PLANNING COMMISSION WORK SESSION AGENDA
Monday, September 09, 2024 - 6:00 PM
Council Chambers, 169 SW Coast Hwy, Newport, Oregon 97365

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

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

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

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1. CALL TO ORDER

Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, John Updike, Dustin Capri, and Greg Sutton.

2. UNFINISHED BUSINESS

2.A Response to Testimony from the August 26, 2024 Hearing on the Updates to the Comprehensive Plan and Zoning Ordinance to Implement the new Yaquina Bay Estuary Management Plan

Memorandum
Updated Estuary Chapter of the Comprehensive Plan 9.5.24
Updated Zoning Ordinance Amendments 9.5.24
Updated Estuary Zoning Map
Summary of In-Person Testimony from the August 26, 2024 Commission Meeting
Comments from Annie Merrill, YBEMP Coalition 8.22.24
Comments from Mark Arnold 8.23.24
Comments from Port of Newport 8.23.24
Email from Meg Reed, DLCD 9.4.24
Updated YBEMP Goal 16 Resource Inventory Bibliography

3. NEW BUSINESS

3.A SB 1537 Revisions to Limited Land Use Decision Making Procedures.

Memorandum
NMC Chapter 14 Limited Land Use Decision Amendments – 9.5.24 Draft
Local Government Law Group Memo
SB 1537 Limited Land Use Decision Amendments
ORS 197.195

3.B Planning Commission Work Program Update.

PC Work Program 9-5-24

4. ADJOURNMENT

City of Newport

Community Development Department

Memorandum

To: Planning Commission/Commission Advisory Committee

From: Derrick Tokos, Community Development Director

Date: September 5, 2024

Re: Response to Testimony from the August 26, 2024 Hearing on the Updates to the Comprehensive Plan and Zoning Ordinance to Implement the new Yaquina Bay Estuary Management Plan

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Enclosed is a summary of in-person testimony that the Planning Commission received at the August 26, 2024 public hearing, along with the latest set of written comments from engaged stakeholders. This meeting is an opportunity for the Commission to consider that feedback and determine whether or not it wants to make further changes to the Comprehensive Plan and Zoning Ordinance updates.

Also, attached is a current draft of the new Comprehensive Plan chapter. I updated the maps with the final versions that we received from the Department of Land Conservation and Development. They haven't changed in a materials material way. I also redlined out the "to the extent practical" reference under Policy 14 that I had missed. Those are the only changes that I made to that document. For the Zoning Ordinance, I revised the definition of the term "restoration" as recommended by Meg Reed with DLCD. She mentioned it at the hearing and summarized the change in a follow-up email (attached). No changes have been made to the zoning map.

In addition to the above, I am enclosing the final draft of the Goal 16 Resource Inventory for the Yaquina Bay Estuary. Those looking to develop within the estuary would be provided this information when preparing impact assessments and this document may be easier to amend then trying to imbed the same information in the City's Comprehensive Plan.

Once I have your feedback, I'll make whatever final changes need to be made to the various documents in advance of the September 23rd meeting where the Commission will be asked to make its recommendation to the City Council.

Attachments:
Updated Estuary Chapter of the Comprehensive Plan 9.5.24
Updated Zoning Ordinance Amendments 9.5.24
Updated Estuary Zoning Map
Summary of In-Person Testimony from the August 26, 2024 Commission Meeting
Comments from Annie Merrill, YBEMP Coalition 8.22.24
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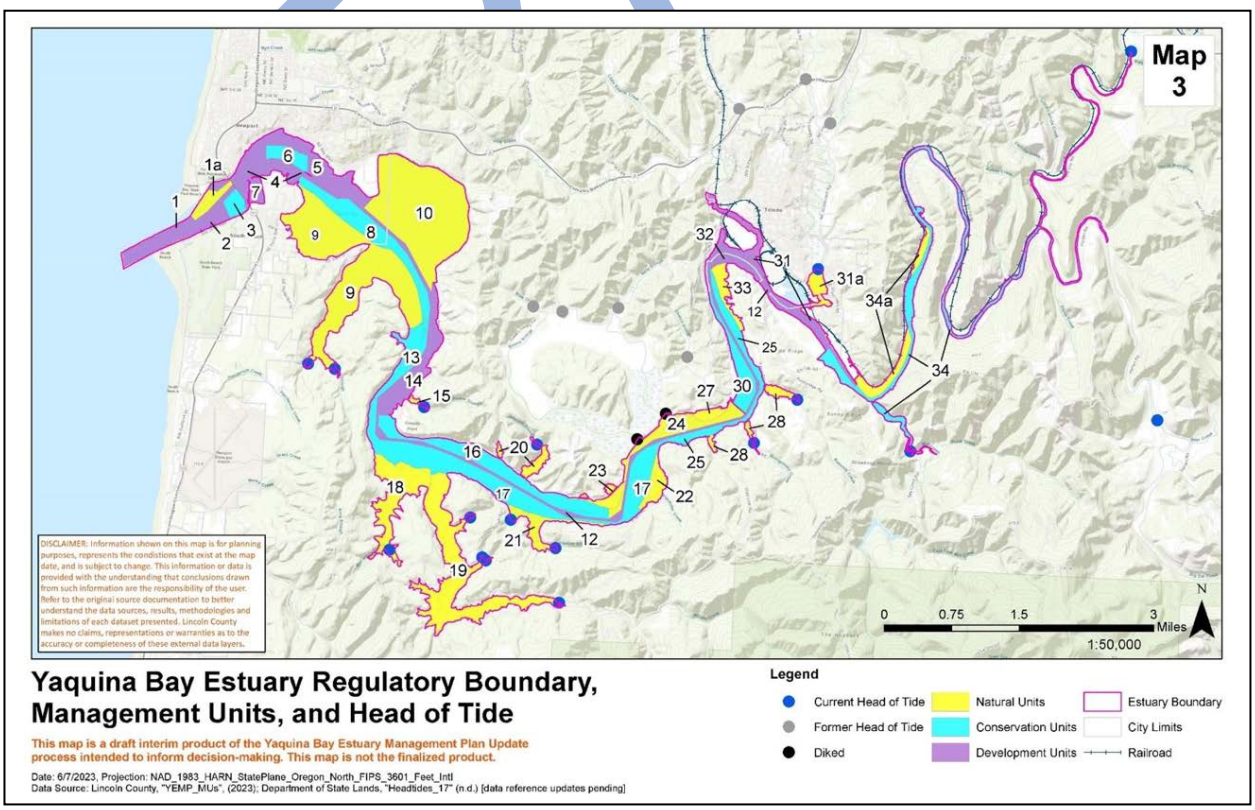
YAQUINA BAY
AND ESTUARY SECTION

Introduction:

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

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

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



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

Resource Inventories:

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

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

Climate Change Vulnerabilities:

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

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

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

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

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

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

Estuary Management Sub-Areas:

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

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

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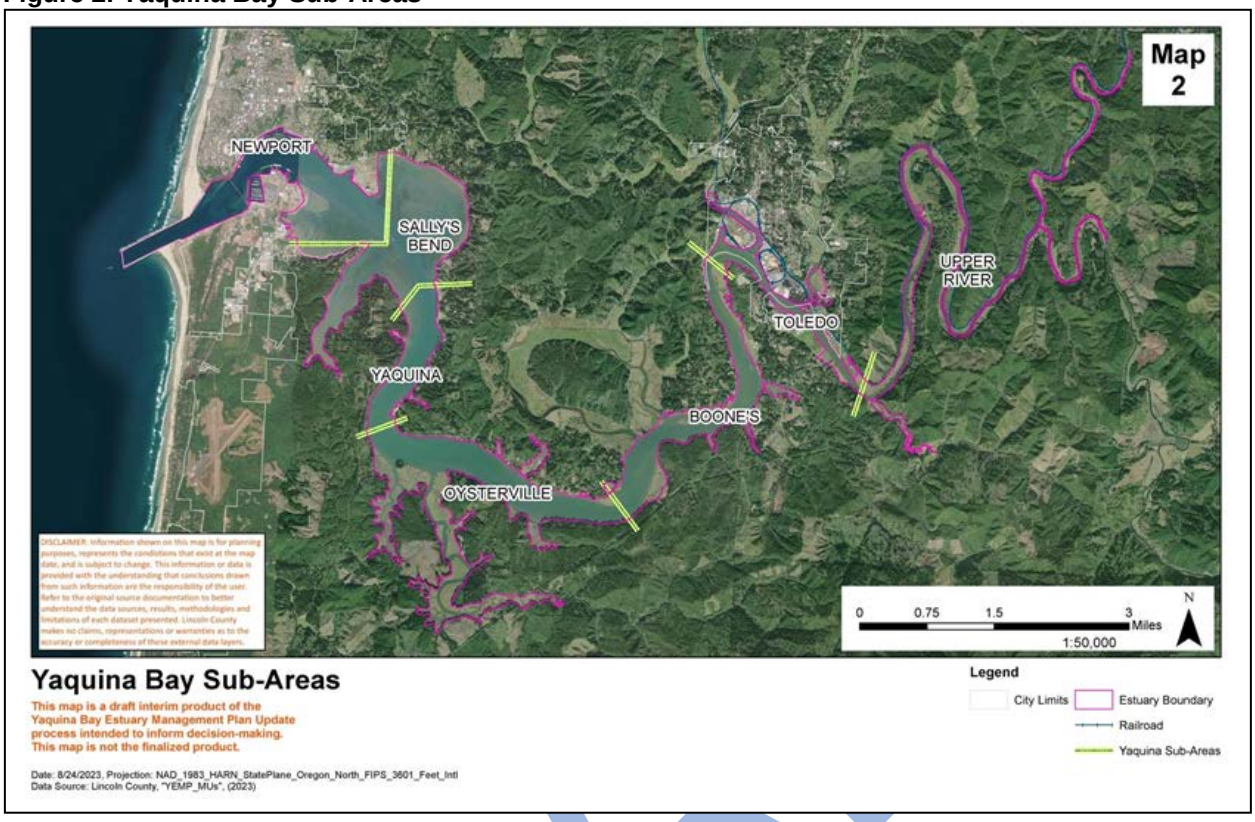
[3] Feely et al. 2008. Barton, A, B. Hales, G. G. Waldbusser, C. Langdon, R.A. Feely. 2012. The Pacific oyster, Crassostrea gigas, shows negative correlation to naturally elevated carbon dioxide levels: Implications for near-term ocean acidification effects. Limnology and Oceanography, 57(3): 698-710.

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

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

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

Figure 2. Yaquina Bay Sub-Areas



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

Newport Sub-Area:

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

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

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

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

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

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

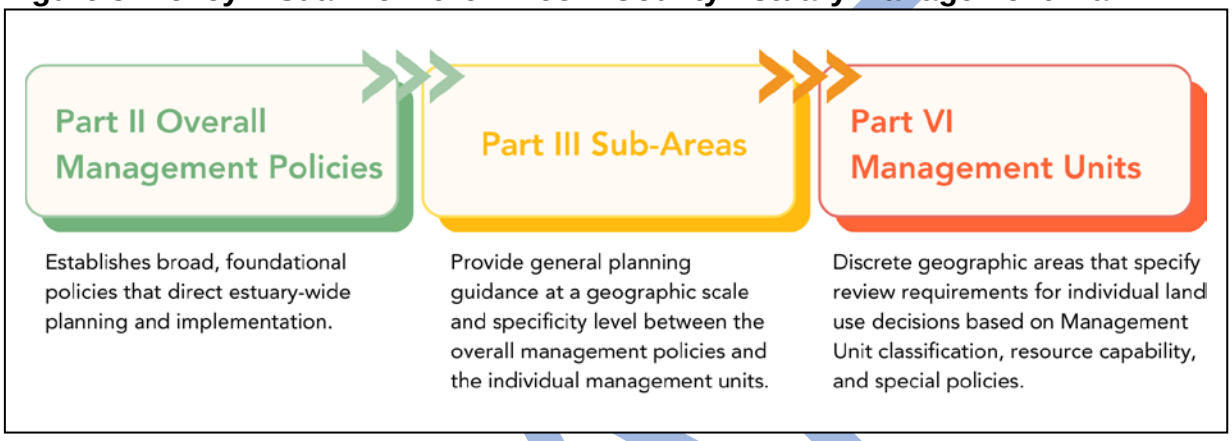
- Increased risk of jetty or breakwater failures due to sea level rise and storm surge;
- Increased risk of loss of structural integrity to underground or submerged infrastructure due to higher water tables from sea level rise;
- Increased risk of sea level rise submerging port, marina, and other moorage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

Estuary Policy Framework and Coordination:

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

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

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



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

Newport Sub-Area Estuary Management Units:

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

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

Natural Management Units

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

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

The following uses are permitted in Natural Management Units:

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

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

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

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

Conservation Management Units

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

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

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

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

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

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

Development Management Units

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

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

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

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

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

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

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

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

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

Management Unit 1

Estuary Management Unit: 1

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
Data Source: Lincoln County, YEMP_MUs (2024)

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

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

> Classification: Development. This unit has been classified as Development in order to provide for maintenance and repair of the north jetty, a navigation improvement that may require periodic major alterations. Other than providing for alterations necessary

to maintain navigation, management of Unit 1 should conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

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

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

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

Management Unit 1a

Estuary Management Unit: 1a

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
Data Source: Lincoln County, YEMP_MUs (2024)

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

> Description: Management Unit 1A consists of the intertidal and subtidal area west of the west boundary of the Highway 101 right-of-way (Yaquina Bay Bridge), lying between the navigation channel and the north shore. Along the north jetty, Unit 1A

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

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

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

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

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

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

Management Unit 2

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

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

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

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

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

Management Unit 3

Estuary Management Unit: 3

Date: 8/27/2024.
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Data Source: Lincoln County, YEMP_MUs (2024)

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

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

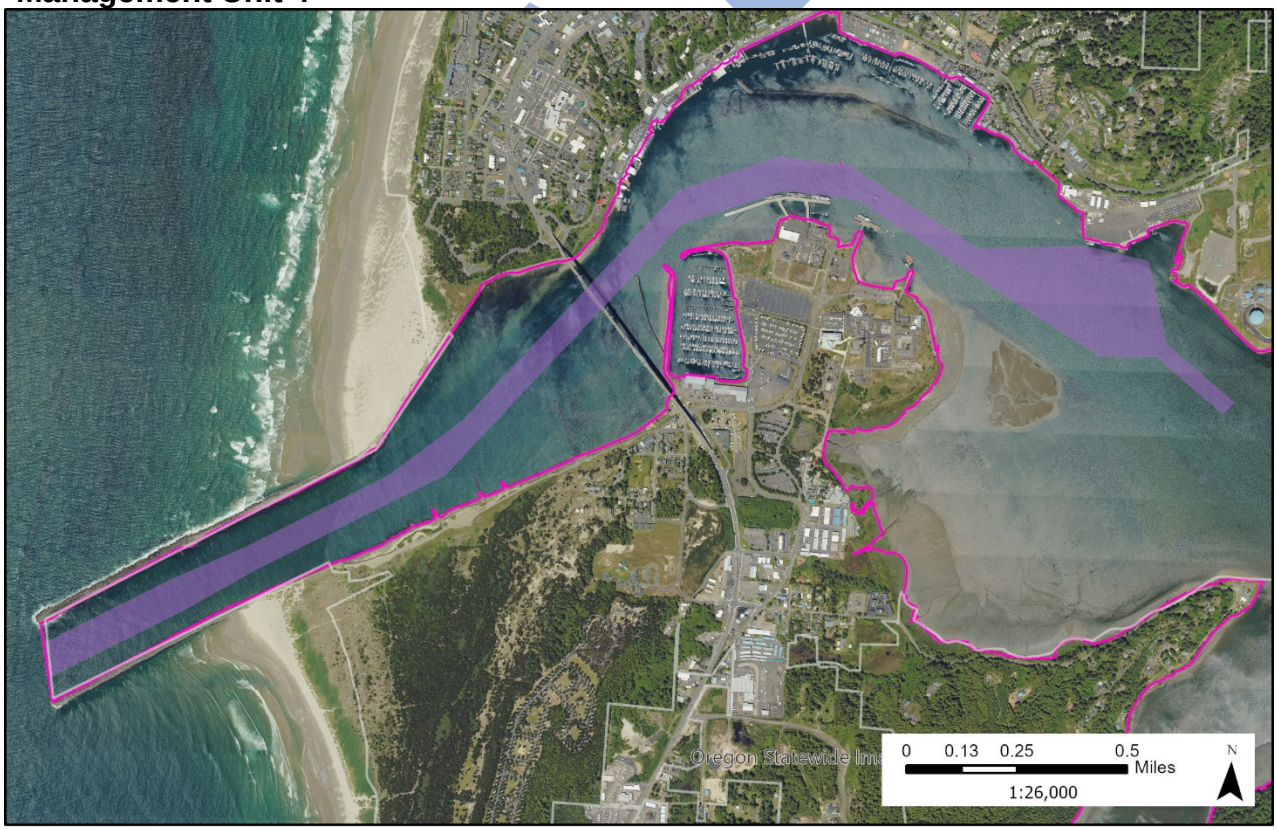
> Resource Capability: Management Unit 3 has significant intertidal area, and important shellfish beds. Existing alterations are minor in nature. Further minor structural alterations such as pilings and dolphins would be consistent with the existing character and resource capability of the area.

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

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

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

Management Unit 4



Estuary Management Unit: 4

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
Data Source: Lincoln County, YEMP_MUs (2024)

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Legend

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

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

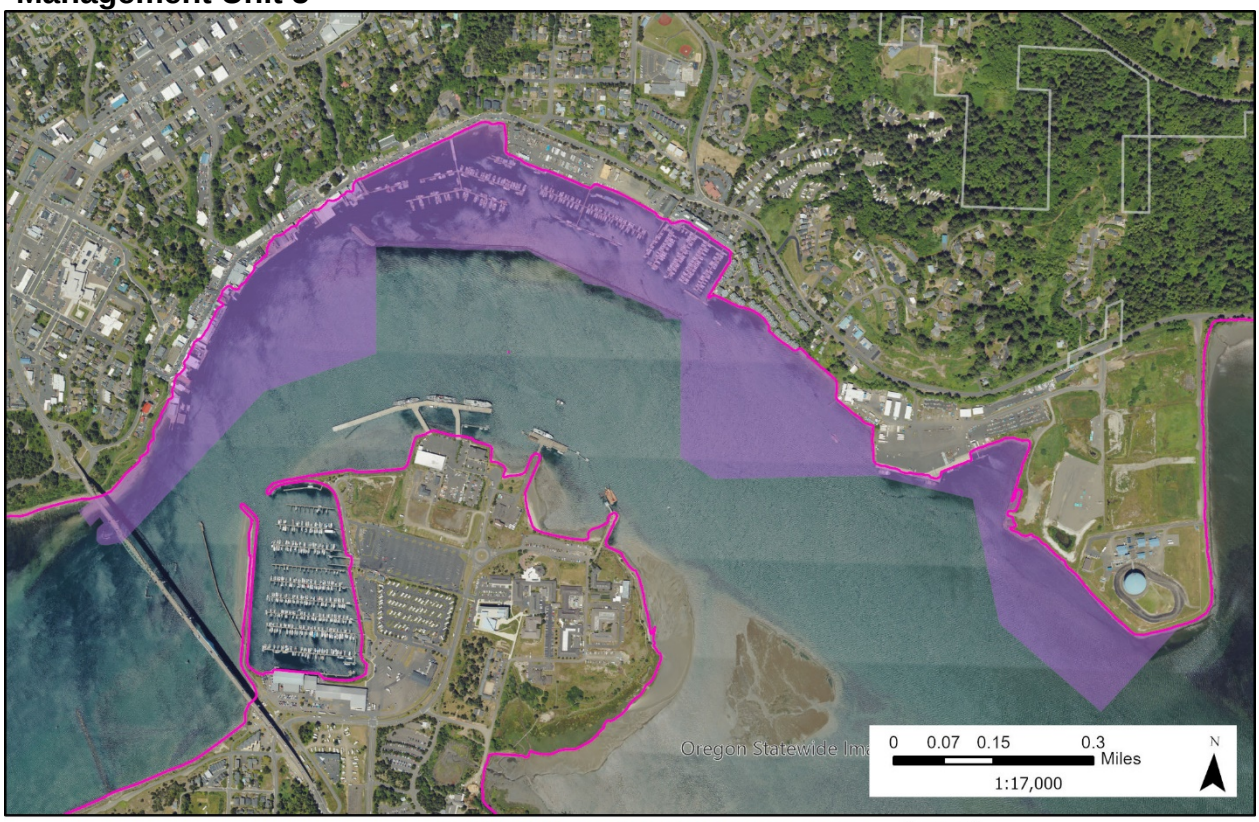
> Classification: Development. This unit has been classified as development, to provide for the dredging and other alterations required to maintain the deep-water navigation channel and turning basin.

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

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

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

Management Unit 5



Estuary Management Unit: 5

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
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> Description: Management Unit 5 consists of the area between the north shore of the bay and the navigation channel, from the west boundary of the Highway 101 right-of-way east to McLean Point. A portion of the west boundary of Management Unit 5 extends beyond the Highway 101 right of way to include a 50-foot radius around the fender dolphins that protect the west side of the Yaquina Bay bridge support structures. It includes the Port of Newport commercial moorage basins (Port Docks 3, 5 and 7, and the north marina breakwater), the developed waterfront in the Newport urban area, and the Port of Newport's international terminal facilities at McLean Point. Natural resources of importance include tideflats, eelgrass and shellfish beds, and fish spawning and nursery areas. This portion of the estuary is used intensively for shallow and medium draft navigation, moorage of small and large boats, and for recreation. Other significant uses include the Port of Newport's international terminal operation, research activities, the U.S. Coast Guard Station, seafood processing plants and infrastructure, and mixed-use development along the historic Newport bayfront. The shoreline and aquatic areas are extensively altered with riprap, bulkheads, piers and wharves, the north marina breakwater, pilings, floating docks, periodic maintenance dredging and other activities.

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

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

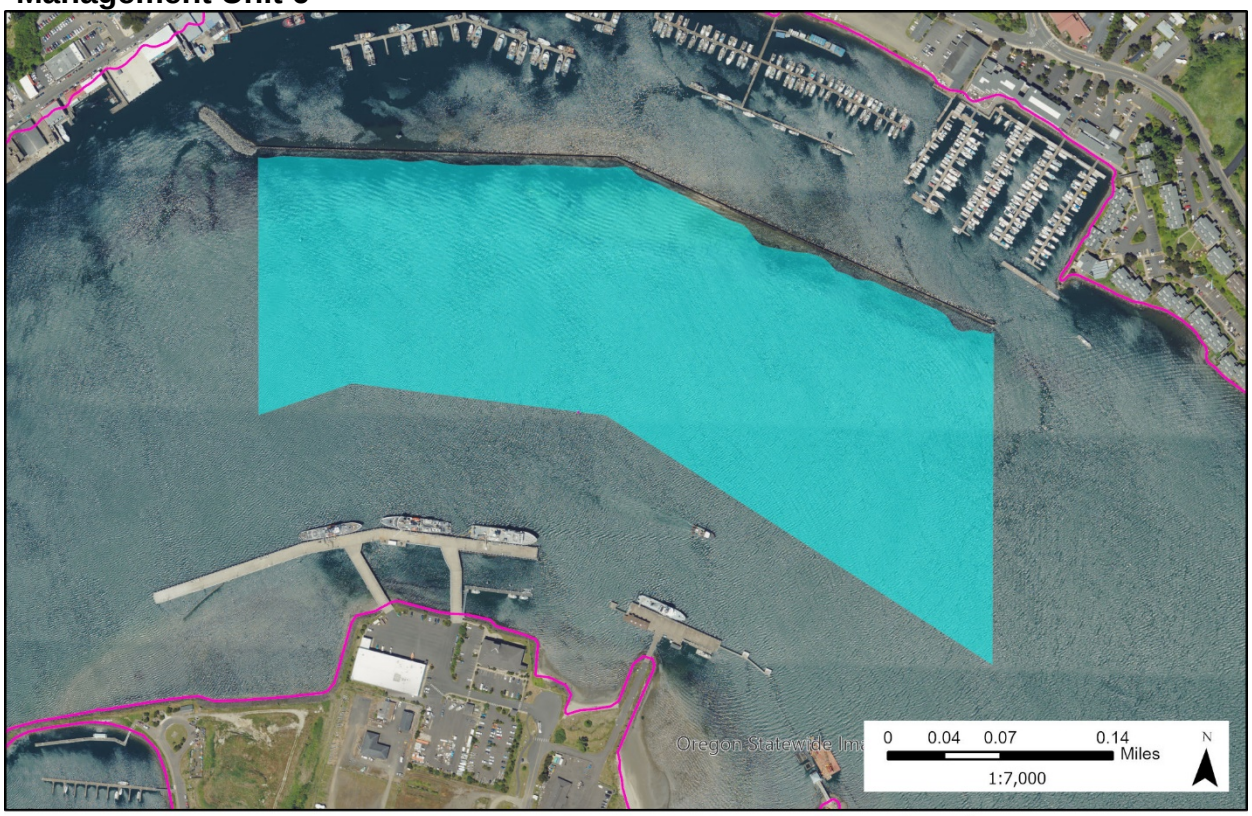
> Management Objective: Management Unit 5 shall be managed to provide for the development of port facilities and other water-dependent uses requiring aquatic area alterations. Water-related and non-related uses not requiring dredge or fill may be permitted consistent with the unique mixed-use character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

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

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

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

Management Unit 6



Estuary Management Unit: 6

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
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> Description: Management Unit 6 consists of the area south of the north marina breakwater, extending from MLW south to the navigation channel. Unit 6 is bounded on the west by a north-south line extending from the west end of the breakwater to the navigation channel, and on the east by a north-south line extending from the east end of the breakwater to the navigation channel. Unit 6 contains both intertidal and subtidal area with a number of important resource characteristics. Significant habitat areas include eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Major uses in the unit include recreation (fishing, boating, crabbing and clamming), medium and shallow draft navigation, and some limited commercial harvest activities. Alterations within the unit include pilings and navigation aids.

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

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

limited to minor structural alterations such as pilings and dolphins. Any fill or removal activities should be evaluated on a case-by-case basis.

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

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

Management Unit 7

Estuary Management Unit: 7

Date: 8/27/2024.
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> Description: Management Unit 7 consists of the aquatic area between the navigation channel and the south shore, from the west boundary of the Highway 101 right-of-way east to the small boat pier at the OSU Hatfield Marine Science Center. A portion of the west boundary of Management Unit 7 extends beyond the Highway 101 right of way to include a 50-foot radius around the fender dolphins that protect the west side of the Yaquina Bay bridge support structures. It includes the South Beach Marina, the NOAA Marine Operations Center, and the OSU Hatfield Marine Science Center facilities. The

majority of the unit is sub-tidal and includes eelgrass and shellfish beds, and fish spawning and nursery areas. Major uses in the area are deep, medium and shallow draft navigation, moorage, recreation and some limited commercial harvest. Alterations include pilings, piers and wharves, breakwaters, floating docks, riprap, and periodic dredging.

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

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

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

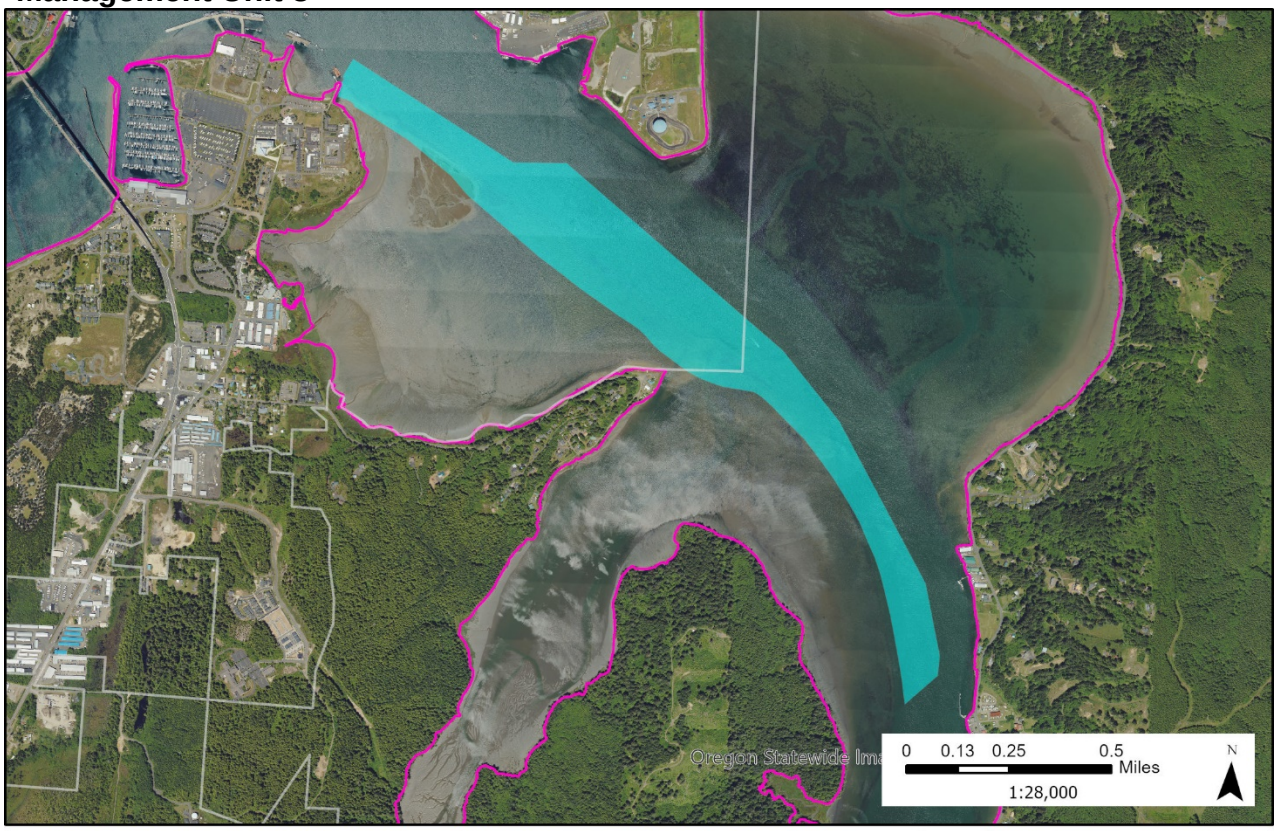
> Special Policies: Eelgrass beds, shellfish beds, and fish spawning and nursery areas are located within Management Unit 7. Adverse impacts of development on these resources shall be avoided or minimized to the extent practical.

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

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

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

Management Unit 8



Estuary Management Unit: 8

Date: 8/27/2024.
Projection: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Intl Feet
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> Description: Management Unit 8 is a sub-tidal area between the navigation channel and the intertidal flats of the Idaho Point/King's Slough area. It contains significant habitat areas, including eelgrass and shellfish beds, fish spawning and nursery areas, and waterfowl habitat. Uses within the unit consist of medium and shallow draft navigation, commercial harvest and recreation. Existing alterations are limited to navigation aids.

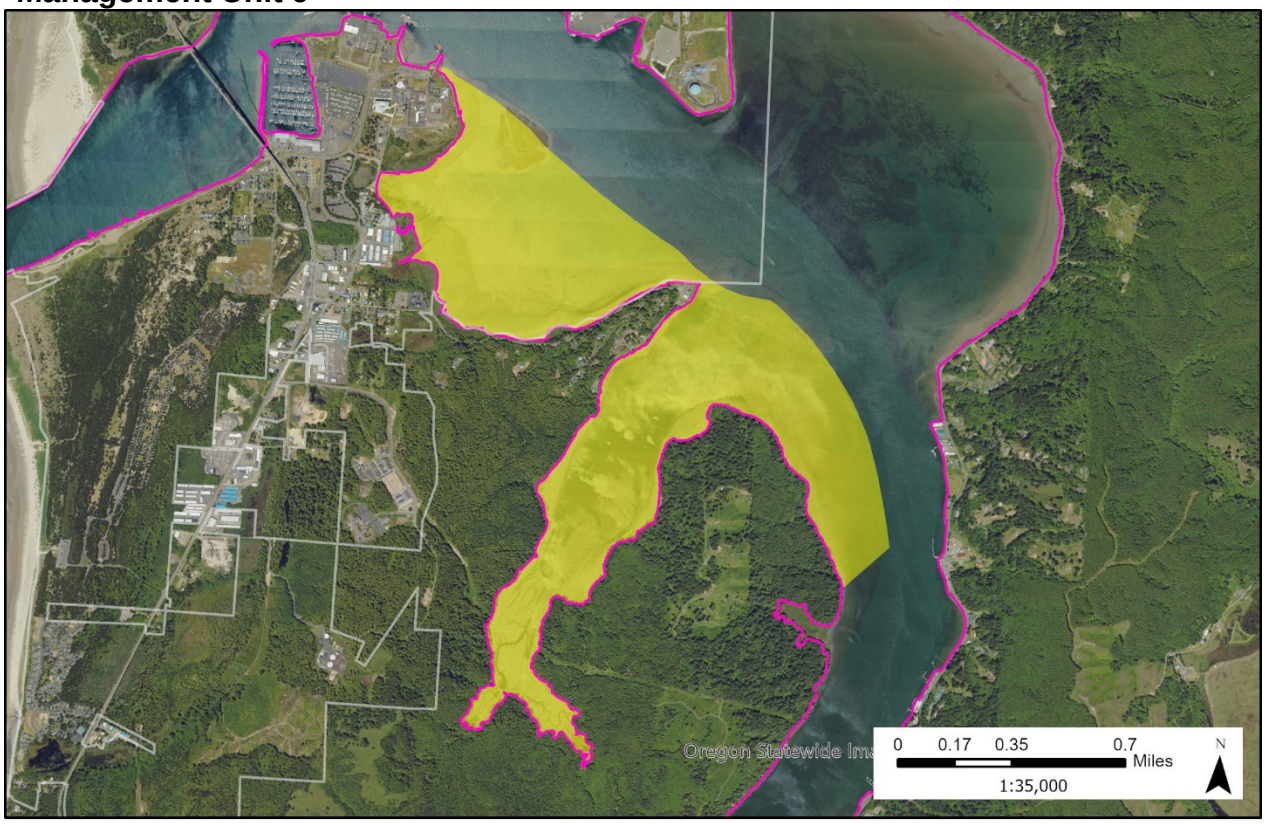
> Classification: Conservation. This unit has been classified as conservation in order to conserve the natural resources of the unit while allowing minor alterations similar to those now existing in the unit.

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

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

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

Management Unit 9



Estuary Management Unit: 9

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Legend

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

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

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

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

The area is used for recreational purposes with significant recreational clamming in Idaho Flat (accessed primarily from the OSU Hatfield Marine Science Center location) and

occasional angling and waterfowl hunting. There are several private boat ramps, including one at Idaho Point (formerly the site off a small marina)..

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

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

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

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

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

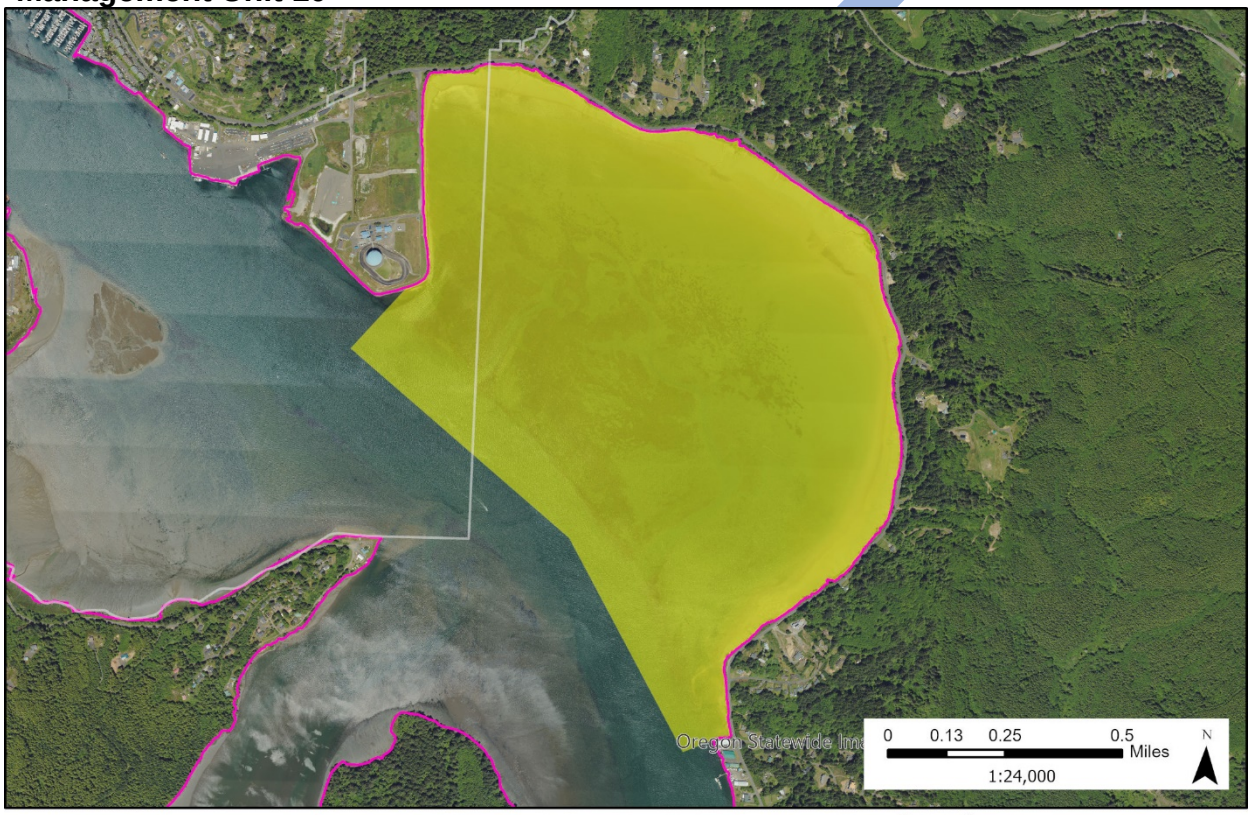
> Special Policies. Limited maintenance dredging and other maintenance activities may be permitted for the maintenance of the existing boat ramp in Management Unit 9. Expansion of this use or establishment of new marina uses is not permitted.

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

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

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

Management Unit 10



Estuary Management Unit: 10

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

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

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

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

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

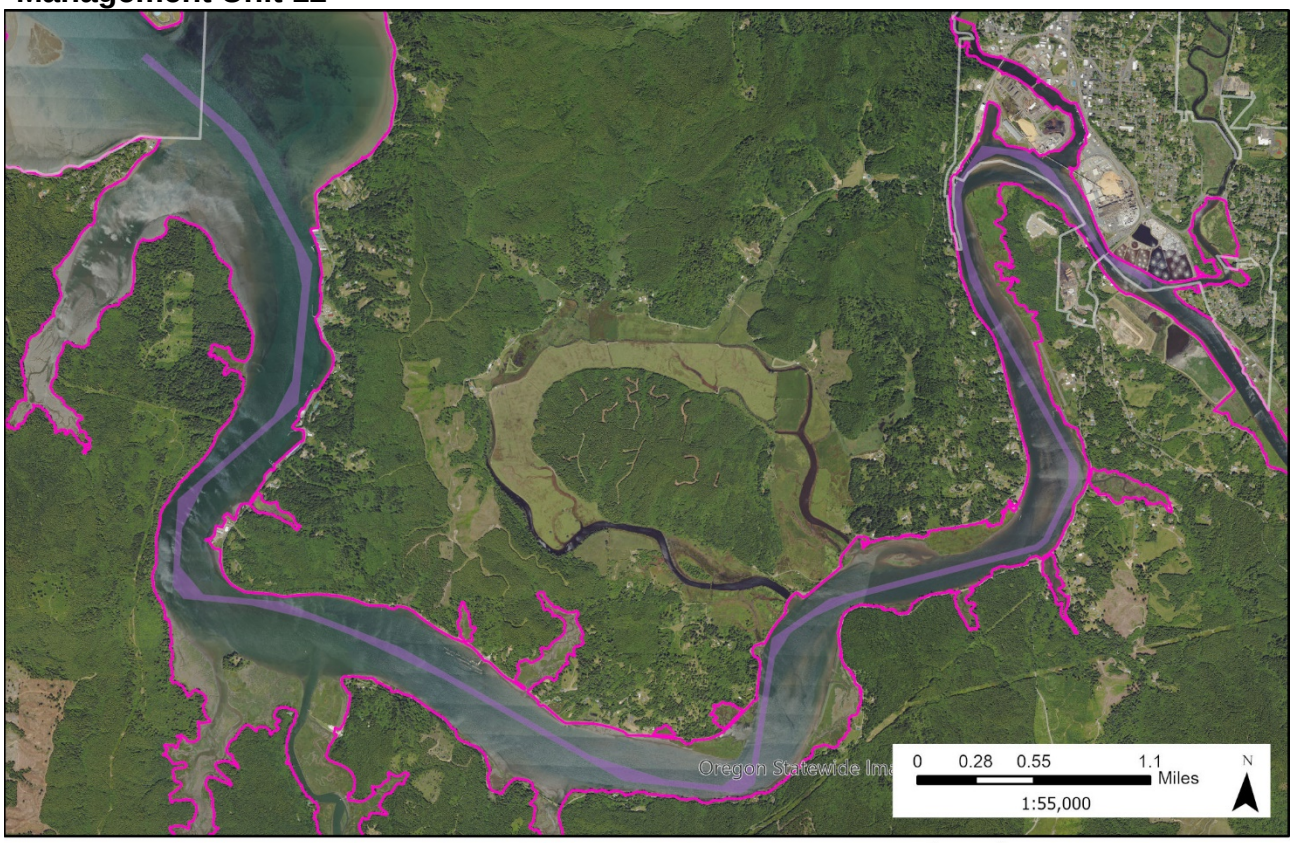
> Resource Capability: Management Unit 10 is similar in character and resource values to Management Unit 9. Due to the importance and sensitive nature of the resources in this area, permitted alterations shall be limited to those which result in only temporary, minor disturbances (e.g., several submerged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

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

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

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

Management Unit 12



Estuary Management Unit: 12

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

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

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

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

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

Mitigation and Restoration

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

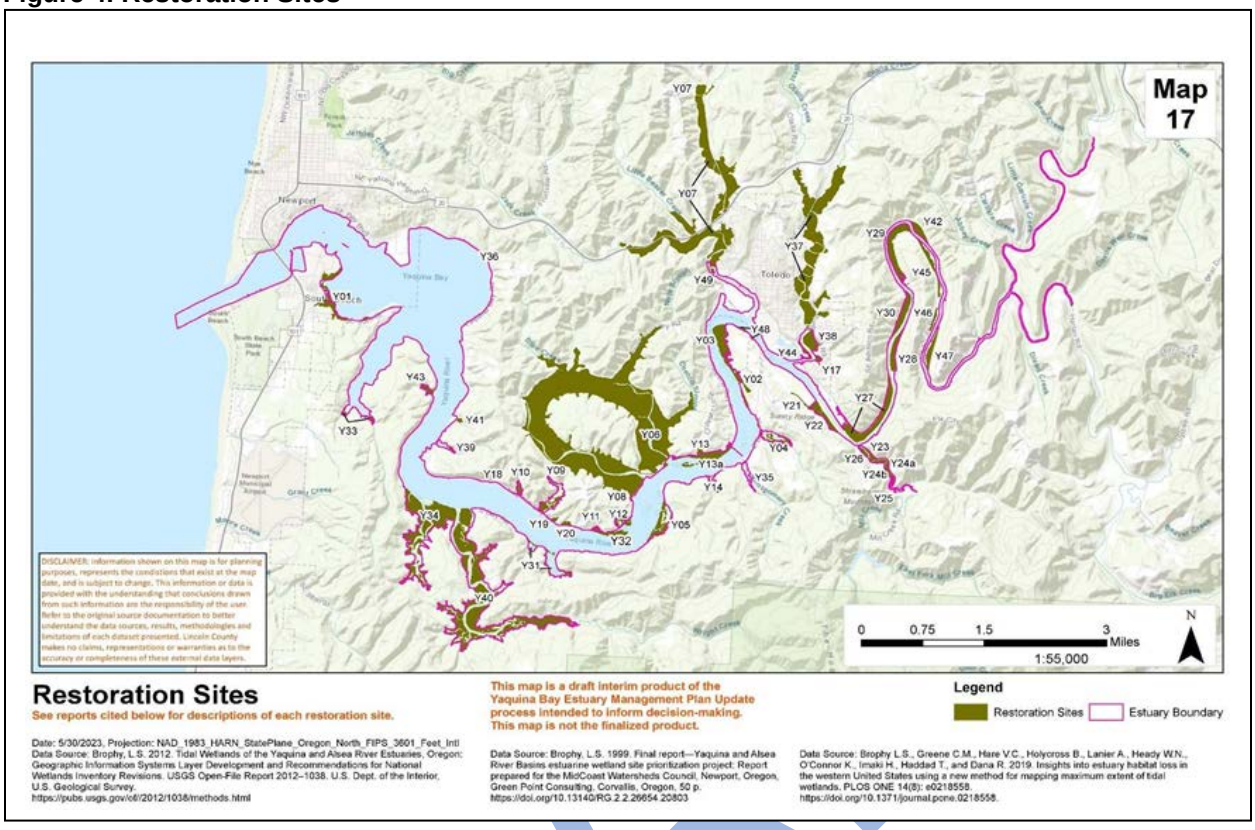
1. Biological Potential: Sites have been evaluated in terms of their similarity of habitat to areas likely to be altered or destroyed by future development activities; or, alternatively, sites were chosen which may provide resources that are in greatest scarcity compared to their past abundance or distribution.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

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

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

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

Figure 4. Restoration Sites



Mitigation Needs and Sites

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

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

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

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

Implementation

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

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

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

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

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

Local Review Procedures

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

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

State and Federal Regulation

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

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

State and Local Coordination

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

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

Exceptions

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

(Existing language to be retained except where edited)

Yaquina Bay Shorelands:

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

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

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

> Points of public access to the water.

> Areas especially suited for water-dependent uses.

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

Several of the Goal 17 inventory topics for coastal shorelands do not appear in the legend for the Yaquina Bay Shorelands Map either because they do not occur (coastal headlands) or are not directly associated with it (geologic hazards). However, the report and mapping of hazards by RNKR Associates is included in the Newport Comprehensive Plan inventory.[14] The historic and archaeological resources of the Yaquina Bay Shoreland have been identified in the historical section of this document.

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

Flooding

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

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

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

Significant Natural Areas

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

Public Access Points

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

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

Areas Especially Suited for Water-Dependent Uses

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

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

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

> Potential for aquaculture;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Port Development Plan:

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

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

Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the Marine Science Center, and continued development at the Newport Marina at South Beach complex.

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

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

GOALS AND POLICIES
YAQUINA BAY AND ESTUARY

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

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

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

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

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

b) Water dependent uses requiring an estuarine location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Impact Assessment need not be lengthy or complex. The level of detail and

analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases, it should enable reviewers to gain a clear understanding of the impacts to be expected. The Impact Assessment shall be submitted in writing to the local jurisdiction and include information on:

a.) The type and extent of alterations expected;

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

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

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

1.) long term continued use of the proposed alteration

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

3.) living resources,

4.) recreation and aesthetic use,

5.) navigation, and

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

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

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

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

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

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

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

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

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

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

Temporary alterations include:

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

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

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

Temporary alterations require a resource capability determination to ensure that:

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

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

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

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

CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS**

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14.01.020 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 14.02 ESTABLISHMENT OF ZONES

14.02.010 Establishment of Zones

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

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

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

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

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CHAPTER 14.03 ZONING DISTRICTS

14.03.010 Purpose.

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

14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into ~~four~~ five (45) basic classifications and ~~thirteen~~ eighteen (~~13~~18) use districts as follows:

A. Districts zoned for residential use(s).

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

B. Districts zoned for commercial use(s).

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

C. Districts zoned for industrial use(s).

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

D. Districts zoned for public use(s).

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

E. Districts zoned for estuary use(s).

1. E-C Estuary Conservation

2. E-D Estuary Development

3. E-N Estuary Natural

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

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14.03.040 Intent of Zoning Districts.

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

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

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

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

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

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14.03.120 Estuary Uses

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

"P" = Permitted Uses.

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

"X" = Not Allowed.

		E-C	E-D	E-N
	Management Units	3, 6, and 8	1, 2, 4, 5, 7, and 12	1a, 9, and 10

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

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

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

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

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

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

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

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CHAPTER 14.04 ESTUARINE USE STANDARDS

14.04.010 Purpose

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

14.04.020 Outright Permitted Uses

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

A. Within all Estuary Zone Districts

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

B. Within the E-D Zone District

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

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

14.04.030 General Standards

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

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

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

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

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

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

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

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

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

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

9. For structures associated with marinas or port facilities:

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

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

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

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

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

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

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

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

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

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

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

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

C. Submerged Crossings:

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

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

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

D. Excavation:

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

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

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

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

14.04.040 Special Standards

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

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

2. If a substantial public benefit is demonstrated;

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

4. No feasible alternative upland locations exists; and

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

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

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

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

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

14.04.050 Impact Assessments

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

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

2. The type of resources affected;

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

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

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

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

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

14.04.060 Conditional Use Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.04.070 Dredged Material Disposal Standards

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

1. Upland or approved fill project sites.

2. Approved offshore ocean disposal sites.

3. Aquatic E-D zoned areas.

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

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

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

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

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

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

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

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

CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

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

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CHAPTER 14.13 DENSITY LIMITATIONS

14.13.010 Density Limitations

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NMC 14.13.020

Table "A"

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

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

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

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CHAPTER 14.34 CONDITIONAL USES

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14.34.060 Supplemental Estuary Conditional Use Standards

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

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

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CHAPTER 14.52 PROCEDURAL REQUIREMENTS

***

14.52.060 Notice

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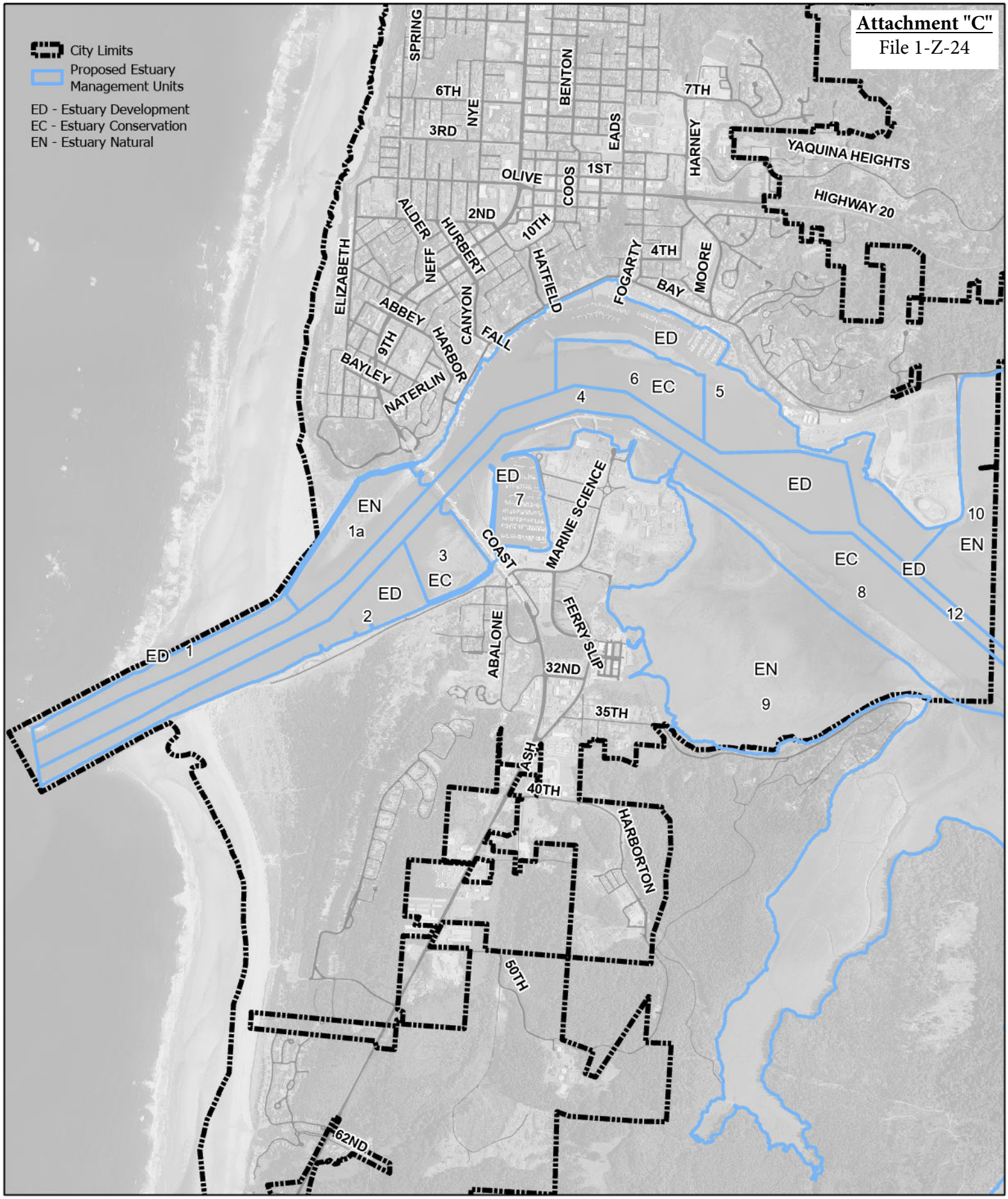
G. Written Notice for Land Use Decision in Estuary Zone Districts. The City of Newport shall notify state and federal agencies with ~~interest or~~ jurisdiction in estuaries of estuary use applications which may require their review. This notice will include a description of the use applied for, references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

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



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

Proposed Estuary Management Units

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

2,000 1,000 0 2,000 US Feet

N

Kent Doughty, Audubon Society of Lincoln City:

1) Incorporate resource information for special policies and management unit descriptions into the text for each Management Unit.

2) Each of the management units that have been identified as suitable for eel grass should include special policies to protect and minimize impacts to eel grass.

Laura Ehret:

1) Recommend Policy 18 for "Outright Permitted Uses" be removed. She thought it might be addressed by having the explicate definition Tokos that noted.

2) She wanted specific attention to what is endangered and aquatic resources.

3) The required evaluations of vulnerabilities to climate change should be coupled with mitigation actions, otherwise the plan will show concerns but lack action.

Paul Engelmeyer, Bird Alliance of Oregon:

1) Endorses what was submitted by Oregon Shores Conservation Coalition.

2) Make sure the natural resource inventory is strong.

3) Connecting what goes on in the headwaters with conservation for species with the idea of protection, restoration and working with the community.

4) Do a better job of inventorying the strategy species in the State's conservation strategy.

5) Recommend a 5 year review to find out what the track record of the recommendations and inventories so the City could say what was completed and to determine what they needed to do a better job on.

Annie Merrill, Oregon Shores Conservation Coalition:

1) Supports the adoption of the update of the Yaquina Bay Estuary Plan.

2) Comments they submitted included recommendations for improving consistency with State policies, increasing climate resilience, and mitigating adverse impacts to esturain resources.

3) Recommend they strengthen protections for eel grass and by proxy all of the species that depend on this habitat by requiring the impacts to this resource be avoided and minimized in every management unit containing eel grass, not just Management Unit 7, where a special policy is included.

4) In general, avoidance of adverse impacts to estuarine resources should be prioritized in all cases for every estuarine alteration. They recommend a general mitigation standard be incorporated to alleviate

inconsistencies between the zoning codes and the Comp Plan, and better align the amendments with the intention of Goal 16.

5) Consider the number of climate mitigation standards that they provided in their submitted comments. This included standards that require a structures to be designed to minimize climate vulnerabilities, prioritize natural infrastructure and shoreline stabilization standards, and require the applicants consider flooding and erosion risk from sea level rise and demonstrate safety.

6) Recommend that the City eliminate Policy 18. Outright permitted uses are simply permitted uses under Goal 16, but the way the policy is implemented and described, improperly exempts uses from being reviewed and held in compliance with general standards in the zoning code. It implies that all those uses are exempt.

7) The information they showed in their comments for Management Unit 10 was pulled from the resource inventories in the updated maps that are in the larger plan update. It was made to describe that all the special data they had should be integrated into plan language so that it was very clear what resources were present. The text was not updated to include this information, but the maps are updated. If not addressed now, it is something that needs to be considered in a future update.

Mark Arnold:

1) He noted his submitted comments included suggested edits to the Comp Plan.

2) Raised concerns that the eel grass extent map was based on out of date data. He noted the 1987 publication was based on the 1978 data, and was concerned that the most up to date data would be used, and recommended there be a policy that would say this so they wouldn't be locking in the maps for regulatory purposes, and to make the plan more dynamic as real world information becomes available. He wanted future decisions would be based on the most up to date information.

3) For the Hatfield outfalls, the Aquarium outfalls were sited as a special policy. He thought it made sense to have the Hatfield outfalls also be mentioned and grandfathered in so they weren't left out.

4) For private ownership of tidelands, it made sense to have a discussion with the City Attorney to make sure something wasn't included that didn't fit with what the city just did to sale tidelands.

5) Add research and development to Comp Plan Policy 18 if development or redevelopment was being done. He hoped there was something that made it easy for research that didn't have a significant impact just to be approved without the researcher having to pay a lot of money for a fee every time someone wanted to do research for a project in the estuary.

6) In Restoration, he recommended deleting one sentence so that definition would be consistent with the Newport Comprehensive Plan and Goal 16. The Zoning Ordinance amendment would restrict restoration to situations where dry land would be returned to the estuary, among other things that were restoration. He wanted the definition sentence either be deleted or revised so that eel grass and oyster restoration could be permitted.

7) He thought the Embarcadero should be added to the plan.

Paula Miranda, Port of Newport:

1) The Federal Government, the State, the citizens of Newport and the Port District have put a lot of money into developing, redeveloping and maintaining a lot of the docks and assets to support Yaquina Bay. This is a working estuary and have to continue maintaining all of the assets they have and to modernize them through mitigation that impacts Newport. There are a lot of Management Units included that the Port owns that have concerns on any adverse impact. Some of the language they are asking for is important because they want to make sure that whatever they do they can live with for many years to come. They have to be careful how the language is drafted so it doesn't impede from maintaining and mitigating some of the things that the Port has to do.

2) The Port wanted Sally's Bend in Management Unit 10 to be considered in the future for aquiculture and mitigation, which meant they wanted to enhance that instead of develop it. They have tried to be stewards for the environment and meet the standards. They want to make sure the language didn't slow down their progress and impede them from doing what they need to do to maintain what they already have.

3) She wanted the Commission to prohibit some of the language the Port had requested.

4) Turning basin in Unit 9 needs to be maintained with dredging. This needed to be clarified to help maintain what they already had.

Meg Reed, DLCD:

1) Some of the permitted outright uses are only allowed in development management units. The goal allows for this if they address findings of implementational climate of alterations of the estuary at the time of planned development, otherwise they have to be done at the time of permit review. The DLCD wanted to emphasize that there needed to be the findings for the permitted outright uses included in the text of the Comp Plan in order to be consistent with Goal 16. This wasn't in the Comp Plan yet and they wanted to have it included to be consistent with the goal and justify why the activities are permitted outright.

2)She noted that based on the earlier comments, research and education are already included in the permitted outright uses list, and are not subject to a permit as long as they are esturain alterations in any of the management zones.

3) For the conversation on the "extent practical", it was their belief that adding the extent practical language was not consistent with implementation requirements of Goal 16, and it could be interpreted as establishing a less restrictive standard. This appears twice in the Goal 16 implementation requirements (1 & 2). Where these policies mimic the language of Goal 16, they think it should stay without having the modifier to the extent practical in order to be consistent with the language. This is for the Comp Plan as well as the codes, that need to be unmodified to properly implement those goal requirements.

4) As for the comment about changing the definition of “restoration” to match the goal is a good one. This was something she missed, and there was a definition of “restore” in the statewide planning goals, that was in the codes now. The draft of the YBEP has “restoration” and I removes two of the sentences that are in the code now. She believed they should delete those in order to have the definition of restoration to match in the overall draft plan, as well as to allow “restoration” more broadly than it currently says.

5) All of the new data sets for the updates for Yaquina Bay were taken into account for the boundaries of every estuary management unit, and whether those boundaries should be altered based on resource information. It wasn’t necessarily included in the unit descriptions, and something that could be improved. She thought the better time to do this was on the whole plan level, not just for some of the units for uniformity. She would encourage the County to do this with their management units.

6) She recommended for the Comp Plan amendments, that they strict “to the extent possible” from the Policy 14 language. Also strike “to the extent possible” from the code in the definition of “restoration.”

Gil Sylvia, Port Commission:

1) He was concerned about what standards they were adopting for each of their management units. They were allowed to adopt higher protection and adoption standards that were in Goal 16. The Port wanted it made explicit that if they were adopting higher standards than in Goal 16. He was concerned if they out “to the extent possible” and you keep a “void” and “minimize” than it wouldn’t be clear how it would be interpreted in 10-15 years. The Port wanted it to see the words “either you avoid significant impact” out. Or, if there was going to be a void/minimize without the word “significant”, then it needs to have “to the extent possible” included, because without it they were not sure how the language would be interpreted in 10-20 years in terms of trying to utilize conservation and natural areas.

Sherri Marineau

From: Derrick Tokos
Sent: Thursday, August 22, 2024 11:34 AM
To: Sherri Marineau
Subject: FW: coalition comments to Newport Planning Commission
Attachments: YBEMP coalition comment-Newport Planning Commission 8.21.24.pdf

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From: Annie Merrill [redacted]
Sent: Wednesday, August 21, 2024 2:28 PM
To: Derrick Tokos [redacted]
Cc: REED Meg * DLCD [redacted]
Subject: coalition comments to Newport Planning Commission

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hey Derrick,

Thank you so much for sending the latest version of the Comprehensive Plan and Zoning Ordinance amendments, implementing the Yaquina Bay Estuary Management Plan.

Please see the attached testimony to the Newport Planning Commission, submitted on behalf of Oregon Shores, Coast Range Association, Bird Alliance of Oregon, and Audubon Society of Lincoln City.

I also intend to testify in person on Monday, so please sign me up.

I appreciate your thoughtfulness in responding to all my inquiries and comments thus far. Thanks so much for all your hard work.

Kind regards,
Annie

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August 21, 2024

To: Derrick Tokos, Planning Director, Community Development Department, City of Newport; Members of the City of Newport Planning Commission;

RE: Newport Comprehensive Plan and Zoning Ordinance amendments to implement the 2023 Yaquina Bay Estuary Management Plan (File No. 1-CP-24 and 1-Z-24)

I. Introduction

Thank you for the opportunity to provide comments on the proposed amendments to the City of Newport's Comprehensive Plan and Zoning Ordinance, to implement the updated Yaquina Bay Estuary Management Plan. The undersigned groups share an interest in protecting Oregon's unique and valuable estuarine resources and the uses thereof. We submit these comments for your consideration on behalf of our thousands of members and supporters across Oregon and hundreds in Lincoln County.

We wholeheartedly support the update of the Yaquina Bay Estuary Management Plan, and several of our organizations were active participants on the Advisory Group during the update process. We applaud the City of Newport for working diligently to adopt and incorporate the updated plan in the City's plans and policies. Overall, the new plan is much improved from the original 1982 version, and is the first EMP in Oregon to undergo a comprehensive update and incorporate language about climate change.

While we support the adoption of this plan, we offer the following comments and recommendations to make the plan components under Newport's jurisdiction even stronger and more consistent with state polices. We are confident that our suggested edits, if incorporated, will lead to a legally defensible plan that meets the needs of the community and responsibly stewards our estuarine resources. We also believe this adoption offers an important opportunity to address many of the challenges our estuarine communities and ecosystems face from climate change and the associated loss of habitat and resources, so we urge the City to consider our suggested changes aimed to build greater resilience and mitigate impacts. Comments on the Comprehensive Plan and Zoning Ordinance are made in the order each section appears in the proposed drafts, for ease of reference and incorporation of suggestions. See the conclusion section at the bottom for a summary of comments herein.

II. Comprehensive Plan (Yaquina Bay and Estuary Section) comments

A. Management Unit section

Adding more descriptive resource information

During the Yaquina EMP update process, our organizations advocated for new natural resource inventory information and data, displayed in the updated maps, to be incorporated into text descriptions of each management unit, to more accurately reflect the present state of the bay. While the maps were updated, special policies and management unit descriptions were not updated to reflect new resource information. We still maintain that incorporating more specific resource information within management unit "Descriptions," "Resource Capability," and "Management Objectives" sections in all management units is advantageous in that it provides justification for the management unit objectives, it improves the implementation of relevant standards and Resource Capability Tests, and provides more clarity to plan users and decision-makers regarding the ecological and cultural resources present in a given unit.

In particular, we recommend that Aquatic Resources of Special Concern (ARSC), designated and defined by the Department of State Lands, be described in management units where these resources are known to be present (See 2A Definitions). ARSC include mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), and wooded tidal wetlands. Providing this information will clarify plan implementation for applicants and for agencies processing removal-fill permits, where such resources need to be considered. We also recommend that this section align resource descriptions with the Oregon Conservation Strategy, which identifies estuaries as a strategy habitat and the following species as strategy species: Black Brant, Dungeness crab, black rockfish, copper rockfish, and kelp greenling (all dependent on eelgrass habitats) and coho and Chinook salmon dependent on estuarine habitats.[1] Other strategy species known to use Yaquina estuarine habitats include Brown Pelican, Caspian Tern, Red-necked Grebe, Franklin's Gull, and Marbled Murrelet (also listed in the federal Endangered Species Act as Threatened and in Oregon's ESA as Endangered).

Example of MU section

We have in the past offered a template to the planning team for structuring MU descriptions and incorporating new resource inventory information in all other management units in the county and city's relative jurisdictions (See attachment). We still recommend this template be applied to all management units in Newport's boundaries. See below for an example provided for management unit 10.

Management Unit 10:
Description:
Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and is bounded on the south by the authorized federal navigation channel (see Figure 15), and units 14 and 5, classified as Development. The large majority of this unit (X percent) is owned

[1] ODFW Oregon Conservation Strategy: https://www.oregonconservationstrategy.org/

by the Port of Newport, with a small component held in public ownership by the state (to the South East) and a “Special District” on the North West corner of the unit).

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance, identified by ODFW in the late 1970’s, including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterbird (waterfowl, shorebird, etc.) habitat. These resources are still present. Historic extent of eelgrass covered over 50% of this management unit (PMEP 2019) and the meadow present in MU 10 is the largest eelgrass area in the entire bay. However, recent maps show that eelgrass beds are only present in small patches on the edges and middle of the management unit (CMECS Biotic, 2018), indicating a significant loss of habitat. It is estimated that dredge and fill activities in the lower Yaquina Bay have decreased eelgrass habitat by 16%.[2] Eelgrass and associated habitat makes this area extremely important for ESA listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as “Essential Fish Habitat” under the Magnuson–Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region (ODFW, 2011), which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.[3] X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

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

Several areas of shorelines altered by pilings and riprap exist at X and X locations. The Northwest corner of Sally’s Bend was filled to accommodate development, which became the NW Natural Gas site in 1977.

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 10, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, projected by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the Yaquina Bay Road flooding, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Additionally, these same areas are expected to be inundated in the event of a Tsunami scenario ranging from small to large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in adjacent shoreline areas under sea-level rise conditions ranging from 2.5- 4.7 ft and is designated as a high priority zone to accommodate this migration.[4] A small freshwater

[2] Ferraro, Steven P; Cole, Faith A., 2010. Ecological periodic tables for nekton usage of four US Pacific Northwest estuarine habitats. Canadian Journal of Fisheries and Aquatic Sciences, 67(12), pp.1957-1967.

[3] Bohlen, Victoria L. 2019. Evaluation of a Habitat Suitability Model to predict the geospatial distribution of Olympia oyster presence in Yaquina Bay, Oregon, Master’s Thesis, Oregon State University Scholars Archive. Accessed: https://ir.library.oregonstate.edu/concern/graduate_projects/0v838678g

[4] Brophy, Laura S; Ewald, Michael J. 2018. Modeling sea level rise impacts to Oregon’s tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. MidCoast Watersheds Council. Oregon State University

emergent wetland that was formerly tidal, on the E. side of Sally's Bend at the junction of John Nye Road and N. Bay Road is designated as a potential Restoration Site (Y36).

Classification: Natural
As a major tract of tide flat with seagrass beds, this unit has been classified as Natural in order to preserve significant natural resources in the unit. Rationale: Goal 16 states that areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:
Management Unit 10 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat support for biodiversity, and shoreline protection from storms. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

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

Management Objective:
Because of the resource capabilities of Management Unit 10, it shall be managed to preserve and protect natural resources and values. This area shall be managed to aid eelgrass expansion, native oyster re-establishment, and improved water quality to enhance natural resources present.

Minor alterations

The term "minor alteration" is used throughout the descriptions for each individual management unit. More specifically, minor alterations are permitted in all units. OAR 660-017-0005(1) provides the definition of alteration to mean "any man-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality."

Given that minor alterations are permitted in all units, a clear definition of "minor alteration" is important to ensuring that any allowed use is consistent with Goal 16 and the management unit objectives. OAR 660-017-0020 states that "no development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units." Together the definition of alteration and OAR 660-017-0025 standard for level of development or alteration, suggest that any man-caused change to the environment cannot be more intensive than Goal 16's permitted uses for each management unit. Therefore, a minor alteration must be something less than those permitted uses.

We propose that the following definition be incorporated in this section, and the corresponding zoning ordinances:

> Minor alteration is an action that results in only short-term, temporary impacts to species or habitats and does not degrade or compromise estuarine habitats, water quality, and natural productivity.

Special Policies

Each management unit contains special policies which include additional protections for important species or estuarine resources. Special policies provide an opportunity to update and/or strengthen protections for important ecological resources. During the update process in 2023, new special policies were never considered by the planning team due to the limited scope of the update. We ask that the city take this plan adoption opportunity to improve special policies that apply to management units within Newport's jurisdiction. We recommend the following additions below:

Of the 28 management units within the original 1982 YBEMP, where current Pacific Marine and Estuarine Partnership data[5] shows that eelgrass and its suitable habitat are present, eelgrass is only acknowledged in the narrative statements (i.e., description, management objective, classification, resource capability) of 10 management units (MU3, MU5, MU6, MU7, MU8, MU9, MU10, MU14, MU21, and MU24), seven of which are under the city of Newport's jurisdiction. Only one of these management units (unit 7) has a special policy to minimize impacts to existing eelgrass beds.

Eelgrass is an essential estuarine resource that offers an array of climate resilience benefits and ecosystem services to the Newport community, including carbon sequestration, storm buffering, ocean acidification amelioration, erosion mitigation, improved water quality, support for fisheries, migratory birds, etc. Eelgrass is also a key habitat that supports ecosystem function and biodiversity, contributing to the overall health of Yaquina bay. Eelgrass resources are also disappearing in Yaquina bay rapidly, even in Natural Management Units (i.e. MU 9 and 10) where minimal development has occurred.[6] We strongly recommend Newport support eelgrass persistence and recovery in the comprehensive plan.

Each management unit with identified existing and suitable eelgrass habitat should include a special policy that avoids and/or minimizes impacts to eelgrass beds. Special policy language should depend on the type of management unit. The following policies are recommended for each type of management unit:

[5] PMEP Estuary Viewer uses "Maximum Eelgrass Extent" to display historic presence of eelgrass https://psmfc.maps.arcgis.com/apps/webappviewer/index.html?id=f25b8d649f2a46cbafc5c66fe21c99de

[6] Kaldy, Jim. Past, Present & Future of Seagrasses in Yaquina Bay and other Estuaries. Hatfield Marine Science Center Fall 2021 Seminar Series, Newport, OR, October 21, 2021.

- For Natural and Conservation Management Units with identified existing and suitable eelgrass habitat, a special policy should be included, stating that development proposals with potential to impact these areas must provide a Resource Capability Test, supported by an Impacts Assessment, in accordance with Goal 16. Additionally, if the Resource Capability Test and Impacts Assessment indicate high risk of eelgrass degradation or loss, then the project should be deemed incompatible or action must be taken to mitigate impacts to eelgrass to achieve no net loss of eelgrass function.

- Development Management Units[7] with existing and potential eelgrass habitat should be revised to include the following special policy: Eelgrass beds and suitable eelgrass habitat areas are located within this management unit. Adverse impacts of future development on these resources shall be avoided, and unavoidable impacts shall be minimized.

In addition, special policies for each type of management unit should also include specific mitigation requirements to maintain eelgrass habitat function.

B. Mitigation and Restoration section

In this section, it should be noted that the purpose of mitigation is first to avoid impacts, then minimize the impacts. This is key to conserving resources, since restoration is difficult and both restoration and mitigation projects often fail to achieve similar ecological functions, even over time. Therefore the Impact Assessment Requirements Section of the Comprehensive Plan must also include sufficient information that allows for assessment if and how robust efforts have been done to avoid, minimize, rectify impacts, and the other requirements of the mitigation process.

While restoration and mitigation sites have been selected, the section on mitigation should make clear that since these areas are outside Newport's jurisdiction and that additional mitigation opportunities can be identified, nothing in this section precludes restoration on these sites.

C. Goals and Policies section

<u>Outright Permitted Uses-Policy 18</u>

We appreciate the change in language in this policy from "exempt uses" to "outright permitted" uses. However, we are still concerned that these uses are improperly being treated as exempt, when they should be treated parallel to other permitted uses in the plan.

The language of this policy suggests that the uses are an exception to uses allowed in a management unit. However, "outright permitted uses" are just permitted uses described under

[7] In the revised YBEMP, any proposal to expand development units 4, 5, 7, 12, 14, 31, and 32 would likely require a goal exception.

Goal 16 and should be identified as such in the zoning code use matrix. Including these uses as being exempt from review under the plan seemingly allows the proposed uses to avoid compliance with the general policies and standards of the plan, which is directly contrary to Goal 16. Therefore, Policy 18, which creates an "outright permitted use" policy is misleading and should not be included in the plan update.[8] See section 2C below, regarding the Zoning Ordinance section.

II. Zoning Ordinance comments

A. Section 14.01.020: Definitions

In general, we strongly encourage the city to use definitions stated in other state policies and statutes wherever possible. This is important for ensuring greater consistency across permitting processes, and improving clarity for plan users. We offer the following changes and additions to definitions as suggestions to improve plan use.

Adverse Impact (significant)

We still maintain that it is important to define significant adverse impact for greater clarity. We recommend NOAA's definition (15 CFR 971.101)[9] be incorporated:

> "Significant adverse environmental effect means: (1) Important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values"

Cumulative Impacts

We recommend the following definition of cumulative impacts be added to definitions, for use in the impacts assessment section (see 2E), as used by the U.S. Environmental Protection Agency:

> "Cumulative impacts" are defined as the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes.[10] Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person's lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people

[8] Yaquina Bay Estuary Management Plan Update, at 39, https://www.newportoregon.gov/citygov/comm/pc/agendas/06-24-2024_PC_Work_Session_Meeting.pdf

[9] NOAA (15 CFR 971.101) https://www.law.cornell.edu/cfr/text/15/971.101

[10] United States Environmental Protection Agency (US EPA). 2022. Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development. September 2022. https://www.epa.gov/system/files/documents/2023-05/CUMULATIVE%20IMPACTS%20RESEARCH-FINAL%20REPORT-EPA%20600-R-22-014A%20%2812%29.PDF

> through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community.

Mitigation (definition consistent with state definition)

The City of Newport should use the definition of Mitigation that is consistent with the Department of State Land's definition to ensure consistency across permitting processes. Under DSL's Removal-Fill policies:

> "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
> (a) Avoiding the effect altogether by not taking a certain action or parts of an action;
> (b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;
> (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;
> (d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
> (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

Aquatic Resources of Special Concern

We recommend the following definition for Aquatic Resources of Special Concern be incorporated in the definitions section, and referenced in the Management Unit section of the Comprehensive Plan, where such resources are present:

> "Aquatic Resources of Special Concern" (ARSP) are waters of this state that provide functions, values and habitats that are limited in quantity because they are naturally rare or have been disproportionately lost due to prior impacts. These include mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), and wooded tidal wetlands (OAR 141-085-0510).

Nature Based Solutions and Natural Climate Solutions

It is important to define Natural Climate Solutions, or Nature Based Solutions, which will likely be proposed as future uses of the Yaquina Bay. In particular, DLCD is currently developing an Estuarine Resilience Action Plan for Lincoln County, which will outline opportunities for restoration and resilience projects in Yaquina Bay that offer nature based solutions to climate change and other vulnerabilities. It is important that the Newport Comprehensive Plan identifies

these possible uses now, so those projects can be implemented. We suggest the following definition, Oregon law (H.B. 3409, 2023)[11]:

> "natural climate solution" is an activity that enhances or protects net biological carbon sequestration on natural and working lands, while maintaining or increasing ecosystem resilience and human well-being.

Natural Working Lands

Note that H.B. 3409 identified estuarine habitats as "Natural Working Lands", as one of the habitats that Natural Climate Solutions activities are a focus of the State. The city might also consider including a definition of Natural and Working Lands, to clarify future proposed uses that can be considered both restoration and agricultural uses. Lack of clarity in other local comprehensive plans and EMPs in Coos county has caused permit delays and general confusion for plan users and decision-makers. We suggest the following definition, from the bill language:

"Natural and working lands" means:

> Lands actively used by an agricultural owner or operator for an agricultural operation, including but not limited to active engagement in farming or ranching; producing forest products; consisting of forests, woodlands, grasslands, sagebrush steppes, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas or the submerged and submersible lands within Oregon's territorial sea and marine habitats associated with those lands.

Climate Change

The definition of climate change could be improved for greater accuracy and relevant estuarine context could be added. We suggest the following definition:

> The rapidly increasing changes in the measures of climate including precipitation, temperature, sea levels, and wind patterns; resulting from an increase in greenhouse gas concentrations in the atmosphere. Estuarine environments are expected to be biologically and physically impacted by climate change via sea level rise, alteration of hydrology, increases in erosion and salinity, changes in storm patterns, and ocean acidification, etc.

Landward Migration

We recommend the following definition of landward migration be included, to bring attention to changes in estuarine habitat that are expected to occur as a result of sea level rise:

[11] Oregon State Legislature. HB 3409 (2023) Relating to climate; and declaring an emergency. p34 https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3409/Enrolled

> The landward movement of tidal wetlands over time due to accelerating rising sea levels. Landward migration requires suitable conditions, such as a gradual slope and land free of urban development. Areas within Oregon's estuaries have limited capacity for landward migration as they have steep slopes and urban barriers.

Sea Level Rise

We recommend the following definition of sea level rise be incorporated as well:

> Sea level rise is an increase in the ocean's surface height relative to the land in a particular location resulting from the expansion of warm ocean water and melting polar ice due to human-caused climate change. These factors result from the increasing human greenhouse gas emissions driving Earth's temperatures higher.

B. Section 14.03.120: Estuary Uses

Section 14.03.120 describes the estuary uses permitted within each of the management unit types. In addition to listing the permitted uses within each type of management unit, it is important to note that under OAR 660-017-0025 "no development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units." We suggest that this language be included as an opening or final sentence within this section.

Additionally, excavation is discussed in the general standards, Section 14.04.030, but is not included within the use matrix. This leaves it unclear where excavation is allowed or not, causing conflicts with Goal 16, which only allows removal-and-fill in specific circumstances for each management unit classification. Accordingly, we believe two rows should be added to the matrix. First, a row for excavation for restoration, which should be a conditional use in all management units. Second, a row for excavation for navigation or other water-dependent uses, which should be a conditional use in development units and a prohibited use in conservation and natural units.

C. Section 14.04.020: Outright Permitted Uses

As discussed above regarding the Comprehensive Plan section on outright permitted uses (1C), characterizing certain uses as being excepted from the estuary management plan contradicts Goal 16, regardless of whether they are described as "exempt" uses or "outright permitted uses." The uses listed here in the Zoning Codes illustrate why this is true.

For example, "[r]emoval or installation of not more than six pile associated with an in-water structure within a 12 month period" is listed as a use "not subject to the standards in this chapter." However, there are no permitted uses under Goal 16 that would allow pile in a natural management unit. And, presumably, depending on how and where the pile are installed, it is foreseeable that they could "potentially alter the estuarine ecosystem" and thus require an impact statement under Goal 16. Therefore, broadly providing that these activities are not

subject to the other standards of the ordinance violates Goal 16. The other listed uses suffer from the same flaw. This section should be removed from the ordinance and the uses recategorized as permitted uses in corresponding management units in Section 14.03.120.

D. Section 14.04.030: General Standards

The following additions to the General Standards section would greatly increase estuarine resilience to climate and development stressors and improve consistency between the Comprehensive Plan and Zoning Ordinances.

General Mitigation Standard

Throughout the estuary management plan update, various sub-area and management unit policies include requirements to minimize impacts to relevant resources. These requirements are not well-reflected in the proposed zoning code language. To remedy this inconsistency, we recommend the following catch-all provision that requires identified adverse impacts be minimized in all situations to be included at the top of the general standards section:

> The siting, design, and conduct of all proposed structures and uses shall be carried out and conditioned to minimize adverse impacts identified in a Section 14.04.050 impacts assessment. The impacts to be minimized shall include impacts on aquatic life and habitats, flushing and circulation characteristics, patterns of erosion and accretion, and neighboring uses. Where there is insufficient or incomplete information available to determine the impacts of a proposed use, applicants must provide an adaptive management plan that includes corrective actions that will be carried out in response to measurable and identified outcomes.

This language is based on the language that was already included in the code for all proposed structures in Paragraph A.1. of this section, which can be removed if the above policy is included. We believe the intent of the plan update and Goal 16 are better met by applying this requirement to all uses.

Climate Vulnerability Standard

While the Climate Vulnerability Assessment is a fantastic addition to the zoning codes, applicants are not required to take any actions to mitigate the climate vulnerabilities they identify in this assessment. We see an opportunity to apply and require adaptation measures in the city's Zoning Ordinances in the General Standards section, which can help avoid costly, repetitive building and damage to infrastructure from increased floods, storm intensity, and sea level rise if applied. We recommend the following, to increase overall climate mitigation and help the city proactively plan for all the climate vulnerabilities identified in Section 14.04.050.

Suggested standard:

> Structures must be designed to minimize the climate vulnerabilities identified in the Section 14.04.050 impact assessment. Where possible, such minimization shall include

> constructing infrastructure that is designed to be adaptive and resilient in the long-term as well as integrating natural climate solutions or hybrid designs that blend natural and built systems.

See definition of Natural Climate Solutions in 2A.

Shoreline Stabilization Structure Standards

General standard A.10 and A.11 should be strengthened to enforce Goal 17's requirement that "[l]and-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions." As these policies are currently written, there are no "land-use management practices" being utilized and the requirements for non-structural solutions are unclear and do not include feasible relocation of existing structures.

We recommend that Newport adopt a policy that no new structures or substantial improvements to existing structures can be permitted in locations that will foreseeably require shoreline stabilization within a 50-year analysis time frame with recognition of sea level rise. We also recommend that Newport require that new structures be built on the safest possible site with the least exposure to risk from future erosion and flooding.[12] These suggested changes better align with Goal 17's preference for "land-use management practices" for erosion control and ensure that new construction along the estuary will be viable in the long-term. We suggest the following policy language:

> Applications for new structures or substantial improvements to existing structures shall include an analysis of the foreseeable impacts of expected sea level rise to the structure in the next 50 years. Such analysis shall include an assessment of the site most suitable for development based on the least exposure to risk from future erosion and flooding. Structures and substantial improvements shall only be permitted where applicants demonstrate that the structure will not face substantial flooding or erosion risk from rising sea levels within 50 years. Flooding or erosion risk is substantial where it would require future shoreline stabilization. New structures must also demonstrate that development is occurring on the safest possible site.

Additionally, we recommend strengthening the requirements in standard A.11 to make clear what showings are required of an applicant to establish that the higher priority shoreline stabilization methods are not feasible and adding relocation of threatened structures as the highest priority method. The current language only states that applicants must demonstrate a higher priority method is "unreasonable," without discussion of how they should show that or what "unreasonable" means. And relocation of existing structures, which avoids the need for shoreline stabilization in the first place, was not included as an alternative.[13]

[12] This recommendation is based on similar language from Neskowin's Coastal Hazard Overlay Zone. Tillamook County Land Use Ordinance, Section 3.530(7)(d).

[13] The Oregon Parks and Recreation Department includes relocation of existing structures as an alternative to structural shoreline stabilization in its regulations for ocean shore structures. OAR 736-020-0003(2)(b).

Goal 17 prioritizes non-structural solutions to erosion and flooding because structural solutions like riprap revetments severely reduce the shoreline, limiting public access and harming critical ecosystem functions of an estuary.[14] As the impacts of climate change grow and sea levels rise, the harmful impacts of these hardened structures will only increase. Historically, contrary to Goal 17, many applicants for structural shoreline stabilization have avoided implementing less-harmful alternatives while only conducting cursory review of their feasibility. To ensure that the identified higher-priority alternatives are actually prioritized, we recommend the following language to replace the current standard:

> Applications for structural shoreline stabilization structures shall include an analysis of hazard avoidance alternatives. Such structures shall be permitted only where an applicant can show that there are no feasible higher-priority alternatives that would preserve the primary purpose of the existing use. If cost of an alternative is listed as a factor for why a higher-priority alternative is not feasible, the applicant must include cost estimate(s) from licensed contractors. Higher cost alone is not sufficient to demonstrate that a higher-priority alternative is not feasible unless that cost greatly outweighs the social, economic, and environmental benefits of the alternative. The following, in order, are the preferred hazard avoidance approaches:
>
> a. Relocation of threatened structures
> b. Vegetative, natural, or other nonstructural technique;
> c. Cobble dynamic revetment;
> d. Vegetated riprap;
> e. Unvegetated riprap;
> f. Bulkheads (except that the use of bulkheads shall be limited to ED and EC management units only).

<u>Submerged Crossing Standards</u>

The state recently underwent a process for considering how to handle submerged crossings through the Territorial Sea, resulting in the updated Territorial Sea Plan Part Four.[15] Many of the policies expressed in the plan are just as relevant in the context of submerged crossings through the estuary, and we recommend including adapted versions of three of those policies to strengthen this section.

First, we recommend replacing standard C.2 with the following language, which ensures that uses beyond navigation are protected:

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[14] Statewide Land Use Goal 17, Implementation Requirement 5; Matthew S. Kornis et al., Estuaries and Coasts, *Linking the Abundance of Estuarine Fish and Crustaceans in Nearshore Waters to Shoreline Hardening and Land Cover* (June 24, 2016), https://link.springer.com/article/10.1007/s12237-017-0213-6.
[15] Oregon Territorial Sea Plan Part Four: Uses of the Sea Floor, https://www.oregon.gov/lcd/OCMP/SiteAssets/Pages/Territorial-Sea-Plan/TSP%20Part%204%208.25.23.pdf.

> Submerged crossings, including their landing onshore, shall be designed and located so as to avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other natural resources of the estuary.

Second, we recommend including the following language to require crossings be located in close proximity to each other to limit their impacts:

> Where feasible, submerged crossings should be located as close as possible to existing crossings.

Finally, we recommend including the following requirement that submerged crossings should be buried wherever possible to avoid long-term impacts on other uses and the ecosystem:

> All submerged crossings shall be buried unless that burial cannot be practicably achieved and the adverse effects of not burying the crossing have been avoided, minimized, or mitigated to the maximum extent practicable.

E. Section 14.04.050 Impact Assessments

Methods to Avoid or Minimize Impacts

Goal 16 requires that an impact assessment include "the methods which could be employed to avoid or minimize adverse impacts." However, the impact assessment standards in the proposed code provisions only require an analysis of "methods to be employed to avoid or minimize adverse impacts," which is narrower than what Goal 16 requires. To remedy this inconsistency and improve the information available to the City in its decision making in other parts of the code, we recommend changing the language to include:

> Methods to be employed to avoid or minimize adverse impacts, as well as any additional methods that could be employed and an explanation for why they are not included.

Aquatic Resources of Special Concern

There are certain resources in the estuary that are particularly important to its future health. It is thus critical to understand the impact proposed uses will have on these resources. Including a requirement to identify the presence of any of these aquatic resources of special concern (see definition in 2A) and assess potential impacts to them will maximize the efficiency of the impact assessment and allow for more informed decision making. We propose the following standard to be added after paragraph A.3 of this section in combination with the proposed definition of aquatic resources of special concern above:

> The presence of any aquatic resources of special concern and analysis of all foreseeable impacts to those resources.

Cumulative Impacts

The impact assessments section currently does not include an explicit requirement for assessing the cumulative impacts of a proposed project with other projects. Understanding this aspect of a proposal is crucial to understanding the project's full effects. While these cumulative impacts (see definition in 2A) are likely already included with the broad requirement to assess the impacts of a project on the estuary, making that requirement explicit is worthwhile to clarify what is required to applicants. We suggest the following language to be added under paragraph A.3 of this section:

> The cumulative impacts of the project in conjunction with the impacts of past projects, other current projects, and probable future projects with potential overlapping effects.

This assessment or resource inventory should include historic and current conditions of habitat as well as species of conservation concern - native oysters, herring or sturgeon as examples. Current conditions would also include water quality. Recent information indicates that 99% of Oregon's estuaries are water quality impaired as such DEQ will be engaging in the TMDL process in the future for each estuary.

F. Section 14.04.060: Conditional Use Standards

Section 14.04.060 provides the conditional use standards for each management unit. In addition to the standards laid out, this section should include language from OAR 660-017-0025(3)(a), which states that "both shallow and deep draft development estuaries shall be managed to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses consistent with overall Estuarine Resources Goal Requirements." Including this as a standard makes clear that a use that is not outright permitted in natural, development, and conservation management units must still be consistent with Goal 16 in addition to the management objective and special policies of the unit.

Resource Capability Test

We strongly recommend that the "Resource capability test" is better described in section 14.04.040. This test is extremely important for determining whether a conditional use is permissible within a given management unit and for determining the impact of a proposed use and whether the resources in a given unit can assimilate the impact and continue to function. Therefore, it is necessary for every plan user and decision-maker to understand what the test is, how it is applied, and under what circumstances the resource capability test is needed.

We recommend the following language for the resource capability test to replace the paragraphs at Section 14.040.060(A)(4) and Section 14.040.060(B)(4):

A Resource Compatibility Test is applied as a decision-making tool, to determine whether a proposed conditional use may be compatible with the existing resources or ecology of an area. A determination of consistency with resource capability and the purposes of the management unit shall be based on the following:

a. A description of resources identified in the plan inventory as well as any existing threats to those resources; and
b. An evaluation of impacts on those resources by the proposed use conducted as part of the impacts assessment required by Section 14.04.050. The impacts assessment for a conditional use must analyze the cumulative impacts of the activity when combined with other existing and planned activities and be sufficiently detailed to demonstrate with substantial evidence that the project is compatible with those resources.

III. Other (general) comments

A. Adaptive management

We recommend an adaptive management structure be incorporated into the Newport Comprehensive Plan and Zoning Ordinances to prompt a periodic review of resource inventory data and plan effectiveness every five years or so, and follow through with needed updates. This would allow targeted updates to occur more frequently to match the rapidly changing conditions of the estuary; including sea level rise (which will alter the estuary boundary), increasing coastal hazards, habitat and species migration, and loss of biodiversity. Without this structure, the Yaquina Bay EMP and the Newport Comprehensive Plan are at risk of being quickly outdated. Indeed, much work was needed to update the Yaquina Bay EMP precisely because the plan had gone unchanged for approximately 40 years.

Adaptive management is a structured, iterative process of robust decision-making in the face of uncertainty, with an aim to reduce uncertainty over time via system monitoring. It is useful in the context of managing natural resources in the face of climate change, because it allows planners to monitor how conditions are changing, create and test management strategies (i.e. climate mitigation), evaluate how well those management strategies are working, and then adapt the plan accordingly, despite the high degree of uncertainty.

Given the impacts of climate change and the degree of uncertainty in the plan updates section, the zoning code should outline a structured process to monitor, re-evaluate, analyze plan success, and then adapt the plan to changing needs. The code should also describe the various adaptive management strategies and provide a timeline for undergoing this process. The boundaries of the estuary are not the only thing changing as a result of climate change.

Furthermore, there is an opportunity to use an adaptive management structure to evaluate how well the new climate vulnerability impact assessments works to allow planners to address hazards, and evolve this climate strategy accordingly. As suggested in DLCD's Sea Level Rise

Planning Guide[16], “the plan could include time-based triggers to review hazard datasets on a regular basis (e.g., every five years) to continue to adopt and use the best available information.” Such time-based triggers for plan adaptation and a protocol for monitoring plan success should be embedded in the Zoning Ordinances.

Additionally, new tools and planning resources are being developed by DLCD and NOAA to help cities adapt to climate change. A periodic review of the Comprehensive Plan and Zoning Ordinances would create an opportunity to draw on those resources for new ideas to develop a strong climate mitigation plan, and incorporate new solutions. Without a robust system to monitor the effectiveness of planning strategies and learn from past mistakes and successes, the City won’t be able to mitigate the effects of climate change and adapt effectively.

Along with the recommendation to include a clear adaptive management strategy, we also recommend that new spatial data be incorporated into the associated Yaquina Bay Estuary Management Plan Map Viewer[17] as it becomes available. It is important that land use decisions made during the life of the updated Yaquina Bay EMP are informed by the best available scientific information and guided by the policies in the plan. This Map Viewer is a tool that will allow data to be updated frequently without a full plan update, and we encourage the city to use it regularly and coordinate with DLCD to keep it updated, to the benefit of all plan users and the public.

IV. Conclusion/Summary

Our comments underscore the importance of incorporating descriptive natural resource information and special policies to minimize impacts to eelgrass in every management unit. We request that the “Outright Permitted Uses” policy (18) be removed, as it is inconsistent with Goal 16. Our comments on the Zoning Ordinances provide improved and additional definitions, consistent with state policies. We urge the City to consider our suggestions for improving General Standards to increase resilience to climate change impacts and create greater consistency with statewide land use planning goals. We also point to improvements to the Impact Assessment requirements to consider aquatic resources of special concern and methods to minimize adverse and cumulative impacts. Further, we recommend language to better describe the Resource Capability Test for enhanced plan useability. Last, we recommend the City consider an adaptive management approach to update these Yaquina Bay EMP components more frequently and efficiently in the face of uncertainty and accelerating climate change. In general, our comments were designed to help the City strengthen the Comprehensive Plan and Zoning Ordinances to build better consistency across state policies and permitting processes, while taking into account current and future threats to estuarine resources. Thank you for considering our recommendations and concerns, and we look forward to the adoption of the Yaquina Bay EMP.

[16] https://www.coastalatlas.net/sealevelriseplanning/downloads/SLR_Planning_Guide_V1.pdf
[17] https://www.coastalatlas.net/yaquina_emp/viewer/

Sincerely,

Annie Merrill
Ocean and Estuaries Manager
Oregon Shores Conservation Coalition

Joe Liebezeit
Assistant Director of Statewide Conservation
Bird Alliance of Oregon

Steve Griffiths
Conservation Chair
Audubon Society of Lincoln City

Michael Gaskill
Marine Programs Director
Coast Range Association

Sherri Marineau

From: Derrick Tokos
Sent: Thursday, August 22, 2024 11:35 AM
To: Sherri Marineau
Subject: FW: coalition comments to Newport Planning Commission
Attachments: Recommended MU Template for Update_Final.docx (1).pdf

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From: Annie Merrill [redacted]
Sent: Wednesday, August 21, 2024 2:32 PM
To: Derrick Tokos [redacted]
Subject: Re: coalition comments to Newport Planning Commission

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hey Derrick,

Sorry, I forgot the attachment, mentioned in the comment letter. See attached as a supporting document to the comment letter.

Cheers,
Annie

On Wed, Aug 21, 2024 at 2:28 PM Annie Merrill [redacted] wrote:

> Hey Derrick,
>
> Thank you so much for sending the latest version of the Comprehensive Plan and Zoning Ordinance amendments, implementing the Yaquina Bay Estuary Management Plan.
>
> Please see the attached testimony to the Newport Planning Commission, submitted on behalf of Oregon Shores, Coast Range Association, Bird Alliance of Oregon, and Audubon Society of Lincoln City.
>
> I also intend to testify in person on Monday, so please sign me up.
>
> I appreciate your thoughtfulness in responding to all my inquiries and comments thus far. Thanks so much for all your hard work.
>
> Kind regards,
> Annie
>
> --

Recommended Management Unit Template for Draft YBEMP

Context

A new ODFW resource inventory was not conducted for this update, although some language has been updated, more can be added to ensure the descriptions do not include relic 40-year old information. Originally recommended in ODFWs report, *Habitat Classification and Inventory Methods for the Management of Oregon Estuaries*, a permanent monitoring program that works to provide planners the information they need, remains salient. The report states,

"As planning proceeds and development goals identified in local plans are implemented, basic inventory data will become increasingly important to all local, state, and federal agencies involved in estuary management. A standard, coordinated inventory program to provide this information is essential to ensure that the most pressing research needs have priority, that research time and dollars are spent most effectively, and that results achieve a high degree of transferability. The Oregon Estuarine Research Council, composed of state and. federal agencies and institutions, could help to coordinate research efforts and prevent duplication in future estuary inventories."

Oregon no longer has an Oregon Estuarine Research Council. We believe the inaccurate framing of what kind of tool EMPs are, what kind of monitoring support they are to receive from coastal partner agencies, and the viewpoint that they are a tool solely for one group of government official versus others or the community at large, is a result, in part, of a lack of investment in the implementation vision for the coastal goals and a loss of institutional knowledge. Planners are one end user of estuary management plans. A primary user, yes, but not the only one.

In absence of the 'envisioned' resource inventory monitoring program and supporting data, or even a one-time ODFW inventory effort for this YBEMP update, the research community and state agencies hold spatial data and other non-spatial research data that is available to support the YBEMP management unit updates and is quite plentiful. The project team gathered spatial data for static County maps, but no analysis occurred in the presence of natural resource managers, or others with expertise. There was no facilitated process to discuss management unit boundaries, resource presence/absence, or the management objectives for the 39 units. The advisory group that contained this project's natural resource expertise, has had the same amount of time as the public to view the new management unit boundaries overlaid with resource data; approximately 3 weeks.

Without adequate time for a meaningful analysis of the units and spatial information during this process, we offer the Steering Committee a template to consider for the Management Unit update work that remains in order to reflect current resource data and information based on 21st century technology, tools, and research. Collaborators included advisory group members and local community members that have natural resource backgrounds and natural history knowledge. This document goes further by providing example language for several units to illustrate the deficit in the current management unit section of the draft YBEMP. However, we recommend all units contain similar information synthesized from updated officially County adopted maps and other resource maps, and data not officially adopted by the County, but still helpful information for decision makers, applicants, and the interested public.

Recommended Template Outline

Resource Description

Overall, this section should address the most recent information to describe the characteristics of the unit. We recommend the following short paragraphs:

> **Paragraph 1:** location, geography, and locators. Percent private ownership.
>
> **Paragraph 2:** natural resources of note- info on water quality (issues, outfalls or otherwise- if no outfalls good to note as well) and cultural resources of note (that are appropriate to share in a public doc)
>
> **Paragraph 3:** past, current, and future potential uses.
>
> **Paragraph 4:** any known alterations, historic and contemporary
>
> **Paragraph 5:** Forward looking challenges and considerations. Particularly sea level rise modeling or other info from the state's SLR toolkit. The public can't access this viewer without a password-- https://www.coastalatlas.net/index.php/tools/planners/68-slr/ but the planning guide does provide the guidance that updated EMPs should consider SLR and modify management unit uses accordingly. https://www.coastalatlas.net/sealevelriseplanning/downloads/SLR_Planning_Guide_V1.pdf

Classification:

This paragraph should address the requirements of the classification of the unit from Goal 16. It is an appropriate place to provide a rationale for the classification to a greater extent than the existing language. This would help the public understand the classification system, the rationale that went into the classification, and serve as a reminder to future governmental staff what decision occurred in the past and why.

Resource Capability:

Originally, this section relied on the ODFW inventory of major and minor resources found within a given unit. Since we do not have an updated ODFW inventory with newly revised major and minor resource classifications, we recommend listing ecosystem services in addition to how the unit has served the human community (i.e. aquaculture). Services to human community in an economic sense is currently what is addressed in the language. The notion of 'ecosystem services' was not well developed when first written, so there is an opportunity to describe how estuary functions support the quality of life the community enjoys.

Management Objective:

This section should include more specifics about how the resources present will be sustained or what the goals are for 'enhancement'; a word frequently used in Goal 16. Much more is known about the extent and trend of resources in the estuary as well as how to manage (even through a planner's lens) a resource to make sure it is maintained. The objectives can also address human use management objectives (ie aquaculture).

Special Policies:

Ensuring estuary function per Goal 16 requires actions and management to take place at site-level scales. Ecosystem function is depleted by many cumulative decisions over time (ie death by a thousand cuts). Time should be taken to thoughtfully consider the potential impacts to and management goals for each unit and be used guide current and future planners as well as land use permit applicants for that unit.

Management Unit Examples

Below we provide example language (that is not necessarily finished) for management units 10, 14, 17, 18, 19, 24, 28, and 34A. The below examples do their best to illustrate what the template outline above is recommending.

We'd like to request that the information contained within these examples as well as the special policy examples be incorporated into the YBEMP draft. They are comments as well as examples.

We marked the absence of important numbers or information with an 'X' and indicated where the agencies or Tribes may have the needed information.

Management Unit 10:

Description:

Management Unit 10 includes the Sally's Bend area between Coquille Point and McLean Point and is bounded on the south by the authorized federal navigation channel (see Figure 15), and units 14 and 5, classified as Development. The large majority of this unit (X percent) is owned by the Port of Newport, with a small component held in public ownership by the state (to the South East) and a "Special District" on the North West corner of the unit).

The unit consists of one of the largest tideflats in the estuary, with a number of natural resource values of major significance, identified by ODFW in the late 1970's, including eelgrass beds, shellfish and algal beds, fish spawning and nursery areas, and wildlife and waterfowl habitat. These resources are still present. Historic extent of eelgrass has covered over 50% of this management unit (PMEP 2019) and the meadow present in MU 10 is the largest eelgrass area in the entire bay. However, recent maps show that eelgrass beds are only present in small patches on the edges and middle of the management unit (CMECS Biotic, 2018), indicating a significant loss of habitat. It is estimated that dredge and fill activities in the lower Yaquina Bay have decreased eelgrass habitat by 16%.[1] Eelgrass and associated habitat makes this area extremely important for ESA listed fish species, commercially important fisheries species, recreationally important clams, and migratory birds. It is recognized as "Essential Fish Habitat" under the Magnuson–Stevens Fishery Conservation and Management Act. Additionally, a significant area in the middle of MU 10 is utilized by pinnipeds (seals and sea lions) as a haul out region (ODFW, 2011), which are species supported under the Marine Mammal Protection Act. Recovering populations of native Olympia oysters have also been surveyed at the South corner of the management unit off Coquille Point.[2] X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

[1] Ferraro, Steven P; Cole, Faith A., 2010. Ecological periodic tables for nekton usage of four US Pacific Northwest estuarine habitats. Canadian Journal of Fisheries and Aquatic Sciences, 67(12), pp.1957-1967.

[2] Bohlen, Victoria L. 2019. Evaluation of a Habitat Suitability Model to predict the geospatial distribution of Olympia oyster presence in Yaquina Bay, Oregon, Master's Thesis, Oregon State University Scholars Archive. Accessed: https://ir.library.oregonstate.edu/concern/graduate_projects/0v838678g

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

Several minor alterations are present, including piling and rip rapped shorelines at X and X locations. The Northwest corner of Sally's Bend was filled to accommodate development, which became the NW Natural Gas site in 1977

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 10, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, projected by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the Yaquina Bay Road flooding, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Additionally, these same areas are expected to be inundated in the event of a Tsunami scenario ranging from small to large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in adjacent shoreline areas under sea-level rise conditions ranging from 2.5- 4.7 ft and is designated as a high priority zone to accommodate this migration.[3] A small freshwater emergent wetland that was formerly tidal, on the E. side of Sally's Bend at the junction of John Nye Road and N. Bay Road is designated as a potential Restoration Site (Y36).

Classification: Natural
As a major tract of tide flat with seagrass beds, this unit has been classified as natural in order to preserve significant natural resources in the unit. Rationale: Goal 16 states that areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:
Management Unit 10 is a highly sensitive area with resource values of major importance to the estuarine ecosystem. Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat support for biodiversity, and shoreline protection from storms. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

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

Management Objective:

[3] Brophy, Laura S; Ewald, Michael J. 2018. Modeling sea level rise impacts to Oregon's tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. MidCoast Watersheds Council. Oregon State University

Because of the resource capabilities of Management Unit 10, it shall be managed to preserve and protect natural resources and values. This area shall be managed to aid eelgrass expansion, native oyster re-establishment, and improved water quality to enhance natural resources present.

Special Policies:

1. To maintain the ecosystem integrity of this area to support continued resource capabilities and ecosystem services, future development within this unit shall not be permitted.
2. Because this unit is suitable for native oyster re-establishment and restoration efforts are underway, impacts to Olympia oysters present shall be avoided.
3. To support the continued presence of eelgrass beds in this unit, reduced water quality and sedimentation in this unit that is a result of dredging in other, nearby units will be mitigated. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.
4. Deepening and widening of the channel and turning basin in this management unit impacting eelgrass and hydrology within Sally's Bend shall be avoided.

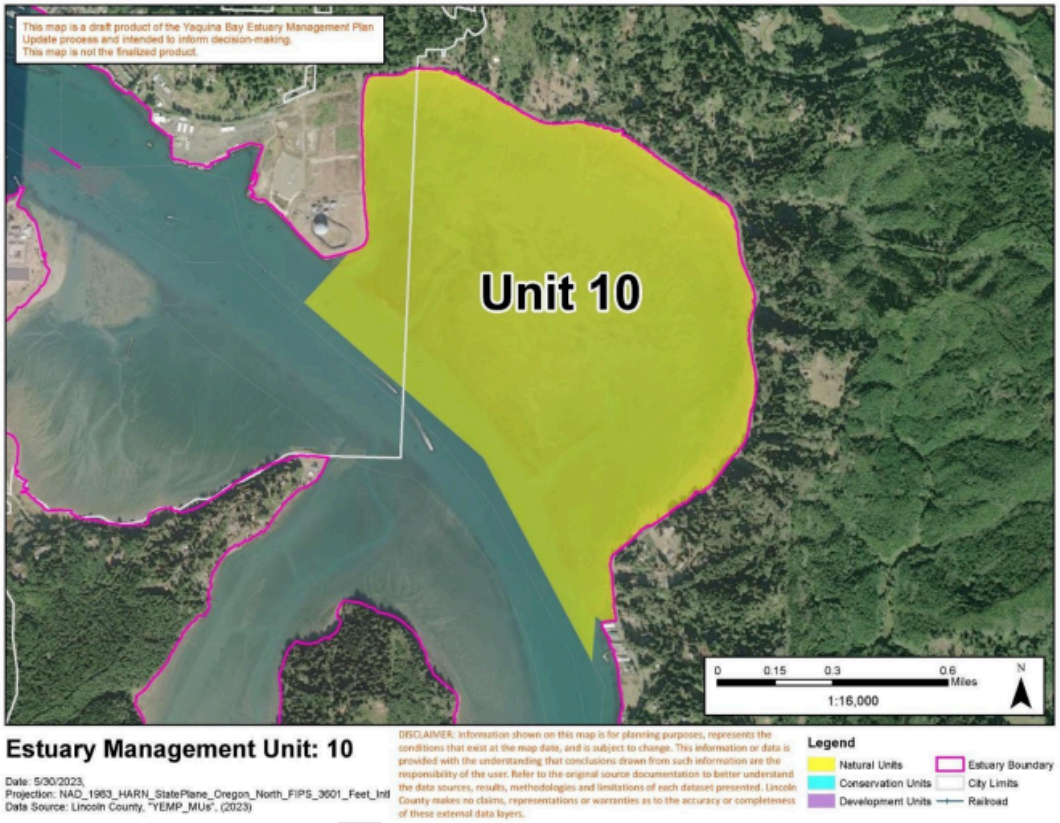

Figure 15. Estuary Management Unit 10, Yaquina Bay

Management Unit 14:

Description:

Management Unit 14 is the area between the navigation channel and the east shore from Coquille Point up to River Bend (Oneatta Point) in the Yaquina sub-area (see Figure 18). Parker Slough (MU 15) meets

the Yaquina River at the Southern end of MU 14 and a dike separates the two management Units. X percent is privately owned.

Natural resources present in this unit, as identified by ODFW in the late 1970's, include fish spawning and nursery areas, eelgrass, and shellfish beds, tideflats, wildlife and waterfowl habitat (all of minor significance). These resources are still present, primarily patches of eelgrass lining the channel (CMECS Biotic, 2018). These eelgrass patches are habitat corridors for migrating fish species of commercial importance, such as Fall Chinook, Chum, Coho, and Coastal Cutthroat (USFW, 2023). Recovering populations of native Olympia oysters have also been surveyed throughout the management unit (Bohlen, 2019). X water quality conditions have been recorded in this unit.

Cultural resources…[More here as desired by SHPO and the Tribes]

The predominant uses in the unit are small boat moorage, medium and shallow draft navigation, marine construction and repair, and recreation.

Major alterations are present in the form of boat launches and haul outs, piling, wharves, floating docks that serve marina development, and marine construction and repair operations. Additional alterations include fills along the shoreline, dredging, navigation aids, and stabilized (bulkheads and riprap) shorelines, and dikes.

Current sea-level rise modeling indicates that by X year, X percent of the shoreline will be inundated by sea-level rise. Two low-lying areas on the shoreline of MU 14, off Yaquina Bay Road will be flooded when the sea rises 4-5ft, while 2 more areas are projected to be flooded with 1-2 ft of sea level rise by the year 2100 (NOAA, 2022; NOAA 2012). There is also a 1% annual chance of these regions of the shoreline flooding across, which may be a hazard risk to residents living off Yaquina Bay Road (FEMA, 2019). Significant areas of the shoreline adjacent to MU 14 are expected to be inundated in the event of a Tsunami scenario ranging from small to extra-large (DOGAMI & FEMA, 2019). Landward migration of tidal wetland habitat is expected in the majority of adjacent shoreline areas under sea-level rise conditions ranging from 1.6- 4.5 ft but is designated as a low priority zone to accommodate this migration (Brophy et al. 2018). A small formal tidal marsh just S of Weiser Point (Y41) and a tidal flat on the E. bank of Yaquina (Y39) are designated as potential Restoration Sites within this unit.

Classification: Development
Unit 14 is a deep-water area close to shore with existing development of moderate intensity and thus is classified for development management. Rationale: Goal 16 states that areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance.

Resource Capability:
Ecosystem services provided by this unit because of the capabilities of present resources include stabilized sediment and reduced erosion, improved water quality, enhanced carbon sequestration, habitat for commercially important fish, and shoreline protection from storms. Resource capabilities of this unit also support water-dependent uses and recreation.

Numerous major alterations have occurred in this area in conjunction with past developments, including dredging, intertidal fills, and structures such as piers and docks. This unit also has natural deep water adjacent to developable shorelands, one of the last such areas in the estuary. Development of these areas for water dependent uses is not subject to resource capability findings and will be consistent with the purpose of a development management unit.

Management Objective:
Management Unit 14 shall be managed to provide for water dependent development consistent with available levels of services and backup space.

Special Policies:
1. Due to the limited water surface area available and the need for direct land to water access, alternatives (such as mooring buoys and dry land storage) to docks and piers for commercial and industrial use are not feasible in Unit 14. Multiple use facilities common to several users are encouraged where practical.
2. Due to the presence of recovering Olympia oysters in this management unit, suitable material for oyster settlement shall be placed in the water during a development, when possible

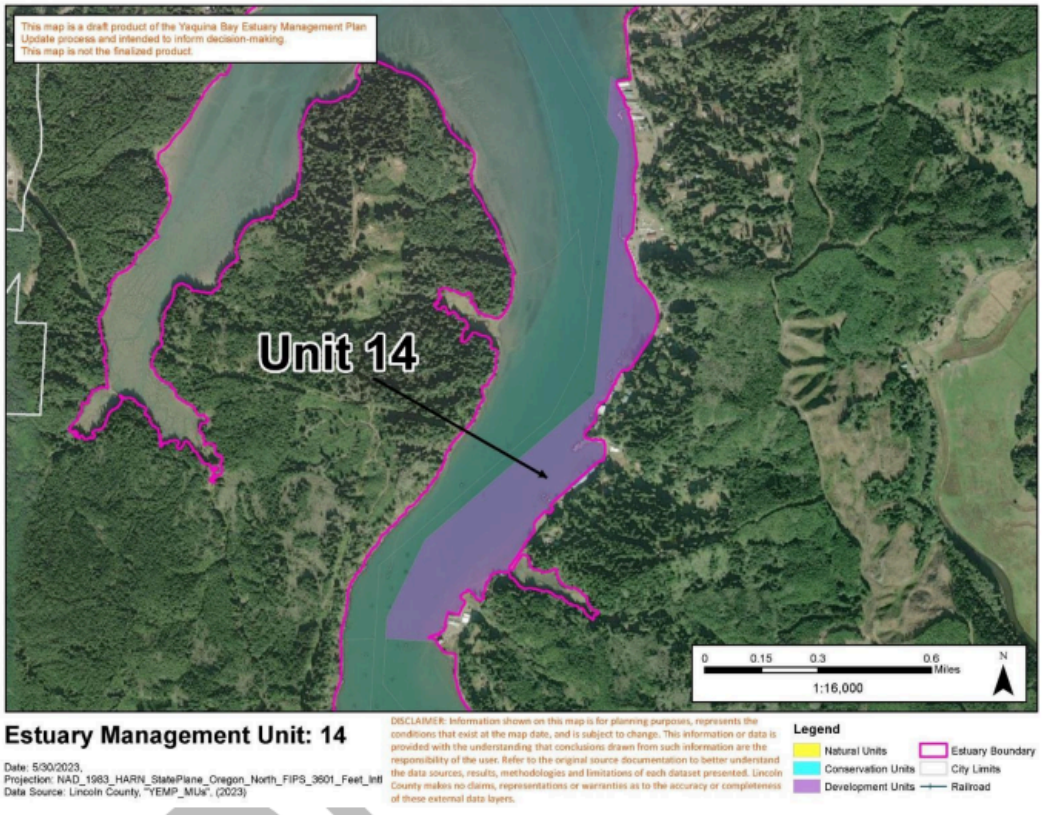

Figure 18. Estuary Management Unit 14, Yaquina Bay

Management Unit 17:

Description:

Management Unit 17 consists of the area between the river left of the navigation channel and the south shore of the bay from River Bend east to Grassy Point. Four natural management units (18,19,21, and 22) abut this unit nearshore. The unit extends from river mile X to X. X percent of this unit is privately owned.

Natural resources of significance identified by ODFW in the late 1970's include shellfish beds, fish spawning and nursery areas, and wildlife habitat. These resources are still present [ODFW should confirm]. Eelgrass is present in the nearshore area of this unit, especially in the area next to natural MU's 18 and 19. Cool water flowing into this unit from the adjacent sloughs, the slower water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey. In 2019, mid-estuary was determined to be most suitable for Olympia oysters suitable for restoration of native oyster reef and native oysters were present in intertidal sampling.[4] [More here as desired….]

Cultural resources…[More here as desired by SHPO and the Tribes]

This unit represents a portion of the prime aquaculture area of the estuary and oyster farming is the principal use in the unit. There are no public boat launches or other recreational infrastructure to access the water. Other uses in the unit include shallow and medium draft navigation, recreation, and commercial harvest..

XX percent of the shoreline has been hardened with rip rap. Pilings from previous alterations are present at X and X locations. Floating docs are present, however not as dense in other management units. DSL proprietary records report XX dock registration and over water leases in this unit. [DSL should help with this information].

Numerous minor alterations needed for commercial aquaculture operations have taken place in this area. Alterations include piling, piers, floating docks, and stabilized shorelines.

Current sea-level rise modeling indicates that by 20XX this unit will experience increased water depth of xx. The natural management units abutting this unit to the south will likely help this unit's resilience to flooding, water temperature increases, and habitat migration that supports current fish and wildlife resources.

Classification: Conservation

This is an area suitable for commercial aquaculture, native shellfish restoration, recreation, and related activities. The 'conservation' classification is warranted. Rationale: Goal 16 states that areas not specifically set aside for preservation (and labelled 'natural'), will be given a 'conservation' classification, and shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary. This unit shall be managed to conserve the natural resources and benefits it provides. This unit will support the maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture uses of the estuary. This area contains tracts of significant habitat but also contains current commercial aquaculture practices described below, so is best classified as conservation.

[4] Bohlen, V. 2029. Evaluation of a Habitat Suitability Model to Predict the geospatial distribution of Olympia Oyster presence in Yaquina Bay, Oregon.

Resource Capability:

Restoration adjacent to this management unit has increased the ecosystem function of this area over the decades. Ecosystem services provided by this unit because of the capabilities of present resources include…..[more here.]

Relatively high-water quality established this unit as an area suitable for aquaculture by ODA and it has been used as a commercial oyster growing area for decades. Resource capabilities of this unit also support fishing, kayaking, wildlife watching, and other recreational uses.

Similar types of minor alterations described above will be necessary for the continued operation of the oyster industry and are consistent with the resource capabilities of this unit.

Management Objective:

Because of the capabilities of Management Unit 17, it shall be managed to maintain and enhance natural resources present. Aided by the restored natural management units abutting the unit, the area is expected to experience eelgrass and mudflat expansion, native oyster re-establishment, and shallow water habitat, and it will be managed to support these goals. This unit will also be managed to cultivate aquaculture opportunities and will provide for aquaculture related development.

Special Policies:

1. Aquaculture facilities may include receiving, processing, and retail sales facilities.

2. To maintain the suitability of this area for aquaculture and otherwise protect important resources, development for high intensity water dependent recreation shall not be permitted in Management Unit 17.

3. Because units in the mid-estuary are especially suitable for native oyster re-establishment, impacts to Olympia oysters present will be avoided and where appropriate shell or other appropriate biogenic material added when development is permitted.

4. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 18

Description:

Management Unit 18 includes the tidal marsh complex and intertidal area of McCaffery Slough (see Figure 22). This is an important natural resource area, with extensive areas of a major tract of intact aquatic area and tidal marsh providing important primary productivity and extensive wildlife habitat. Except for the upper- most end of McCaffery, all the tidal marshes are owned by the Wetlands Conservancy (TWC) and are managed for conservation. [Note that Map 5 Ownership map does not show the extent of TWC ownership here]. Additionally, in the lower area, substantial area of tidal marsh bridge between McCaffery and Poole Slough (management unit 19) and are owned by The Wetland

Conservancy, and acquisition and conservation of additional tidal marsh is a high priority. Most of the aquatic area and wetlands of this unit remain essentially unaltered.

Water quality is high, with no outfalls and OR DEQ maintains one Water Quality Portal station here. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence and sedimentation can keep up.

McCaffery Slough was once considered as a candidate site for a State Estuarine Research Reserve.

Classification: Natural

As a major tract of unaltered tidal marsh, this unit is classified natural in order to preserve its essential resource characteristics.

Resource Capability:

The McCaffery Slough area provides major resource values in the form of primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. McCaffery Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported.

The sub-tidal portion of McCaffery Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence which builds up marsh soil elevations and sedimentation can keep up.

Management Objective:
Management Unit 18 shall be managed to preserve and protect natural resources and values.

Because sedimentation appears to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris. OSU. 2010), minor structural alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. alterations such as piling or navigation aids.

Special Policies:

1. Conditional uses shall not be allowed in this management subunit except for:

(a) Research and educational observations that require minor aquatic area alteration.

(b) Navigation aids such as beacons and buoys.

(c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

(d) Passive restoration that requires estuarine aquatic area alteration.

(e) Active restoration of fish and wildlife habitat, including native oysters, water quality, or estuarine productivity.

2. No new aquaculture leases shall be issued within McCaffery Slough.

3. Existing unused aquaculture lease areas shall be terminated or if renewed shall only allow native shellfish and plants aquaculture to be cultivated provided that:

- No dredging for harvest of shellfish shall be allowed.
- No aquaculture related gear shall cover extensive water area or be allowed to contact the bottom at low tides.

4. This area shall be considered for Estuarine Research Reserve designation

5. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 19

Description:

Management Unit 19 includes all of the tidal marsh area of Poole's Slough (see Figure 23). This area is part of the largest and most diverse tidal marsh complex in the estuary and provides an extensive area of significant wildlife habitat. These areas are managed for protection of ecological values. conservation.

Uses in this area include shallow draft navigation related to aquaculture activities, and recreational use. Substantial portions of the unit are owned and protected by The Wetlands Conservancy. TWC has also worked to remove diked areas and add large woody debris to restore tidal marsh, including as a restoration project for the ODOT Highway 20 project which removed 1400 linear feet of dike, restoring 2.25 acres of tidal marsh and about 600 feet of channels. Large wood was also placed on the marsh to create habitat complexity. The MidCoast Watersheds Council has also done restoration in Poole Slough, removing an old road grade blocking tidal flow to restore tidal marsh habitat and has placed extensive large wood on the marsh and floodplain to restore habitat complexity and serve as nurse logs for tidal spruce swamp habitat restoration. Tidal spruce swamps and tidal scrub shrub habitats were once common habitat in the Yaquina and throughout west coast estuaries, but are now rare. Over 92% of this habitat type has been lost in Yaquina Bay (and throughout Oregon and the west coast). Historically, Poole Slough had tidal forested and shrub wetlands in its upper most reaches (Brophy 2019, see page 48, 58, 66 74 for Yaquina information)

Water quality is high. There are no outfalls located here and Oregon DEQ maintains four Water Quality Portal stations within Poole Slough.

A dredge material disposal site was designated at the mouth of Poole Slough, but is an inappropriate legacy use and should be removed during this comprehensive plan update. Upland dredge disposal sites exist, e.g. see analysis done by Green Point Consulting for the Port of Toledo in 2008 (attached).

The sub-tidal portion of Poole Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

There are some medium-high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough. The tidal marshes are high marshes currently but may convert to low marshes or mudflats with over 1.6 feet of sea level rise, unless the rate of SLR is slow and biological growth and senescence, which builds up marsh soil elevation, and sedimentation can keep up.

Management Unit 19 also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Classification: Natural

This area is a major tract of tidal marsh and is classified natural in order to preserve important resource values.

Resource Capability:

Poole Slough Unit provides a large area of significant tidal marsh and the associated resource values, particularly primary productivity and wildlife habitat. Eelgrass is found at its mouth which has high bird and fish use (see submittal from Walt Nelson). Tidal marsh habitats in Yaquina Bay are documented to support juvenile fish use of Chinook, Coho and Chum salmon, coastal cutthroat, Pacific lamprey, winter steelhead, green sturgeon which provide rich food for fast growth and cover (see Pacific Marine and Estuarine Fish Habitat Partnership assessment reports). Eelgrass supports juvenile groundfish use as well as providing Pacific herring spawning and rearing here. Poole Slough contains extensive amounts of emergent marsh which also supports very high bird use. It is used as shelter and for foraging by ducks and coots in winter, as a roost area for herons, geese, and shorebirds at high tide, and for foraging by land birds including swallows, European starlings, and song sparrows. Emergent marsh tidal channels also supported foraging shorebirds when exposed and fishing herons and egrets when flooded.

Poole Slough also includes the main sub-tidal channel of Poole's Slough. This area is presently used for oyster culture and some limited development of facilities is present at the Slough mouth. The mouth of the channel is also used for shallow draft navigation in conjunction with aquaculture operations. This area is partially altered, with docks, piling and other minor structural improvements.

Remnant populations of native Olympia oysters have been found here and there is an effort by Confederated Tribes of the Siletz Indians, The Nature Conservancy and OSU to restore more native oysters here.

This is a sensitive area and because sedimentation appeared to be the limiting factor for both recruitment and survival of the Olympia oyster (Eardley, Chris 2010), Therefore, alterations that do not alter the hydrology, cause sedimentation, occupy excessive surface area or adversely affect water quality may be consistent with the resource capabilities of this area, e.g. minor structural alterations such as piling or navigation aids.

The sub-tidal portion of Poole's Slough is composed primarily of fine organic sediments, and many areas of the channel provide protected rearing sites for juvenile fishes and crabs, as well prime growing areas for oysters. Structural alterations that do not significantly unduly alter impede circulation, occupy excessive surface area or adversely affect water quality are consistent with the resource capabilities of this unit.

There are some medium high priority Landward Migration Zones, particularly in the upper reaches of Poole Slough

Management Objective:

Management Unit 19 shall be managed to preserve and protect natural resources and values.

Special Policies:
NOTE: The Goal 16 exception taken for this area is a relic and should be removed from this comprehensive plan update.

1. Conditional uses shall not be allowed in this management subunit except for:

    (a) Research and educational observations that require minor aquatic area alteration.

    (b) Navigation aids such as beacons and buoys.

    (c) Projects for the protection of habitat, water quality, fish, wildlife and aesthetic resources that require aquatic area alteration.

    (d) Passive restoration that requires estuarine aquatic area alteration.

    (e) Active restoration of fish and wildlife habitat (including native oysters), water quality, or estuarine productivity.

2. Aquaculture operations shall be confined to the existing footprint.

    (a)dredging for harvest of shellfish shall not be allowed.

    (b) No aquaculture related gear shall be allowed to contact the bottom at low tides.

3. No new aquaculture lease shall be allowed and unused leases shall be terminated.

4. This area shall be considered for Estuarine Research Reserve designation.

5. Disposal of dredge material is prohibited

6. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

Management Unit 24:

Description:

Management Unit 24 includes the area between the authorized federal navigation channel and the north shore from Grassy Point east to Criteser's Moorage (see Figure 28). Management Units 23 and 27 are located to the east and west (classified as "Natural") and restoration site Y06 is located to the north/east. Approximately a third of this unit is publicly owned (County, Federal, or Special District), with the rest held privately.

This unit contains a number of natural resources of major significance, including eelgrass and shellfish beds, fish spawning and nursery areas, tideflats and wildlife habitat. Fish species include Fall Chinook, Chum, Coho, Coastal Cutthroat, Pacific Lamprey, Western River Lamprey, Winter Steelhead, and White Sturgeon as indicated from Inventory Map 13.

Cultural resources…[More here as desired by SHPO and the Tribes]

Medium and shallow draft navigation and recreational activity are the major uses within the unit. Alterations include XX feet of riprapped shorelines, and piling, navigation aids, and dikes located [insert specific location]. Tidegates are located at the mouth of Boone and Nute Sloughs.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012), which has implications for the future of the Yaquina Bay Road. With 5ft of sea level rise, the adjacent restoration site Y06 will be inundated. This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to inundate restoration site Y06 and the Yaquina Bay Road, which poses a hazard risk to residents (FEMA, 2019). This management unit is also expected to be inundated in the event of a Tsunami scenario ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in MU 24 at 1.6, 2.5, and 4.7ft of sea level rise, and areas within this MU are ranked low to medium priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural

This unit is classified natural in order to preserve the important diversity of natural resources of major significance in this area. Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

Unit 24 is an area of diverse resource values, including productive intertidal and shallow sub-tidal areas, shellfish beds, fish spawning and nursery areas, and eelgrass beds. The nature of the resources in this unit is such that minor structural alterations such as piling or small docks that do not occupy extensive surface area or significantly affect circulation patterns, could be considered if they do not have serious impacts on the functional characteristics of the area. The mouths of Boone and Nute sloughs and their associated tide gates are located within Unit 24. These sloughs represent a significant potential

restoration resource, and alterations undertaken for the purpose of active restoration in this portion of Unit 24 would be consistent with the resource capabilities of this area.

To maintain natural resource values, permitted alteration shall be limited to those which result in temporary or minor disturbances. More permanent alterations shall be reviewed individually for consistency with the resource capabilities of this area.

Management Objective

Management Unit 24 shall be managed to preserve or enhance natural resources such as shellfish and eelgrass beds, productive tidal wetlands, wildlife habitat, and water quality.

Special Policies:

1. No use will be allowed that permanently block restoration of full aquatic passage or potential restoration of Boone and Nute Slough.
2. To support expansion of the eelgrass bed resource and meet management objectives, a use that is within 200 ft of the existing edges of the bed will not be allowed.

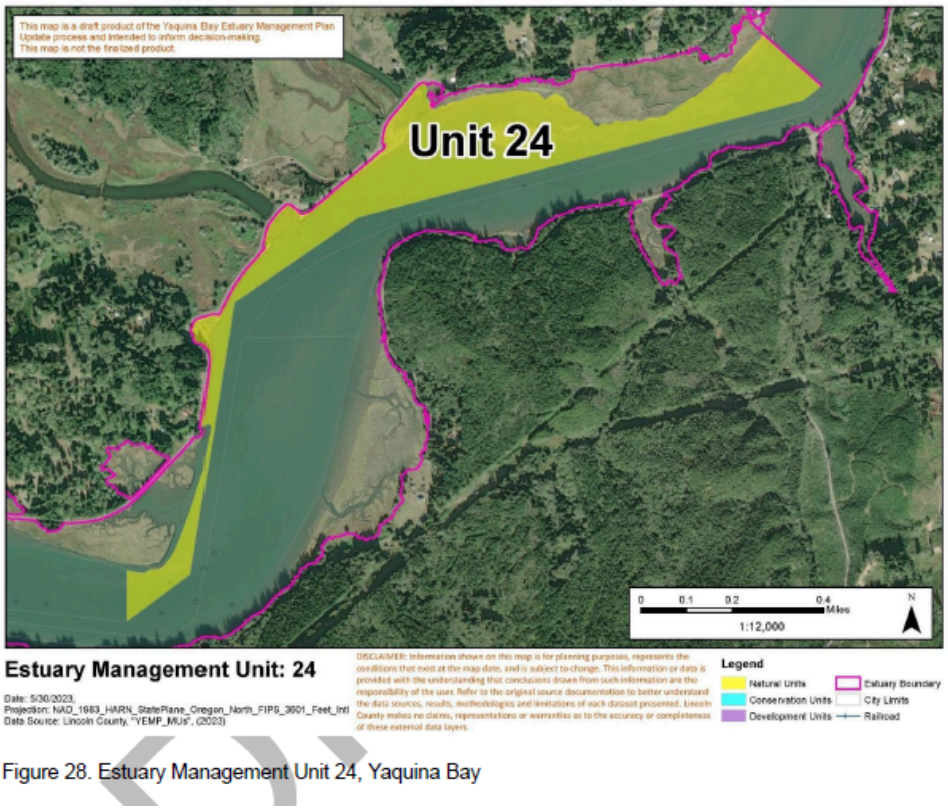

Figure 28. Estuary Management Unit 24, Yaquina Bay

Management Unit 28

Description:

Estuary Management Unit (EMU) 28 consists of three small sloughs formed by the mouths Babcock Creek, Montgomery Creek and a third unnamed creek, located along the south shore of the bay west of the Toledo airport. These sloughs contain important intertidal flats, channels and salt tidal marshes, and

provide fish spawning and nursery areas and wildlife habitat of major significance. Minor recreational activity is the only current use within this unit. All three sloughs are partially closed off at the mouth by the county road crossings but piling bridges or culverts allow the sloughs to fill and drain with the tides. A majority of this unit (XX acres) is owned by the Confederated Tribes of Siletz Indians.

Important natural resources include cool water flowing into this unit from the upstream tributaries, water velocities associated with the topography of the surroundings, and emergent intertidal vegetation and associated habitat makes this area important for ESA listed fish species, native migratory fish, and lamprey.

Importance of habitat for birds and wildlife [ODFW input here].

Cultural resources…[More here as desired by SHPO and the Tribes]

Historical and contemporary alterations….[DSL input here].

Current sea-level rise modeling indicate that by 20XX this unit will experience increased water depth of xx.

Classification: Natural

The Yaquina Bay Estuary Management Plan (YBEMP) classifies EMU 28 as Natural. The classification is warranted.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

The areas are primarily intertidal flats, with low and high tidal marshes around the fringes. This Unit has only a small acreage of fringing tidal marsh. In addition to their value for productivity, these sloughs provide a protected environment for rearing juvenile fishes and crabs as well as valuable waterfowl feeding and resting sites. Because of these important resource values, alterations should be limited to minor structural types in association with low intensity uses.

Tidal circulation is currently impeded in these areas as a result of the county road Crossing at the mouth of the inlet. The construction of bridge crossings or the placement of additional or larger culverts to enhance tidal circulation would improve resource values and would be consistent with the area's resource capabilities.

Management Objectives:

Management Unit 28 shall be managed to preserve, protect and where appropriate, enhance the natural resources and values**.**

Special Policies:

1. Bridge crossing construction and/or culvert replacement activities may be permitted for maintenance or replacement of existing crossings or for active restoration of flushing action tidal exchange in these sloughs. Alterations for these activities are consistent with the purpose and resource capabilities of this unit.

2. Retain and enhance large woody debris as it provides habitat complexity and cover, which is especially important for ESA listed juvenile Coho salmon utilizing estuarine areas for rearing[5]

Management Unit 34A

Description:

Management Unit 34A consists of two tracts of restored tidal marsh and intertidal fringe located along the north and west shore, upriver of the STEDCO industrial property and lying between the railroad grade and MLLW (see Figure 38). Management Units 31 and 34 (classified as "Development" and "Conservation" Management Units) are directly adjacent to this site. Management Unit 34A includes roughly 77 acres of tidal marsh currently owned by The Wetlands Conservancy (2023). These areas were blocked from tidal exchange by man-made dikes in the early 20th century, and have been restored to the estuary system through dike breaching and channel restoration that began in 2002. Additional restoration actions including levee lowering, new channel establishment, large woody debris placement, and planting of native vegetation occurred in 2020. These marshes are part of the river sub-system, which is a primarily riverine environment with marine influence. These tidal marshes represent a scarce habitat type in this reach of the estuary and are considered resources of major significance. There are currently no active human uses in this unit.

Current sea-level rise modeling under a range of scenarios, indicates that by X year, X percent of the shoreline will be inundated by sea-level rise (NOAA 2022, NOAA 2012). This is also a Special Flood Hazard Area, with a 1% annual chance of flooding (equivalent to a 100-year flood event) projected to cover this entire management unit (FEMA, 2019). MU 34a is also expected to be inundated in the event of a Tsunami ranging from small to XXL (DOGAMI & FEMA, 2019). Finally, landward migration of tidal wetlands is expected in this MU at 1.6, 2.5, and 4.7ft of sea level rise. Areas within this MU are ranked high, medium, and medium-low priority to accommodate this migration (Brophy et al. 2018).

Classification: Natural
As a major tract of tidal marsh, this unit has been classified natural in order to preserve natural resources in the unit which are of major significance.

Rationale: Goal 16 states areas that include major tracts of salt marsh, tideflats, and seagrass and algae beds shall be designated as Natural to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes.

Resource Capability:

[5] Koski, K V. 2009. The fate of coho salmon nomads: the story of an estuarine-rearing strategy promoting resilience. Ecology and Society 14(1): 4. [online] URL: http://www.ecologyandsociety.org/vol14/iss1/art4/

Management Unit 34A is a formerly diked area that was disconnected from the tidal regime of the estuary. These tracts are now largely restored to tidal exchange and thus reconnected to the estuarine system. However, the restoration of full function of this marsh is ongoing and additional active restoration activities may be undertaken to further enhance the value of these tracts to the estuarine system. Active and passive restoration activities are consistent with the resource capabilities of this unit. Other uses are inconsistent with the resource capabilities of this unit.

Management Objective:

Because this site is being restored to increase estuarine/riverine function, the management objective is to maintain the goals of restoration including floodplain function, slowing floodwater, increased woody debris and recruitment of woody debris, and natural vegetation to provide high quality fish and wildlife habitat, enhance water quality and other ecosystem services.

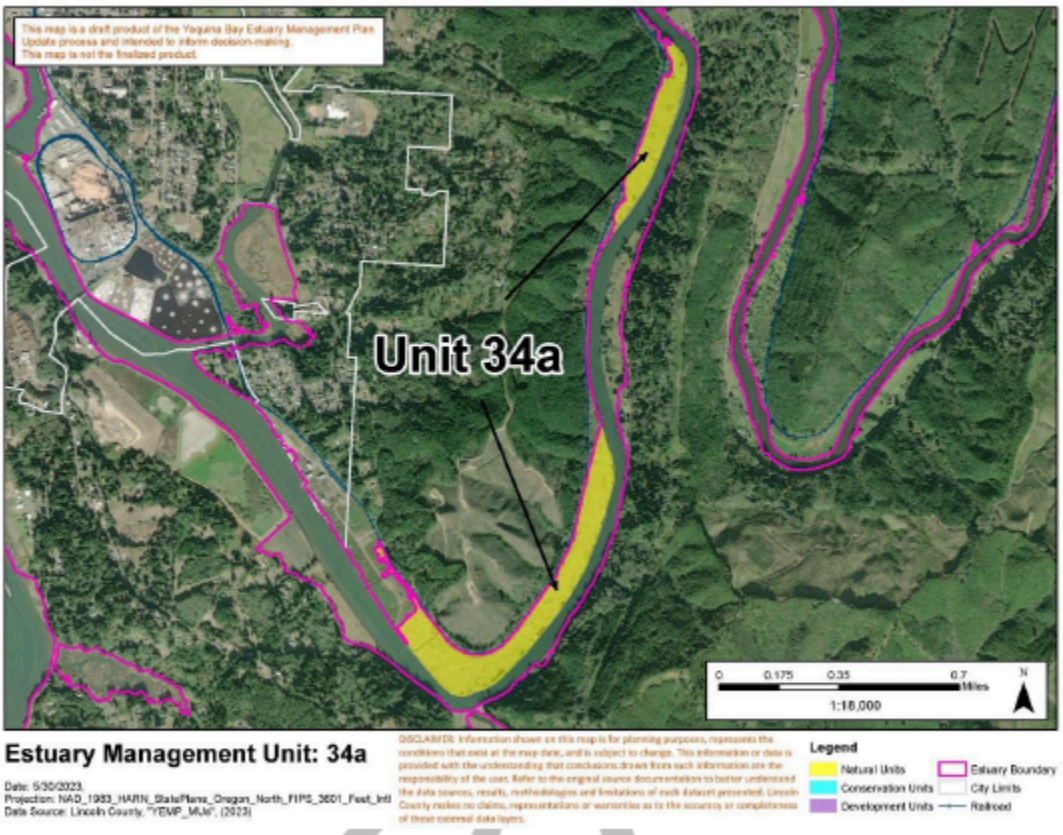

Figure 38. Estuary Management Unit 34a, Yaquina Bay

Sherri Marineau

From: Mark Arnold [redacted]
Sent: Friday, August 23, 2024 9:47 AM
To: Derrick Tokos; Sherri Marineau
Subject: Comments about Proposed Comp Plan and Zoning Ordinance. Input for Planning Commission Session on 8/26/24.
Attachments: Mark Arnold comment, Resource Inventories, 8-22-24.pdf; Mark Arnold comment, HMSC water intake and outflow, 8-22-24.pdf; Mark Arnold comment, Mgt Unit 9 Special Policy, 8-22-24.pdf; Mark Arnold comment, Policy 18 Uses Permitted Outright, 8-22-24.pdf; Mark Arnold comment, Definition of Restoration, 8-22-24.pdf; Mark Arnold comment, Additional requested edits and revisions to proposed Newport Comprehensive Plan 8-22-24.pdf

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Derrick,

HI. Thank you very much for sending your updated version of the proposed Comp Plan and Zoning Ordinance revisions earlier this week.

Attached are comments by topic. These comments update, replace, and expand on comments I submitted last month. Each comment is limited to a few pages, with one comment having some additional attached information.

- Resource Inventories; Related Goal and Policy
- Water Intake and Outfalls at Hatfield Marine Science Center (HMSC)
- Private Ownership of Tideland in Management Unit 9 (this is a request for alternative Special Policy language)
- Policy 18: Uses Permitted Outright: Including Scientific Research Activities That Do Not Require a Structure
- Definition of Restoration
- Additional Edits and Revisions to Proposed Newport Comprehensive Plan

This is as much input as I have been able to prepare over the last two days. Some of the input consists of comments submitted previously for your and the Planning Commission's background and consideration.

I appreciate all the work done by you and the Planning Commission. The proposed Comprehensive Plan and Zoning Ordinance revisions have been greatly improved by the Planning Commission's and your work and review of input provided to date. Because the Yaquina Bay Estuary Management Plan, the Newport Comprehensive Plan, and Newport Zoning Ordinance are long and detailed, and will determine what uses can and cannot be approved for the estuary, the work you and the Commission have done and are doing is very important and will have a significant future impact on the greater Newport area.

Thank you.

Mark

Mark Arnold
[redacted]

RESOURCE INVENTORIES; RELATED GOAL AND POLICY

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background

Under the heading "Resource Inventories" (page 2), the last sentence reads as follows:

- "The rationale for permitted use decisions and management classifications is contained in these brief factual base summaries; for detailed resource information and a bibliography of documents included in the inventory, the Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, should be consulted."

Comments

The Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, has not been provided for review. Some of the information provided to accompany the August 2023 update of YBEMP was decades out-of-date. This is a significant concern. This information, by reference in the Newport Comprehensive Plan, will have an impact on future decisions, and whether proposed uses will be approved or disapproved, for requested estuarine uses.

Actual resource capabilities in the estuary can change over time, so any information collected at one point in time will necessarily be dated and can become outdated over time.

Future decisions should be based on the best, most recent, resource capability information available at the time the decisions are made.

Requests

The resource inventories, referenced in the Comprehensive Plan, must be provided for review and comment before they are incorporated by reference into the Newport Comprehensive Plan.

Under the heading "Resource Inventories," revise the last sentence, and add additional language, as follows (with deletions shown with strikethrough and addition shown in italics):

- "The rationale for ~~permitted use decisions and~~ management *unit* classifications is contained in these brief factual base summaries. For detailed resource information and a bibliography of documents included in the inventory, *as of July 15, 2024,* the Yaquina Bay Estuary Goal Resource Inventory Bibliography, dated July 15, 2024, should be consulted. *When more up-to-date and more accurate resource information is available, the most up-to-date and accurate resource information should be used to inform decisions about resource capabilities of each management unit.*"

Consistent with the requested revision under the heading “Resource Inventories,” and for the same reasons, add a new Policy under the heading “Goals and Policies: Yaquina Bay and Estuary” as follows:

- Policy [enter policy number]: *Up-To-Date Information to Inform Decisions. Review of proposed projects and alterations, and permit decisions for activities proposed for the estuary and for shoreline adjacent to the estuary, should be informed by the most recent, up-to-date, accurate, and relevant information, and informed by the most relevant scientific studies. This includes resource capability information, and the likely impact that any proposed activity might have on the resource capabilities of the estuary. Relevant information provided by, and studies conducted by, subject matter experts should be given careful consideration. Historical information can also be reviewed as relevant information, providing it is identified as historical information.*

WATER INTAKE AND OUTFALLS AT HATFIELD MARINE SCIENCE CENTER (HMSC)

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background

The Hatfield Marine Science Center (HMSC) salt water intake and salt water outfalls are not mentioned in the August 2023 update of YBEMP nor in the proposed revisions to the Newport Comprehensive Plan. HMSC intakes salt water from Yaquina Bay for its research labs, including Federal and State agency labs, and for exhibits at the visitor center. After use, water is released through three outfalls on the HMSC campus. The facilities on the Hatfield campus use approximately 1 million gallons of salt water per day. This use is subject to numerous government regulations, and the facilities have received numerous regulatory approvals.

The HMSC water intake facility is located at the east end of Management Unit 7 at the HMSC small boat pier. MU 7 extends east to, and includes, the small boat pier.

HMSC Intake Facility

After use and treatment, water is released through three outfalls into the estuary. One is located in MU 7 on the north side of the HMSC campus, one is near the boundary of MU 8 and MU 9 at the northwest corner of Idaho Flat, and one is at the west edge of MU 9.

Proposed revisions to the Newport Comprehensive Plan include a Special Policy in MU 9 for the water outfall from the Oregon Coast Aquarium, but no mention is made for HMSC.

HMSC Water Outfall at Shoreline
At Northwest Corner of Idaho Flat

Recommendation: In the Newport Comprehensive Plan, add a Special Policy to each of Management Units 7, 8 and 9 that permits outright the water intake from Yaquina Bay in Management Unit 7, and permits outright the three water outfalls into the estuary in Management Units 7, 8 and 9, for the Hatfield Marine Science Center.

PRIVATE OWNERSHIP OF TIDELAND IN MANAGEMENT UNIT 9

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN

Background:

- DLCD's proposed update to the YBEMP (August 2023) includes the following Special Policy: "Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged."
- This refers to privately-owned tideland in Kings Slough, adjacent to the mouth of Kings Slough, and upstream. Between 10 and 11 acres are inside the Newport City Limits.
- This Special Policy is a repetition of the Special Policy in the 1982 YBEMP.
- This Special Policy from 1982 is repeated in the proposed Newport Comprehensive Plan.
- When the 1982 YBEMP was adopted, this tideland was owned by companies in the business of harvesting timber, using dredged tideland for log storage, and using tideland for the transportation of logs. The tideland is no longer being used for log storage or log transportation.
- The August 2023 update of YBEMP did not update the policy to reflect changes that occurred after 1982 including changes in ownership and the current activities in Management Unit 9.
- After extensive water quality testing, the middle and northern portions of Kings Slough, including the mouth of Kings Slough, have been designated by the Oregon Department of Agriculture (ODA) as an "Approved Area" for growing shellfish for human consumption.
- Tideland owned by the Yakona Nature Preserve, upstream from the mouth of Kings Slough, was included in a conservation easement that the Yakona Nature Preserve granted to McKenzie River Trust. Yakona Nature Preserve still owns the tideland.
- In 2024, the City of Newport sold its small parcels of tideland, including a parcel in Management Unit 9, to the Yakona Nature Preserve, a private non-profit corporation.

Request:

- DELETE THE FOLLOWING 1982 SPECIAL POLICY: "Major portions of Management Unit 9 are held in private ownership. Because the preservation of critical natural resources requires that uses in this area be severely restricted, public or conservation acquisition of these privately owned lands is strongly encouraged."

- REPLACE WITH THE FOLLOWING SPECIAL POLICY: "Uses in Management Unit 9 should be restricted to activities consistent with preservation of critical natural resources and maintaining excellent water quality necessary for growing shellfish for human consumption."

Reasons:

- The current owners of this tideland support conservation principles, "best practice" shellfish aquaculture, and/or research. These benefit the estuary. One of the owners (Yakona Nature Preserve) granted an easement to a conservancy. (The next page has a table showing the largest owners of tideland in Management Unit 9.)
- During the past 42 years, no public agency has acquired this tideland.
- The City of Newport has no City funding allotted to purchase tideland.
- The Newport City Council in January 2024 approved proceeding with the conveyance of a small, 3-acre tideland parcel in MU 9 to the Yakona Nature Preserve. The conveyance was recorded in July 2024. (Information is provided on following pages.)
- Preservation of natural resources can be accomplished through the permitting process.

MAP OF PRIVATELY-OWNED TIDELAND IN MANAGEMENT UNIT 9

Privately-owned tideland is outlined in red, including over 10 acres inside the Newport City Limits adjacent to Idaho Point. Yellow is City of Newport tideland parcel in Kings Slough that was sold to the Yakona Nature Preserve.

Largest Privately-Owned Tideland Parcels in Management Unit 9
(Note: Several smaller tideland parcels are not shown)

Taxlot(s)	Tideland Acres	Owner in 1982	Owner in 2024
11-11-22-B0-00100	70.52	Geogia-Pacific Corp.	Yakona Nature Preserve (a private foundation)
11-11-15-00-01400 11-11-16-00-00200 11-11-21-00-00500	44.80 88.35 6.00	Geogia-Pacific Corp.	Kings Estuary Shellfish LLC (owned by Mark L. Arnold)
Part of 11-11-21-00-00600	62.95	The Times Mirror Company	Yaquina Bay Kings Shellfish LLC (owned by Mark, Brian & Jonathan Arnold)
Part of 11-11-21-00-00700	Significant amount of tideland in southern Kings Slough. Tideland acreage not identified by Assessor's Office.	Geogia-Pacific Corp.	Emery Investments, Inc.

The situation in 1982: Tideland used for log storage and transportation. Dredging adversely affected ecology of tideland.

- These tideland lots were owned by Georgia-Pacific Corporation, a timber company, and The Times Mirror Company, which harvested timber for use in producing paper for publishing.
- Previously, dredging was done in early 1950s on the Times Mirror parcel for log storage and transportation. This parcel was adjacent to a log dump. Dredged material was deposited as fill in the estuary.
- The 1982 YBEMP sought to restrict dredging in tideland for log storage and transportation.

The situation in 2024: Current owners support conservation, "best practice" aquaculture, and research.

- Yakona Nature Preserve granted a conservation easement to the McKenzie River Trust.
- Mark Arnold (Kings Estuary Shellfish LLC and Yaquina Bay Kings Shellfish LLC) wants some of his tideland to be used for "best practice" shellfish aquaculture and research, with remaining tideland conserved.
- Emery Investments has done nothing with its tideland and supports conservation.

NEWPORT
OREGON

STAFF REPORT
CITY COUNCIL AGENDA ITEM

Date: January 2, 2024

Title: Public Hearing to Consider a Purchase and Sale Agreement Setting Out the Terms of Sale of Certain City-Owned Tidelands to the Yakona Nature Preserve

Prepared by: Derrick I. Tokos, AICP, Community Development Director

Recommended Motions: I move to approve the purchase and sale agreement with the Yakona Nature Preserve for city-owned tidelands described in a warranty deed recorded in Book 311, at Page 119 of the Lincoln County Book of Records, and authorize the City Manager to execute the necessary documents to complete the transaction, subject to review and approval by the City Attorney.

Background Information: At its December 4, 2023 meeting, the City Council determined that the subject tidelands, totaling 9.23 acres, are no longer needed for public use and that it is in the public interest to sell the property. Further, the Council directed the City Manager to coordinate the preparation of land conveyance documents with the Yakona Nature Preserve, and schedule a public hearing for Council consideration of the documents.

Enclosed is a draft purchase and sale agreement that includes a draft form of the deed that would be used to convey the property and a draft conservation easement with the McKenzie River Trust to preserve the tidelands in a natural state. If approved, the purchase and sale agreement will be provided to Western Title and Escrow to facilitate the transaction. The sales price is $5,870, which is equivalent to the real market that the Lincoln County Assessor's Office has established for the property. Mr. Barton has indicated that the Yakona Nature Preserve is comfortable with that figure, and has further indicated that they are prepared to cover the closing costs and escrow fees.

The City acquired the tideland property from Jack and Lily Stocker, who donated them in December of 1995 (ref: Warranty Deed, Book 311, Page 119, Lincoln County Book of Records). The City Council at the time viewed the tidelands as having potential mitigation value, or value as future inventory land that the City could trade. In 2008 the City conveyed one of the parcels to the Central Coast Land Conservancy (Ref: Deed Instrument #200803360). The property is adjacent to other land owned by the Conservancy and was provided as match for North American Wetlands Conservation Fund funds pursuant to a grant agreement between the Conservancy and U.S. Fish and Wildlife Service. A deed restriction was placed on the conveyed parcel requiring that it be conserved in order to protect the ecological values of the salt marsh and fish and wildlife species that depend upon it. Bill Barton, on behalf of the Yakona Nature Preserve, approached the City to acquire the remaining four parcels with the intent of placing them into a conservancy similar to what was done in 2008.

Newport Municipal Code (NMC) Chapter 2.25 sets out the process the City must follow for the potential sale of the property. The tidelands qualify as "substandard undeveloped property," which are defined as lots or parcels without structures that are not of minimum buildable size for

the zone in which they are located or that cannot be developed for other reasons (NMC 2.25.020(A)). The City Council held the first of two required hearings on December 4, 2023, determining that the tidelands are surplus to the public need and should be sold to the Yakona Nature Preserve so that they can be placed into a conservancy. This second public hearing is required so that the public can review and provide comment on the negotiated purchase and sale agreement (NMC 2.25.030(C)).

The four tideland parcels are identified as Tax Lots 11-11-21-00-01190-00, 11-11-22-C0-04200-00, 11-11-27-00-03100-00, and 11-11-28-00-00201-00. Tax Lot 1190 is rectangular in shape on the west side of the Yakona Nature Preserve, extending into King Slough. The other three parcels are located immediately east of the Preserve along the Yaquina River. These tideland properties are situated along the bank of the river between the mean low and mean high water lines.

Fiscal Notes: There are no fiscal impacts associated with this agenda item. If the property is sold, then the proceeds would be directed to the City land account for future land purchases, unless an alternative use of the funds is identified by Council.

Alternatives: Move forward with the potential sale, seek changes to the sales agreement, hold off on pursuing a potential sale, or as suggested by Council.

Attachments:
Draft Purchase and Sale Agreement
Vesting Deed
Tidelands Map
Yakona Backgrounder
Hearing Notice

WT0261659-AMM
RECORDING COVER SHEET

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon and does NOT affect the instrument. ORS 205.234

After recording return to: ORS 205.234(1)(c)
JoAnn Barton
Yakona Nature Preserve, an Oregon non-profit corporation
214 SW Coast Hwy
Newport, OR 97365

Lincoln County, Oregon
07/08/2024 01:56:01 PM **2024-04567**
DOC-BSD Cnt=1 Pgs=3 Stn=9
$15.00 $11.00 $10.00 $60.00 $7.00 $103.00
I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Amy A Southwell, Lincoln County Clerk

1. **Title(s) of the transaction(s)** ORS 205.234(1)(a)

   Statutory Bargain and Sale Deed

2. **Direct party(ies) / grantor(s)** Name(s) ORS 205.234(1)(b)

   City of Newport, an Oregon municipal corporation

3. **Indirect party(ies) / grantee(s)** Name(s) ORS 205.234(1)(b)

   Yakona Nature Preserve, an Oregon non-profit corporation

4. **True and actual consideration:**

   ORS 205.234(1)(d) Amount in dollars or other

   $5,870.00

   Other: _____

5. **Send tax statements to:** ORS 205.234(1)(e)

   Yakona Nature Preserve, an Oregon non-profit corporation
   214 SW Coast Highway
   Newport, OR 97365

6. **Satisfaction of lien, order, or warrant:**
   Check one (if applicable) ORS 205.234(1)(f)

   ☐ FULL ☐ PARTIAL

7. **The amount of the monetary obligation imposed by the lien, order, or warrant:** ORS 205.234(1)(f)

   $0.00

8. **Previously recorded document reference:** _____

9. **If this instrument is being re-recorded, complete the following statement:** ORS 205.244(2)

   Re-recorded at the request of: _____

   To correct: _____

   Previously recorded in Book/Reel _____ and Page _____, or as Fee/Instrument Number _____.

LOT02616Sn - Amm

Space above this line for Recorder's use.

After recording, return to:
Yakona Nature Preserve
Attn: Bill Barton, Secretary
214 SW Coast Highway
Newport, Oregon 97365

STATUTORY BARGAIN AND SALE DEED

City of Newport, an Oregon municipal corporation, Grantor, conveys to Yakona Nature Preserve, an Oregon nonprofit corporation, Grantee, subject to the reservations set forth below, the following described real property (the "Property"):

PARCEL I:

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL II:

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL III:

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

PARCEL IV:

Tidelands lying within the northwest quarter of the southeast quarter in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, being adjacent to that tract described by instrument recorded June 14, 1995, in Book 301, page 884. Film Records to Alan S. Crandall, et ux, and adjacent to that portion of the northwest quarter of the southeast quarter described in instrument recorded February 23, 1967, in Book 275, page 264. Deed Records to William E. Rowe, et ux.

RELEASE AND WAIVER OF CLAIMS: Grantee acknowledges that it has examined the Property to its own satisfaction and has formed its own opinion as to its condition (including environmental condition) and value. Grantee has not relied on any statements or representations from Grantor or any person acting on behalf of Grantor concerning any of the following:

(i) the size or area of the Property;
(ii) the location of corners or boundaries of the Property;
(iii) the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other

governmental requirements;
(iv) the availability of services to the Property;
(v) the ability of Grantee to use the Property or any portion of it for any intended purpose; or
(vi) any other matter affecting or relating to the Property or any portion of it.

Grantee is acquiring the Property, both above surface and below surface, in the condition existing at the time of conveyance, AS IS, with all defects, if any. Effective on delivery, Grantee waives, releases and forever discharges Grantor and Grantor's officers and employees, of and from all claims, actions, causes of action, fines, penalties, damages, costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. This waiver and release shall run with the land as to the Property and be binding on Grantee and Grantee's successors and assigns.

The true and actual consideration for this conveyance is $5,870.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated June 28, 2024.

The City of Newport,
an Oregon municipal organization

By: _____

as its: City Manager

STATE OF OREGON)
) SS.
County of Lincoln)

On this 28th day of June 2024, before me personally appeared Spencer Nebel, who being duly sworn stated that he is the City Manager of the City of Newport, and acknowledged the foregoing instrument to be the voluntary act, and that he executed the foregoing instrument on behalf of the City of Newport, acting under authority granted to him by the Newport City Council.

OFFICIAL STAMP
AMANDA GAYLE MADDOX
NOTARY PUBLIC - OREGON
COMMISSION NO. 1039276
MY COMMISSION EXPIRES AUGUST 22, 2027

_____
NOTARY PUBLIC FOR OREGON
My Commission Expires: August 22, 2027

POLICY 18: USES PERMITTED OUTRIGHT:
INCLUDING SCIENTIFIC RESEARCH ACTIVITIES THAT DO NOT REQUIRE A STRUCTURE

REQUESTED REVISION TO NEWPORT COMPREHENSIVE PLAN
(GOALS AND POLICIES, YAQUINA BAY AND ESTUARY)

Background

As proposed, Policy 18 reads as follows:

- "Policy 18: Uses Permitted Outright. New development or redevelopment that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as uses permitted outright that do not require estuarine review."

Comments

Scientific research activities can provide useful information about the ecology of the estuary, including monitoring changes to the estuary as a result of climate and other environmental changes. This information can inform government officials, other decision-makers, people undertaking activities in the estuary, and the general public about what is happening to the ecology of the estuary.

Some types of research activities can have as little impact as the ones already proposed to be permitted outright.

It would be helpful to facilitate scientific research activities that will lead to increased knowledge about the estuary.

Request

Revise Policy 18 to include additional language shown in italics:

- "Policy 18: Uses Permitted Outright. New development or redevelopment, *and scientific research activities (besides those requiring new structures),* that will not alter an aquatic area within the estuary or where the scale and scope of the development or redevelopment *or research activity* is so small that its impact on the aquatic area is negligible may be classified in the Newport Zoning Ordinance as uses permitted outright that do not require estuarine review."

DEFINITION OF RESTORATION

REQUESTED REVISION TO NEWPORT ZONING ORDINANCE (NMC 14.01.020 Definitions)

Background: YBEMP definition of "restoration"

The draft Yaquina Bay Estuary Management Plan (YBEMP), August 2023, uses the following definitions for "restoration":

RESTORATION: Revitalizing, returning or replacing original attributes and amenities, such as natural biological productivity, which have been diminished or lost by past alterations, activities or catastrophic events.

ACTIVE RESTORATION: The use of specific remedial action such as removing fills, breaching dikes, removing tide gates etc. to restore or replace original estuarine attributes (see RESTORATION)

PASSIVE RESTORATION: The use of natural processes, sequences or timing to bring about restoration after removal or reduction of adverse stresses. (See Restoration)

(Excerpts from "Appendix: Definitions," pages 143, 145, and 146.)

In addition, the draft YBEMP, August 2023, provides the following "Estuarine Use Standard" for "Restoration":

Restoration

Definition: Replacing or restoring original attributes or amenities such as natural biological productivity or cultural and aesthetic resources which have been diminished or lost by past alterations or activities. Active restoration involves the use of specific remedial action such as removing dikes, installing water treatment facilities, etc. Passive restoration is the use of natural processes, sequences or timing to bring about restoration after the removal or reduction of adverse stresses.

1. Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

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

(Excerpt from "Part V – Estuarine Use Standards," page 45.)

Background: Proposed Newport Comprehensive Plan definition of “restoration”

The proposed Newport Comprehensive Plan definition of “restoration” adds the following restriction:

- “A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began."

This restriction is part of the proposed definition of “Restoration (estuary).” There are additional definitions for “Active restoration” and “Passive restoration” but, as written, they appear to be subordinate definitions that explain two types of “Restoration (estuary).”

Concerns

The restriction in this sentence applies to some, but not all, types of restoration projects. The restriction may be a relevant criterion for some grant programs, but it does not apply to all possible requests for estuary use permits for restoration projects.

For example, one type of Olympia oyster restoration project uses commercial oyster grow-out bags, with recycled Pacific oyster shells inserted in the bags, stacked on wooden pallets in order to create an artificial substrate. Oyster larvae and juvenile oysters can attach to the artificial substrate and grow in areas where the natural substrate is too soft for oysters to grow on the bottom naturally without sinking in the mud.

Photo of bagged oyster shells on pallet.
(Source: “Comparison of Habitat Restoration and Enhancement Methods for Olympia Oysters (*Ostrea lurida*) in Yaquina Bay, Oregon,” by Karen H. Law, a thesis submitted to Oregon State University, 2018.)

Goal 16 Language

In addition, the "Goal 16 Estuarine Resources" rule refers to "restoration" as follows:

- "Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation."

The Goal 16 concept of "restoration" is much broader than the removal of dikes or other physical impediments in order to transfer dry land back into the estuary.

City of Newport Comprehensive Plan

Policy 8 reads as follows:

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

As with Goal 16, the Policy 8 concept of "restoration" is much broader than the removal of dikes or other physical impediments in order to transfer dry land back into the estuary.

Request

- Delete the following sentence from the definition proposed for the Newport Zoning Ordinance: "A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began."

- After the deletion, the definition would be compatible with the YBEMP definitions of "Restoration," "Active Restoration," and "Passive Restoration" (on pages 143-146 of the August 2023 draft YBEMP), compatible with the Estuarine Use Standard for "Restoration" (on page 45 of the August 2023 draft YBEMP), compatible with Goal 16, and compatible with Newport Comprehensive Plan Policy 8.

ADDITIONAL REQUESTED EDITS AND REVISIONS
TO PROPOSED NEWPORT COMPREHENSIVE PLAN

For Management Unit 5, add a reference to the Embarcadero Marina under "Description" and add a Special Policy as follows: "*The Embarcadero Marina is permitted as a condominium where some moorage slips are privately owned, with owners paying real estate taxes and condominium fees, while other moorage slips are owned by the condominium owners association and rented to others.*"

For Management Unit 9, under the heading "Description" in paragraph 5, revise the beginning of the first sentence by adding the words in italics: "Nearly all of the intertidal flat area *in Idaho Flat* is in public ownership (State of Oregon Board of Higher Education)…." This is a minor edit so the sentence is accurate.

For Management Unit 10, revise the first Special Policy (strikethrough for deletion and italics for new language) so it is more accurate and consistent with the "Description": "Because ~~this unit is~~ *some areas* are suitable for native oyster re-establishment and restoration efforts are underway, significant adverse impacts to existing Olympia oyster beds shall be avoided."

Under the heading "Areas Especially Suited for Water-Dependent Uses," item 3, revise the beginning of the first sentence (strikethrough for deletion and italics for new language) so it is accurate: "On the south side of the bay, the OSU Marine Science Center's dock facilities, ~~the Orc Aqua commercial salmon hatchery~~ *the NOAA dock facilities*, and the land immediately adjacent to the South Beach Marina are especially suited for water-dependent uses…."

Port of Newport
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August 22, 2024

To: Derrick Tokos, Community Development Director, City of Newport;
Members of the Newport Planning Commission

RE: Amendments to Newport Comprehensive Plan and Zoning Code to implement the Updated Yaquina Bay Estuary Management Plan

The Port of Newport appreciates the opportunity to provide additional comments on the amendments to the Newport Comprehensive Plan and Zoning Code. Our comments are based on the reality that the Yaquina Bay Estuary is a working estuary. Development units border natural and conservation units which can create significant challenges in meeting the objectives for every management unit. Many existing Port-owned infrastructures need to be maintained on a regular basis. That includes ongoing dredge maintenance to the channel and berths. Sometimes, mitigations are also necessary to keep this existing infrastructure in place. We note that Unit 10 is highlighted as an important Natural Zone. Since the Port owns most of Unit 10, it is important that you recognize we have interest in utilizing some of those areas as possible aquaculture and mitigation sites in the future. The intent is to enhance this unit and avoid significant adverse impacts. The requested changes will allow the Port to continue our mission to provide economic opportunities to Newport while following all the rules to protect Yaquina Bay for future generations.

Comments

1) Goal 16 Standards: Throughout the Yaquina Bay Estuary management planning process, it was stressed that the plan was to be consistent with Goal 16, consequently Goal 16 language appears throughout the document. What is unclear, however, is whether some of the language, particularly language describing specific management units could be interpreted as exceeding Goal 16 standards for protection of natural, conservation, and development zones. If the City of Newport does not intend for these standards to exceed standards found in Goal 16 then this should be explicitly stated as a preamble to the document. If environmental standards are intended to be higher than those found in Goal 16 for any management unit then this should also be explicitly stated in the objectives for the specific management unit.

2) Definition of Significant (Adverse) Impact. The port remains concerned that there is no good definition or examples of "significant" versus non-significant impacts which is critical to understanding Goal 16 and developing impact assessments. The responsibility for definitions and examples, however, should not fall to individual municipalities but to

the state of Oregon and DLCD. We urge you to discuss this need with DLCD. The Port of Newport would be glad to participate in efforts to provide definitions and examples.

3) "To the extent Practical": We noted in the Policy section of the document (pgs 40-45) that the phrase "to the extent practical" has been deleted. In addition, the word "significant" is not use to modify "impact" or similar words including "loss", "destruction" or "injury". This creates a policy prescription potentially requiring the avoidance or mitigation of any size impact (whether minor or significant) regardless of the cost. Because Yaquina Bay is a working estuary this is not rational given there could be very high costs to the community to avoid very minor impacts which could preclude beneficial projects that under a reasonable interpretation of Goal 16 would be allowed. We urge the committee to add the word "significant" and add back the phrase "to the extent practical."

Thank you for the opportunity to provide these additional suggestions and comments and we look forward to helping the City of Newport develop their estuary management plan.

Paula Miranda—Port of Newport Executive Director
Aaron Bretz—Port of Newport Deputy Executive Director and Operations Manager
Gil Sylvia—Port of Newport Commission President

Derrick Tokos

From: REED Meg * DLCD <Meg.REED@dlcd.oregon.gov>
Sent: Wednesday, September 4, 2024 4:21 PM
To: Derrick Tokos
Subject: Follow-up items for YBEMP + Data Inventory
Attachments: 2024.09.04_YBEMP_MapInventory.pdf

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hi Derrick,

I finally have a finalized version of the data bibliography and map series to go along with the updates to the Comprehensive Plan for the Yaquina Bay Estuary. I am not sure how you have adopted resource inventory information previously, but I assume this could be adopted by reference or incorporated as an appendix to the Comp Plan. Let me know if you want anything changed or in different formats, etc.

As I mentioned last week, I do think the definition of "restoration" should be edited to be: **"RESTORATION: Revitalizing, returning or replacing original attributes and amenities, such as natural biological productivity, which have been diminished or lost by past alterations, activities or catastrophic events."**
I think I may have sent you the other definition to begin with, so I apologize for that. Changing it to the above will be in conformance with the draft revised YBEMP.

There was a last "to the extent practical" phrase that should be deleted in the most recent version of the Comp Plan chapter on pg. 43, Policy #14(c).

Lastly, I do recommend including at least some of the findings language for the permitted outright uses in the Comp Plan chapter in addition to the adoption ordinance for longevity's sake. It will help to have the information where people are more likely to see it.

Let me know if I missed anything that I promised to get to you or if you need anything else from me.

Also, can you remind me of the schedule for next steps for this? I didn't write it down while at the hearing last week.

Thanks!
Meg

Meg Reed
Coastal Policy Specialist | Oregon Coastal Management Program
Pronouns: She/her
Oregon Department of Land Conservation and Development
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Yaquina Bay Estuary

Goal 16 Resource Inventory Bibliography

Version: July 15, 2024

Statewide Planning Goal 16: Estuarine Resources requires local governments to conduct inventories to provide information necessary for designating estuary uses and policies. These inventories provide information on the nature, location, and extent of physical, biological, social, and economic resources to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of potential for development. The list of geospatial information outlined below encompasses the best available information that was gathered and consulted during the 2023 update of the Yaquina Bay Estuary Management Plan. These datasets informed policy development or revision, boundaries of estuary management units, and estuary zoning decisions. Following the list of datasets are a series of maps that display the data included here.

Regulatory Data Layers

NAME: Estuary Boundary

SOURCE: Institute for Policy, Research, and Engagement (IPRE), University of Oregon, Lincoln County, Oregon Department of Land Conservation and Development (DLCD)

YEAR: 2024

ABSTRACT: For purposes of implementing the Yaquina Bay Estuary Management Plan, "estuary" is defined as "a semi-enclosed body of water connected with the ocean and within which fresh and saltwater mix. The estuary includes estuarine water; intertidal lands; sub-tidal lands; and tidal marshes. Estuaries extend upstream to the head of tide; their landward extent is Mean Higher High Water or the line of non-aquatic vegetation. The estuary boundary was developed using several data inputs to match the definition of estuary, including Mean Lower Low Water, Mean Low Water, Mean High Water, Mean Higher High Water, navigation channels, jetties, Lincoln County tax lots, estuary management units, aquatic and non-aquatic vegetation, and head of tide. In addition, the text descriptions of each estuary management unit also supported the development of this boundary. It is important to note that the text descriptions of the estuary management units and estuary boundary are the regulating boundaries for the estuary management plan. Maps and GIS data layers are a representation of those boundaries. In case of any doubt, the text descriptions should be used to resolve any boundary confusion.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/1

NAME: Estuary Plan Management Unit Classifications

SOURCE: IPRE, University of Oregon, Lincoln County, Oregon Department of Land Conservation and Development

YEAR: 2024

ABSTRACT: The estuary is classified into distinct water use management units of either “Natural,” “Conservation,” or “Development” based on the inventory information, as well as: adjacent upland characteristics, compatibility with adjacent uses, energy costs and benefits, and the extent to which the limited water surface area of the estuary shall be committed to different uses. The original 1982 estuary management unit boundaries were consulted and reviewed as a starting point for the 2023 plan revision process. From there, several data layers were evaluated, as well as expert practitioners and estuary users to modify management unit boundaries, reclassify management units, or in some cases, create new management units based on current, historic, and future conditions. It is important to note that the text descriptions of the estuary management units and estuary boundary are the regulating boundaries for the estuary management plan. Maps and GIS data layers are a representation of those boundaries. In case of any doubt, the text descriptions should be used to resolve any boundary confusion.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/5

NAME: Yaquina Bay Sub Areas

SOURCE: IPRE, University of Oregon

YEAR: 2023

ABSTRACT: The Yaquina Bay estuary has been divided into seven sub-areas, each representing a common set of natural and anthropogenic features. These sub-areas provide a basis for describing in broad terms how different reaches of the estuary presently function and are used, and to identify considerations in planning for future use and conservation. The sub-areas are: Newport, Sally’s Bend, Yaquina, Oysterville, Boone’s, Toledo, and Upper River.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/6

NAME: Head of Tide

SOURCE: Oregon Department of State Lands (DSL)

YEAR: 2000

ABSTRACT: This dataset was generated from the "Heads of Tide for Coastal Streams in Oregon" study conducted by DSL in the late 1980s. The digitization of the report’s tidal data was

conducted against 1:24,000 USGS Quads and 1:24,000 Digital Ortho Quads dating from 1995 and reviewed and QA/QCed by the original DSL staff (Greg Willnow and Perry Lumley) that generated the original report and also verified in the field by R. Sounhein and G. Willnow during the Waterway Inventory Project of 1997-2000.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/7

NAME: Dredge Material Disposal Sites

SOURCE: Oregon Coastal Management Program (OCMP)

YEAR: 1987

ABSTRACT: Location and extent of dredge material disposal sites in the uplands adjacent to the Yaquina Bay estuary as described in the Lincoln County Dredged Material Disposal Plan of September 1982. Upland sites are protected from incompatible development prior to being needed for the disposal of dredged material, as required by Goal 16. These sites were not reviewed or updated during the 2023 planning process.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/12

NAME: Dredge Placement Areas, USACE

SOURCE: US Army Corps of Engineers (USACE)

YEAR: 2021

ABSTRACT: Placement Areas contain geospatial boundaries representing defined limits for acceptable placement of ocean disposal of dredged material. These areas depict locations managed and maintained by each USACE district that are intended to serve the dredging and sediment management communities and their stakeholders.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/13

NAME: Estuary Restoration Sites

SOURCE: Institute for Applied Ecology (IAE)

YEAR: 2012

ABSTRACT: Current and likely former tidal wetlands of the Yaquina River Estuary, Oregon, USA (emergent, shrub and forested habitat classes only). GIS data was created to accompany the following publication: Brophy, Laura S. 1999. *Yaquina and Alsea River Basins, Estuarine Wetland Site Prioritization Project*. Prepared for MidCoast Watersheds Council, September 1999. Green Point Consulting, Corvallis, OR, USA. The shapefile also contains

6 new sites identified by using 2009 LiDAR data. Site numbers are from the 1999 prioritization of tidal wetlands of the Yaquina River Estuary. This data compliments Part VII of the Yaquina Bay Estuary Management Plan on "Mitigation and Restoration," which addresses the Goal 16 provision requiring local governments to identify areas for restoration.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/33

Coastal Habitat, Fish, and Wildlife Information:

For physical and biological information, the Goal 16 inventories for Yaquina Bay include habitat information that uses the Coastal and Marine Ecological Classification Standard (CMECS). CMECS is a structured catalog of ecological terms that also provides a framework for interpreting, classifying, and inter-relating observational data from all types of sensors and platforms. The CMECS vocabulary describes coastal and marine environments from the head of tide in estuaries to the depths of the oceans. All of Oregon's major estuaries have been mapped using the CMECS system. Other authoritative habitat, fish, and wildlife information is also included in this list.

NAME: CMECS: Aquatic Setting

SOURCE: OCMP

YEAR: 2017

ABSTRACT: The CMECS Aquatic Setting classification distinguishes oceans, estuaries and lakes, deep and shallow waters and submerged and intertidal environments within which more refined classification of geological, physicochemical, and biological information can be organized. It is comprised of three hierarchical levels (System, Subsystem and Tidal Zone) and provides the context for all CMECS components. In particular, this layer is useful for determining tidal vs. non-tidal (diked) areas of estuaries.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/14

NAME: CMECS: Biotic Setting

SOURCE: OCMP

YEAR: 2017

ABSTRACT: The CMECS Biotic Component is a hierarchical classification that identifies (a) the composition of floating and suspended biota and (b) the biological composition of coastal and marine benthos.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/15

NAME: CMECS: Geoform Setting

SOURCE: OCMP

YEAR: 2017

ABSTRACT: The Geoform Component describes the major geomorphic and structural characteristics of the coast and seafloor. This component is divided into four subcomponents that describe tectonic and physiographic settings and two levels of geoform elements (based upon the scale of the features) that include geological, biogenic, and anthropogenic geoform features. Representative units include lagoon, ledge, tidal channel/creek, and moraine.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/16

NAME: CMECS: Substrate Setting

SOURCE: OCMP

YEAR: 2017

ABSTRACT: Substrate is defined in CMECS as "the non-living materials that form an aquatic bottom or seafloor, or that provide a surface (e.g., floating objects, buoys) for growth of attached biota. Substrate may be composed of any substance, natural or manmade." There are three primary CMECS substrate types: Biogenic, Geologic, and Anthropogenic.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/17

NAME: Eelgrass Extent

SOURCE: Pacific Marine and Estuarine Fish Habitat Partnership (PMEP)

YEAR: 2017

ABSTRACT: Extent of eelgrass habitats derived from multiple datasets and sources, from data collected over different time periods using a variety of data collection methods. Data sources include Washington Department of Land Conservation and Development's Submerged Vegetation Monitoring Porgram (SVMP), Island County, Clallam County, Snohomish County, Skagit County, Whatcom County, Pierce County, and Jefferson County, Marine Resource Consultants, United States Geological Survey (USGS), Pacific Northwest National Laboratories (PNNL), Oregon Department of Land Conservation and Development's (DLCD) Estuary Plan Book, the Environmental Protection Agency, Oregon Department of Fish and Wildlife's Shellfish and Estuarine Assessment of Coastal Oregon (SEACOR) program, South Slough National Estuarine Research Reserve (SSNERR), National Oceanic and Atmospheric Administration (NOAA), Merkel & Associates, Inc., Tetra Tech, Inc., Point Reyes National Seashore, Elkhorn Slough National Estuarine

Research Reserve (ESNERR), California Department of Fish and Wildlife (CDFW), California Seagrant, Coastal Resource Management, MBC Applied Environmental Sciences, Ocean Imaging, Golden State Aerial Surveys, Inc., and Pentec. For a complete list of datasets and data sources, see the accompanying report for this dataset titled, "Eelgrass Habitats on the U.S. West Coast: State of the Knowledge of Eelgrass Ecosystem Services and Eelgrass Extent" at www.pacificfishhabitat.org/assessment-reports/.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/19

NAME: Eelgrass Beds

SOURCE: Environmental Protection Agency (EPA)

YEAR: 2005

ABSTRACT: This data layer displays native and non-native eelgrass beds from the Environmental Protection Agency's data collection effort in 2005 in 11 estuaries of Oregon.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/36

NAME: Estuarine Intertidal Wetlands

SOURCE: OCMP

YEAR: 2017

ABSTRACT: This data layer includes the National Wetlands Inventory Cowardin classes in the Estuarine—Intertidal Subsystem (defined as exceeding 0.05% salt content) that are located within Goal 16's Conservation and Natural Management Units in the Estuary Management Plan (1987) to head of tide minus diked areas.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/37

NAME: Estuary Tidal Wetlands

SOURCE: Mid-Coast Watershed Council (MCWC)

YEAR: 2012

ABSTRACT: Current and likely former tidal wetlands of the Yaquina River Estuary, Oregon, USA (emergent, shrub and forested habitat classes only). GIS data was created to provide GIS data to accompany the following publication: Brophy, Laura S. 1999. Yaquina and Alsea River Basins, Estuarine Wetland Site Prioritization Project. Prepared for MidCoast Watersheds Council, September 1999. Green Point Consulting, Corvallis, OR, USA. 104pp

(including tables, maps and appendices). The shapefile also contains 6 new sites identified by using 2009 LiDAR data.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/30

NAME: Forested Wetlands

SOURCE: Institute for Natural Resources (INR)

YEAR: 2009

ABSTRACT: This data layer is a subset of the Oregon Framework Wetlands Cover: Cowardin Classification (October 30, 2009), which is a compilation of polygon data from numerous sources, and represents the most comprehensive dataset available for the location and composition of the state's wetlands. It uses as a base all available digital data from the National Wetland Inventory (NWI; U.S. Fish and Wildlife Service), to which has been added draft NWI mapping (Oregon Natural Heritage Information Center and The Wetlands Conservancy), mapping from Local Wetland Inventories (Department of State Lands, DSL), wetlands along state highways (Oregon Department of Transportation), and mapping of individual sites by a variety of federal, state, academic, and nonprofit sources. This layer displays only the estuarine and palustrine forested wetlands classes of the source dataset in the Coastal Zone.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/38

NAME: National Wetland Inventory

SOURCE: US Fish and Wildlife Service (USFWS)

YEAR: 2023

ABSTRACT: This data set represents the extent, approximate location and type of wetlands and deepwater habitats in the United States. These data delineate the areal extent of wetlands and surface waters as defined by Cowardin et al. (1979), which represents a biological definition of wetlands and deepwater habitats. There is no attempt to define the limits of proprietary jurisdiction of any Federal, State, or local government, or to establish the geographical scope of the regulatory programs of government agencies. Some wetland habitats may be under-represented or excluded in certain areas because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters and also some deepwater reef communities (coral or tuberficid worm reefs). These habitats, because of their depth and water clarity, go undetected by most aerial imagery. By policy, the dataset also excludes certain types of "farmed wetlands" as may be defined by the Food Security Act or that do not coincide with the Cowardin et al. definition. Contact the

USFWS's Regional Wetland Coordinator for additional information on what types of farmed wetlands are included on wetland maps. This dataset should be used in conjunction with the Wetlands_Project_Metadata layer, which contains project boundaries, specific wetlands mapping procedures and information on dates, scales and emulsion of imagery used to map the wetlands within specific project boundaries.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/31

NAME: Shellfish Preserve

SOURCE: Oregon Department of Fish and Wildlife (ODFW)

YEAR: 2017

ABSTRACT: Boundaries of ODFW Shellfish Preserve are designated for research and conservation of bivalves, including clams. Yaquina Bay is home to one of three shellfish preserves in Oregon (others ate located in Tillamook Bay and Netarts Bay).

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/35

NAME: Pinniped Haulout Locations

SOURCE: ODFW

YEAR: 2011

ABSTRACT: Pinniped (seal and sea lion) haul-out and rookery locations. Heads-up digitizing was used to create points on 0.5 m resolution, color digital orthophoto quadrangles taken in 2005. Digitizing was performed by Marine Mammal Research Program staff from the Oregon Department of Fish and Wildlife (ODFW). Points may indicate a "specific" location of a haul-out or rookery (e.g., a single offshore rock) or a more "general" area in which animals will likely be found (e.g., a large stretch of rocky intertidal habitat). Attribute data includes species-specific site use and abundance for Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), Steller sea lions (*Eumetopias jubatus*), and California sea lions (*Zalophus californianus*). Parturition sites (rookeries) for Steller sea lions are identified but not for harbor seals as they may give birth nearly everywhere that adults are found (California sea lions do not breed in Oregon and northern elephant seals only occassionaly give birth at Cape Arago). Data are based primarily on average counts from recent aerial surveys (last 5-10 years) which typically occur in May, June, and July.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/34

NAME: Chum Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/22

NAME: Coastal Cutthroat Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/24

NAME: Coho Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/23

NAME: Fall Chinook Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/21

NAME: Green Sturgeon Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of

Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/28

NAME: Pacific Lamprey Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/25

NAME: Western River Lamprey Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are

now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/26

NAME: White Sturgeon Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/29

NAME: Winter Steelhead Habitat Distribution

SOURCE: ODFW

YEAR: 2022

ABSTRACT: These data describe areas of suitable habitat believed to be used currently or historically by native or non-native fish populations. The term "currently" is defined as within the past five reproductive cycles. Historical habitat includes suitable habitat that fish no longer access and will not access in the foreseeable future without human intervention. This information is based on sampling, the best professional opinion of Oregon Dept. of Fish and Wildlife or other natural resources agency staff biologists or modeling (see the fhdBasis field). Due to natural variations in run size, water conditions, or other environmental factors, some habitats identified may not be used annually. The data were developed over an extensive time period ranging from 1996 to 2021. The data are now managed on the National Hydrography Dataset and have been synchronized to 2019 NHD geometry.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/27

Hazards and Other Reference Information

NAME: Current and Historic Diking

SOURCE: OCMP

YEAR: 2011

ABSTRACT: Represents estuarine areas that belong to special districts such as districts for diking, drainage or other forms of hydromodification. Assembled from survey meets & bounds, legal descriptions, county clerk records and/or district map records. This information was assembled from both current and historic documentation, and while effort has been made to ensure completeness, the layer may or may not represent the full extent of estuarine areas subject to special districts.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/11

NAME: Tide Gates

SOURCE: Oregon Watershed Enhancement Board (OWEB)

YEAR: 2019

ABSTRACT: These data include the point locations of tide gates identified during field inventories in Oregon estuaries and the Oregon side of the Lower Columbia River. The field surveys were preformed by watershed councils and other organizations, then compiled in a standard format by The Nature Conservancy. The tide gate locations were originally collected for use in the TNC Oregon Tide Gate Optimization tool.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/9

NAME: Port Facilities

SOURCE: IPRE, University of Oregon

YEAR: 2023

ABSTRACT: Data was compiled from: Office of the Assistant Secretary for Research and Technology/Bureau of Transportation Statistics, National Transportation Atlas Database, and US Army Corps of Engineers Navigation Data Center (2019); georeferenced by IPRE (2023).

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/8

NAME: Historic Vegetation

SOURCE: OWEB

YEAR: 2003

ABSTRACT: Depicts historical vegetation and wetlands. Data are based on (1) General Land Office (GLO) survey data recorded between 1855 and 1910, including township and section line data, and (2) U.S. Coast Survey topographic maps (T-sheets) compiled between 1851 and 1928, delineating the immediate coast and lower river estuaries. Most of the GLO-based mapping was completed in 2003 with funding from the Oregon Watershed Enhancement Board.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/32

NAME: Special Flood Hazard Area

SOURCE: Federal Emergency Management Agency (FEMA)

YEAR: 2019

ABSTRACT: An area having special flood, mudflow or flood-related erosion hazards and shown on a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM) Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE or V. The Special Flood Hazard Area (SFHA) is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance for those with a federally backed mortgage applies.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/39

NAME: Land Ownership

SOURCE: IPRE, University of Oregon

YEAR: 2023

ABSTRACT: Layer shows a compilation of various land ownerships, including county, city, tribal, federal, state, port, special district, non-governmental organization, and other.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/10

NAME: Sea Level Rise

SOURCE: National Oceanic and Atmospheric Administration (NOAA)

YEAR: 2022

ABSTRACT: Illustrates the potential scale of 1-5 feet of sea level rise flooding. Does not depict the exact location, or account for erosion, subsidence, or future construction. Water levels are relative to Mean Higher High Water (excludes wind driven tides). Strictly a screening-level tool for management decisions and useful as a planning reference tool and not for navigation, permitting, or other legal purposes. For more information see Sweet et. al. "NOAA Technical Report NOS CO-OPS 083. Global and Regional Sea Level Rise Scenarios for the United States." 2017 and Sweet et. al. "NOAA Technical Report NOS 01. Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines." 2022.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/41

NAME: Landward Migration Zones

SOURCE: MCWC

YEAR: 2017

ABSTRACT: From the publication, *Modeling sea level rise impacts to Oregon's tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future*, Prepared by: Laura S. Brophy and Michael J. Ewald, Estuary Technical Group, Institute for Applied Ecology, Corvallis, Oregon, December 2017. Potential future tidal wetlands (landward migration zones) for emergent, scrub-shrub and forested tidal wetlands, under several sea level rise (SLR) scenarios. This project used an elevation-based method (modified bathtub approach) to map current and future tidal wetlands. Elevation was obtained from LIDAR; projected SLR was obtained from recent, authoritative, and region-specific scientific literature. Landward migration zones (LMZs) were modeled for six SLR scenarios that could be expected between now and the year 2160, but this study did not assume any specific timeframe for the scenarios modeled. Both lower and upper boundaries for LMZs were mapped, to allow determination of areas that would be lost due to conversion to mudflat under each SLR scenario. This project mapped potential future tidal wetlands in three vegetation classes: marsh, shrub, and forested.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/63

NAME: Tsunami Inundation Scenarios

SOURCE: DOGAMI

YEAR: 2013

ABSTRACT: Represents the Small through XXL tsunami inundation scenarios for the Oregon coast, developed by DOGAMI. See Open-File Report O-13-19, Tsunami inundation scenarios for Oregon, by George R. Priest, Robert C. Witter, Y. Joseph Zhang, Kelin Wang, Chris Goldfinger, Laura L. Stimely, John T. English, Sean G. Pickner, Kaleena L.B. Hughes, Taylore E. Wille, and Rachel L. Smith for more information. This digital data release is for seven tsunami inundation scenarios for the entire Oregon coast in the form of polygons. The hydrodynamic computer model SELFE is used to simulate tsunami generation, propagation and maximum inundation for five Cascadia subduction zone earthquake sources (SM, M, L, XL, XXL) and two Alaska earthquake sources.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/56

NAME: SB 379 Tsunami Regulatory Line

SOURCE: DOGAMI

YEAR: 2000

ABSTRACT: Represents the tsunami regulatory line created in 1995 through Senate Bill 379 for the Oregon coast. This file is for GIS purposes only. The data comes from DOGAMI Open-File Report O-14-09, Redigitized GIS Data Approximating the Oregon Senate Bill 379 (SB 379) Tsunami Regulatory Line, by Rachel L. Smith and Sean G. Pickner. That publication is supplemental to DOGAMI Open File Report O-00-05, Digital reissue of tsunami hazard maps of coastal quadrangles orginally mandated by Senate Bill 379 (1995) by George Priest, 2000. This data release provides digital versions of Oregon's tsunami regulatory line and supplemental georeferenced digital scans of the official regulatory paper maps.

SERVICE LINK: https://gis.lcd.state.or.us/server/rest/services/Projects/OCMP_EstuaryMgmtPlan_Yaquina/MapServer/55

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N

0 0.75 1.5 3 Miles

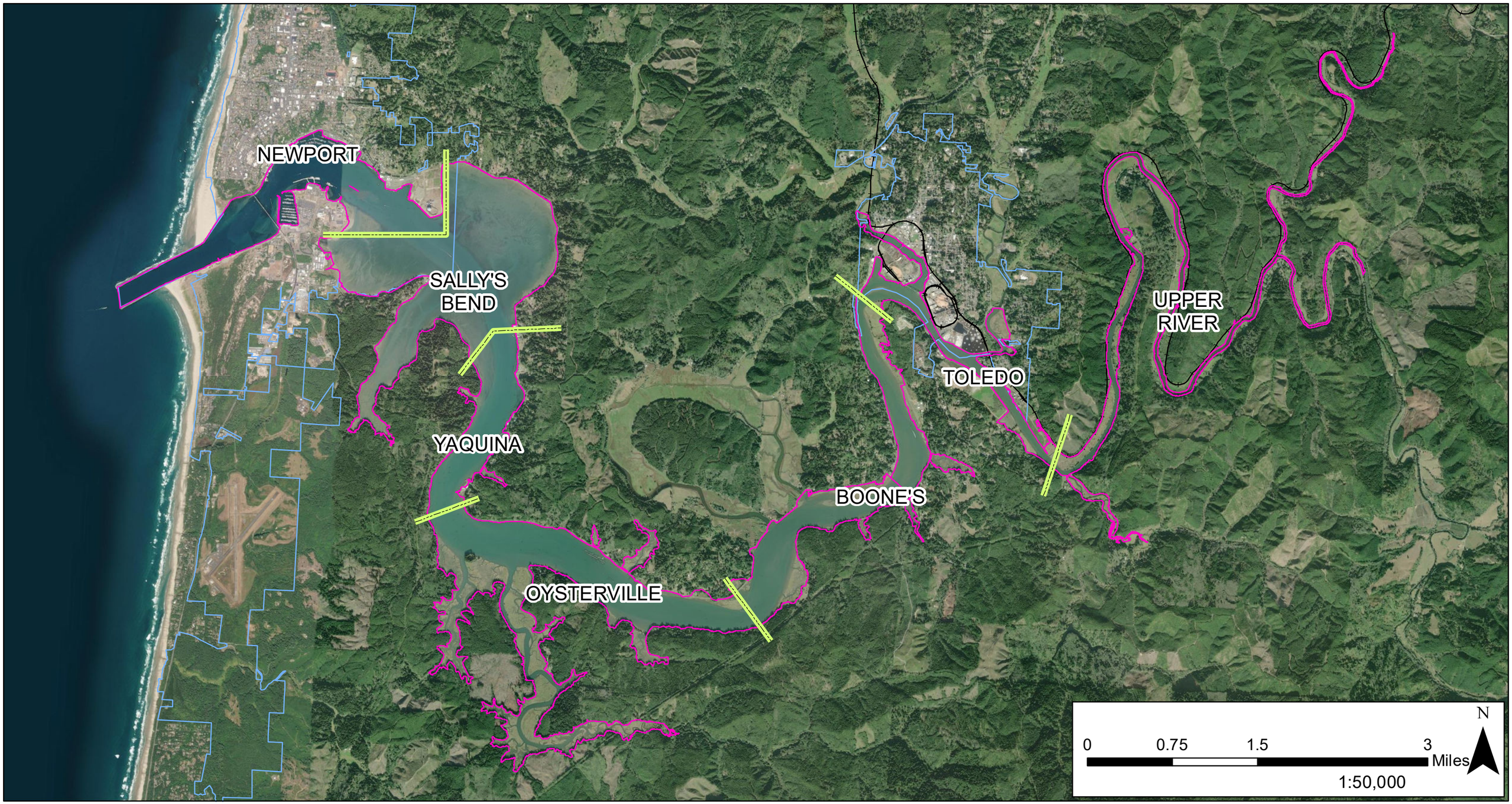
1:50,000

Yaquina Bay Estuary Regulatory Boundary, Management Units, and Head of Tide

Date: 8/27/2024, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: Lincoln County, (2023); Department of State Lands, (2000)

Legend

- Current Head of Tide
- Former Head of Tide
- Diked
- Natural Units
- Conservation Units
- Development Units
- Estuary Boundary
- City Limits
- Railroad

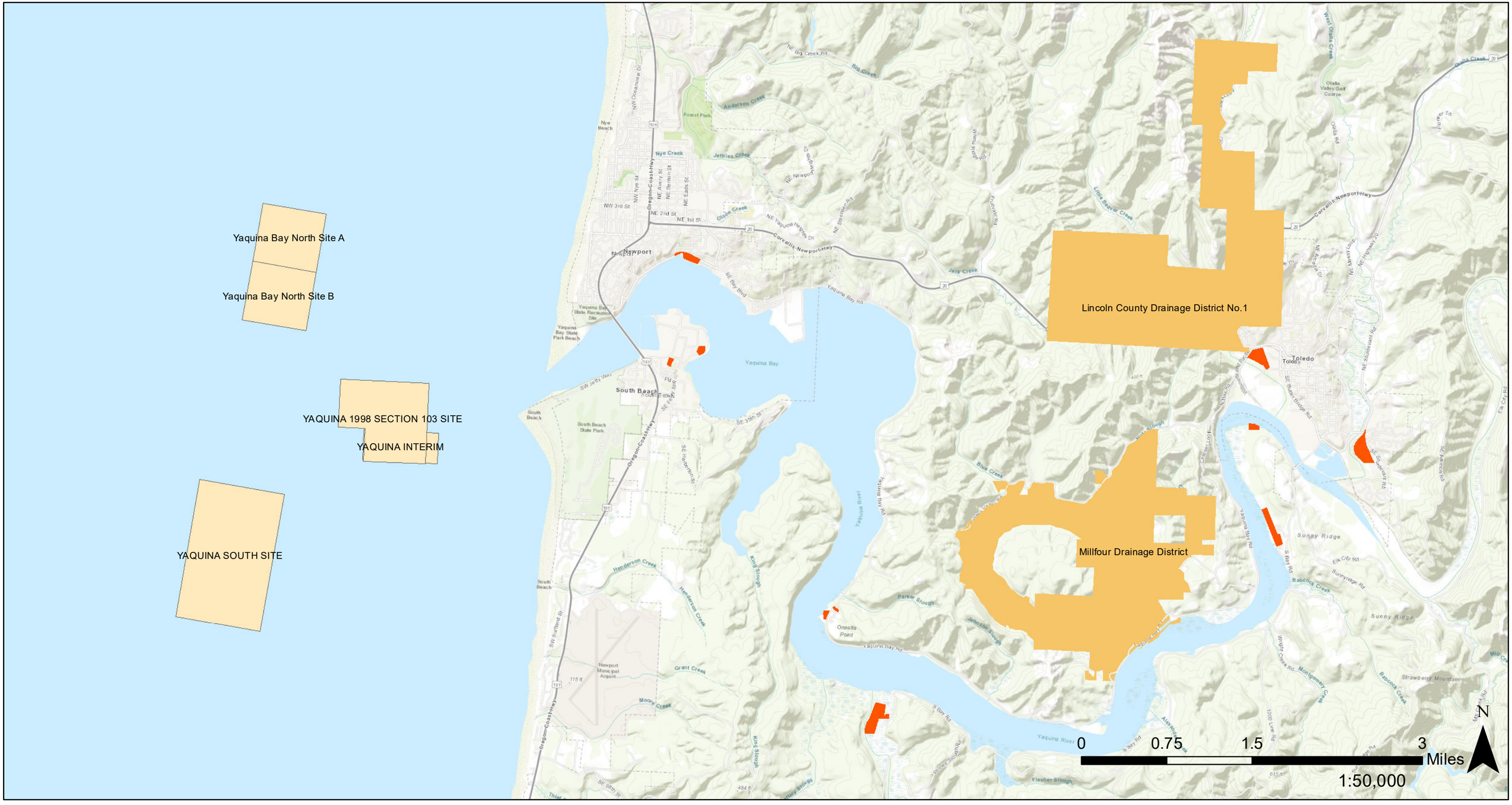


Yaquina Bay Sub-Areas

Legend

- Yaquina Sub-Areas
- Estuary Boundary
- City Limits
- Railroad

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Lincoln County, Dept. of State Lands

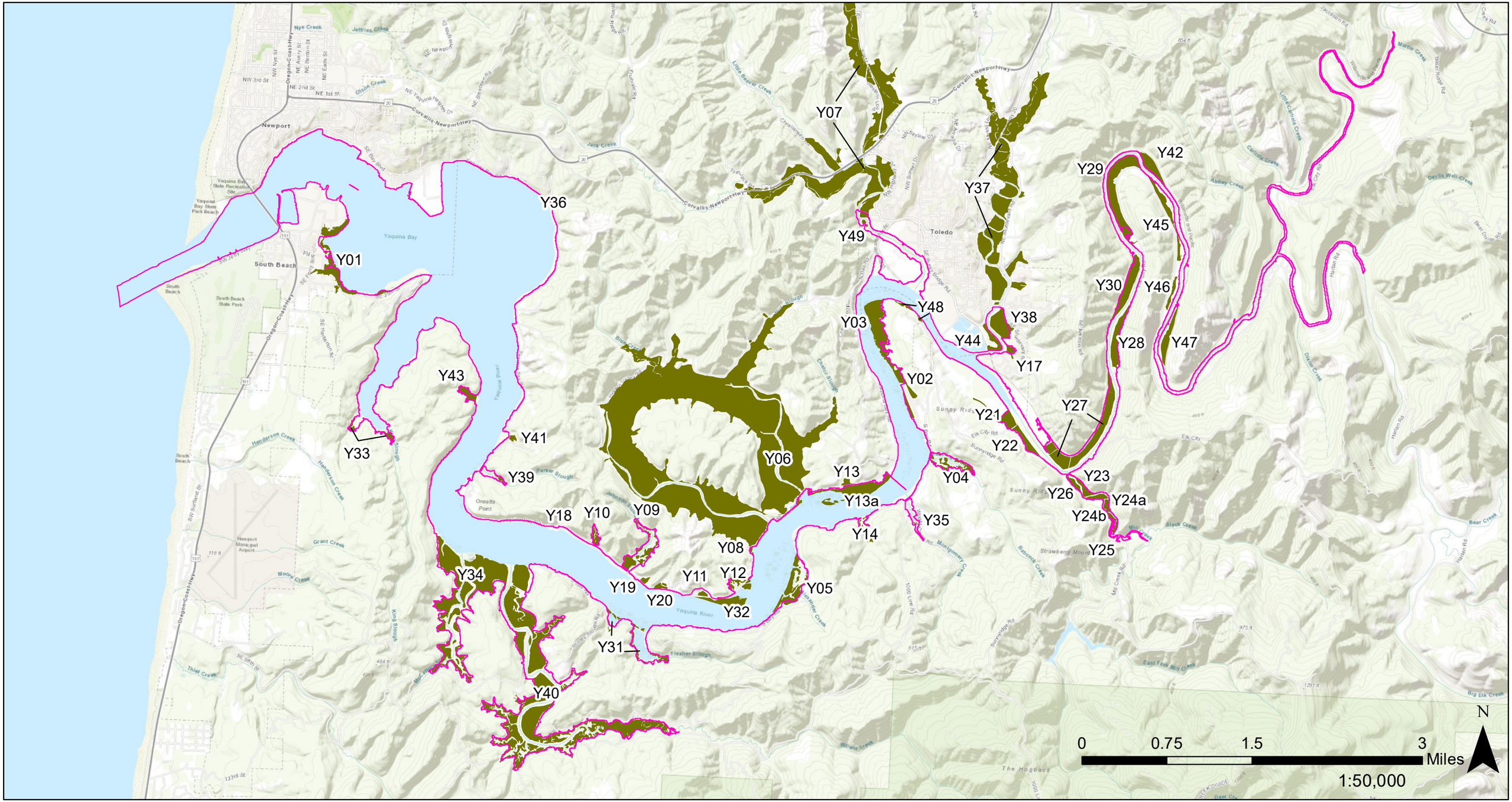


Current and Historic Diking, Dredge Material Disposal Sites and USACE Placement Areas

Legend

Current and Historic Diking | Dredge Material Disposal Sites | USACE Placement Areas

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Adamus Resource Assessment Inc., Oregon Coastal Atlas, Oregon State University



Restoration Sites

See reports cited below for descriptions of each restoration site.

Legend

Estuary Boundary

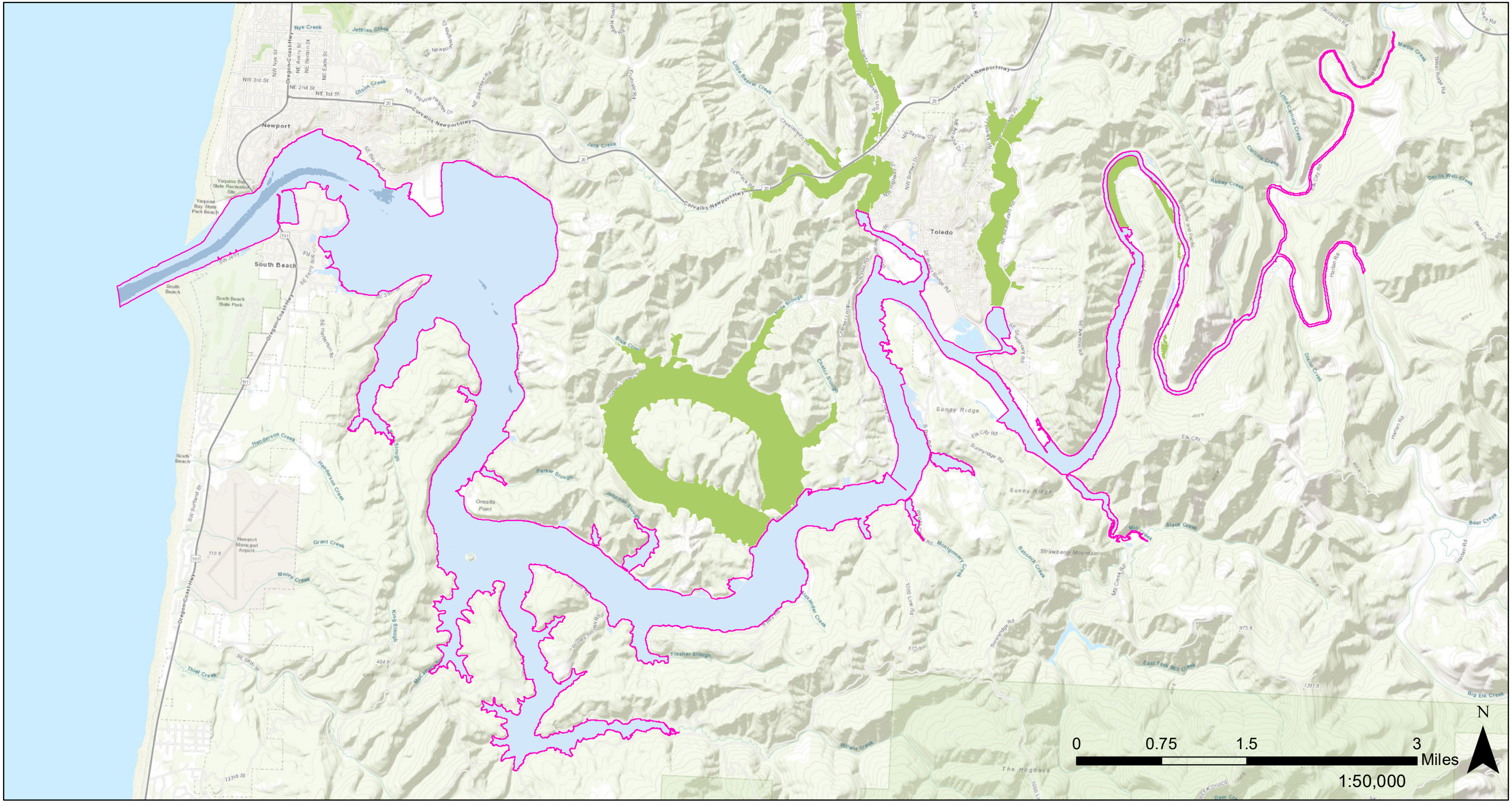
Restoration Sites

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Brophy, L.S. 2012. Tidal Wetlands of the Yaquina and Alsea River Estuaries, Oregon: Geographic Information Systems Layer Development and Recommendations for National Wetlands Inventory Revisions. USGS Open-File Report 2012–1038. U.S. Dept. of the Interior, U.S. Geological Survey.
https://pubs.usgs.gov/of//2012/1038/methods.html

Data Source: Brophy, L.S. 1999. Final report—Yaquina and Alsea River Basins estuarine wetland site prioritization project: Report prepared for the MidCoast Watersheds Council, Newport, Oregon, Green Point Consulting, Corvallis, Oregon, 50 p.
https://doi.org/10.13140/RG.2.2.26654.20803

Data Source: Brophy L.S., Greene C.M., Hare V.C., Holycross B., Lanier A., Heady W.N., O'Connor K., Imaki H., Haddad T., and Dana R. 2019. Insights into estuary habitat loss in the western United States using a new method for mapping maximum extent of tidal wetlands. PLOS ONE 14(8): e0218558.
https://doi.org/10.1371/journal.pone.0218558.

CMECS Aquatic

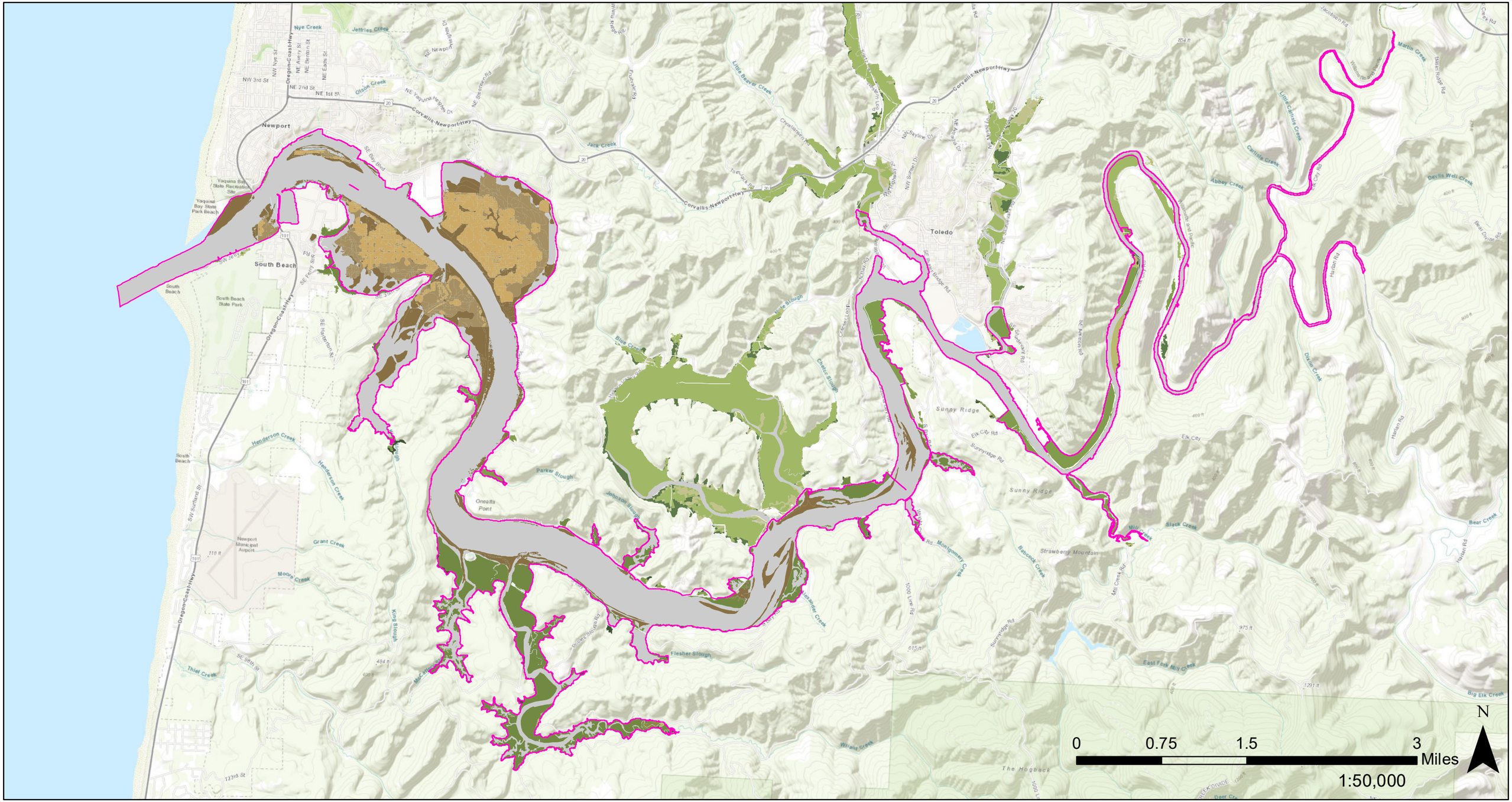


Legend

- Estuary Boundary
- 2.1 - Estuarine Coastal
- 2.1.AI07 - Estuarine Coastal (Diked)
- 2.2 - Estuarine Open Water
- 2.3 - Estuarine Tidal Riverine Coastal
- 2.3.AI07 - Estuarine Tidal Riverine Coastal (Diked)

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Oregon Coastal Management Program, DLCD (2018)

CMECS Biotic

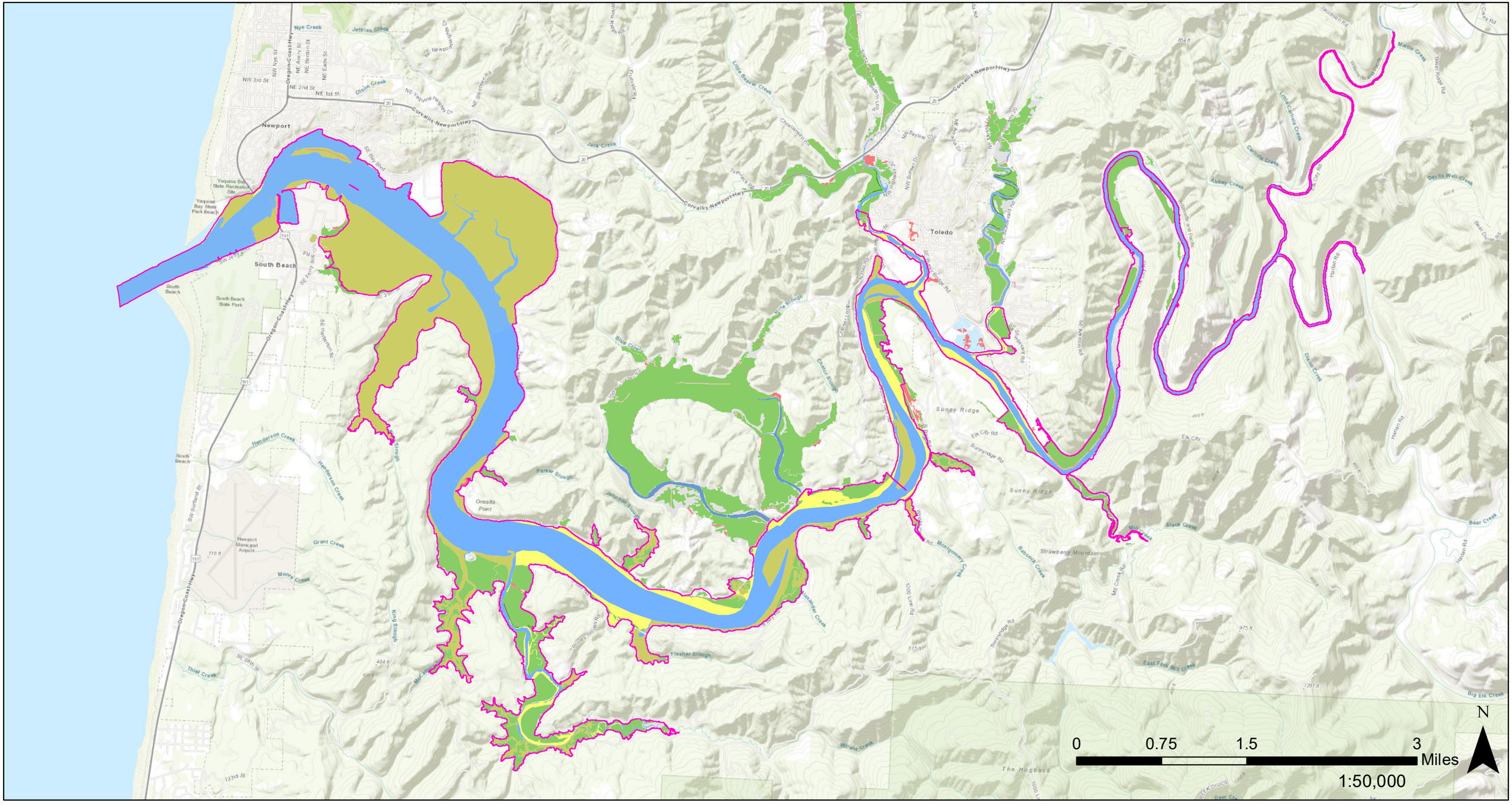


Legend

- Estuary Boundary
- 2 - Benthic / Attached Biota
- 2.2.1.20.2.1 - Ostrea lurida
- 2.2.2 - Soft Sediment Fauna
- 2.2.2.14 - Clam Bed
- 2.2.2.6 - Tunneling Megafauna
- 2.5 - Aquatic Bed
- 2.5.1 - Benthic Macroalgae
- 2.5.1.4 - Filamentous Algae
- 2.5.1.5 - Leathery Algae
- 2.5.1.7 - Sheet Algae
- 2.5.2 - Aquatic Vascular Vegetation
- 2.5.2.1 - Seagrass Bed
- 2.5.2.1.16 - Zostera Marina
- 2.5.2.1.17 - Zostera Japonica
- 2.6 - Emergent Wetland
- 2.6.1 - Emergent Tidal Marsh
- 2.6.1.1 - Brackish Marsh
- 2.7 - Scrub-Shrub Wetland
- 2.7.1 - Tidal Scrub-Shrub Wetland
- 2.7.1.1 - Brackish Tidal Scrub-Shrub
- 2.8 - Forested Wetland
- 2.8.1 - Tidal Forest/Woodland
- 9.9.9.9.9 - Unclassified

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Oregon Coastal Management Program, DLCD (2018)

CMECS Geoform

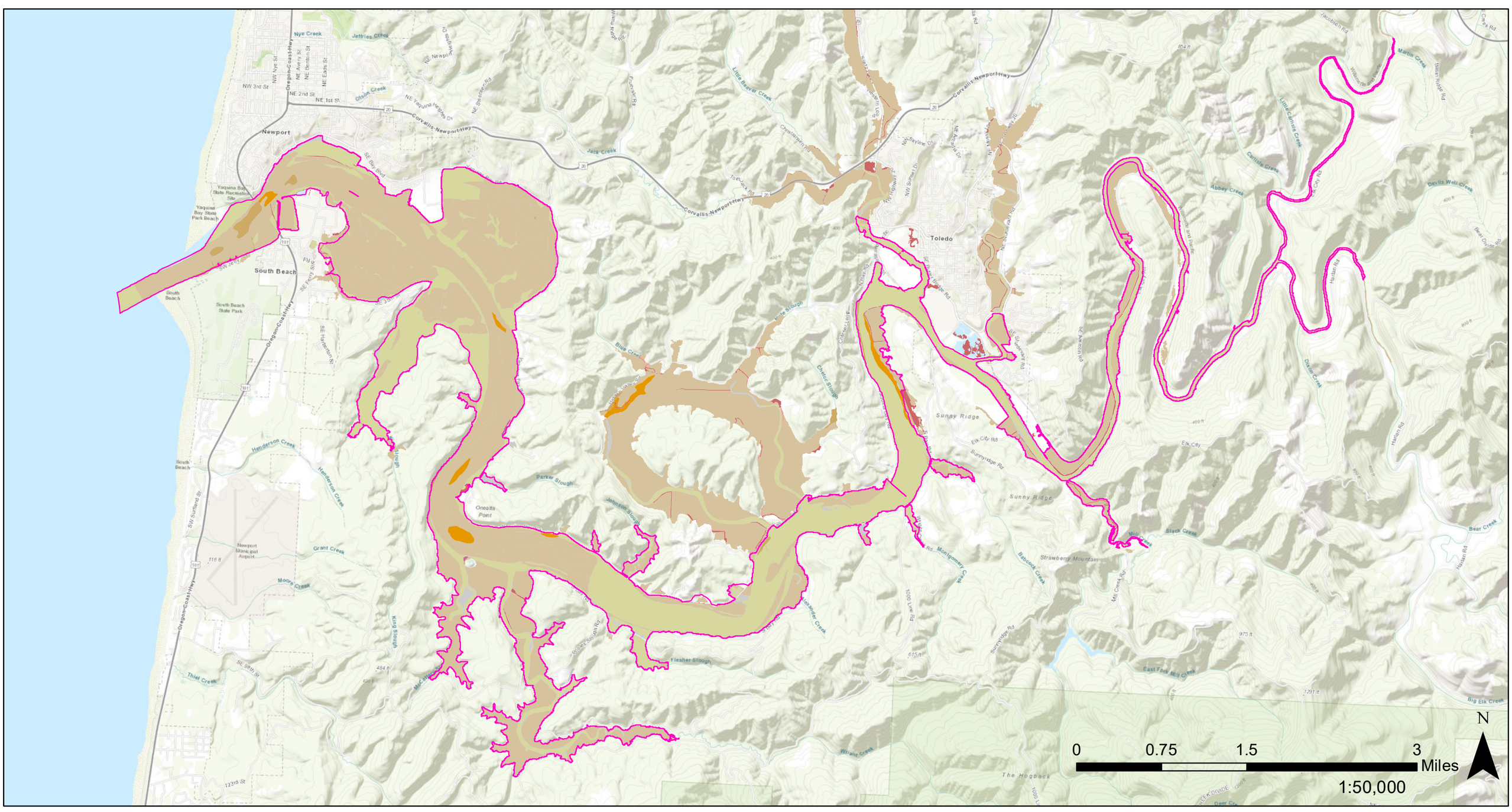


Legend

- Estuary Boundary
- 1.21 - Fan
- 1.21.3 - Shoreline Fan
- 1.22 - Flat
- 1.22.5 - Tidal Flat
- 1.29 - Island
- 1.36 - Marsh Platform
- 1.41 - Natural Levees
- 1.41.A106 - Natural Levees fill
- 1.61 - Shore
- 1.9 - Channel
- 1.9.3 - Slough
- 3.14 - Dock / Pier
- 3.16 - Dredge Deposit
- 3.19 - Fill Area
- 3.21 - Harbor
- 3.24 - Marine / Boat Ramp
- 3.3.1 - Artificial Levee
- 3.3.1.b - Artificial Levee, (breached)
- 3.30 - RipRap Deposit
- Unclassified
- Other Water

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Oregon Coastal Management Program, DLCD (2018)

CMECS Substrate



Legend

- Estuary Boundary
- 1.1 - Rock Substrate
- 1.1.1 - Bedrock
- 1.2 - Unconsolidated Mineral Substrate
- 1.2.1 - Gravel and Gravel Mixes
- 1.2.2 - Fine Unconsolidated Substrate
- 1.2.2.2 - Sand
- 2 - Biogenic Substrate
- 2.3.1.2 - Woody Debris
- 2.5 - Shell Substrate
- 3 - Anthropogenic Substrate
- 3.1 - Anthropogenic Rock
- 3.1.2 - Anthropogenic Rock Rubble
- 3.1.3 - Anthropogenic Rock Hash
- 3.3 - Construction Materials
- 9.9.9.9.9 - Unclassified

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Oregon Coastal Management Program, DLCD (2018)

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

0 0.75 1.5 3 Miles

1:50,000

N

Aquatic Beds, including Eelgrass Extent

Legend

- 2.5 - Aquatic Bed
- 2.5.1 - Benthic Macroalgae
- 2.5.2 - Aquatic Vascular Veg- Eelgrass Bed
- Eelgrass Extent (PMEP West Coast USA)
- Estuary Boundary

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: OCMP, Coastal and Marine Ecological Classification Standard, Phase II (2018); Pacific Marine & Estuarine Fish Habitat Partnership (2019)

Wetlands and Estuarine Habitats

Legend

- Fill
- Water
- Marine Sourced Low Tidal Wetland
- Marine Sourced High Tidal Wetland
- Non Tidal Wetland
- Potential Tidal Forested Wetland
- Restoration Consideration Area
- River Sourced Tidal Wetland
- Unconsolidated
- Upland
- Estuary Boundary

0 0.75 1.5 3 Miles

1:50,000

N

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Adamus Resource Assessment Inc., Oregon Coastal Atlas, Oregon State University

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

0 0.75 1.5 3 Miles

1:50,000

N

National Wetlands Inventory

Legend

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Riverine
- Estuary Boundary

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: U.S. Fish and Wildlife Service (2023)

Map 18

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

0 0.75 1.5 3 Miles

1:50,000

N

Pinniped Haulouts and Coastal Habitats

Legend

- Pinniped Haulout
- Shellfish Preserve
- Eelgrass Beds
- Estuarine Intertidal Wetlands
- Forested Wetland
- Estuary Boundary

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: OCMP, Coastal Habitat Screening Tool; Oregon Department of Fish and Wildlife (2011)

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

0 0.75 1.5 3 Miles

1:50,000

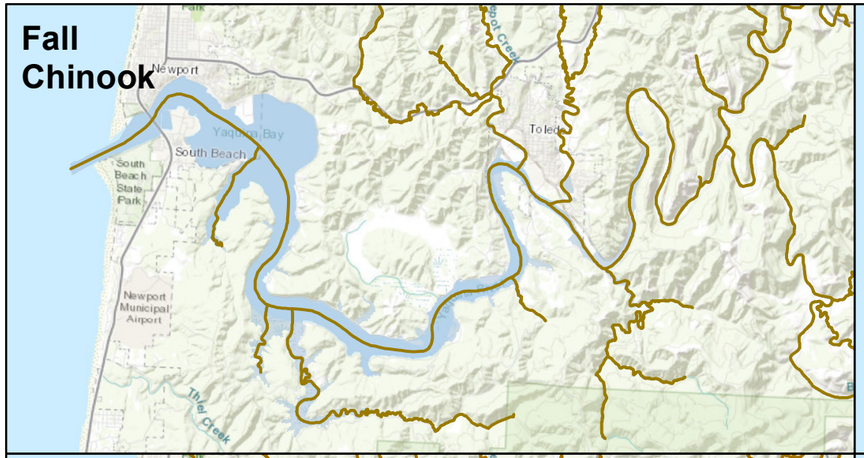
N

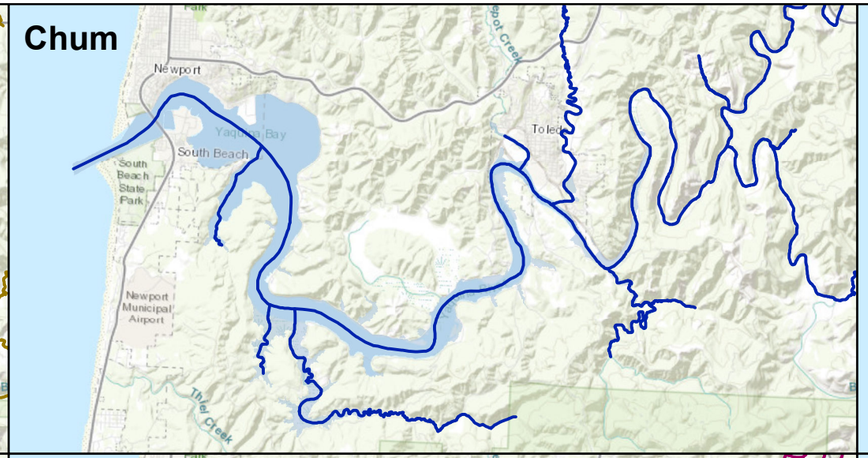
Soft Sediment Fauna

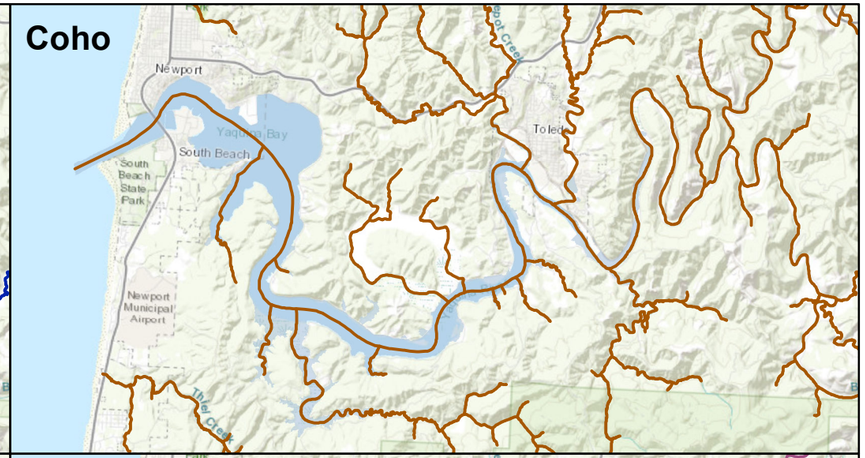
Legend

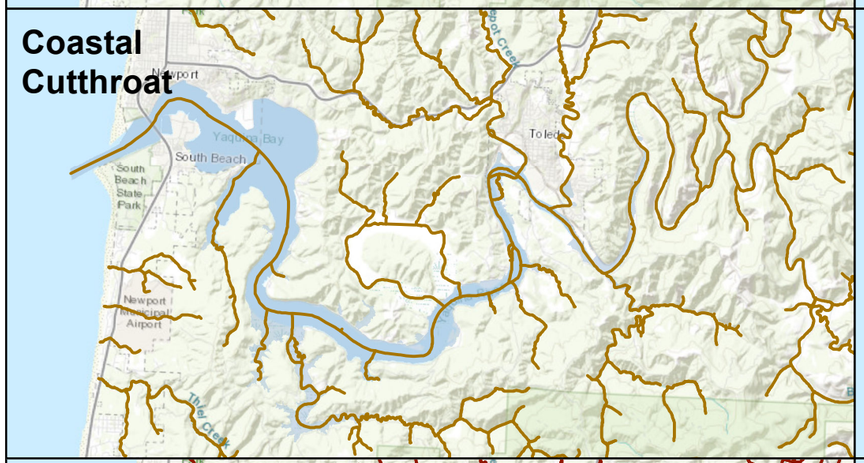
- 2.2.1.20.2.1p - Attached Ostrea
- 2.2.2 - Soft Sediment Fauna
- 2.2.2.14 - Tunneling Megafauna
- 2.2.2.6 - Clam Bed
- Estuary Boundary

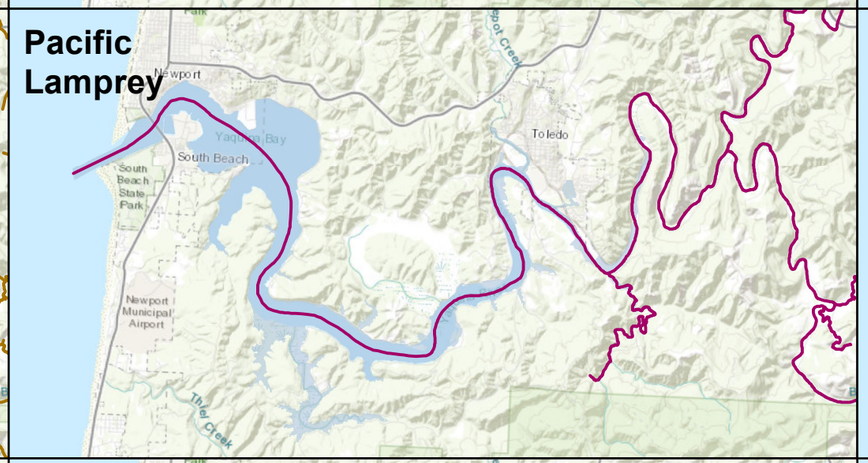
Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: OCMP, Coastal and Marine Ecological Classification Standard, Phase II (2018), Biotic_Component

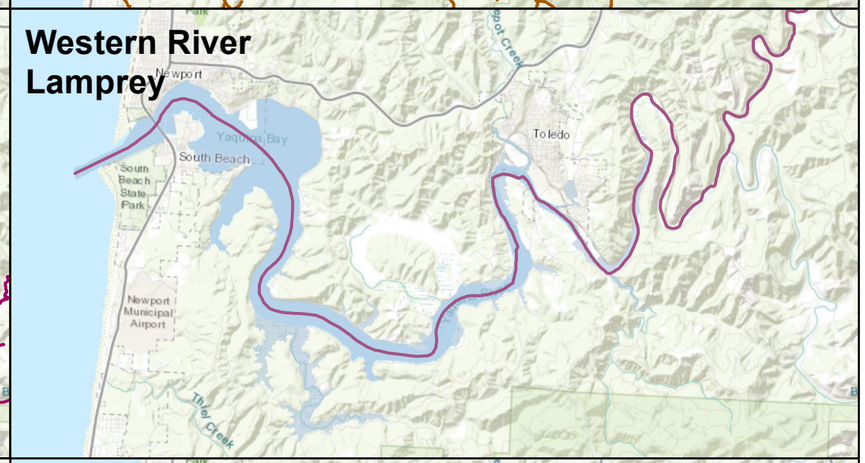


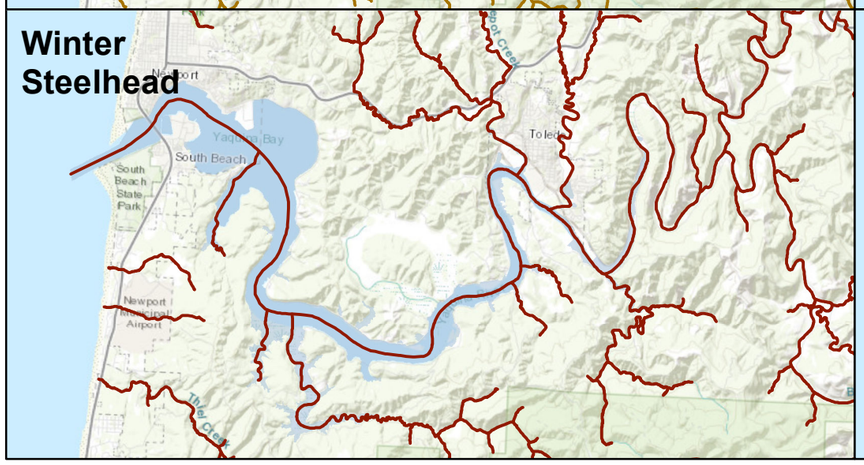


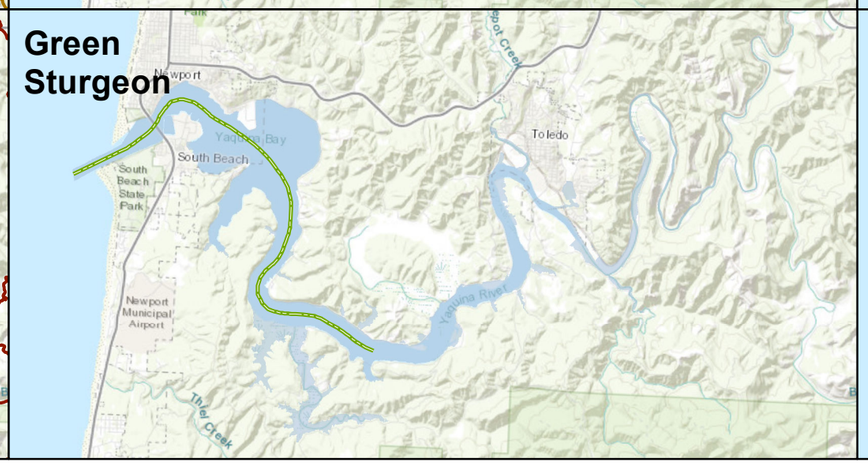


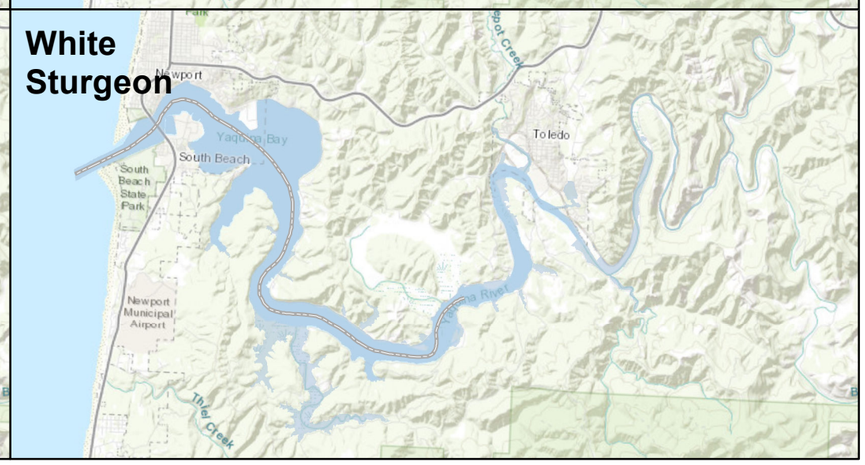












Fish Species

Legend

- Fall Chinook
- Chum
- Coho
- Coastal Cutthroat
- Pacific Lamprey
- Western River Lamprey
- Estuary Boundary
- Winter Steelhead
- Green Sturgeon
- White Sturgeon

N

0 2.25 4.5 9 Miles

1:150,000

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: US Fish and Wildlife, "Oregon Fish Habitat Distribution" (2023)

Text

0 0.75 1.5 3 Miles

1:50,000

N

Port Facilities and Tide Gates

Legend

Estuary Boundary | Port Facilities | Tide Gates

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: OCMP

Historic Vegetation, 1855-1928

Legend

- Composition unknown
- Unvegetated
- Water & wetlands
- Herbaceous uplands
- Prairie
- Savanna
- Riparian & wetland forest
- Shrubland & thickets
- Upland forest
- Woodland
- Estuary Boundary
- Highways

N

0 0.75 1.5 3 Miles

1:50,000

Date: 3/23/2023, Projection: NAD 1983 Lambert Conformal Conic,
Data Source: Lincoln County, Oregon Biodiversity Information Center, Portland State University

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

0 0.75 1.5 3 Miles

1:50,000

N

Flood Zones

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: Federal Emergency Management Agency (10/17/2019), "Flood Hazard Zones" (S_FLD_HAZ_AR), "Baseline Water Level", (S_WTR_AR)

Legend

- Baseline Water Level
- 1% Annual Chance (100-year)
- 0.2% Annual Chance (500-year)
- Floodway
- Estuary Boundary

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

0 0.75 1.5 3 Miles

1:50,000

N

Sea Level Rise

Legend

Baseline Water Level | 1 ft of SLR | 2 ft of SLR | 3 ft of SLR | 4 ft of SLR | 5 ft of SLR | Estuary Boundary

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: NOAA Technical Report CO-OPS 083 (2017) and Technical Report NOS 01 (2022); https://coast.noaa.gov/slrdata/ ;
Federal Emergency Management Agency (10/17/2019), "Baseline Water Level", (S_WTR_AR)

The data in this map illustrates the scale of potential sea level rise flooding, not the exact location, and do not account for erosion, subsidence, or future construction. Water levels are relative to Mean Higher High Water (MHHW) (excludes wind driven tides). The map should be used strictly as a screening-level tool for management decisions and as a planning reference tool and not for navigation, permitting, or other legal purposes. For more information see Sweet et. al. “NOAA Technical Report NOS CO-OPS 083. Global and Regional Sea Level Rise Scenarios for the United States.” 2017 and Sweet et. al. “NOAA Technical Report NOS 01. Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines.” 2022

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

0 0.75 1.5 3 Miles

1:50,000

N

Landward Migration Zones

Legend

- LMZ of 1.6 ft of SLR
- LMZ of 2.5 ft of SLR
- LMZ of 4.5 ft of SLR
- Estuary Boundary

LMZ: Landward Migration Zone
SLR: Sea Level Rise

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: Brophy, Laura S.; Ewald, Michael J (2018) MidCoast Watersheds Council Landward Migration Zone (LMZ) Project Data. MidCoast Watersheds Council. Oregon State University. Dataset. https://doi.org/10.7267/N9FB5138

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

0 0.75 1.5 3 Miles

1:50,000

N

Tsunami Inundation Scenarios

This map displays projected tsnumi inundation output of computer models representing five selected tsunami scenarios. Each scenario assumes the tsunami occurs at an 18-year average Mean Higher High Water (MHHW) tide observed at the Port Orford tide gauge. The five scenarios are labeled as "T-shirt" sizes ranging from Small (S) to Extra Extra Large (XXL).

Date: 5/30/2023, Projection: NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl
Data Source: DOGAMI, Open-File Report O-13-19 (2019); Federal Emergency Management Agency (10/17/2019)

Legend

- Baseline Water Level
- Small Tsunami Inundation Scenario
- Medium Tsunami Inundation Scenario
- Large Tsunami Inundation Scenario
- Extra Large Tsunami Inundation Scenario
- Extra Extra Large Tsunami Inundation Scenario
- SB379
- Estuary Boundary

City of Newport

Community Development Department

Memorandum

To: Planning Commission/Commission Advisory Committee

From: Derrick Tokos, Community Development Director

Date: September 5, 2024

Re: SB 1537 Revisions to Limited Land Use Decision Making Procedures

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The Governor's Housing Bill (SB 1537) included a number of sections that dealt with a variety of topics. With Ordinance No. 2222, we focused on syncing up the code changes recommended as part of the City's Housing Production Strategy with the adjustment section of SB 1537. Another section of SB 1537 that the City will need to implement relates to limited land use decisions.

As noted in the memo from the Local Government Law Group (see Question #5), local governments were not required to implement the limited land use decision making procedures until the passage of SB 1537. I have enclosed a copy of the relevant sections of the bill. The legislation revised the definition of limited land use decisions to include replats, property line adjustments, and the extension/alteration/expansion of non-conforming uses. I am seeking clarification from the State as to whether or not the reference to non-conforming uses is limited to residential uses, and hope to have an answer by Monday.

The other change made by the legislation is that it mandates that the limited land use decision making process be followed exactly as outlined in statute. This means that subdivisions will no longer be subject to a public hearing before the Planning Commission. Also, the City will have to limit public notice of limited land use decisions to properties within 100-feet of the subject site, which is half the distance we currently use for Type II land use actions.

City's have some flexibility in how they handle appeals of limited land use decisions and I would appreciate your thoughts on that topic. Most of the other changes in the attached set of amendments are intended to clarify terminology that we use when referencing the various land use processes.

This section of SB 1537 is effective January 1, 2025, and I'd like to get a compliant set of code amendments in place by that deadline so that we don't have to apply the statutes directly.

Attachments:
NMC Chapter 14 Limited Land Use Decision Amendments – 9.5.24 Draft
Local Government Law Group Memo
SB 1537 Limited Land Use Decision Amendments
ORS 197.195

CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS**

14.01.020 Definitions

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

***

Land Division. A subdivision or partition.

Land Use Action. The procedure by which the City of Newport makes a land use decision.

Land Use Decision. In general, a final decision or determination that concerns the adoption, amendment, or application of the statewide planning goals, a comprehensive plan provision, or a land use regulation. Specifically, a city decision as defined by ORS 197.015(10).

Land Use Decision (limited). A final decision or determination pertaining to a tentative subdivision or partition plat, replat, property line adjustment, or the extension, alteration or expansion of a nonconforming use.

Staff: Adding definition of limited land use decision, as modified by Section 44, SB 1537.

CHAPTER 14.32 NONCONFORMING USES, LOTS, AND STRUCTURES

***

14.32.030 Approval Authority

Upon receipt of an application, the Community Development Director or designate shall determine if an alteration, expansion, or replacement of a nonconforming use or structure qualifies for Type II or Type III review based on the standards established in this subsection. There shall be no

appeal of the Director's determination as to the decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. An application shall be processed and authorized using a Type II decision-making procedure when characterized by the following.

1. The request is to alter, expand, or replace a nonconforming ~~single-family dwelling~~residential building or structure accessory thereto; or

2. Alteration or expansion of a nonconforming use or structure is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.

B. All other applications for the alteration, expansion, or replacement of nonconforming uses or structures shall be processed and authorized using a Type III decision-making procedure.

Staff: SB 1537 was crafted as a housing bill, so the intent behind making non-conforming use reviews limited land use decisions was presumably limited to non-conforming residential buildings (as opposed to commercial or industrial). The above change expands the scope of Type II reviews to include all residential housing types, not just single family dwellings.

***

CHAPTER 14.52 PROCEDURAL REQUIREMENTS

***

14.52.020 Description of Land Use Actions/Decision-Making Procedures

The following is a description of four general types of land use actions/decision-making procedures utilized for land use and limited land use decisions within the City of Newport:

A. Type I Land Use Actions. Type I decisions are generally made by the Community Development Director without

public notice prior to the decision and without a public hearing. A notice of the decision and opportunity to appeal is provided. Type I decisions involve limited administrative discretion. An example of a Type I action is an estuarine review. An appeal of a Type I decision is heard by the Planning Commission.

B. Type II Land Use Actions. Type II decisions are generally made by the Community Development Director with public notice and an opportunity to comment but without a public hearing. Type II decisions involve administrative discretion in the application of criteria but usually involve land use actions with limited impacts or involve limited land use decisions. Examples of Type II actions include Conditional Use Permits that generate less than 50 vehicle trips per day and involve property that is less than an acre in size, Subdivisions, Property Line Adjustments, ~~Minor~~ Partitions, and ~~Minor~~ Replats. An appeal of a Type II decision by the Community Development Director is heard by the Planning Commission, and an appeal of a Type II decision by the Planning Commission is heard by the City Council.

C. Type III Land Use Actions. Type III decisions are considered quasi-judicial land use actions and generally are made by the Planning Commission after public notice and a public hearing. Type III decisions generally use discretionary criteria or involve land use actions with larger impacts than those reviewed under a Type I or Type II procedure. Examples of Type III actions include Conditional Use Permits that generate more than 50 trips per day, variances, preliminary and final planned development applications, and interpretation requests~~, and tentative subdivision plat applications~~. An appeal of a Type III permit decision is heard by the City Council.

D. Type IV Land Use Actions. Type IV decisions are made by the City Council as either quasi-judicial or legislative decisions involving land use action such as urban growth boundary amendments, Comprehensive Plan map/text amendments, Zoning map/text amendments, annexation requests, planned destination resorts conceptual master plans, and street/plat vacations for which an ordinance must be adopted by the City Council. Most Type IV decisions require a public hearing and recommendation by the Planning Commission prior to the City Council public hearing.

Staff: Clarifies that subdivisions are no longer subject to Planning Commission approval. Other edits eliminate old terms

14.52.030 Approving Authorities

The approving authority for the various land use and ministerial actions shall be as follows:

A. City Council. A public hearing before the Council is required for all land use actions identified below. Items with an "*" require a public hearing and recommendation from the Planning Commission prior to a City Council hearing.

1. Annexations*.

2. Comprehensive Plan amendments (text or map)*.

3. Planned destination resorts--conceptual master plans*.

4. Urban growth boundary amendments*.

5. Vacations (plat or street)*.

6. Withdrawals of territory (public hearing required).

7. Zone Ordinance amendments (text or map)*.

8. Any other land use action defined in ordinance as a Type IV ~~decision~~action*.

9. Any land use action seeking to modify any action or conditions on actions above previously approved by the City Council where no other modification process is identified.

10. Appeals of a Planning Commission action.

B. Planning Commission. A public hearing before the Commission is required for all land use actions identified below. Items with an "*" are subject to Planning Commission review as defined in the section of the ordinance containing the standards for that particular type of land use action. Planning Commission decisions may be appealed to the City Council.

1. Conditional use permits*.

2. Nonconforming use changes or expansions*.

3. Planned destination resorts - preliminary and final development plans*.

4. Planned developments.

~~5. Subdivisions (tentative subdivision plat).~~

~~6~~5. Variances.

~~7~~6. Adjustments*.

~~8~~7. Design review*.

~~9~~8. Interpretations of provisions of the Comprehensive Plan or Zoning Ordinance that require factual, policy, or legal discretion.

~~10~~9. Any land use ~~action~~ decision defined as a Type III ~~decision~~action.

~~11. Any land use action defined as a Type II decision for which the Planning Commission is the initial approving authority.~~

~~12~~10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Planning Commission where no other modification process is identified.

~~13~~11. Appeal of the Community Development Director decision under a Type I or Type II ~~decision~~action.

C. Community Development Director. Land use actions decided by the Director are identified below. A public hearing is not required prior to a decision being rendered. Items with an "*" are subject to Director review as defined in the section of the ordinance containing the standards for that particular type of land use action. Decisions made by the Community Development Director may be appealed to the Planning Commission.

1. Conditional use permits*.

2. Subdivisions.

~~2~~3. Partitions~~, minor~~.

~~3~~4. Replats~~, minor~~.

~~4~~5. Estuarine review.

~~5~~6. Adjustments*.

~~6~~7. Nonconforming use changes or expansions*.

~~7~~8. Design review*.

~~8~~9. Ocean shorelands review.

~~9~~10. Any land use ~~action~~ decision or limited land use decision defined as a Type I or Type II ~~decision~~action. ~~for which the Community Development Director is the initial approving authority.~~

1~~0~~10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Community Development Director where no other modification process is identified.

12. Ministerial actions necessary to implement Title XIV of the Newport Municipal Code, including final plats, property line adjustment conveyance documents, public improvement agreements, temporary uses (unless an alternative process is provided), and confirmation that building permits satisfy clear and objective approval standards.

Staff: Amended to eliminate redundant language and to establish that all land divisions are subject to Community Development Director (Type II) review.

14.52.060 Notice

The notification requirements in general for the various types of land use actions are identified below. The applicant shall provide city staff with the required names and addresses for notice. Notice of hearings to individual property owners is not required for Type IV legislative actions unless required by

state law, such as ORS 227.186 (notice to owners whose property is rezoned). These notification requirements are in addition to any other notice requirements imposed by state law or city ordinance.

A. Information Required in all Notices of Actions and Hearings:

1. Name of applicant and property owner (if different), and file number.

2. Location of property (if applicable).

3. Date, time, and location for public hearing (for all hearings).

4. A brief summary of the nature and substance of the application or decision.

5. A list of applicable Newport Ordinance and/or Comprehensive Plan standards and where the applicable criteria may be found.

6. A statement that relevant information (decision, staff report, application or other materials) may be reviewed and providing information about where and when they can be reviewed, and a statement that copies are available at cost).

7. Staff contact information, including name, address, and phone number.

8. Date the notice is mailed.

B. Information Required in Specific Notices:

1. Date of decision (for Type I actions).

2. A statement describing the process and the deadline for filing comments (for Type II actions).

3. A statement that the failure to raise an issue with sufficient specificity to allow the decision maker an opportunity to respond to the issue precludes raising the issue on appeal, including an appeal to the Land Use Board of Appeals (for Type II and III and quasi-judicial Type IV actions).

4. Date, time, and location of the hearing (all hearing notices).

5. A statement that the staff report will be available for view at no cost and that copies will be available at a reasonable cost at least seven days before the hearing (Type III and Type IV quasi-judicial actions).

6. A general description of the hearing process, including the process for submitting written materials (Type III and IV ~~decisions~~actions).

7. An explanation of the use or uses that could be authorized by the decision (Type IV ~~decisions~~actions).

C. Mailing of Notice. Notices of hearings and ~~actions~~ applications shall be mailed by first class mail at least 14 days prior to the deadline for providing testimony for Type II ~~decisions~~ actions and at least 20 days prior to the public hearing for Type III and Type IV quasi-judicial actions. Notices shall be mailed to:

1. The applicant and property owner (if different).

2. Any affected public agency, including ODOT or Lincoln County Transit, or public/private utility.

3. Any person who has requested notice of the hearing or action in writing.

4. Any officially recognized neighborhood association whose boundaries include the subject property.

5. Record owners of property (as specified in the most recent Lincoln County Assessor's property tax assessment roll):

   a. Within 100 feet of the subject property (Type II actions involving limited land use decisions).

   b. Within 200 feet of the subject property (Type I actions, Type II actions involving land use decisions, and Type III actions).

   ~~b~~c. Within 300 feet of the subject property (Type IV quasi-judicial actions).

D. Written Notice for Rezoning of Mobile Home or Manufactured Dwelling Park. If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park, written notice by first class mail shall be given to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, before the date of the first hearing on the application.

E. Written Notice to Airport Owners. Notice of a public hearing on a zone use application shall also be provided to the owner of an airport, defined by the Department of Transportation as a "public use airport," if:

1. The name and address of the airport owner has been provided by the Aeronautics Division of the Department of Transportation to the City Community (Planning) Department; and

2. The property subject to the zone use hearing is:

   a. Within 5,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport," or

   b. Within 10,000 feet of the side or end of the runway of an airport determined by the Department of Transportation to be an "instrument airport."

3. Notice of a zone use hearing need not be provided if the permit or zone change would only allow a structure less than 35 feet in height, and the property is located outside of the runway "approach surface" as defined by the Department of Transportation.

F. Published Notice. Notice of each Type III and Type IV hearing shall be published at least once in a newspaper of general circulation in the city at least 5 days, and no more than 14 days, prior to the date set for public hearing.

Staff: Terminology has been clarified, and language has been added to account for the 100-foot notice parameter for limited land use decisions.

***

14.52.100 Appeals

Any person with standing may appeal a decision of the approving authority. No person shall have standing to appeal unless the person made an appearance of record in the initial proceeding prior to the close of the public comment period, public hearing, or close of the record. All appeals shall be made no later than 15 calendar days after the date the final order is signed. "Appearance of record" shall mean either appearance in person or in writing. City Council decisions may be appealed to the Oregon Land Use Board of Appeals as provided by state law.

A. Appeal Document. All appeals shall be signed by the appellant or authorized agent and shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.

2. A statement demonstrating that the appellant has standing to appeal.

3. A statement of the specific grounds which the appellant relies on as the basis for the appeal. If the appellant contends that the findings of fact made by the approving authority are incorrect or incomplete, the application shall specify the factual matters omitted or disputed. If the appellant contends that the decision is contrary to city code, an ordinance statute, or other law, the appeal shall identify the city code, an ordinance, statute, or other legal provision, and state how the applicable provision has been violated. For appeals of a quasi-judicial or limited land use action, a statement demonstrating that the appeal issues were raised with sufficient specificity in the hearing below.

B. Scope of Review. Unless the appeal is heard de novo, the appeal of a decision by a person with standing shall be limited to the specific issues raised during the hearing from which the decision is being appealed. Approving authorities may hear appeals on the record of the initial hearing (if a previous hearing was held) or de novo. An appeal of a limited land use decision, ~~from~~ or a land use ~~action~~ decision that had a previous hearing shall be held on the record unless the approving authority determines that a de novo hearing is warranted.

1. When de novo hearing is warranted.

   a. Where a land use decision was made without a public hearing, the appeal shall be heard de novo.

   b. For a limited land use decision, or ~~Where a~~ land use decision ~~was~~ made following a public hearing, the approving authority may consider holding the appeal de novo for any of the following reasons:

      i. (The appellant(s) have documented as part of a petition to appeal a significant procedural error that resulted in a substantive harm to their ability to participate ~~in the initial hearing~~ that could be cured by a ~~subsequent~~ de novo hearing.

      ii. The appeal of the decision is part of a package of land use ~~requests~~ actions submitted by the applicant that include other land use ~~requests~~ actions that will be considered in a ~~new~~ public hearing before the review authority, and it would be more efficient to conduct the appeal de novo in conjunction with the hearings for the other land use ~~requests~~actions.

      iii. A significant number of appeals have been filed such that the efficiency of the appeal process would be better served through a de novo hearing.

2. Procedure for determining when de novo hearing is warranted on appeal from a land use decision made following a public hearing:

   a. Following the end of the appeal period for which an appeal has been filed with a request for a de novo hearing, the matter of the de novo appeal hearing request shall be scheduled at the next available approving authority meeting for consideration.

   b. The appeal authority shall review the submitted request for de novo hearing along with any staff and applicant (if other than appellant) input on the matter and make a decision.

C. Notice of Appeal. Notice of the appeal hearing shall be given to the applicant, the applicant's authorized agent (if any), and to interested persons. Interested persons are:

1. Anyone who has made appearance of record.

2. Anyone who has filed a written request for notice of the approving authority's decision; and

3. Anyone who has requested notice of any appeal hearing.

D. Appeal Hearings. The following is a minimum set of procedures supplemented by any duly adopted rules of procedure:

1. Appeal hearings on the record shall be conducted as follows:

a. A record of hearing shall be prepared by the Community Development Department containing the written material involving the approval through the filing of the appeal. A transcript of the hearing shall be prepared and included with the record.

b. Following preparation of the record, a date for the on-the-record hearing shall be set by the Community Development Department, and notice of the date of the appeal hearing shall be given.

c. The appellant(s) shall have seven calendar days from the date the record is available to supplement the petition for appeal by identifying items in the record in support of the appeal ("support brief").

d. The applicant(s) (if other than the appellant) and city staff shall have seven calendar days from the date the appellant support brief is due to respond ("response brief").

e. The appeal hearing will allow for comments by city staff, argument from appellant(s), applicant(s) (if other than appellant), rebuttal, and questions and deliberation by the approving authority.

2. De novo appeal hearings may be held by the appeals approving authority. In cases of a de novo hearing, the

same procedure shall be used as was employed in the initial hearing.

3. Ability for City Council to deny appeal without hearing. The City Council may deny an appeal from a Planning Commission decision where the Planning Commission has held a de novo hearing following an appeal of a decision of the Community Development Director for land use actions subject to the 120-day rule in ORS 227.178. If the City Council votes to deny an appeal, the Council shall adopt the Planning Commission Final Order as the final decision of the City.

E. Appeals Decision. Upon review of the appeal, the appeals approving authority may, by final order, affirm, reverse, or modify in whole or part the initial decision. When the appeals approving authority modifies or reverses a decision of the initial approving authority, the final order shall set forth findings and reasons for the change. The appeals approving authority may also remand the matter back to the initial approving authority for further consideration or clarification. A notice of the decision made by the approving authority shall be given to:

1. Anyone who has made appearance of record; and

2. Anyone who has filed a written request for notice of the approving authority's decision; and

3. Anyone who has requested notice of any appeal hearing.

F. Judicial Finality. No permit shall be issued, no permit or approval shall be considered valid, and no project may proceed, based on any land use decision of the City of Newport for a land use action processed under this section of the Ordinance, until such time as all rights of appeal from such decision have been exhausted and such decision is "judicially final." A decision shall be considered judicially final at such time as any applicable period for the appeal of such decision shall have expired without initiation of an appeal, or any properly initiated appeal shall have been exhausted, whichever is later. However, this shall not preclude the making of an application for, or the conduct of proceedings to consider, the issuance of a permit or approval based on such land use decision.

Staff: Language has been added requiring that an appeal of a limited land use decision be handled on the record in most cases. This is optional. The Commission could also handle the appeals de novo.

***

14.52.140 Expiration and Extension of ~~Decision~~Land Use Actions

Expiration or extension of all land use ~~decisions~~ actions shall be as follows:

A. All land use ~~decisions~~ actions shall be void if within twenty-four (24) months of the date of the final decision:

1. All necessary building permit(s) have not been issued, if required; or

2. The authorized use has been established; or

3. In cases where a final plat is required, the final plat has not been signed by the City and referred for recording.

B. Notwithstanding Subsection (A) of this section, the approval authority may set forth in ~~the~~ its written decision specific instances or time periods when a permit expires.

C. The Community Development Department may extend any approved ~~decision~~ land use action for a period of twelve (12) months; provided the permit holder:

1. Submits a written request for an extension of time prior to expiration of the approval period; and

2. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

D. The Planning Commission may grant an additional twelve (12) month extension after conducting a public hearing. Notice shall be the same as what was provided for the original ~~tentative plan~~land use action. The criteria for an extension are:

1. An unforeseen change in the economic condition has affected the real estate market for the project; or

2. The weather has prevented the physical work; or

3. Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.

4. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

E. The granting of an extension pursuant to this section is ~~an~~ a ~~administrative~~ ministerial action, ~~is not a land use decision as described in ORS 197.015,~~ and is not subject to appeal as a limited land use decision, or land use decision.

F. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

G. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

Staff: Amendments clarify terminology. No substantive changes.

14.52.150 Revocation of Decisions

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation proceeding under this section.

A. Type I, Type II, and Type III ~~decisions~~ actions may be revoked or modified if the Planning Commission determines a substantial likelihood that any of the following situations exists:

1. One or more conditions of the approval have not been implemented or have been violated: or

2. The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant.

B. A revocation shall be processed as a Type III ~~decision~~action. The Community Development Department or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the city's approval.

C. Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the Planning Commission, unless the decision provides otherwise. In the event the Planning Commission's decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.

Staff: Amendments clarify terminology. No substantive changes.

LOCAL GOVERNMENT LAW GROUP
An Oregon Professional Corporation

Memo

To: **City of Newport**

From: **Carrie Connelly, Attorney**

Date: **May 22, 2024**

Re: **SB 1537 Related Questions**

Overview: The City of Newport engaged our office to advise particularly on the impacts of SB 1537 (2024) housing land adjustment provisions[1] on planned City Development Code amendments. Prior to the passage of SB 1537, the City was working on a number of updates to its Development Code to eliminate barriers to housing development. The Planning Commission recommended that the Council adopt a set of amendments authorizing various "adjustments" which differ from those mandated by SB 1537. The City's amendments are now on hold, until the Council determines the impact of the new legislation on its planned amendments.

Question 1: Can the City require developers to choose to lower development costs by requesting either SB 1537 adjustments or otherwise available City financial incentives?

> **Answer 1:** We identified no language in SB 1537, Sections 38 to 41, that prohibits the City from conditioning City offered financial incentives upon compliance with the City Code. Consequently, the City should be able to require an applicant to either: 1) lower development costs by requesting up to ten adjustments under SB 1537; or 2) off-set the cost of complying with the City's unadjusted Code by accessing City funds and other incentive programs.
>
> This conclusion seems consistent with other state land use laws. For example, ORS 197A.400 allows a local government to offer alternative sets of standards and criteria, as long as an applicant can choose between compliant and non-compliant criteria.

Question 2: Must the City allow SB 1537 adjustments to eliminate off-street parking minimums in conjunction with the City's shared street sections, which were developed to

[1] Sections 38 through 41 of SB 1537 take effect January 1, 2025, and sunset on January 2, 2032.

reduce the cost of frontage improvements in areas that are terrain constrained or lack adequate right-of-way.

Answer 2: As concluded above, SB 1537 does not prohibit the City from offering mutually exclusive programs to reduce the cost of housing development. SB 1537, Section 38 specifically authorizes a local government to either " . . . [u]se an existing process, *or* develop and apply a new process, that complies with the requirements of . . ." Section 38. Section 38(3)(a). This should not prohibit a local government from offering two housing programs, one that complies with SB 1537 and another that offers different adjustments. As long as a residential developer has the option to request adjustments which comply with SB 1537, the City need not repeal or otherwise eliminate a preexisting program.

SB 1537 does require that, upon a developer's request, the City must grant up to ten of the specific development and design adjustments set out in Section 38(4) and (5). However, such a request must meet qualifying requirements, and can only request certain "adjustments." The term "adjustment" is defined to exclude "[d]eviations from land use regulations or requirements related to *accessibility*, affordability, *fire ingress or egress, safety* . . . ." Section 38(1)(b)(B) (emphasis added).

To the extent that the City can show that a request adjusts a City regulation or requirement related to accessibility, fire ingress or egress, or public safety, that regulation may not be adjusted. Along this line of reasoning, the City may be able to show that off-street parking minimums are necessary to preserve accessibility, fire ingress or egress, and general public safety where reduced street widths are allowed.

Question 3: How can City fees differ between City offered and SB 1537 required adjustments?

Answer 3: SB 1537, Section 38(3) directs that an application for an adjustment "is a limited land use decision." Land use application fees generally may not exceed the City's actual or average costs to process the application at issue. See, ORS 227.175(1) (authorizing permit application fees); ORS 92.044(3)-(4) and 92.046(4) (authorizing fees for subdivision and partition review).

Assuming that the City already requires fees for other types of limited land use decisions, the City will likely be able to support a similar fee reflecting the City's actual or average costs to process SB 1537 adjustments. On that same rationale, an application that is processed administratively by staff could merit a lower fee.

While the City cannot charge land use fees that are more than its actual or average costs, it can always charge less. Best practices, however, support calculating all land use fees on the same basis (actual or average costs.)

Question 4: Can the City require an applicant to substantiate statements that they are eligible for an SB 1537 adjustment per Section 38(2)(g)?

Answer 4: The referenced section states: "(g) The application *states how* at least one of the following criteria apply . . . ." One interpretation is that a SB 1537 adjustment application need only identify at least one satisfied criterion. However, the plain language of the statute requires an applicant to state "how" at least one criterion applies. For this reason, it seems that *some* explanation of how the claimed criteria will be met is required by Section 38(2)(g).

On the other hand, Section 38 provides no basis for a City to evaluate or measure an applicant's submittal. Once a developer "states how" at least one required criterion is met, the application standard is arguably satisfied. Given this, echoing the statutory language may be the most defensible course of action (i.e. "The application must state how at least one of the following criteria apply . . ."). This approach should meet the statutory requirement, while allowing for some local flexibility and the ability to follow caselaw, as LUBA and Oregon courts interpret this legislation.

Question 5: How should the City structure its review process for deciding SB 1537 adjustments?

Answer 5: To comply with SB 1537, Section 45(6), the City must update its Type II limited land use procedures to reflect the amended definition of that term and adhere to ORS 197.195. To date, the statutory process was optional. As of January 1, 2025, it is mandatory. Once the City's Code is updated, that limited land use process will govern SB 1537 adjustment applications – with the exceptions identified in Section 38(3). Those include: 1) no notice of the decision is required if the application is denied, other than notice to the applicant; and 2) only the applicant is allowed to appeal an adjustment decision.

Question 6: Are coastal shorelands exempt from the SB 1537 adjustment allowance pursuant to Section 38(1)(b)(B)?

Answer 6: Section 38(1)(b)(B) of SB 1537 prohibits:

> "*Deviations from* land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site clean-up, wildlife protection, or *statewide land use planning goals relating to* natural resources, natural hazards, the Willamette River Greenway, estuarine resources, *coastal shorelands*, beaches and dunes or ocean resources." (Emphasis supplied.)

This language does not exempt coastal shorelands from SB 1537 adjustments – unless the requested adjustment requires a deviation from the City development and design standards that implement Goal 17, Coastal Shorelands, or other coastal planning goals.

Question 7: Does the City need to officially designate Nye Beach and Bayfront as commercial corridors, as the term is used in SB 1537, Section 38(4)(g)(D)(ii), to preserve ground floor areas for commercial uses?

Answer 7: SB 1537, Section 38(4)(g)(D)(ii) requires the City to grant an adjustment to:

> "Prohibitions for the ground floor of a mixed-use building, against . . . [n]onresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, *except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments*." (Emphases added.)

For the City to preserve any prohibitions against the above-described nonresidential active uses in any area of the City, that area must be a clearly defined mixed-use area or a clearly defined commercial corridor designated by the City Council. Therefore, if Nye Beach and Bayfront are already designated mixed-use areas, no further Council action is required. If not so designated, as staff anticipates, the Council will need to clearly designate those areas as commercial corridors in order to preserve applicable nonresidential active use prohibitions. SB 1537 does not identify what is required to specifically and clearly designate those commercial corridor areas, but a descriptive overlay zone would likely suffice.

(c) Failing to comply with conditions of approval adopted under subsection (4) of this section.

SECTION 40. Temporary exemption authority. Before January 1, 2025, notwithstanding section 39 of this 2024 Act:

(1) Cities may deliver applications for exemption under section 39 of this 2024 Act to the Department of Land Conservation and Development; and

(2) The Department of Land Conservation and Development may perform any action that the Housing Accountability and Production Office may take under section 39 of this 2024 Act. Decisions and actions of the department under this section are binding on the office.

SECTION 41. Reporting. (1) A city required to provide a report under ORS 197A.110 shall include as part of that report information reasonably requested from the Department of Land Conservation and Development on residential development produced through approvals of adjustments granted under section 38 of this 2024 Act. The department may not develop a separate process for collecting this data or otherwise place an undue burden on local governments.

(2) On or before September 15 of each even-numbered year, the department shall provide a report to an interim committee of the Legislative Assembly related to housing in the manner provided in ORS 192.245 on the data collected under subsection (1) of this section. The committee shall invite the League of Oregon Cities to provide feedback on the report and the efficacy of section 38 of this 2024 Act.

SECTION 42. Operative date. Sections 38 to 41 of this 2024 Act become operative on January 1, 2025.

SECTION 43. Sunset. Sections 38 to 41 of this 2024 Act are repealed on January 2, 2032.

LIMITED LAND USE DECISIONS

SECTION 44. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196, 197 and 197A, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196, 197 and 197A.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines are advisory and do not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12)(a) "Limited land use decision"[*:*]

[*(a)*] means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(C) The approval or denial of an application for a replat.

(D) The approval or denial of an application for a property line adjustment.

(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.

(b) **"Limited land use decision"** does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or Metro or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that Metro may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195, 197 and 197A.

(19) "Special district" means any unit of local government, other than a city, county, Metro or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban growth boundary" means an acknowledged urban growth boundary contained in a city or county comprehensive plan or adopted by Metro under ORS 268.390 (3).

(21) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(22) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(23) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 45. ORS 197.195 is amended to read:

197.195. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.797.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction

of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.797. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision.

(6) A city shall apply the procedures in this section, and only the procedures in this section, to a limited land use decision, even if the city has not incorporated limited land use decisions into land use regulations, as required by ORS 197.646 (3), except that a limited land use decision that is made under land use standards that do not require interpretation or the exercise of policy or legal judgment may be made by city staff using a ministerial process.

SECTION 45a. Section 46 of this 2024 Act is added to and made a part of ORS chapter 197.

SECTION 46. Applicability of limited land use decision to housing development. (1) The Housing Accountability and Production Office may approve a hardship exemption or time extension to ORS 197.195 (6), during which time ORS 197.195 (6) does not apply to decisions by a local government.

(2) The office may grant an exemption or time extension only if the local government demonstrates that a substantial hardship would result from the increased costs or staff capacity needed to implement procedures as required under ORS 197.195 (6).

(3) The office shall review exemption or time extension requests under the deadlines provided in section 39 (3) of this 2024 Act.

SECTION 47. Sunset. Section 46 of this 2024 Act is repealed on January 2, 2032.

SECTION 47a. Operative date. Section 46 of this 2024 Act and the amendments to ORS 197.015 and 197.195 by sections 44 and 45 of this 2024 Act become operative on January 1, 2025.

ONE-TIME SITE ADDITIONS TO URBAN GROWTH BOUNDARIES

SECTION 48. Sections 49 to 59 of this 2024 Act are added to and made a part of ORS chapter 197A.

SECTION 49. Definitions. As used in sections 49 to 59 of this 2024 Act:

(1) "Net residential acre" means an acre of residentially designated buildable land, not including rights of way for streets, roads or utilities or areas not designated for development due to natural resource protections or environmental constraints.

(2) "Site" means a lot or parcel or contiguous lots or parcels, or both, with or without common ownership.

SECTION 50. City addition of sites outside of Metro. (1) Notwithstanding any other provision of ORS chapter 197A, a city outside of Metro may add a site to the city's urban growth boundary under sections 49 to 59 of this 2024 Act, if:

(a) The site is adjacent to the existing urban growth boundary of the city or is separated from the existing urban growth boundary by only a street or road;

(b) The site is:

(A) Designated as an urban reserve under ORS 197A.230 to 197A.250, including a site whose designation is adopted under ORS 197.652 to 197.658;

(B) Designated as nonresource land; or

(C) Subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland;

(c) The city has not previously adopted an urban growth boundary amendment or exchange under sections 49 to 59 of this 2024 Act;

(d) The city has demonstrated a need for the addition under section 52 of this 2024 Act;

(e) The city has requested and received an application as required under sections 53 and 54 of this 2024 Act;

(f) The total acreage of the site:

197.195 Limited land use decision; procedures. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.797.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.797. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision. [1991 c.817 §3; 1995 c.595 §1; 1997 c.844 §1]

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)

July 8, 2024 — Work Session

- Water System Master Plan Update (*Carryover from June 24, 2024 work session*)
- Public Outreach Plan and Web Updates for City Center Revitalization Plan

July 22, 2024 — Work Session

- Work Session on File# 1-CP-24/1-Z-24, Implementing the Yaquina Bay Estuary Management Plan
- Updated Schedule for South Beach Island Annexation Project

August 12, 2024 — CANCELLED

August 26, 2024 — Work Session

- Comprehensive Plan Streamlining Project Sample Chapter (Beth Young)
- Review Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Endangered Species Act Pre-Implementation Requirements

August 26, 2024 — Regular Session

- File #3-Z-23, Hearing on Amendments to Ord #2222 to Implement Adjustment Provisions of Governor's Housing Bill (SB 1537)
- File #1 CP-24/1-Z-24, Hearing on Comp Plan/Zoning Amendments Implement the Updated Estuary Management Plan

September 9, 2024 — Work Session

- Review Policy/Code Options from 8/26/24 Hearing on File #1 CP-24/1-Z-24, Comp Plan/Zoning Amendments Implement the Updated Estuary Management Plan
- Implementation of Limited Land Use Decision Provisions of Governor's Housing Bill (SB 1537)

September 23, 2024 — Work Session

- Update on State of Oregon Housing Needs Analysis Rulemaking
- Scope of Work for Updating Newport's System Development Charge Methodology

September 23, 2024 — Regular Session

- Continued Hearing on File #1 CP-24/1-Z-24, Hearing on Comp Plan/Zoning Amendments Implement the Updated Estuary Management Plan

October 14, 2024 — Work Session

- Placeholder for Comprehensive Plan Streamlining Project Full Document (Beth Young)
- Placeholder for Discussion on Nye Beach Parking / ePermitting Outreach
- Web Map Updates with New Aerial Imagery and Lidar Information

October 14, 2024 — Regular Session

- Public Hearing File #1 & 2-PD-24, Wilder Remainder Phase (Planned Development, Final Development, Preliminary Subdivision Plat)
- Public Hearing File #2-SUB-24, 4-lot Townhouse Subdivision on Nye Street
- Placeholder for Appeal of File #1-MRP-24, Reconfiguration of 5th Street Lots