



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, March 11, 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.

1. CALL TO ORDER AND ROLL CALL

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

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of February 26, 2024.

[Draft PC Work Session Minutes 02-26-2024](#)

[02-26-24 PC Work Session Meeting Video Link](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of February 26, 2024.

[Draft PC Reg Session Minutes 02-26-2024](#)

[02-26-24 PC Regular Session Meeting Video Link](#)

2.C Approval of the Amended Planning Commission Regular Session Meeting Minutes of February 12, 2024.

[Approved PC Reg Session Minutes 02-12-2024-Amended](#)

[02-12-24 PC Regular 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.

3.A Public Comments

[Mark Arnold Public Comments - 3-11-2024](#)

4. ACTION ITEMS

4.A Approval of the the Planning Commission's FY 24/25 Goals.

5. PUBLIC HEARINGS

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

**City of Newport
Draft Planning Commission Work Session Minutes
February 26, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT	
Time Start: 6:02 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	
Commissioner Gary East	
Commissioner Braulio Escobar	
Commissioner John Updike	
Commissioner Marjorie Blom	
Citizen Advisory Member Dustin Capri (by video)	
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL	
a. Roll Call	None.
FISCAL YEAR 2024/25 GOAL SETTING.	
a. Staff report	Mr. Tokos provided an overview of the goals and objectives for the upcoming fiscal year.
b. Discussion on goals and responsibilities	The Commission held discussions on the training and structure of committees; the status of city department head retirements; how the City Center Revitalization project would affect the Farmer’s Market; clarification on what a public gathering location was; a timeline for City Center Revitalization improvements; implementation of the Parking Plan; airport services; Buildable Lands inventory; the South Beach annexation project; affordable housing strategies; Wastewater Treatment Plant Master Plan completion; South Beach urban renewal and redevelopment projects; Safe Routes to Schools project; Lighthouse to Lighthouse connection project; the homelessness task force; the system development charges methodology update; and upcoming subdivision ordinance updates.
c. Commission feedback	Tokos received input from the Commission that included suggestions to change Goal B-5(a) to say “continue” the implementation of housing production strategy instead of “initiate” the implementation; and set up the next RFP process for the South Beach

	<p>development agreement to include an upfront “good faith payment” of costs for legal and staff time.</p> <p>Berman requested another goal be added to review obsolete or inappropriate items in the Comprehensive Plan for historical resources, and to determine whether these items should be enumerated in the Comprehensive Plan, or if there should be a procedure created to handle additions and subtractions as a separate list. Capri suggested adding the couplet discussion as a goal.</p>
<p>ZONING STANDARDS FOR SCHOOLS.</p> <p>a. Staff report</p> <p>b. Commission feedback</p>	<p>Mr. Tokos provided an overview of the zoning standards for public and private schools and how they were permitted in each zone.</p> <p>Berman expressed concerns that an art class setting could be considered a school under the new custom creative work category. Tokos confirmed there was specific language in the new code for the teaching component which allowed apprenticeships or small class settings as permissible.</p>
<p>PLANNING COMMISSION WORK PROGRAM UPDATE.</p>	<p>None.</p>

Submitted by: _____
 Sherri Marineau, Executive Assistant

02-26-2024 - Planning Commission Work Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1208?view_id=2&redirect=true

City of Newport
 Draft Planning Commission Regular Session Minutes
 February 26, 2024

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
Time Start: 7:20 P.M. Time End: 8:25 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	
Commissioner John Updike	
Commissioner Marjorie Blom	

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER AND ROLL CALL	
a. Roll Call	None.
APPROVAL OF THE MINUTES	
a. Meeting minutes of Regular Session Meeting on February 12, 2023	Berman reported minor corrections to the minutes. Motion by Commissioner Updike, seconded by Commissioner Berman, to approve the regular session meeting minutes of February 12, 2023 as written. Motion carried unanimously in a voice vote.
CITIZEN/PUBLIC COMMENT	
None.	
ACTION ITEM	
File No. 1-CUP-24: Final Order and Findings for Conditional Use Permit to Allow the Operation of a Coffee Shop in a W-2/"Water-Related" Zone.	Motion was made by Commissioner Berman, seconded by Commissioner Hanselman, to approve File No. 1-CUP-24 Final Order and Findings of Fact with conditions. Motion carried unanimously in a voice vote.
PUBLIC HEARING	
File No. 3-Z-23: Amendments Related to the Implementation of the City's Housing Production Strategy, to Reduce Code Barriers For Housing Development.	
a. PUBLIC HEARING OPEN	7:27 p.m.

<p>b. STAFF REPORT - DERRICK TOKOS</p> <p>c. PUBLIC COMMENT</p> <p>d. PUBLIC HEARING CLOSED</p> <p>e. COMMISSION DECISION</p>	<p>Tokos presented the written staff report and acknowledged the public testimony received from Cheryl Connell.</p> <p>The Commission gave input on the amendments. Branigan suggested changing the 30-gallon trash receptacles for four RV sites to 60 gallons. The Commission held discussions on the differences of RV pads that were gravel versus concrete. Hanselman thought the width of a two-lane street for RV parks should be changed to no less than “25 feet” instead of “20 feet.” Tokos explained the Fire Department hadn’t expressed concerns on the 20 foot street width. He reminded that the 20 feet was for travel lanes and there needed to be additional space on either side of the 20 foot road width for parking. A majority of the Commission was in agreement to make a favorable formal recommendation to the City Council with a condition that the Fire Chief weigh in formally and any comments he has will be considered at the Council level.</p> <p>The Commission also wanted to add under solid waste, that receptacles would be provided at a rate of one 30-gallon container for each four recreations vehicle spaces “unless a larger size is recommended by the service provider.”</p> <p>None.</p> <p>8:25 pm</p> <p>Escobar thought the Commission should take more time to consider the road widths before making a recommendation</p> <p>Motion was made by Commissioner Berman, seconded by Commissioner Blom, to forward a favorable recommendation to the City Council for File No. 3-Z-23: Amendments Related to the Implementation of the City’s Housing Production Strategy, to Reduce Code Barriers for Housing Development to include the change on the garbage receptacle language and the request for the City Council to hear the Fire Chief’s opinion on road widths. Motion carried in a voice vote. Escobar was a nay.</p>
<p>DIRECTOR COMMENTS</p>	<p>None.</p>

Submitted by: _____

Sherri Marineau, Executive Assistant

02-26-2024 - Planning Commission Regular Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1210?view_id=2&redirect=true

**City of Newport
Draft Planning Commission Regular Session Minutes
February 12, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT	Time End: 7:51 P.M.
Time Start: 7:00 P.M.	

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherrri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East	
Commissioner Braulio Escobar	
Commissioner John Updike	
Commissioner Marjorie Blom	

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER AND ROLL CALL	
a. Roll Call	None.
APPROVAL OF THE MINUTES	
a. Meeting minutes of Regular Session Meeting on January 22, 2023	Berman reported minor corrections to the minutes. Motion by Commissioner Berman, seconded by Commissioner East, to approve the regular session meeting minutes of January 8, 2023 with minor corrections. Motion carried in a voice vote. Commissioner Blom abstained.
CITIZEN/PUBLIC COMMENT	
None.	
PUBLIC HEARING	
File No. 1-CUP-24: Conditional Use Permit to Allow the Operation of a Coffee Shop in a W-2/"Water-Related" Zone.	
a. PUBLIC HEARING OPEN	7:05 p.m. East and Updike reported site visits. Chair Branigan asked if any public members present objected to the Planning Commission participating in the hearing. Joshua Perkins (Newport) expressed concerns about Mayor Kaplan, but didn't express any objections to the Commission as a whole participating in the hearing.
b. STAFF REPORT - DERRICK TOKOS	Tokos presented the written staff report. Applicant, Art Moore (Newport) answered the Commission's questions and spoke in support of the approving the conditional use permit.

<p>c. PUBLIC COMMENT</p> <p>d. PUBLIC HEARING CLOSED</p> <p>e. COMMISSION DECISION</p>	<p>7:20 p.m.</p> <p>The Commissioners were in general agreement with approving the request.</p> <p>Motion was made by Commissioner Escobar, seconded by Commissioner Berman, to approve File No. 1-CUP-24 with conditions. Motion carried unanimously in a voice vote.</p>
<p>DIRECTOR COMMENTS</p> <p>SB 1537 Governor's Housing Bill.</p>	<p>Tokos covered the -4 set of amendments to SB 1537, the Governor's housing bill; the City's letter in support of HB 4134 sent to the House Committee; and the population estimates from the City Manager.</p> <p>Commissioners discussed HB 1537 and how it would affect an Urban Renewal District expansion. Tokos explained that HB 1537 was more for the Willamette Valley farmlands than it was for Newport.</p> <p>Tokos reviewed the City's letter in opposition of the adjustments to SB 1537, and discussed HB 4099 that would set up a deferred payment program for system development charges with the State for new housing construction.</p>

Submitted by: _____

Sherry Marineau, Executive Assistant

02-12-2024 - Planning Commission Regular Session Meeting Video Link:

https://thecityofnewport.granicus.com/player/clip/1200?view_id=2&redirect=true

YAQUINA BAY ESTUARY MANAGEMENT PLAN (YBEMP)
Comments Submitted to Newport Planning Commission, March 11, 2024

My name is 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)**

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- B. Policy to Facilitate and Encourage a Balance of Ecologically-Beneficial Organisms
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- C. Policy for Making Determinations About Natural Resources, Natural Resource
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REQUESTED EDITS TO AUGUST 2023 YBEMP UPDATE

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- J. Edits to Sally’s Bend Sub-Area: Sub-Area Policies**
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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

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.

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 contractor’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 Ecosystem 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 substrate 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, except 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, except in the following situation. ESTUARINE WATER WITHDRAWN FROM THE ESTUARY FOR USE IN ONSHORE AQUACULTURE ACTIVITIES MAY BE CONDITIONALLY APPROVED FOR RELEASE BACK INTO THE ESTUARY IF IT MEETS ALL APPLICABLE OREGON DEPARTMENT OF AGRICULTURE (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 ~~Raccoon~~ *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~~ *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 Raccoon 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 ripped 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 clambers.

*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 it is 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.*

Management Objective

~~[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.

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 be 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/EXPLANATORY 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 in 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 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.

Management Objective

~~[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. All the matrices in the 1982 plan were removed, leaving no clarity in their place for individual Management Units.
- Proposed Zoning Code language was added. 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.

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.

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.

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

	Special Policy	Dolphins	Pilings	Docks	Piers	Wharves	Groins	Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	Shoreline stabilization (structural)	
Commercial /Recreational																
N	Water dependent															
N	Water related															
N	Non-water related															
N	Marina													N	N	N
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	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															
C	Aquaculture Facilities															
Restoration																
C	Active															
P	Passive															

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

	Dike (new)	Shoreline stabilization (structural)	New Dredging	Maintenance Dredging	(beacons, buoys, etc.)	Breakwaters	Pile Dikes	Groins	Marves	Piers	Docks	Dolphins	Special Policy
Commercial / Recreational													
N													
N													
N													
N													
N													
N													
Industrial													
N													
N													
N													
N													
N													
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Port Facilities													
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C													
Restoration													
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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.

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.

- (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.**

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 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?

- **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”?** 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.**