the Code. Tokos noted the changes would be noticed as a formal Comprehensive Plan amendment.
FOLLOW-UP REVIEW OF AMENDMENTS TO FACILITATE CONSTRUCTION OF NEEDED HOUSING.	Mr. Tokos provided an overview of the amendments to facilitate construction of needed housing. Discussions included information on the changes the Commission recommendations, and changes to address the recommended amendments from SB 1537. Tokos reviewed changes to create two different types of adjustments in the Code to allow ministerial actions; updates to the ordinance to explain the serious of steps projecting forward to when the City Council would review these changes; rules that density limitations and parking limits cannot being paired with adjustment authorized by SB 1537; adjustment and variance processes and the standards; procedures the City would be putting in place for adjustments to authorized by SB 1537, as codified in ORS Chapter 197A; and updates to NMC Chapters 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44, and 14.51. The Commission was in general agreement with the additions for the new Chapter 14.51.020 for Housing Adjustment Process.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: Sherri Marineau

Sherri Marineau, Executive Assistant

Enrolled
Senate Bill 1537

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Tina Kotek for Office of the Governor)

CHAPTER .....

AN ACT

Relating to housing; creating new provisions; amending ORS 183.471, 197.015, 197.195, 197.335, 197.843, 215.427, 227.178 and 455.770; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

HOUSING ACCOUNTABILITY AND PRODUCTION OFFICE

SECTION 1. Housing Accountability and Production Office. (1) The Department of Land Conservation and Development and the Department of Consumer and Business Services shall enter into an interagency agreement to establish and administer the Housing Accountability and Production Office.

(2) The Housing Accountability and Production Office shall:

(a) Provide technical assistance, including assistance through grants, to local governments to:

(A) Comply with housing laws;

(B) Reduce permitting and land use barriers to housing production; and

(C) Support reliable and effective implementation of local procedures and standards relating to the approval of residential development projects.

(b) Serve as a resource, which includes providing responses to requests for technical assistance with complying with housing laws, to:

(A) Local governments, as defined in ORS 174.116; and

(B) Applicants for land use and building permits for residential development who are experiencing permitting and land use barriers related to housing production.

(c) Investigate and respond to complaints of violations of housing laws under section 2 of this 2024 Act.

(d) Establish best practices related to model codes, typical drawings and specifications as described in ORS 455.062, procedures and practices by which local governments may comply with housing laws.

(e) Provide optional mediation of active disputes relating to housing laws between a local government and applicants for land use and building permits for residential development, including mediation under ORS 197.860.

(f) Coordinate agencies that are involved in the housing development process, including, but not limited to, the Department of Land Conservation and Development, Department of

Consumer and Business Services, Housing and Community Services Department and Oregon Business Development Department, to enable the agencies to support local governments and applicants for land use and building permits for residential development by identifying state agency technical and financial resources that can address identified housing development and feasibility barriers.

(g) Establish policy and funding priorities for state agency resources and programs for the purpose of addressing barriers to housing production, including, but not limited to, making recommendations for moneys needed for the purposes of section 35 of this 2024 Act.

(3) The Land Conservation and Development Commission and the Department of Consumer and Business Services shall coordinate in adopting, amending or repealing rules for:

(a) Carrying out the respective responsibilities of the departments and the office under sections 1 to 5 of this 2024 Act.

(b) Model codes, development plans, procedures and practices by which local governments may comply with housing laws.

(c) Establishing standards by which complaints are investigated and pursued.

(4) The office shall prioritize assisting local governments in voluntarily undertaking changes to come into compliance with housing laws.

(5) As used in sections 1 to 5 of this 2024 Act:

(a) "Housing law" means ORS chapter 197A and ORS 92.010 to 92.192, 92.830 to 92.845, 197.360 to 197.380, 197.475 to 197.493, 197.505 to 197.540, 197.660 to 197.670, 197.748, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467 and administrative rules implementing those laws, to the extent that the law or rule imposes a mandatory duty on a local government or its officers, employees or agents and the application of the law or rule applies to residential development or pertains to a permit for a residential use or a division of land for residential purposes.

(b) "Residential" includes mixed-use residential development.

SECTION 2. Office responses to violations of housing laws. (1) The Housing Accountability and Production Office shall establish a form or format through which the office receives allegations of local governments' violations of housing laws that impact housing production. For complaints that relate to a specific development project, the office may receive complaints only from the project applicant. For complaints not related to a specific development project, the office may receive complaints from any person within the local government's jurisdiction or the Department of Land Conservation and Development or the Department of Consumer and Business Services.

(2)(a) Except as provided in paragraph (c) of this subsection, the office shall investigate suspected violations of housing laws or violations credibly alleged under subsection (1) of this section.

(b) The office shall develop consistent procedures to evaluate and determine the credibility of alleged violations of housing laws.

(c) If a complainant has filed a notice of appeal with the Land Use Board of Appeals or has initiated private litigation regarding any aspect of the application decision that was alleged to have been the subject of the housing law violation, the office may not further participate in the specific complaint or its appeal, except for:

(A) Providing agency briefs, including briefs under ORS 197.830 (8), to the board or the court;

(B) Providing technical assistance to the local government unrelated to the resolution of the specific complaint; or

(C) Mediation at the request of the local government and complainant, including mediation under ORS 197.860.

(3)(a) If the office has a reasonable basis to conclude that a violation was or is being committed, the office shall deliver written warning notice to the local government specifying

the violation and any authority under this section that the office intends to invoke if the violation continues or is not remedied. The notice must include an invitation to address or remedy the suspected violation through mediation, the execution of a compliance agreement to voluntarily remedy the situation, the adoption of suitable model codes developed by the office under section 1 (3)(b) of this 2024 Act or other remedies suitable to the specific violation.

(b) The office shall prioritize technical assistance funding to local governments that agree to comply with housing laws under this subsection.

(c) A determination by the office is not a legislative, judicial or quasi-judicial decision.

(4) No earlier than 60 days after a warning notice is delivered under subsection (3) of this section, the office may:

(a) Initiate a request for an enforcement order of the Land Conservation and Development Commission by delivering a notice of request under section 3 (3) of this 2024 Act.

(b) Seek a court order against a local government as described under ORS 455.160 (3) without being adversely affected or serving the demand as described in ORS 455.160 (2).

(c) Notwithstanding ORS 197.090 (2)(b) to (e), participate in and seek review of a matter under ORS 197.090 (2)(a) that pertains to housing laws without the notice or consent of the commission. No less than once every two years, the office shall report to the commission on the matters in which the office participated under this paragraph.

(d) Except regarding matters under the exclusive jurisdiction of the Land Use Board of Appeals, apply to a circuit court for an order compelling compliance with any housing law. If the court finds that the defendant is not complying with a housing law, the court may grant an injunction requiring compliance.

(5) The office may not, in the name of the office, exercise the authority of the Department of Land Conservation and Development under ORS 197A.130.

(6) The office shall send notice to each complainant under subsection (1) of this section at the time that the office:

(a) Takes any action under subsection (3) or (4) of this section; or

(b) Has determined that it will not take further actions or make further investigations.

(7) The actions authorized of the office under this section are in addition to and may be exercised in conjunction with any other investigative or enforcement authority that may be exercised by the Department of Land Conservation and Development, the Land Conservation and Development Commission or the Department of Consumer and Business Services.

(8) Nothing in this section:

(a) Amends the jurisdiction of the Land Use Board of Appeals or of a circuit court;

(b) Creates a new cause of action; or

(c) Tolls or extends:

(A) The statute of limitations for any claim; or

(B) The deadline for any appeal or other action.

SECTION 3. Office enforcement orders. (1) The Housing Accountability and Production Office may request an enforcement order under section 2 (4)(a) of this 2024 Act requiring that a local government take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with a housing law, except for a housing law that pertains to the state building code or the administration of the code.

(2) Except as otherwise provided in this section, a request for an enforcement order by the office is subject to the applicable provisions of ORS 197.335 and ORS chapter 183 and is not subject to ORS 197.319, 197.324 or 197.328.

(3) The office shall make a request for an enforcement order under this section by delivering a notice to the local government that states the grounds for initiation and summarizes the procedures for the enforcement order proceeding along with a copy of the notice

to the Land Conservation and Development Commission. A decision of the office to initiate an enforcement order is not subject to appeal.

(4) After receiving notice of an enforcement order request under subsection (3) of this section, the local government shall deliver a notice to an affected applicant, if any, in substantially the following form:

NOTICE: The Housing Accountability and Production Office has found good cause for an enforcement proceeding against _____ (name of local government). An enforcement order may be adopted that could limit, prohibit or require the application of specified criteria to any action authorized by this decision but not applied for until after the adoption of the enforcement order. Future applications for building permits or time extensions may be affected.

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(5) Within 14 days after receipt by the commission of the notice under subsection (3) of this section, the Director of the Department of Land Conservation and Development shall assign the enforcement order proceedings to a hearings officer who is:

(a) An administrative law judge assigned under ORS 183.635; or

(b) A hearings officer randomly selected from a pool of officers appointed by the commission to review proceedings initiated under this section.

(6) The hearings officer shall schedule a contested case hearing within 60 days of the delivery of the notice to the commission under subsection (3) of this section.

(7)(a) The hearings officer shall prepare a proposed enforcement order or order of dismissal, including recommended findings and conclusions of law.

(b) A proposed enforcement order may require the local government to take any necessary action to comply with housing laws that is suitable to address the basis for the proposed enforcement order, including requiring the adoption or application of suitable models that have been developed by the office under section 1 (3)(b) of this 2024 Act.

(c) The hearings officer must issue and serve the proposed enforcement order on the office and all parties to the hearing within 30 days of the date the record closed.

(8)(a) The proposed enforcement order becomes a final order of the commission 14 days after service on the office and all parties to the hearing, unless the office or a party to the hearing appeals the proposed enforcement order to the commission prior to the proposed enforcement order becoming final.

(b) If the proposed enforcement order is appealed, the commission shall consider the matter at:

(A) Its next regularly scheduled meeting; or

(B) If the appeal is made 45 or fewer days prior to the next regularly scheduled meeting, at the following regularly scheduled meeting or a special meeting held earlier.

(9) The commission shall affirm, affirm with modifications or reverse the proposed enforcement order. The commission shall issue a final order no later than 30 days after the meeting at which it considered the matter.

(10) The commission may adopt rules administering this section, including rules related to standing, preserving issues for commission review or other provisions concerning the commission's scope and standard for review of proposed enforcement orders under this section.

SECTION 4. Housing Accountability and Production Office Fund. (1) The Housing Accountability and Production Office Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Housing Accountability and Production Office Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.

(3) Interest earned by the fund shall be credited to the fund.

(4) Moneys in the fund are continuously appropriated to the Department of Land Conservation and Development to administer the fund, to operate the Housing Accountability and Production Office and to implement sections 1 to 5 of this 2024 Act.

SECTION 5. Reporting. On or before September 15, 2026, the Housing Accountability and Production Office shall:

(1) Contract with one or more organizations possessing relevant expertise to produce a report identifying improvements in the local building plan review approval, design review approval, land use, zoning and permitting processes, including but not limited to plan review approval timelines, process efficiency, local best practices and other ways to accelerate and improve the efficiency of the development process for construction, with a focus on increasing housing production.

(2) Produce a report based on a study by the office of state and local timelines and standards related to public works and building permit application review and develop recommendations for changes to reduce complexity, delay or costs that inhibit housing production, including an evaluation of their effect on the feasibility of varying housing types and affordability levels.

(3) Produce a report summarizing state agency plans, policies and programs related to reducing or eliminating regulatory barriers to the production of housing. The report must also include recommendations on how state agencies may prioritize resources and programs to increase housing production.

(4) Provide the reports under subsections (1) to (3) of this section to one or more appropriate interim committees of the Legislative Assembly in the manner provided in ORS 192.245.

SECTION 6. Sunset. Section 5 of this 2024 Act is repealed on January 2, 2027.

SECTION 7. Operative and applicable dates. (1) Sections 2 and 3 of this 2024 Act become operative on July 1, 2025.

(2) Sections 2 and 3 of this 2024 Act apply only to violations of housing laws occurring on or after July 1, 2025.

(3) The Department of Land Conservation and Development and Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary for the departments or the Housing Accountability and Production Office to exercise, on and after the operative date, all of the duties, functions and powers conferred by sections 1 to 5, 35, 39 and 46 of this 2024 Act.

OPTING IN TO AMENDED HOUSING REGULATIONS

SECTION 8. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing

information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information[*, as described in subsection (2) of this section,*] within 180 days of the date the application was first submitted [*and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall be based*] **must be based:**

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]**; or**

(B) For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.

(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:

(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;

(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:

(i) The county determines that additional information is not required under subsection (2) of this section; or

(ii) The applicant makes a submission under subsection (2) of this section in response to a county's request;

(C) A county may deny a request under paragraph (a)(B) of this subsection if:

(i) The county has issued a public notice of the application; or

(ii) A request under paragraph (a)(B) of this subsection was previously made; and

(D) The county may not require that the applicant:

(i) Pay a fee, except to cover additional costs incurred by the county to accommodate the request;

(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or

(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.

[*(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.*]

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:

(a) A decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or

(b) A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 9. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted [*and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall*] **must** be based**:**

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]**; or**

(B) For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.

(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:

(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;

(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:

(i) The city determines that additional information is not required under subsection (2) of this section; or

(ii) The applicant makes a submission under subsection (2) of this section in response to a city's request;

(C) A city may deny a request under paragraph (a)(B) of this subsection if:

(i) The city has issued a public notice of the application; or

(ii) A request under paragraph (a)(B) of this subsection was previously made; and

(D) The city may not require that the applicant:

(i) Pay a fee, except to cover additional costs incurred by the city to accommodate the request;

(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or

(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.

[*(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.*]

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:

(a) A decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or

(b) A decision of a city involving an application for the development of residential structures within an urban growth boundary, where the city has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit,

limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

ATTORNEY FEES FOR NEEDED HOUSING CHALLENGES

SECTION 10. ORS 197.843 is amended to read:

197.843. (1) The Land Use Board of Appeals shall award attorney fees to**:**

(a) An applicant whose application is only for the development of affordable housing[*, as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250*], if the board [*affirms a quasi-judicial land use decision approving the application or*] reverses a quasi-judicial land use decision denying the application[.]**;**

(b) An applicant whose application is only for the development of housing and was approved by the local government, if the board affirms the decision; and

(c) The local government that approved a quasi-judicial land use decision described in paragraph (b) of this subsection.

(2) For housing other than affordable housing, the attorney fees specified in subsection (1)(b) and (c) of this section apply only within urban growth boundaries.

[*(2)*] **(3)** A party who was awarded attorney fees under this section or ORS 197.850 shall repay the fees plus any interest from the time of the judgment if the property upon which the fees are based is developed for a use other than [*affordable*] **the proposed** housing.

[*(3)*] **(4)** As used in this section:

[*(a) "Applicant" includes:*]

[*(A) An applicant with a funding reservation agreement with a public funder for the purpose of developing publicly supported housing;*]

[*(B) A housing authority, as defined in ORS 456.005;*]

[*(C) A qualified housing sponsor, as defined in ORS 456.548;*]

[*(D) A religious nonprofit corporation;*]

[*(E) A public benefit nonprofit corporation whose primary purpose is the development of affordable housing; and*]

[*(F) A local government that approved the application of an applicant described in this paragraph.*]

(a) "Affordable housing" means affordable housing, as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250.

(b) "Attorney fees" includes prelitigation legal expenses, including preparing **and processing** the application and supporting the application in local land use hearings or proceedings.

SECTION 11. Operative and applicable dates. (1) The amendments to ORS 197.843 by section 10 of this 2024 Act become operative on January 1, 2025.

(2) The amendments to ORS 197.843 by section 10 of this 2024 Act apply to decisions for which a notice of intent to appeal under ORS 197.830 is filed on or after January 1, 2025.

INFRASTRUCTURE SUPPORTING HOUSING PRODUCTION

SECTION 12. Sections 13 and 14 of this 2024 Act are added to and made a part of ORS chapter 285A.

SECTION 13. Capacity and support for infrastructure planning. The Oregon Business Development Department shall provide capacity and support for infrastructure planning to municipalities to enable them to plan and finance infrastructure for water, sewers and sanitation, stormwater and transportation consistent with opportunities to produce housing units at densities defined in section 55 (3)(a)(C) of this 2024 Act. "Capacity and support" includes assistance with local financing opportunities, state and federal grant navigation, writing, review and administration, resource sharing, regional collaboration support and technical support, including engineering and design assistance and other capacity or support as the department may designate by rule.

SECTION 14. Housing Infrastructure Support Fund. (1) The Housing Infrastructure Support Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Housing Infrastructure Support Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.

(3) Interest earned by the fund shall be credited to the fund.

(4) Moneys in the fund are continuously appropriated to the Oregon Business Development Department to administer the fund and to implement section 13 of this 2024 Act.

SECTION 15. Sunset. (1) Sections 13 and 14 of this 2024 Act are repealed on January 2, 2030.

(2) Any unobligated moneys in the Housing Infrastructure Support Fund on January 2, 2030, must be transferred to the General Fund for general governmental purposes.

SECTION 16. Infrastructure recommendation and reporting. (1) On or before December 31, 2024, the Department of Land Conservation and Development, in consultation with the Housing and Community Services Department, the Oregon Business Development Department and other agencies that fund and support local infrastructure projects, shall submit a report to an appropriate interim committee of the Legislative Assembly in the manner provided in ORS 192.245 that includes a list of key considerations and metrics the Legislative Assembly could use to evaluate, screen and prioritize proposed local infrastructure projects that facilitate and support housing within an urban growth boundary.

(2) The Department of Land Conservation and Development shall facilitate an engagement process with local governments, tribal nations, the development community, housing advocates, conservation groups, property owners, community partners and other interested parties to inform the list of key considerations and metrics.

NOTE: Sections 17 through 23 were deleted by amendment. Subsequent sections were not renumbered.

HOUSING PROJECT REVOLVING LOANS

SECTION 24. As used in sections 24 to 35 of this 2024 Act:

(1) "Assessor," "tax collector" and "treasurer" mean the individual filling that county office so named or any county officer performing the functions of the office under another name.

(2) "County tax officers" and "tax officers" mean the assessor, tax collector and treasurer of a county.

(3) "Eligible costs" means the following costs associated with an eligible housing project:

(a) Infrastructure costs, including, but not limited to, system development charges;

(b) Predevelopment costs;

(c) Construction costs; and

(d) Land write-downs.

(4) "Eligible housing project" means a project to construct housing, or to convert a building from a nonresidential use to housing, that is:

(a) Affordable to households with low income or moderate income as those terms are defined in ORS 458.610;

(b) If for-sale property, a single-family dwelling, middle housing as defined in ORS 197A.420 or a multifamily dwelling that is affordable as described in paragraph (a) of this subsection continuously from initial sale for a period, to be established by the Housing and Community Services Department and the sponsoring jurisdiction, of not less than the term of the loan related to the for-sale property; or

(c) If rental property:

(A)(i) Middle housing as defined in ORS 197A.420;

(ii) A multifamily dwelling;

(iii) An accessory dwelling unit as defined in ORS 215.501; or

(iv) Any other form of affordable housing or moderate income housing; and

(B) Rented at a monthly rate that is affordable to households with an annual income not greater than 120 percent of the area median income, such affordability to be maintained for a period, to be established by the department and the sponsoring jurisdiction, of not less than the term of the loan related to the rental property.

(5) "Eligible housing project property" means the taxable real and personal property constituting the improvements of an eligible housing project.

(6) "Fee payer" means, for any property tax year, the person responsible for paying ad valorem property taxes on eligible housing project property to which a grant awarded under section 29 of this 2024 Act relates.

(7) "Fire district taxes" means property taxes levied by fire districts within whose territory all or a portion of eligible housing project property is located.

(8) "Nonexempt property" means property other than eligible housing project property in the tax account that includes eligible housing project property.

(9) "Nonexempt taxes" means the ad valorem property taxes assessed on nonexempt property.

(10) "Sponsoring jurisdiction" means:

(a)(A) A city with respect to eligible housing projects located within the city boundaries; or

(B) A county with respect to eligible housing projects located in urban unincorporated areas of the county; or

(b) The governing body of a city or county described in paragraph (a) of this subsection.

SECTION 25. (1)(a) A sponsoring jurisdiction may adopt by ordinance or resolution a program under which the sponsoring jurisdiction awards grants to developers for eligible costs.

(b) Before adopting the program, the sponsoring jurisdiction shall consult with the governing body of any city or county with territory inside the boundaries of the sponsoring jurisdiction.

(2) The ordinance or resolution shall set forth:

(a) The kinds of eligible housing projects for which a developer may seek a grant under the program; and

(b) Any eligibility requirements to be imposed on projects and developers in addition to those required under sections 24 to 35 of this 2024 Act.

(3) A grant award:

(a) Shall be in the amount determined under section 26 (3) of this 2024 Act; and

(b) May include reimbursement for eligible costs incurred for up to 12 months preceding the date on which the eligible housing project received local site approval.

(4) Eligible housing project property for which a developer receives a grant for eligible costs may not be granted any exemption, partial exemption or special assessment of ad valorem property taxes other than the exemption granted under section 30 of this 2024 Act.

(5) A sponsoring jurisdiction may amend an ordinance or resolution adopted pursuant to this section at any time. The amendments shall apply only to applications submitted under section 26 of this 2024 Act on or after the effective date of the ordinance or resolution.

SECTION 26. (1)(a) A sponsoring jurisdiction that adopts a grant program pursuant to section 25 of this 2024 Act shall prescribe an application process, including forms and deadlines, by which a developer may apply for a grant with respect to an eligible housing project.

(b) An application for a grant must include, at a minimum:

(A) A description of the eligible housing project;

(B) A detailed explanation of the affordability of the eligible housing project;

(C) An itemized description of the eligible costs for which the grant is sought;

(D) The proposed schedule for completion of the eligible housing project;

(E) A project pro forma demonstrating that the project would not be economically feasible but for receipt of the grant moneys; and

(F) Any other information, documentation or attestation that the sponsoring jurisdiction considers necessary or convenient for the application review process.

(c)(A) The project pro forma under paragraph (b)(E) of this subsection shall be on a form provided to the sponsoring jurisdiction by the Housing and Community Services Department and made available to grant applicants.

(B) The department may enter into an agreement with a third party to develop the project pro forma template.

(2)(a) The review of an application under this section shall be completed within 90 days following the receipt of the application by the sponsoring jurisdiction.

(b) Notwithstanding paragraph (a) of this subsection:

(A) The sponsoring jurisdiction may in its sole discretion extend the review process beyond 90 days if the volume of applications would make timely completion of the review process unlikely.

(B) The sponsoring jurisdiction may consult with a developer about the developer's application, and the developer, after the consultation, may amend the application on or before a deadline set by the sponsoring jurisdiction.

(3) The sponsoring jurisdiction shall:

(a) Review each application;

(b) Request that the county tax officers provide to the sponsoring jurisdiction the amounts determined under section 27 of this 2024 Act;

(c) Set the term of the loan that will fund the grant award for a period not to exceed the greater of:

(A) Ten years following July 1 of the first property tax year for which the completed eligible housing project property is estimated to be taken into account; or

(B) If agreed upon by the sponsoring jurisdiction and the department, the period required for the loan principal and fees to be repaid in full;

(d) Set the amount of the grant that may be awarded to the developer under section 29 (2) of this 2024 Act by multiplying the increment determined under section 27 (1)(c) of this 2024 Act by the term of the loan; and

(e)(A) Provisionally approve the application as submitted;

(B) Provisionally approve the application on terms other than those requested in the application; or

(C) Reject the application.

(4)(a) The sponsoring jurisdiction shall forward provisionally approved applications to the Housing and Community Services Department.

(b) The department shall review the provisionally approved applications for completeness, including, but not limited to, the completeness of the project pro forma submitted with the application under subsection (1)(b)(E) of this section and the amounts computed under section 27 (1) of this 2024 Act and notify the sponsoring jurisdiction of its determination.

(5)(a) If the department has determined that a provisionally approved application is incomplete, the sponsoring jurisdiction may:

(A) Consult with the applicant developer and reconsider the provisionally approved application after the applicant revises it; or

(B) Reject the provisionally approved application.

(b) If the department has determined that a provisionally approved application is complete, the approval shall be final.

(c) The sponsoring jurisdiction shall notify each applicant and the department of the final approval or rejection of an application and the amount of the grant award.

(d) The rejection of an application and the amount of a grant award may not be appealed, but a developer may reapply for a grant at any time within the applicable deadlines of the grant program for the same or another eligible housing project.

(6) Upon request by a sponsoring jurisdiction, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

SECTION 27. (1) Upon request of the sponsoring jurisdiction under section 26 (3)(b) of this 2024 Act, the assessor of the county in which is located the eligible housing project to which an application being reviewed under section 26 of this 2024 Act relates shall:

(a) Using the last certified assessment roll for the property tax year in which the application is received under section 26 of this 2024 Act:

(A) Determine the amount of property taxes assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts from the amount determined under subparagraph (A) of this paragraph.

(b) For the first property tax year for which the completed eligible housing project property is estimated to be taken into account:

(A) Determine the estimated amount of property taxes that will be assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the estimated amount of operating taxes and local option taxes levied by fire districts from the amount determined under subparagraph (A) of this paragraph.

(c) Determine the amount of the increment that results from subtracting the amount determined under subsection (1)(a) of this section from the amount determined under subsection (1)(b) of this section.

(2) As soon as practicable after determining amounts under this section, the county tax officers shall provide written notice to the sponsoring jurisdiction of the amounts.

SECTION 28. (1)(a) The Housing and Community Services Department shall develop a program to make loans to sponsoring jurisdictions to fund grants awarded under the sponsoring jurisdiction's grant program adopted pursuant to section 25 of this 2024 Act.

(b) The loans shall be interest free for the term set by the sponsoring jurisdiction under section 26 (3)(c) of this 2024 Act.

(2) For each application approved under section 26 (5)(b) of this 2024 Act, the Housing and Community Services Department shall:

(a) Enter into a loan agreement with the sponsoring jurisdiction for a payment in an amount equal to the total of:

(A) Loan proceeds in an amount equal to the grant award for the application set under section 26 (3)(d) of this 2024 Act; and

(B) The administrative costs set forth in subsection (3) of this section; and

(b) Pay to the sponsoring jurisdiction the total amount set forth in paragraph (a) of this subsection out of the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) The administrative costs referred to in subsection (2)(a)(B) of this section are:

(a) An amount not greater than five percent of the loan proceeds to reimburse the sponsoring jurisdiction for the costs of administering the grant program, other than the costs of tax administration; and

(b) An amount equal to one percent of the loan proceeds to be transferred to the county in which the sponsoring jurisdiction is situated to reimburse the county for the costs of the tax administration of the grant program by the county tax officers.

(4) The Housing and Community Services Department may assign any and all loan amounts made under this section to the Department of Revenue for collection as provided in ORS 293.250.

(5) The Housing and Community Services Department may:

(a) Consult with the Oregon Business Development Department about any of the powers and duties conferred on the Housing and Community Services Department by sections 24 to 35 of this 2024 Act; and

(b) Adopt any rule it considers necessary or convenient for the administration of sections 24 to 35 of this 2024 Act by the Housing and Community Services Department.

SECTION 29. (1) Upon entering into a loan agreement with the Housing and Community Services Department under section 28 of this 2024 Act, a sponsoring jurisdiction shall offer a grant agreement to each developer whose application was approved under section 26 (5)(b) of this 2024 Act.

(2) The grant agreement shall:

(a) Include a grant award in the amount set under section 26 (3)(d) of this 2024 Act; and

(b) Contain terms that:

(A) Are required under sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(B) Do not conflict with sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(3) Upon entering into a grant agreement with a developer, a sponsoring jurisdiction shall adopt an ordinance or resolution setting forth the details of the eligible housing project that is the subject of the agreement, including but not limited to:

(a) A description of the eligible housing project;

(b) An itemized description of the eligible costs;

(c) The amount and terms of the grant award;

(d) Written notice that the eligible housing project property is exempt from property taxation in accordance with section 30 of this 2024 Act; and

(e) A statement declaring that the grant has been awarded in response to the housing needs of communities within the sponsoring jurisdiction.

(4) Unless otherwise specified in the grant agreement, as soon as practicable after the ordinance or resolution required under subsection (3) of this section becomes effective, the sponsoring jurisdiction shall distribute the loan proceeds received from the department under section 28 (2)(a)(A) of this 2024 Act to the developer as the grant moneys awarded under this section.

(5) The sponsoring jurisdiction shall forward to the tax officers of the county in which the eligible housing project is located a copy of the grant agreement, the ordinance or resolution and any other material the sponsoring jurisdiction considers necessary for the tax officers to perform their duties under sections 24 to 35 of this 2024 Act or the ordinance or resolution.

(6) Upon request, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

SECTION 30. (1) Upon receipt of the copy of a grant agreement and ordinance or resolution from the sponsoring jurisdiction under section 29 (5) of this 2024 Act, the assessor of the county in which eligible housing project property is located shall:

(a) Exempt the eligible housing project property in accordance with this section;

(b) Assess and tax the nonexempt property in the tax account as other similar property is assessed and taxed; and

(c) Submit a written report to the sponsoring jurisdiction setting forth the assessor's estimate of the amount of:

(A) The real market value of the exempt eligible housing project property; and

(B) The property taxes on the exempt eligible housing project property that would have been collected if the property were not exempt.

(2)(a) The exemption shall first apply to the first property tax year that begins after completion of the eligible housing project to which the grant relates.

(b) The eligible housing project property shall be disqualified from the exemption on the earliest of:

(A) July 1 of the property tax year immediately succeeding the date on which the fee payment obligation under section 32 of this 2024 Act that relates to the eligible housing project is repaid in full;

(B) The date on which the annual fee imposed on the fee payer under section 32 of this 2024 Act becomes delinquent;

(C) The date on which foreclosure proceedings are commenced as provided by law for delinquent nonexempt taxes assessed with respect to the tax account that includes the eligible housing project; or

(D) The date on which a condition specified in section 33 (1) of this 2024 Act occurs.

(c) After the eligible housing project property has been disqualified from the exemption under this subsection, the property shall be assessed and taxed as other similar property is assessed and taxed.

(3) For each tax year that the eligible housing project property is exempt from taxation, the assessor shall enter a notation on the assessment roll stating:

(a) That the property is exempt under this section; and

(b) The presumptive number of property tax years for which the exemption is granted, which shall be the term of the loan agreement relating to the eligible housing project set under section 26 (3)(c) of this 2024 Act.

SECTION 31. **(1) Repayment of loans made under section 28 of this 2024 Act shall begin, in accordance with section 32 of this 2024 Act, after completion of the eligible housing project funded by the grant to which the loan relates.**

(2)(a) The sponsoring jurisdiction shall determine the date of completion of an eligible housing project.

(b)(A) If an eligible housing project is completed before July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the assessment year.

(B) If an eligible housing project is completed on or after July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the succeeding assessment year.

(c) After determining the date of completion under paragraph (a) of this subsection, the sponsoring jurisdiction shall notify the Housing and Community Services Department and the county tax officers of the determination.

(3) A loan shall remain outstanding until repaid in full.

SECTION 32. **(1) The fee payer for eligible housing project property that has been granted exemption under section 30 of this 2024 Act shall pay an annual fee for the term that shall be the presumptive number of years for which the property is granted exemption under section 30 (3)(b) of this 2024 Act.**

(2)(a) The amount of the fee for the first property tax year in which repayment of the loan is due under section 31 (1) of this 2024 Act shall equal the total of:

(A) The portion of the increment determined under section 27 (1)(c) of this 2024 Act that is attributable to the eligible housing project property to which the fee relates; and

(B) The administrative costs described in section 28 (3) of this 2024 Act divided by the term of the grant agreement entered into under section 29 of this 2024 Act.

(b) For each subsequent property tax year, the amount of the fee shall be 103 percent of the amount of the fee for the preceding property tax year.

(3)(a) Not later than July 15 of each property tax year during the term of the fee obligation, the sponsoring jurisdiction shall certify to the assessor each fee amount that became due under this section on or after July 16 of the previous property tax year from fee payers with respect to eligible housing projects located in the sponsoring jurisdiction.

(b) The assessor shall place each fee amount on the assessment and tax rolls of the county and notify:

(A) The sponsoring jurisdiction of each fee amount and the aggregate of all fee amounts imposed with respect to eligible housing project property located in the sponsoring jurisdiction.

(B) The Housing and Community Services Department of each fee amount and the aggregate of all fee amounts with respect to all eligible housing project property located in the county.

(4)(a) The assessor shall include on the tax statement of each tax account that includes exempt eligible housing project property the amount of the fee imposed on the fee payer with respect to the eligible housing project property.

(b) The fee shall be collected and enforced in the same manner as ad valorem property taxes, including nonexempt taxes, are collected and enforced.

(5)(a) For each property tax year in which a fee is payable under this section, the treasurer shall:

(A) Estimate the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts that would have been collected on eligible housing project property if the property were not exempt;

(B) Distribute out of the fee moneys the amounts determined under subparagraph (A) of this paragraph to the respective fire districts when other ad valorem property taxes are distributed under ORS 311.395; and

(C) Transfer the net fee moneys to the Housing and Community Services Department for deposit in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act in repayment of the loans to which the fees relate.

(b) Nonexempt taxes shall be distributed in the same manner as other ad valorem property taxes are distributed.

(6) Any person with an interest in the eligible housing project property on the date on which any fee amount becomes due shall be jointly and severally liable for payment of the fee amount.

(7) Any loan amounts that have not been repaid when the fee payer has discharged its obligations in full under this section remain the obligation of the sponsoring jurisdiction that obtained the loan from the department under section 28 of this 2024 Act.

(8) Any fee amounts collected in excess of the loan amount shall be distributed in the same manner as other ad valorem property taxes are distributed.

SECTION 33. (1)(a) A developer that received a grant award under section 29 of this 2024 Act shall become liable for immediate payment of any outstanding annual fee payments imposed under section 32 of this 2024 Act for the entire term of the fee if:

(A) The developer has not completed the eligible housing project within three years following the date on which the grant moneys were distributed to the developer;

(B) The eligible housing project changes substantially from the project for which the developer's application was approved such that the project would not have been eligible for the grant; or

(C) The developer has not complied with a requirement specified in the grant agreement.

(b) The sponsoring jurisdiction may, in its sole discretion, extend the date on which the eligible housing project must be completed.

(2) If the sponsoring jurisdiction discovers that a developer willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain a grant with respect to an eligible housing project, the sponsoring jurisdiction may impose on the developer a penalty not to exceed 20 percent of the amount of the grant so obtained, plus any applicable interest and fees associated with the costs of collection.

(3) Any amounts imposed under subsection (1) or (2) of this section shall be a lien on the eligible housing project property and the nonexempt property in the tax account.

(4) The sponsoring jurisdiction shall provide written notice of any amounts that become due under subsections (1) and (2) of this section to the county tax officers and the Housing and Community Services Department.

(5)(a) Any and all amounts required to be paid under this section shall be considered to be liquidated and delinquent, and the Housing and Community Services Department shall assign such amounts to the Department of Revenue for collection as provided in ORS 293.250.

(b) Amounts collected under this subsection shall be deposited, net of any collection charges, in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

SECTION 34. (1) Not later than June 30 of each year in which a grant agreement entered into under section 29 of this 2024 Act is in effect, a developer that is party to the agreement shall submit a report to the sponsoring jurisdiction in which the eligible housing project is located that contains:

(a) The status of the construction or conversion of the eligible housing project property, including an estimate of the date of completion;

(b) An itemized description of the uses of the grant moneys; and

(c) Any information the sponsoring jurisdiction considers important for evaluating the eligible housing project and the developer's performance under the terms of the grant agreement.

(2) Not later than August 15 of each year, each sponsoring jurisdiction shall submit to the Housing and Community Services Department a report containing such information re-

lating to eligible housing projects within the sponsoring jurisdiction as the department requires.

(3)(a) Not later than November 15 of each year, the department shall submit, in the manner required under ORS 192.245, a report to the interim committees of the Legislative Assembly related to housing.

(b) The report shall set forth in detail:

(A) The information received from sponsoring jurisdictions under subsection (2) of this section;

(B) The status of the repayment of all outstanding loans made under section 28 of this 2024 Act and of the payment of all fees imposed under section 32 of this 2024 Act and all amounts imposed under section 33 of this 2024 Act; and

(C) The cumulative experience of the program developed and implemented under sections 24 to 35 of this 2024 Act.

(c) The report may include recommendations for legislation.

SECTION 35. (1) The Housing Project Revolving Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Housing Project Revolving Loan Fund shall be credited to the fund.

(2) Moneys in the fund may be invested as provided by ORS 293.701 to 293.857, and the earnings from the investments shall be credited to the fund.

(3) Moneys in the Housing Project Revolving Loan Fund shall consist of:

(a) Amounts appropriated or otherwise transferred or credited to the fund by the Legislative Assembly;

(b) Net fee moneys transferred under section 32 of this 2024 Act;

(c) Amounts deposited in the fund under section 33 of this 2024 Act;

(d) Interest and other earnings received on moneys in the fund; and

(e) Other moneys or proceeds of property from any public or private source that are transferred, donated or otherwise credited to the fund.

(4) Moneys in the Housing Project Revolving Loan Fund are continuously appropriated to the Housing and Community Services Department for the purpose of paying amounts determined under section 28 of this 2024 Act.

(5) Moneys in the Housing Project Revolving Loan Fund at the end of a biennium shall be retained in the fund and used for the purposes set forth in subsection (4) of this section.

SECTION 36. (1) The Housing and Community Services Department shall have developed and begun operating the loan program that the department is required to develop under section 28 of this 2024 Act, including regional trainings and outreach for jurisdictional partners, no later than June 30, 2025.

(2) In the first two years in which the loan program is operating, the department may not expend an amount in excess of two-thirds of the moneys appropriated to the department for the purpose under section 62 of this 2024 Act.

HOUSING LAND USE ADJUSTMENTS

SECTION 37. Sections 38 to 41 of this 2024 Act are added to and made a part of ORS chapter 197A.

SECTION 38. Mandatory adjustment to housing development standards. (1) As used in sections 38 to 41 of this 2024 Act:

(a) "Adjustment" means a deviation from an existing land use regulation.

(b) "Adjustment" does not include:

(A) A request to allow a use of property not otherwise permissible under applicable zoning requirements;

(B) Deviations from land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site

clean-up, wildlife protection, or statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources;

(C) A complete waiver of land use regulations or any changes beyond the explicitly requested and allowed adjustments; or

(D) Deviations to requirements related to the implementation of fire or building codes, federal or state air, water quality or surface, ground or stormwater requirements, or requirements of any federal, state or local law other than a land use regulation.

(2) Except as provided in section 39 of this 2024 Act, a local government shall grant a request for an adjustment in an application to develop housing as provided in this section. An application qualifies for an adjustment under this section only if the following conditions are met:

(a) The application is for a building permit or a quasi-judicial, limited or ministerial land use decision;

(b) The development is on lands zoned to allow for residential uses, including mixed-use residential;

(c) The residential development is for densities not less than those required under section 55 (3)(a)(C) of this 2024 Act;

(d) The development is within an urban growth boundary, not including lands that have not been annexed by a city;

(e) The development is of net new housing units in new construction projects, including:

(A) Single-family or multifamily;

(B) Mixed-use residential where at least 75 percent of the developed floor area will be used for residential uses;

(C) Manufactured dwelling parks;

(D) Accessory dwelling units; or

(E) Middle housing as defined in ORS 197A.420;

(f) The application requests not more than 10 distinct adjustments to development standards as provided in this section. A "distinct adjustment" means:

(A) An adjustment to one of the development standards listed in subsection (4) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; or

(B) An adjustment to one of the development standards listed in subsection (5) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; and

(g) The application states how at least one of the following criteria apply:

(A) The adjustments will enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations;

(B) The adjustments will enable development of housing that reduces the sale or rental prices per residential unit;

(C) The adjustments will increase the number of housing units within the application;

(D) All of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to moderate income households as defined in ORS 456.270 for a minimum of 30 years;

(E) At least 20 percent of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to low income households as defined in ORS 456.270 for a minimum of 60 years;

(F) The adjustments will enable the provision of accessibility or visitability features in housing units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations; or

(G) All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land

trusts making them affordable to moderate income households as described in ORS 456.270 to 456.295 for a period of 90 years.

(3) A decision on an application for an adjustment made under this section is a limited land use decision. Only the applicant may appeal the decision. No notice of the decision is required if the application is denied, other than notice to the applicant. In implementing this subsection, a local government may:

(a) Use an existing process, or develop and apply a new process, that complies with the requirements of this subsection; or

(b) Directly apply the process set forth in this subsection.

(4) A local government shall grant an adjustment to the following development standards:

(a) Side or rear setbacks, for an adjustment of not more than 10 percent.

(b) For an individual development project, the common area, open space or area that must be landscaped on the same lot or parcel as the proposed housing, for a reduction of not more than 25 percent.

(c) Parking minimums.

(d) Minimum lot sizes, not more than a 10 percent adjustment, and including not more than a 10 percent adjustment to lot widths or depths.

(e) Maximum lot sizes, not more than a 10 percent adjustment, including not more than a 10 percent adjustment to lot width or depths and only if the adjustment results in:

(A) More dwelling units than would be allowed without the adjustment; and

(B) No reduction in density below the minimum applicable density.

(f) Building lot coverage requirements for up to a 10 percent adjustment.

(g) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multi-family housing and mixed-use residential housing:

(A) Requirements for bicycle parking that establish:

(i) The minimum number of spaces for use by the residents of the project, provided the application includes at least one-half space per residential unit; or

(ii) The location of the spaces, provided that lockable, covered bicycle parking spaces are within or adjacent to the residential development;

(B) For uses other than cottage clusters, as defined in ORS 197A.420 (1)(c)(D), building height maximums that:

(i) Are in addition to existing applicable height bonuses, if any; and

(ii) Are not more than an increase of the greater of:

(I) One story; or

(II) A 20 percent increase to base zone height with rounding consistent with methodology outlined in city code, if any;

(C) Unit density maximums, not more than an amount necessary to account for other adjustments under this section; and

(D) Prohibitions, for the ground floor of a mixed-use building, against:

(i) Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and

(ii) Nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.

(5) A local government shall grant an adjustment to design standards that regulate:

(a) Facade materials, color or pattern.

(b) Facade articulation.

(c) Roof forms and materials.

(d) Entry and garage door materials.

(e) Garage door orientation, unless the building is adjacent to or across from a school or public park.

(f) Window materials, except for bird-safe glazing requirements.

(g) Total window area, for up to a 30 percent adjustment, provided the application includes at least 12 percent of the total facade as window area.

(h) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multifamily housing and mixed-use residential:

(A) Building orientation requirements, not including transit street orientation requirements.

(B) Building height transition requirements, not more than a 50 percent adjustment from the base zone.

(C) Requirements for balconies and porches.

(D) Requirements for recesses and offsets.

SECTION 39. Mandatory adjustments exemption process. (1) A local government may apply to the Housing Accountability and Production Office for an exemption to section 38 of this 2024 Act only as provided in this section. After the application is made, section 38 of this 2024 Act does not apply to the applicant until the office denies the application or revokes the exemption.

(2) To qualify for an exemption under this section, the local government must demonstrate that:

(a) The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;

(b) All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government's process; and

(c)(A) Within the previous 5 years the city has approved 90 percent of received adjustment requests; or

(B) The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.

(3) Upon receipt of an application under this section, the office shall allow for public comment on the application for a period of no less than 45 days. The office shall enter a final order on the adjustment exemption within 120 days of receiving the application. The approval of an application may not be appealed.

(4) In approving an exemption, the office may establish conditions of approval requiring that the city demonstrate that it continues to meet the criteria under subsection (2) of this section.

(5) Local governments with an approved or pending exemption under this section shall clearly and consistently notify applicants, including prospective applicants seeking to request an adjustment, that are engaged in housing development:

(a) That the local government is employing a local process in lieu of section 38 of this 2024 Act;

(b) Of the development and design standards for which an applicant may request an adjustment in a housing development application; and

(c) Of the applicable criteria for the adjustment application.

(6) In response to a complaint and following an investigation, the office may issue an order revoking an exemption issued under this section if the office determines that the local government is:

(a) Not approving adjustments as required by the local process or the terms of the exemption;

(b) Engaging in a pattern or practice of violating housing-related statutes or implementing policies that create unreasonable cost or delays to housing production under ORS 197.320 (13)(a); or

(c) Failing to comply with conditions of approval adopted under subsection (4) of this section.

SECTION 40. Temporary exemption authority. Before January 1, 2025, notwithstanding section 39 of this 2024 Act:

(1) Cities may deliver applications for exemption under section 39 of this 2024 Act to the Department of Land Conservation and Development; and

(2) The Department of Land Conservation and Development may perform any action that the Housing Accountability and Production Office may take under section 39 of this 2024 Act. Decisions and actions of the department under this section are binding on the office.

SECTION 41. Reporting. (1) A city required to provide a report under ORS 197A.110 shall include as part of that report information reasonably requested from the Department of Land Conservation and Development on residential development produced through approvals of adjustments granted under section 38 of this 2024 Act. The department may not develop a separate process for collecting this data or otherwise place an undue burden on local governments.

(2) On or before September 15 of each even-numbered year, the department shall provide a report to an interim committee of the Legislative Assembly related to housing in the manner provided in ORS 192.245 on the data collected under subsection (1) of this section. The committee shall invite the League of Oregon Cities to provide feedback on the report and the efficacy of section 38 of this 2024 Act.

SECTION 42. Operative date. Sections 38 to 41 of this 2024 Act become operative on January 1, 2025.

SECTION 43. Sunset. Sections 38 to 41 of this 2024 Act are repealed on January 2, 2032.

LIMITED LAND USE DECISIONS

SECTION 44. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196, 197 and 197A, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196, 197 and 197A.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines are advisory and do not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12)**(a)** "Limited land use decision"[*:*]

[*(a)*] means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(C) The approval or denial of an application for a replat.

(D) The approval or denial of an application for a property line adjustment.

(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.

(b) **"Limited land use decision"** does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or Metro or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that Metro may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195, 197 and 197A.

(19) "Special district" means any unit of local government, other than a city, county, Metro or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban growth boundary" means an acknowledged urban growth boundary contained in a city or county comprehensive plan or adopted by Metro under ORS 268.390 (3).

(21) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(22) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(23) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 45. ORS 197.195 is amended to read:

197.195. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.797.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction

of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.797. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision.

(6) A city shall apply the procedures in this section, and only the procedures in this section, to a limited land use decision, even if the city has not incorporated limited land use decisions into land use regulations, as required by ORS 197.646 (3), except that a limited land use decision that is made under land use standards that do not require interpretation or the exercise of policy or legal judgment may be made by city staff using a ministerial process.

SECTION 45a. Section 46 of this 2024 Act is added to and made a part of ORS chapter 197.

SECTION 46. Applicability of limited land use decision to housing development. (1) The Housing Accountability and Production Office may approve a hardship exemption or time extension to ORS 197.195 (6), during which time ORS 197.195 (6) does not apply to decisions by a local government.

(2) The office may grant an exemption or time extension only if the local government demonstrates that a substantial hardship would result from the increased costs or staff capacity needed to implement procedures as required under ORS 197.195 (6).

(3) The office shall review exemption or time extension requests under the deadlines provided in section 39 (3) of this 2024 Act.

SECTION 47. Sunset. Section 46 of this 2024 Act is repealed on January 2, 2032.

SECTION 47a. Operative date. Section 46 of this 2024 Act and the amendments to ORS 197.015 and 197.195 by sections 44 and 45 of this 2024 Act become operative on January 1, 2025.

ONE-TIME SITE ADDITIONS TO URBAN GROWTH BOUNDARIES

SECTION 48. Sections 49 to 59 of this 2024 Act are added to and made a part of ORS chapter 197A.

SECTION 49. Definitions. As used in sections 49 to 59 of this 2024 Act:

(1) "Net residential acre" means an acre of residentially designated buildable land, not including rights of way for streets, roads or utilities or areas not designated for development due to natural resource protections or environmental constraints.

(2) "Site" means a lot or parcel or contiguous lots or parcels, or both, with or without common ownership.

SECTION 50. City addition of sites outside of Metro. (1) Notwithstanding any other provision of ORS chapter 197A, a city outside of Metro may add a site to the city's urban growth boundary under sections 49 to 59 of this 2024 Act, if:

(a) The site is adjacent to the existing urban growth boundary of the city or is separated from the existing urban growth boundary by only a street or road;

(b) The site is:

(A) Designated as an urban reserve under ORS 197A.230 to 197A.250, including a site whose designation is adopted under ORS 197.652 to 197.658;

(B) Designated as nonresource land; or

(C) Subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland;

(c) The city has not previously adopted an urban growth boundary amendment or exchange under sections 49 to 59 of this 2024 Act;

(d) The city has demonstrated a need for the addition under section 52 of this 2024 Act;

(e) The city has requested and received an application as required under sections 53 and 54 of this 2024 Act;

(f) The total acreage of the site:

(A) For a city with a population of 25,000 or greater, does not exceed 100 net residential acres; or

(B) For a city with a population of less than 25,000, does not exceed 50 net residential acres; and

(g)(A) The city has adopted a binding conceptual plan for the site that satisfies the requirements of section 55 of this 2024 Act; or

(B) The added site does not exceed 15 net residential acres and satisfies the requirements of section 56 of this 2024 Act.

(2) A county shall approve an amendment to an urban growth boundary made under this section that complies with sections 49 to 59 of this 2024 Act and shall cooperate with a city to facilitate the coordination of functions under ORS 195.020 to facilitate the city's annexation and the development of the site. The county's decision is not a land use decision.

(3) Notwithstanding ORS 197.626, an action by a local government under sections 49 to 59 of this 2024 Act is not a land use decision as defined in ORS 197.015.

SECTION 51. Petition for additions of sites to Metro urban growth boundary. (1) A city within Metro may petition Metro to add a site within the Metro urban growth boundary if the site:

(a) Satisfies the requirements of section 50 (1) of this 2024 Act; and

(b) Is designated as an urban reserve.

(2)(a) Within 120 days of receiving a petition under this section, Metro shall determine whether the site would substantially comply with the applicable provisions of sections 49 to 59 of this 2024 Act.

(b) If Metro determines that a petition does not substantially comply, Metro shall:

(A) Notify the city of deficiencies in the petition, specifying sufficient detail to allow the city to remedy any deficiency in a subsequent resubmittal; and

(B) Allow the city to amend its conceptual plan and resubmit it as a petition to Metro under this section.

(c) If Metro determines that a petition does comply, notwithstanding any other provision of ORS chapter 197A, Metro shall adopt amendments to its urban growth boundary to include the site in the petition, unless the amendment would result in more than 300 total net residential acres added under this subsection.

(3) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total less than 300 net residential acres, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section:

(a) On or before November 1, 2025, for all petitions deemed compliant on or before July 1, 2025; or

(b) Within 120 days after a petition is deemed compliant after July 1, 2025, in the order in which the petitions are received.

(4) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total 300 or more net residential acres, on or before January 1, 2027, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section to include the sites in those petitions that Metro determines will:

(a) Best comply with the provisions of section 55 of this 2024 Act; and

(b) Maximize the development of needed housing.

(5) Metro may not conduct a hearing to review or select petitions or adopt amendments to its urban growth boundary under this section.

SECTION 52. City demonstration of need. A city may not add, or petition to add, a site under sections 49 to 59 of this 2024 Act, unless:

(1) The city has demonstrated a need for additional land based on the following factors:

(a)(A) In the previous 20 years there have been no urban growth boundary expansions for residential use adopted by a city or by Metro in a location adjacent to the city; and

(B) The city does not have within the existing urban growth boundary an undeveloped, contiguous tract that is zoned for residential use that is larger than 20 net residential acres; or

(b) Within urban growth boundary expansion areas for residential use adopted by the city over the previous 20 years, or by Metro in locations adjacent to the city, 75 percent of the lands either:

(A) Are developed; or

(B) Have an acknowledged comprehensive plan with land use designations in preparation for annexation and have a public facilities plan and associated financing plan.

(2) The city has demonstrated a need for affordable housing, based on:

(a) Having a greater percentage of severely cost-burdened households than the average for this state based on the Comprehensive Housing Affordability Strategy data from the United States Department of Housing and Urban Development; or

(b) At least 25 percent of the renter households in the city being severely rent burdened as indicated under the most recent housing equity indicator data under ORS 456.602 (2)(g).

SECTION 53. City solicitation of site applications. (1) Before a city may select a site for inclusion within the city's or Metro's urban growth boundary under sections 49 to 59 of this 2024 Act, a city must provide public notice that includes:

(a) The city's intention to select a site for inclusion within the city's urban growth boundary.

(b) Each basis under which the city has determined that it qualifies to include a site under section 52 of this section.

(c) A deadline for submission of applications under this section that is at least 45 days following the date of the notice.

(d) A description of the information, form and format required of an application, including the requirements of section 55 (2) of this 2024 Act.

(2) A copy of the notice of intent under this section must be provided to:

(a) Each county in which the city resides;

(b) Each special district providing urban services within the city's urban growth boundary;

(c) The Department of Land Conservation and Development; and

(d) Metro, if the city is within Metro.

SECTION 54. City review of site applications. (1) After the deadline for submission of applications established under section 55 of this 2024 Act, the city shall:

(a) Review applications filed for compliance with sections 49 to 59 of this 2024 Act.

(b) For each completed application that complies with sections 49 to 59 of this 2024 Act, provide notice to the residents of the proposed site area who were not signatories to the application.

(c) Provide opportunities for public participation in selecting a site, including, at least:

(A) One public comment period;

(B)(i) One meeting of the city's planning commission at which public testimony is considered;

(ii) One meeting of the city's council at which public testimony is considered; or

(iii) One public open house; and

(C) Notice on the city's website or published in a paper of record at least 14 days before:

(i) A meeting under subparagraph (B) of this paragraph; and

(ii) The beginning of a comment period under subparagraph (A) of this paragraph.

(d) Consult with, request necessary information from and provide the opportunity for written comment from:

(A) The owners of each lot or parcel within the site;

(B) If the city does not currently exercise land use jurisdiction over the entire site, the governing body of each county with land use jurisdiction over the site;

(C) Any special district that provides urban services to the site; and

(D) Any public or private utility that provides utilities to the site.

(2) An application filed under this section must:

(a) Be completed for each property owner or group of property owners that are proposing an urban growth boundary amendment under sections 49 to 59 of this 2024 Act;

(b) Be in writing in a form and format as required by the city;

(c) Specify the lots or parcels that are the subject of the application;

(d) Be signed by all owners of lots or parcels included within the application; and

(e) Include each owner's signed consent to annexation of the properties if the site is added to the urban growth boundary.

(3) If the city has received approval from all property owners of such lands, in writing in a form and format specified by the city, the governing body of the city may select an application and the city shall adopt a conceptual plan as described in section 55 of this 2024 Act for all or a portion of the lands contained within the application.

(4) A conceptual plan adopted under subsection (3) of this section must include findings identifying reasons for inclusion of lands within the conceptual plan and reasons why lands, if any, submitted as part of an application that was partially approved were not included within the conceptual plan.

SECTION 55. Conceptual plan for added sites. (1) As used in this section:

(a) "Affordable units" means residential units described in subsection (3)(f)(A) or (4) of this section.

(b) "Market rate units" means residential units other than affordable units.

(2) Before adopting an urban growth boundary amendment under section 50 of this 2024 Act or petitioning Metro under section 51 of this 2024 Act, for a site larger than 15 net residential acres, a city shall adopt a binding conceptual plan as an amendment to its comprehensive plan.

(3) The conceptual plan must:

(a) Establish the total net residential acres within the site and must require for those residential areas:

(A) A diversity of housing types and sizes, including middle housing, accessible housing and other needed housing;

(B) That the development will be on lands zoned for residential or mixed-use residential uses; and

(C) The development will be built at net residential densities not less than:

(i) Seventeen dwelling units per net residential acre if sited within the Metro urban growth boundary;

(ii) Ten units per net residential acre if sited in a city with a population of 30,000 or greater;

(iii) Six units per net residential acre if sited in a city with a population of 2,500 or greater and less than 30,000; or

(iv) Five units per net residential acre if sited in a city with a population less than 2,500;

(b) Designate within the site:

(A) Recreation and open space lands; and

(B) Lands for commercial uses, either separate or as a mixed use, that:

(i) Primarily serve the immediate surrounding housing;

(ii) Provide goods and services at a smaller scale than provided on typical lands zoned for commercial use; and

(iii) Are provided at the minimum amount necessary to support and integrate viable commercial and residential uses;

(c) If the city has a population of 5,000 or greater, include a transportation network for the site that provides diverse transportation options, including walking, bicycling and transit use if public transit services are available, as well as sufficient connectivity to existing and

planned transportation network facilities as shown in the local government's transportation system plan as defined in Land Conservation and Development Commission rules;

(d) Demonstrate that protective measures will be applied to the site consistent with the statewide land use planning goals for:

(A) Open spaces, scenic and historic areas or natural resources;

(B) Air, water and land resources quality;

(C) Areas subject to natural hazards;

(D) The Willamette River Greenway;

(E) Estuarine resources;

(F) Coast shorelands; or

(G) Beaches and dunes;

(e) Include a binding agreement among the city, each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts that the site will be served with all necessary urban services as defined in ORS 195.065, or an equivalent assurance; and

(f) Include requirements that ensure that:

(A) At least 30 percent of the residential units are subject to affordability restrictions, including but not limited to affordable housing covenants, as described in ORS 456.270 to 456.295, that require for a period of not less than 60 years that the units be:

(i) Available for rent, with or without government assistance, by households with an income of 80 percent or less of the area median income as defined in ORS 456.270; or

(ii) Available for purchase, with or without government assistance, by households with an income of 130 percent or less of the area median income;

(B) The construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units;

(C) All common areas and amenities are equally available to residents of affordable units and of market rate units and properties designated for affordable units are dispersed throughout the site; and

(D) The requirement for affordable housing units is recorded before the building permits are issued for any property within the site, and the requirements contain financial penalties for noncompliance.

(4) A city may require greater affordability requirements for residential units than are required under subsection (3)(f)(A) of this section, provided that the city significantly and proportionally offsets development costs related to:

(a) Permits or fees;

(b) System development charges;

(c) Property taxes; or

(d) Land acquisition and predevelopment costs.

SECTION 56. Alternative for small additions. (1) A city that intends to add 15 net residential acres or less is not required to adopt a conceptual plan under section 55 of this 2024 Act if the city has entered into:

(a) Enforceable and recordable agreements with each landowner of a property within the site to ensure that the site will comply with the affordability requirements described in section 55 (3)(f) of this 2024 Act; and

(b) A binding agreement with each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts to ensure that the site will be served with all necessary urban services as defined in ORS 195.065.

(2) This section does not apply to a city within Metro.

SECTION 57. Department approval of site additions. (1) Within 21 days after the adoption of an amendment to an urban growth boundary or the adoption or amendment of a conceptual plan under sections 49 to 59 of this 2024 Act, and the approval by a county if required

under section 50 (2) of this 2024 Act, the conceptual plan or amendment must be submitted to the Department of Land Conservation and Development for review. The submission must be made by:

(a) The city, for an amendment under section 50 or 58 of this 2024 Act; or

(b) Metro, for an amendment under section 51 or 58 of this 2024 Act.

(2) Within 60 days after receiving a submittal under subsection (1) of this section, the department shall:

(a) Review the submittal for compliance with the provisions of sections 49 to 59 of this 2024 Act.

(b)(A) If the submittal substantially complies with the provisions of sections 49 to 59 of this 2024 Act, issue an order approving the submittal; or

(B) If the submittal does not substantially comply with the provisions of sections 49 to 59 of this 2024 Act, issue an order remanding the submittal to the city or to Metro with a specific determination of deficiencies in the submittal and with sufficient detail to identify a specific remedy for any deficiency in a subsequent resubmittal.

(3) If a conceptual plan is remanded to Metro under subsection (2)(b) of this section:

(a) The department shall notify the city; and

(b) The city may amend its conceptual plan and resubmit a petition to Metro under section 51 of this 2024 Act.

(4) Judicial review of the department's order:

(a) Must be as a review of orders other than a contested case under ORS 183.484; and

(b) May be initiated only by the city or an owner of a proposed site.

(5) Following the approval of a submittal under this section, a local government must include the added lands in any future inventory of buildable lands or determination of housing capacity under ORS 197A.270, 197A.280, 197A.335 or 197A.350.

SECTION 58. Alternative urban growth boundary land exchange. (1) In lieu of amending its urban growth boundary under any other process provided by sections 49 to 59 of this 2024 Act, Metro or a city outside of Metro may amend its urban growth boundary to add one or more sites described in section 51 (1)(a) and (b) of this 2024 Act to the urban growth boundary and to remove one or more tracts of land from the urban growth boundary as provided in this section.

(2) The acreage of the added site and removed lands must be roughly equivalent.

(3) The removed lands must have been zoned for residential uses.

(4) The added site must be zoned for residential uses at the same or greater density than the removed lands.

(5)(a) Except as provided in paragraph (b) of this subsection, land may be removed from an urban growth boundary under this section without landowner consent.

(b) A landowner may not appeal the removal of the landowner's land from an urban growth boundary under this section unless the landowner agrees to enter into a recorded agreement with Metro or the city in which the landowner would consent to annexation and development of the land within 20 years if the land remains in the urban growth boundary.

(6) Review of an exchange of lands made under this section may only be made by:

(a) For cities outside of Metro, the county as provided in section 50 (2) of this 2024 Act and by the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act; or

(b) For Metro, the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act.

(7) Sections 50 (1)(d) to (g), 52, 53, 54, 55 and 56 of this 2024 Act do not apply to a site addition made under this section.

SECTION 59. Reporting on added sites. A city for which an amendment was made to an urban growth boundary and approved under sections 49 to 59 of this 2024 Act shall submit a

report describing the status of development within the included area to the Department of Land Conservation and Development every two years until:

(1) January 2, 2033; or

(2) The city determines that development consistent with the acknowledged conceptual plan is deemed complete.

SECTION 60. Sunset. Sections 49 to 59 of this 2024 Act are repealed on January 2, 2033.

APPROPRIATIONS

SECTION 61. Appropriation and expenditure limitation to Department of Land Conservation and Development. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of $5,629,017, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, to take any action to implement sections 1 to 5, 16, 38 to 41, 46 and 49 to 59 of this 2024 Act and the amendments to ORS 183.471, 197.015, 197.195, 197.335, 215.427 and 227.178 by sections 8, 9, 44, 45, 64 and 65 of this 2024 Act.

(2) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of $5,000,000, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, for the Housing Accountability and Production Office, established under section 1 of this 2024 Act, to provide technical assistance, including grants, under section 1 (2) of this 2024 Act and to provide required studies under section 5 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of $10,629,017 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Department of Land Conservation and Development from the Housing Accountability and Production Office Fund established under section 4 of this 2024 Act.

SECTION 62. Appropriation and expenditure limitation to Housing and Community Services Department. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of $75,000,000, for deposit into the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(2) Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter 390, Oregon Laws 2023, for the biennium ending June 30, 2025, is increased by $878,071 for administrative expenses related to the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of $24,750,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Housing and Community Services Department from the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

SECTION 63. Appropriation and expenditure limitation to Oregon Business Development Department. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Business Development Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of $3,000,000, for deposit into the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.

(2) Notwithstanding any other law limiting expenditures, the amount of $3,000,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Oregon Business Development Department from the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.

SECTION 63a. Expenditure limitation to Department of Consumer and Business Services. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (6), chapter 354, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Consumer and Business Services, for Building Codes Division, is increased by $296,944, to support operations of the Housing Accountability and Production Office established under section 1 of this 2024 Act.

CONFORMING AMENDMENTS

SECTION 64. ORS 197.335, as amended by section 17, chapter 13, Oregon Laws 2023, is amended to read:

197.335. (1) [*An order issued under ORS 197.328 and the copy of the order mailed*] **The Land Conservation and Development Commission shall mail a copy of an enforcement order** to the local government, state agency or special district**. An order** must set forth:

(a) The nature of the noncompliance, including, but not limited to, the contents of the comprehensive plan or land use regulation, if any, of a local government that do not comply with the goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with the goals. In the case of a pattern or practice of decision-making, the order must specify the decision-making that constitutes the pattern or practice, including specific provisions the [*Land Conservation and Development*] commission believes are being misapplied.

(b) The specific lands, if any, within a local government for which the existing plan or land use regulation, if any, does not comply with the goals.

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply. In the case of a pattern or practice of decision-making, the commission may require revisions to the comprehensive plan, land use regulations or local procedures which the commission believes are necessary to correct the pattern or practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of this section, an enforcement order does not affect:

(A) Land use applications filed with a local government prior to the date of adoption of the enforcement order unless specifically identified by the order;

(B) Land use approvals issued by a local government prior to the date of adoption of the enforcement order; or

(C) The time limit for exercising land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(2) Judicial review of a final order of the commission is governed by the provisions of ORS chapter 183 applicable to contested cases except as otherwise stated in this section. The commission's final order must include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but an error in procedure is not cause for reversal, modification or remand unless the court finds that substantial rights of any party were prejudiced thereby;

(b) The order to be unconstitutional;

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

(3)(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission's order [*under ORS 197.320 or subsection (2) of this section*] it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance. The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section do not affect the commission's authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(4) As part of its order [*under ORS 197.320 or subsection (2) of this section*], the commission may withhold grant funds from the local government to which the order is directed. As part of an order issued under this section, the commission may notify the officer responsible for disbursing state-shared revenues to withhold that portion of state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the amount of state planning grant moneys previously provided the local government by the commission. The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as outlined in this section and shall release funds to the local government or department when notified to so do by the commission or its designee. The commission may retain a portion of the withheld revenues to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the local government upon completion of requirements of the [*commission*] **enforcement** order.

(5)(a) As part of its order under this section, the commission may notify the officer responsible for disbursing funds from any grant or loan made by a state agency to withhold such funds from a special district to which the order is directed. The officer responsible for disbursing funds shall withhold funds as outlined in this section and shall release funds to the special district or department when notified to do so by the commission.

(b) The commission may retain a portion of the funds withheld to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the special district upon completion of the requirements of the commission order.

(6) As part of its order under this section, upon finding a city failed to comply with ORS 197.320 (13), the commission may, consistent with the principles in ORS 197A.130 (1), require the city to:

(a) Comply with the housing acceleration agreement under ORS 197A.130 (6).

(b) Take specific actions that are part of the city's housing production strategy under ORS 197A.100.

(c) Impose appropriate models that have been developed by department, including model ordinances, procedures, actions or anti-displacement measures.

(d) Reduce maximum timelines for review of needed housing or specific types of housing or affordability levels, [*including*] through ministerial approval or any other expedited existing approval process.

(e) Take specific actions to waive or amend local ordinances.

(f) Forfeit grant funds under subsection (4) of this section.

(7) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the [*commission's*] order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing [*and*] **or** order on an alleged violation.

(8) As used in this section, "enforcement order" or "order" means an order issued under ORS 197.320 or section 3 of this 2024 Act as may be modified on appeal under subsection (2) of this section.

SECTION 65. ORS 183.471 is amended to read:

183.471. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

(a) Identifies the final order by the date it was issued;

(b) Is suitable for indexing and searching; and

(c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two requests submitted under this section in a calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

(a) The Department of Revenue;

(b) The State Board of Parole and Post-Prison Supervision;

(c) The Department of Corrections;

(d) The Employment Relations Board;

(e) The Public Utility Commission of Oregon;

(f) The Oregon Health Authority;

(g) The Land Conservation and Development Commission**, except for enforcement orders under section 3 of this 2024 Act**;

(h) The Land Use Board of Appeals;

(i) The Division of Child Support of the Department of Justice;

(j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;

(k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010;

(L) The Employment Department, if the final order relates to an assessment of unemployment tax for which a hearing was not held;

(m) The Employment Department, if the final order relates to:

(A) Benefits, as defined in ORS 657B.010;

(B) Employer and employee contributions under ORS 657B.150 for which a hearing was not held;

(C) Employer-offered benefit plans approved under ORS 657B.210 or terminated under ORS 657B.220; or

(D) Employer assistance grants under ORS 657B.200; or

(n) The Department of Human Services, if the final order was not related to licensing or certification.

SECTION 66. ORS 455.770 is amended to read:

455.770. (1) In addition to any other authority and power granted to the Director of the Department of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693 **and sections 1 to 5 of this 2024 Act**, with respect to municipalities, building officials and inspectors, if the director has reason to believe that there is a failure to enforce or a violation of any provision of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes, the director may:

(a) Examine building code activities of the municipality;

(b) Take sworn testimony; and

(c) With the authorization of the Office of the Attorney General, subpoena persons and records to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise subject to public inspection under ORS 192.311 to 192.478.

(2) The investigative authority authorized in subsection (1) of this section covers the violation or omission by a municipality related to enforcement of codes or administrative rules, certification of inspectors or financial transactions dealing with permit fees and surcharges under any of the following circumstances when:

(a) The duties are clearly established by law, rule or agreement;

(b) The duty involves procedures for which the means and methods are clearly established by law, rule or agreement; or

(c) The duty is described by clear performance standards.

(3) Prior to starting an investigation under subsection (1) of this section, the director shall notify the municipality in writing setting forth the allegation and the rules or statutes pertaining to the allegation and give the municipality 30 days to respond to the allegation. If the municipality does not satisfy the director's concerns, the director may then commence an investigation.

(4) If the Department of Consumer and Business Services or the director directs corrective action[*, the following shall be done*]:

(a) The corrective action [*shall*] **must** be in writing and served on the building official and the chief executive officers of all municipalities affected;

(b) The corrective action [*shall*] **must** identify the facts and law relied upon for the required action; and

(c) A reasonable time [*shall*] **must** be provided to the municipality for compliance.

(5) The director may revoke any authority of the municipality to administer any part of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes if the director determines after a hearing conducted under ORS 183.413 to 183.497 that:

(a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and

(b) The municipality did not comply with the corrective action required.

CAPTIONS

SECTION 67. The unit and section captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

EFFECTIVE DATE

SECTION 68. This 2024 Act takes effect on the 91st day after the date on which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate February 29, 2024

.....
Obadiah Rutledge, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House March 4, 2024

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State

Derrick Tokos

From: DLCD Plan Amendments <plan.amendments@dlcd.oregon.gov>
Sent: Thursday, July 18, 2024 7:27 PM
To: Derrick Tokos
Subject: Confirmation of PAPA Online submittal to DLCD

[WARNING] This message comes from an external organization. Be careful of embedded links.

You don't often get email from plan.amendments@dlcd.oregon.gov. Learn why this is important

Newport

Your notice of a revised proposal for a change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.
Local File #: 3-Z-23
DLCD File #: 001-24
Original Proposal Received: 1/19/2024
Date of Revision: 7/18/2024
First Evidentiary Hearing: 2/26/2024
Final Hearing Date: 10/7/2024
Submitted by: dtokos

If you have any questions about this notice, please reply or send an email to plan.amendments@dlcd.oregon.gov.

CITY OF NEWPORT

NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Monday, August 26, 2024, at 7:00 p.m. in the City Hall Council Chambers to consider further amendments to draft Ordinance #2222, which was prepared to remove code barriers to housing construction consistent with recommendations from the City's Housing Production Strategy (File No. 3-Z-23). The additional amendments implement adjustment provisions contained in the Governor's Housing Bill (SB1537). Revisions are being made to Newport Municipal Code (NMC) Chapters 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 and 14.52, and a new Chapter 14.51 has been developed to implement SB 1537. Pursuant to Newport Municipal Code (NMC) Section 14.36.010, the Commission must find that the change is required by public necessity and the general welfare of the community in order for it to make a recommendation to the City Council that the amendments be adopted. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (address above).

(FOR PUBLICATION ONCE ON WEDNESDAY, August 14, 2024)

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Public Notices

A. Data, Text, Inventories or Graphics Amendment: 1) New or updated information. B. Conclusions Amendment: 1) Change or addition to the data, text, inventories, or graphics which significantly affects a conclusion that is drawn for that information. C. Goal and Policy Amendments: 1) A significant change in one or more conclusions; or 2) A public need for the change; or 3) A significant change in community attitudes or priorities; or 4) A demonstrated conflict with another plan goal or policy that has a higher priority; or 5) A change in a statute or statewide agency plan; and 6) All the Statewide Planning Goals. D. Implementation Strategies Amendments: 1) A change in one or more goal or policy; or 2) A new or better strategy that will result in better accomplishment of the goal or policy; or 3) A demonstrated ineffectiveness of the existing implementation strategy; or 4) A change in the statute or state agency plan; or 5) A fiscal reason that prohibits implementation of the strategy. For the new estuary related land use standards, Newport Municipal Code (NMC) Section 14.36.010 requires findings that the amendments to the Zoning Ordinance are required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from proponents, testimony from opponents, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Material related to the proposed amendment may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above). Please note that this is a legislative public hearing process and changes to the proposed amendment may be recommended and made through the public hearing process and those changes may also be viewed or a copy purchased. Contact Derrick Tokos, AICP, Newport Community Development Director, (541) 574-0626, email address d.tokos@newportoregon.gov (mailing address above).

LCL24-4001 CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Monday, August 26, 2024, at 7:00 p.m. in the City Hall Council Chambers to consider further amendments to draft Ordinance #2222, which was prepared to remove code barriers to housing construction consistent with recommendations from the City's Housing Production Strategy (File No. 3-Z-23). The additional amendments implement adjustment provisions contained in the Governor's Housing Bill (SB1537). Revisions are being made to Newport Municipal Code (NMC) Chapters 3.25, 3.30, 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33, 14.44 and 14.52, and a new Chapter 14.51 has been developed to implement SB 1537. Pursuant to Newport Municipal Code (NMC) Section 14.36.010, the Commission must find that the change is required by public necessity and the general welfare of the community in order for it to make a recommendation to the City Council that the amendments be adopted. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (address above).

LCL24-4002 PERSUENT TO ORS CHAPTER 819

Notice is hereby given that the following vehicle will be Sold, for cash to the highest bidder, on 8/27/2024 The sale will be held at 10:00am by Car Care Tow Pro 2795 SE 23rd Dr, Lincoln City, OR 2016 GMC Sierra VIN#1GT42YEG0GF211198-2 Amount due on lien $6045.00 Reputed owner(s) ADAMS, MICHAEL OREGON STATE CU

LCL24-4005 SELF STORAGE PUBLIC SALE

Safe-Lock Storage 3639 SE Ash St South Beach, Oregon 97366 Saturday, 8/31/2024 @ 10:00am L27 - Tonya Coronado, L38 - Jose Garcia Villanueva, C06 - Rich Rouske, Sale Subject to Cancellation. Safe-Lock Storage reserves the Right to refuse any and all bids.

LCL24-3053 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

In the Matter of the Estate of COLLEEN JAE BULLIS, aka COLLEEN CLEGHORN, Deceased. Case No. 24PB05562 NOTICE TO INTERESTED PERSONS NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative. All persons having claims against the estate are required to present them, with vouchers attached, to the undersigned personal representative by and through their attorney at PO Box 1987, Newport, OR 97365, within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the Court, the personal representative, or the lawyers for the personal representative, Traci P. McDowall. Dated and first published on August 14, 2024. Traci P. McDowall, OSB #184063 Attorney for Personal Representative. PERSONAL REPRESENTATIVE: Mike Callies, 968 Capri Rd, Enchinitas, CA 92024, (760) 518-4509. LAWYER FOR PERSONAL REPRESENTATIVE: Traci P. McDowall, OSB #184063, PO Box 1987, Newport, OR 97365, (541) 272-5500, traci@yaquinalaw.com

LCL24-4005 PUBLIC MEETING NOTICE

COMMUNITY SERVICES CONSORTIUM (CSC) OREGON CASCADES WEST COUNCIL OF GOVERNMENTS (OCWCOG) EXECUTIVE DIRECTOR RECRUITMENT COMMITTEE MEETING CSC and OCWCOG joint Executive Director Recruitment Committee meeting will be held Thursday, August 15, 2024 at 5:30 pm via Microsoft Teams. The purpose of the meeting is to develop a strategy and final budget to fill the newly created Executive Director position for adoption by each organizations' Board. The meeting is open to the public; all interested persons are welcome to join. Connection information is available by emailing eday@communityservices.us.

LCL24-4004 SALE OF TIMBER, SILETZ INDIAN

RESERVATION
Olalla Logging Unit is located in Govt. Lot 1 of Section 20, T10S, R10W, W.M. in Lincoln County, Oregon. SEALED BIDS, in duplicate, on forms provided therefore, marked outside, "Proposal for Timber Olalla Logging Unit", addressed to the Confederated Tribes of Siletz Indians, ATTN. Natural Resources Director, P.O. Box 549, Siletz, Oregon, 97380 will be received until 1:00 PM, Local Time, on September 17, 2024. Sealed bids may be submitted by personal delivery to the Confederated Tribes of Siletz Indians Administration Building at 201 SE Swan Avenue, Siletz, OR 97380 until 1:00 PM, local time, on the day of bid opening. Sealed bids may also be submitted via FedEx or UPS to the above address or by USPS at P.O. Box 549, Siletz, OR 97380, but must be received at the Natural Resources Department office by 1:00 PM the day of the bid opening. All sealed bids must be submitted along with an acceptable form of bid deposit. THERE WILL BE NO ORAL BIDDING. The Olalla Logging Unit contains approximately 330 thousand board feet (MBF) of standing timber. There is an estimated 295 MBF of Douglas-fir and Other Conifers comprised of 216 MBF of Douglas-fir, 67 MBF of Western Hemlock; 12 MBF of Sitka Spruce; 35 MBF of Red Alder and Other Hardwoods; and an undetermined volume of All Conifer and Hardwood Species Wood Logs. The above stated volumes are estimates and are not guaranteed. Each bidder must state the price per thousand board feet, Scribner Log Scale that will be paid for timber cut and scaled from this unit. Douglas-fir and Other Conifers is the only biddable item. No bid per thousand board feet of less than $253.00 for Douglas-fir and Other Conifers will be considered. No bidding will be permitted on Red Alder and Other Hardwoods or All Conifer and Hardwood Species Wood Logs. Red Alder and Other Hardwoods will be paid for a predetermined cash value of one thousand two hundred thirty dollars and twenty five cents ($1,230.25). All Conifer Species Wood Logs, removed at the Purchaser's option, will be purchased at the rate of $75.00 per thousand board feet gross scale. Timber from this sale IS NOT subject to log export or substitution restrictions. A Bid Deposit in the form of a cashier's check drawn payable to the order of the Confederated Tribes of Siletz Indians in the amount of seven thousand six hundred dollars and no cents ($7,600.00) must accompany each sealed bid. The Bid Deposit of the apparent high bidder, and of others who submit written requests to have their bids considered for acceptance, will be retained, pending acceptance or rejection of the bids. All other deposits will be returned. The deposit of the apparent high bidder will be applied as part of the purchase price against timber cut on this unit, or retained as liquidated damages if the bidder fails to execute the contract and furnish a satisfactory performance bond in the amount of eleven thousand four hundred and no cents ($11,400.00) within thirty (30) days of acceptance of the bid. An acceptable performance bond will be in the form of a cashier's check drawn payable to the Confederated Tribes of Siletz Indians. The right to waive technical defects and to reject any or all bids is reserved. A prospectus and sample timber contract are available upon request. Complete information concerning the timber, the condition of sale, and submission of bids can be obtained from the Natural Resources Director, P.O. Box 549, Siletz, Oregon 97380, Telephone 541-444- 8232.

LCL24-4006 SELF-STORAGE PUBLIC SALE

On Tuesday 8/27/24 ending at 12:05pm an auction will be held online at StorageTreasures.com by Safe & Sound Storage 833 NE 3rd Street Newport OR 97365 for unit C6-Ryan Darr

LCL24-3050

Port of Toledo (Owner) is requesting Bids for the construction of the following project: Port of Toledo Sewer Connection Expansion Project - Bids for the construction of the Project will be received at Port of Toledo located at 496 NE Hwy 20, Unit 1, Toledo, OR 97391 until September 6, 2024, at 2:00 PM local time. Bids may also be mailed to the following address: Debbie Scacco, Port Manager Port of Toledo, 496 NE Hwy 20, Unit 1, PO BOX 428, Toledo, OR, 97391, USA. The envelope shall plainly identify (1) the Project name, (2) the Bidder name, and (3) the Bidders contractor's license number. To ensure your bid is accepted in its entirety, please combine all documents into a single pdf file attached to your email. Bidders shall be responsible for calling the Port of Toledo at (541) 336-5207 before the proposal deadline to confirm the bid was received. Scanned documents attached to the email shall include the Bid Form (C-410) and all forms identified in Article 2.01 of the bid Form. A scanned copy of the fully executed bid bond is acceptable for bid submission. Bids and all associated documents must be received by the Port of Toledo by 2 PM. At that time the Bids received will be publicly opened and read. The Port of Toledo is requesting bids for a sanitary sewer and washdown system as follows: The project consists of three pump stations and a pressure sewer force main connecting to the city sewer on Business Highway 20 and a concrete washdown pad with pump station and treatment. Schedule 1 Part A - Will include PS-03 a OneLift pump station at the industrial park, gravity sewer and connection to the city sewer. Part B - Two small, packaged pump stations PS-01 & 02 will pump to the main pump station PS-03 at the industrial park on the west side of Yaquina Bay Road. Schedule 2 - A 45,000 SF concrete pad will be installed south of the main boathouse building. Boats in dry dock for hull refurbishing will be located on the pad. Debris from the boat hull work will be swept and removed and the pad rinsed and washdown water pumped to a treatment tank using biochar for metals reduction. Treated water will flow by gravity to PS-02. Flow limits are an integral part of this design. Once the pad is cleaned and washdown water removed a separate drainage system will be opened for stormwater runoff. Schedule 1 - Sewer System - Part A - Industrial Park and connection to city sewer - Part B - Boatyard sewer system Schedule 2 - 45,000 SF concrete washdown pad and water treatment. Obtaining the Bidding Documents - Information and Bidding Documents for the Project can be found at the following designated website: https://www.civilwest.com/bidding. Bidding Documents may be viewed at no cost from the designated website. Please refer to eBid Project #9251988. Documents may be downloaded for $20.00. Prospective Bidders are addenda, if any, obtained from sources other than the designated website. For assistance with the bidding website, please contact QuestCDN at 952-233-1632 or info@questcdn.com. The Issuing Office for the Bidding Documents is: Civil West Engineering Services, Inc., 409 SW 10th Street, Newport, OR 97365, Ph: (541) 264-7040. Prospective Bidders may obtain or examine the Bidding Documents at the Issuing Office by appointment only on Monday through Friday between the hours of 8am-5pm and may obtain copies of the Bidding Documents from the Issuing Office as described below. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the designated website or issuing Office. Optional printed copies of the Bidding Documents may be obtained from the Issuing Office by paying a nonrefundable price of $140.00 for each set. Please make checks for Bidding Documents payable to Civil West Engineering Services and send to 486 E Street, Coos Bay, OR 97420. Questions regarding this solicitation can be addressed to: Chris Janigo, PE, Project Manager Civil West Engineering Services, Inc. cjanigo@civilwest.net 541- 982-4137. Pre-bid Conference - A non-mandatory pre-bid conference for the Project will be held on 8-21-2024 at 10:00 a.m. at the Port of Toledo, Oregon, Shipyard Office 1000 S.W. Altree Lane, Toledo, OR 97391. Attendance at the pre- bid conference is not required but is recommended. Instructions to Bidders. For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents. The Port of Toledo encourages disadvantaged, minority, and women-owned consultant firms to respond. This Advertisement is issued by: Owner: Port of Toledo By: Debbie Scacco Title: Port Manager, Date: 8-7- 2024

LCL24-3049 PUBLIC LIEN SALE: U-STORE SELF STORAGE

Auction to be held online at storageauctions.com Auction will run from: 8/13/24 10am & ends 8/23/24 10am, 105 NE 73rd St Newport, OR 97365 Jennifer Ann Plaggmier, 301; Lynda Pruellt, 247,306 GOODS OF EVERY DESCRIPTION SOLD BY STORAGE LOT. CASH & CREDIT CARD ONLY

LCL24-3047 NOTICE OF SHERIFF'S SALE

#24-0633 On September 17, 2024, at the hour of 10:00 a.m., at the Lincoln County Courthouse, 225 W Olive St, Room 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 431 NE Alder St, Yachats, Oregon 97498. The court case number is 23CV39889, U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST, plaintiff(s) vs. KATRINA MIRIAH PETERSON AKA KATRINA M. PETERSON AKA KATRINA PETERSON; THE UNKNOWN HEIRS AND DEVISEES OF MICHAEL TERRY LAIWA AKA MICHAEL T. LAIWA AKA MICHAEL a deceased individual; SANDRA B. FELLER, as claiming successor of DONALD BRUCKSTEIN; WILLIAM BISHOPRICK, an individual; WILLIAM BISHOPRICK AND DINA J. CARTER as CO-TRUSTEES OF THE WILLIAM BISHOPRICK LIVING TRUST DATED MAY 9, 2023; THE INN AT OTTER CREST; and ALL OTHER UNKNOWN PARTIES CLAIMING ANY RIGHT, TITLE, LIEN OR INTEREST IN THE REAL PROPERTY COMMONLY KNOWN AS 301 OTTER CREST LOOP #128-129, OTTER ROCK, OREGON 97369, Defendants. CASE NO.: 24CV13346 SUMMONS FOR PUBLICATION To: ALL UNKNOWN HEIRS AND DEVISEES OF DONALD BRUCKSTEIN, a deceased individual; SANDRA B. FELLER, as claiming successor of DONALD BRUCKSTEIN TO THE DEFENDANT/ RESPONDENT(S) ABOVE NAMED: You are hereby directed and required to appear in, and defend against, this legal action within 30 days after the first date of publication of summons, which is the 7th day of August, 2024, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff WATERFALL VICTORIA GRANTOR TRUST II SERIES G, and serve a copy of your answer upon the undersigned attorneys for plaintiff, ZBS LAW, LLP, at their office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. This is a Complaint for Suit for Partition of Real Property and Reformation of Legal Description; Declaratory Action. You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 in the Portland metropolitan area. If you are a veteran of the armed forces, assistance may be available from a county veterans' service officer or community action agency. Contact information for a local county veterans service officer and community action agency may be obtained by calling a 2- 1-1 Information service. DATED: July 25, 2024 ZBS LAW, LLP By: /s/ Dirk Schouten Dirk Schouten, OSB# 115153 Amber L. Labrecque, OBS No. 094593 dschouten@zbslaw.com alabrecque@zbslaw.com Attorneys for Plaintiff

LCL24-3042 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

Probate Dept. Case No. 24PB06035 NOTICE TO INTERESTED PERSONS In the Matter of the Estate of EDWARD CARLOS ECHEVARRIA, Deceased. NOTICE IS HEREBY GIVEN that Michele Wayman has been appointed as the personal representative of the above estate. All persons having claims

WIDE HOME LOANS INC., Beneficiary of the security instrument, it successors and assigns dated as of Novembe 11, 2005 and recorded on November 22 2005 as Instrument No 200518774 and the beneficial interest was assigned to The Bank of New York Mellon as Trustee for CWABS, Inc Asset-Backed Certificates, Series 2005-17 and recorded Septembe 1, 2023 as Instrumen Number 2023-06105 o official records in the Office of the Recorder o Lincoln County, Oregon to-wit: APN: R302065 LOT 15, BLOCK 3 EAGLE POINT, IN THE CITY OF LINCOLN CITY COUNTY OF LINCOLN AND STATE OF OREGON. Commonly known as: 303 SE NEPTUNE AVE, LINCOLN CITY, OR 97367-2929 Both the Beneficiary, The Bank of New York Mellon as Trustee for CWABS Inc. Asset-Backed Certificates, Series 2005-17, and the Trustee Nathan F. Smith, Esq. OSB #120112, have elected to sell the said real property to satisfy the obligations secured by said Trust Deed and notice has been recorded pursuant to Section 86.752(3) of Oregon Revised Statutes. The default for which the foreclosure is made is the Grantor's failure to pay: Failed to pay payments which became due Monthly Payment(s): 12 Monthly Payment(s) from 02/01/2022 to 01/30/2023 at $797.16 7 Monthly Payment(s) from 02/01/2023 to 08/31/2023 at $833.77 10 Monthly Payment(s) from 09/01/2023 to 06/30/2024 at $925.68 By this reason of said default the Beneficiary has declared all obligations secured by said Trust Deed immediately due and payable, said sums being the following, to-wit: The sum of $74,122.83 together with interest thereon at the rate of 4.75000% per annum from January 1, 2022 until paid; plus all accrued late charges thereon; and all Trustee's fees, foreclosure costs and any sums advanced by the Beneficiary pursuant to the terms of said Trust Deed. Wherefore, notice is hereby given that, the undersigned Trustee will on November 13, 2024 at the hour of 10:00 AM, Standard of Time, as established by Section 187.110, Oregon Revised Statues, at the south entrance of the Lincoln County Courthouse, 225 W Olive St, Newport, OR 97365 County of Lincoln, sell at public auction to the highest bidder for cash the interest in the said described real property which the Grantor had or had power to convey at the time of the execution by him of the said Trust Deed, together with any interest which the Grantor or his successors in interest acquired after the execution of said Trust Deed, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the Trustee. Notice is further given that any person named in Section 86.778 of Oregon Revised Statutes has the right to have the foreclosure proceeding dismissed and the Trust Deed reinstated by payment to the Beneficiary of the entire amount then due (other than such portion of said principal as would not then be due had no default occurred), together with the costs, Trustee's or attorney's fees and curing any other default complained of in the Notice of Default by tendering the performance required under

LCL24-3008 TRUSTEE'S NOTICE OF SALE TS No.: 122325-OR Loan No.: ******7545

Reference is made to that certain trust deed (the "Deed of Trust") executed by EUGENE CORLISS, AND RUTH A CORLISS, HUSBAND AND WIFE AS JOINT TENANTS, as Grantor, to FIDELITY NATIONAL TITLE INSURANCE CO, as Trustee, in favor of BANK OF AMERICA, N.A., as Beneficiary, dated 9/23/2010, recorded 10/8/2010,