

THE CITY OF WHEELER, OREGON COMPREHENSIVE PLAN
Statement of Goals and Policies

GOAL 16: ESTUARINE RESOURCES

INTRODUCTION:

Wheeler citizens strongly support the protection and enhancement of natural features that include estuaries and wetlands. The Nehalem Bay area has a rich and diverse estuarine environment and its protection should be prioritized in the development and planning for land use in our area.

GOAL:

To recognize and protect the unique environmental, economic, and social values of the Nehalem Bay Estuary Complex 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 estuarine resources.

POLICIES:

1. COORDINATED ESTUARY MANAGEMENT PROCESS:

- A. Working together in cooperation, Tillamook County, the City of Wheeler, the City of Nehalem, the Port of Nehalem, and state and federal agencies, prepared the Nehalem Bay Estuary Management Plan.
- B. The Nehalem Bay Estuary Management Plan consists of five elements:
 - 1. A factual base;
 - 2. A collection of management unit designation maps;
 - 3. A dredge material disposal plan;
 - 4. A mitigation and restoration plan; and
 - 5. Policies for uses and activities.
- C. Portions of the Nehalem Bay Estuary Management Plan have been incorporated into the Wheeler Comprehensive Plan.
- D. The management unit designations within Wheeler have been incorporated into the Land Use Map.
- E. Portions of the Tillamook County Comprehensive Plan that relate to estuary management units within the City of Wheeler's Urban Growth Boundary are hereby adopted by reference into the Wheeler Comprehensive Plan: Management Unit Description, Dredge Material Disposal Plan, and Mitigation and Restoration Plans.

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- F. The estuary and shoreland definitions are adopted as part of the Wheeler Zoning Ordinance.

2. ESTUARY MANAGEMENT UNIT DESCRIPTIONS

- A. The City of Wheeler, Oregon includes areas within the Estuary Natural Management Unit designated as Estuary Natural Zone (EN), and areas within the Estuary Development Management Unit designated as Estuary Development Zone (ED).

- B. Estuary Natural Zone:

Within the Estuary Natural (EN) Zone estuarine habitat shall be designated and managed consistent with the following policies:

1. The Estuary Natural (EN) Zones shall include, at a minimum, all major tracts of salt marsh, tidflats, seagrass, and algae beds except where an acknowledged Goal 16 Exception has been adopted by the City.
2. The purpose of the Estuary Natural Zone is to:
 - a. assure protection of significant fish and wildlife habitats; and
 - b. retain diversity of native ecosystems and continued biological productivity within each estuary.
3. The management objective in the Estuary Natural Zone is to:
 - a. preserve those natural resources in recognition of dynamic, natural, geological, and evolutionary processes.
 - b. ensure permissible uses within the Estuary Natural Management shall recognize the low tolerance level of human intensive use.

- C. Estuary Development Zone: Within the Estuary Development (ED) Zone estuarine habitat shall be designated and managed consistent with the following:

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1. Estuary Development (ED) Zones shall include:
 - a. areas which contain public facilities which are utilized for shipping, handling or storage of water-borne commerce, or for moorage of fueling of marine craft;
 - b. subtidal channel areas adjacent or in proximity to the shoreline which are currently used or needed for shallow draft navigation including authorized maintained channels and turning basins;
 - c. areas of minimal biologic significance;
 - d. where an acknowledged Goal 16 exception has been adopted by the City, areas of biologic significance which are potentially suitable for commercial, recreational, or industrial development, due to their proximity to subtidal channels, developed or developable shorelands or developed estuarine areas, and to the availability of services;

2. The management objective in the Estuary Development Zone is to:
 - a. provide for long-term maintenance, enhancement, expansion or creation of structures and facilities for navigational and other water-dependent commercial, industrial or recreational uses;
 - b. provide for the expansion or creation of other commercial, industrial or recreational facilities subject;
 - c. ensure that developments that require surface water appropriation and diversion shall be located where stream flows and water quality are not reduced below the minimum recommended levels;
 - d. leave non-hazard snags adjacent to streams, sloughs, and in forested areas in order to increase habitat complexity and diversity;
 - e. encourage a reduced tax assessment for privately owned Estuary Development Zone areas which have been identified as important estuarine or shoreland natural habitat and resource areas to be designated as open space.

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3 IMPLEMENTATION

- A. The City shall review local, state and federal permit applications for uses and activities within estuaries for consistency with the Wheeler Comprehensive Plan and Zoning Ordinance. Where applicable, procedures for review shall be developed as part of the Wheeler Zoning Ordinance.
- B. The City conducted a resource inventory to ensure open space, protect scenic and historic areas, and natural resources for future generations, and promote healthy and visually attractive environments in harmony with the natural landscape character. These areas are:
 - 1. Botts Marsh, at the north end of Wheeler, west of US Highway 101.
 - 2. Zimmerman Marsh, at the north end of Wheeler, east of US Highway 101.
 - 3. The lowland flood areas identified in Wheeler by the National Flood Insurance Program (NFIP) Flood Insurance Rate Map (FIRM).
 - 4. The wooded area between US Highway 101 and the Nehalem River from Paradise Cove 400 east.
- C. Administration of inventoried resources shall be implemented through development ordinances. During application review, the economic, social, environmental, and energy consequences on the resource shall be considered as part of the decision process.
- D. Where appropriate, resources shall be preserved to prevent erosion and sedimentation and provide support for anadromous fish habitat, to provide upland bird habitat, to protect steep slopes, to mitigate geologic or flooding hazards, to buffer conflicting land uses, or to provide areas for passive or active forms of recreation.
- E. Where resources inventoried are also subject to inventory and possible protection under Goal 16 Estuarine Resources, and Goal 17 Coastal Shorelands, Goal 16 and Goal 17 shall be applied.
- F. The review of actions which would potentially alter the estuarine ecosystem shall include an impact assessment unless this is already part of the Comprehensive Plan.
- G. The City shall notify all local, state and federal agencies with mandates and authorities for planning permit issuance and resource decision making, so they have the opportunity to comment to the City before an assessment is made. The City shall incorporate comments received into applicable decisions.

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- H. The following agencies shall be provided notice of any application: Department of Land Conservation and Development, the Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Army Corps of Engineers, Oregon Department of Environmental Quality.
- I. The City will work with Tillamook County on the preparation of impact assessments, resource capability determinations and necessary revisions to estuary policies and standards.
- J. The City will cooperate with other jurisdictions on the Nehalem Bay in revising the Estuary Plan when necessary.
- K. The City of Wheeler will decide in coordination with the U.S. Army Corps of Engineers and the Department of State Lands whether an area has reverted to estuarine habitat.
- L. The City supports the efforts of the Tillamook Soil and Water Conservation District to maintain and improve streamside habitat along the County's rivers and streams.
- M. For the purpose of Goal 16, agricultural use means using an area for pasture several months of the year or harvesting this area once a year.

4. SPECIFIC USE AND ACTIVITY POLICIES:

A. AQUACULTURE FACILITIES

- 1. In Estuary Natural (EN) zones, aquaculture and water-dependent portions of aquaculture facilities shall be limited to temporary or easily removable benthic or pelagic structures (stakes, racks, trays, long lines or rafts), that will not require dredging or fill other than incidental dredging for harvest of benthic species or removal of in-water structures.
- 2. The use of aquaculture projects (fish hatcheries and fish release/recapture operations) to replenish natural stocks is encouraged.
- 3. The City recognizes the statutory authority of the Oregon Department of Fish and Wildlife and the Oregon Department of Agriculture to regulate aquaculture and oyster culture. These departments shall forward their findings to the City prior to issuance or denial of aquaculture permits.

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4. Existing aquaculture facilities [are] and areas designated as possessing significant aquaculture potential shall be identified and protected from conflicting uses or uses that would create water quality problems.
5. In the Estuary Natural Zone (EN), aquaculture shall be allowed only where it is determined to be consistent with the resource capabilities and purpose of the management unit. This determination shall be made by the City in coordination with the Oregon Department of Agriculture and the Oregon Department of Fish and Wildlife.
6. Aquaculture facilities in Estuary Development (ED) zones will not preclude the provision of maintenance of navigation or other needs for commercial and industrial water-dependent use, and will not prevent the use of shorelands equally suited for water-dependent development.

B. DIKING

1. Maintenance and repair of existing dikes, tide gates, drainage systems, farm roads and bridges and other existing farm structures shall be permitted within all estuary zones and shoreland areas. Dike maintenance and repair shall be permitted for:
 - a. existing serviceable dikes (including those that allow some seasonal inundation); and
 - b. dikes that have been damaged by flooding, erosion or tide gate failure where the area behind the dike has not reverted to estuarine habitat; and
 - c. dikes that have been damaged by flooding, erosion or tide gate failure, where the area behind the dike has reverted to estuarine influence only if this area is in the Farm, F-1 Zone and has been in agricultural use for 3 of the last 5 years and reversion to estuarine habitat has not occurred more than 5 years prior.
2. Construction of temporary (60 days or less) dikes for the purposes of flood protection in emergency situations or in the interest of safety or welfare of the public shall be permitted within all estuary zones.
3. Dredging within estuarine waters, intertidal areas, or tidal wetlands to obtain fill for dike repair or maintenance shall not be permitted. However, dredged material from an approved dredging project may be used for dike repair or maintenance. Dredged material stockpile sites shall be used as a source of fill material for dike repair and maintenance whenever practicable.

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4. New diking of intertidal areas and tidal marshes shall be limited to Estuary Development (ED) zones and shall be permitted only:
 - a. for a water dependent use that requires an estuarine location or is specifically allowed by the management unit or zone; and
 - b. if adverse impact is avoided or minimized to be consistent with the purposes and resource capacity of the area; and
 - c. a need and a substantial public benefit is demonstrated and the use or alteration does not unreasonably interfere with public trust rights.

C. BOAT RAMPS, DOCKS, AND MOORAGES

1. Maintenance and repair of existing docks and moorages shall be permitted within all estuary zones.
2. To preserve significant fish and wildlife habitats and provide for continued biological productivity, new docks and moorages shall not be permitted within Estuary Natural (EN) zones.
3. Safe navigational access to boat ramps, docks, and moorages shall be provided and maintained.
4. New boat ramps, docks and moorages shall be allowed only where sufficient back-up land exists without the need to fill tidelands or marshlands.
5. To encourage the most efficient use of waterfront and water surface area, alternatives to individual, single purpose docks and moorages (such as cooperative use facilities, mooring buoys, or dry land storage) are encouraged.
6. New subdivisions and planned developments in areas adjacent to estuaries, rivers, streams and coastal lakes shall provide for cooperative use facilities whenever possible.
7. Conflicts with navigation and other water surface uses, such as commercial fishing or recreational boating, shall be avoided or minimized.
8. Boat ramps for public use [shall be allowed where consistent with the resource capabilities of the area and the purposes of the management zone.

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D. DREDGED MATERIAL DISPOSAL (DMD)

1. The Nehalem Bay Dredged Material Disposal Plan, the DMD Plan, shall evaluate dredging needs over a five year period and shall establish priorities on areas for dredged material disposal based on the following economic, engineering and environmental considerations:
 - a. engineering feasibility;
 - b. probable method of dredging;
 - c. distance from dredging project;
 - d. elevation;
 - e. cost of site acquisition, preparation, and containment of dredged materials;
 - f. size of site;
 - g. cost of, ability, or necessity to revegetate or develop on top of the dredged material;
 - h. impacts on biological productivity, aquatic community and habitat[s] water quality, wetlands, and floodplains;
 - i. ownership (public or private);
 - j. habitat, scenic, recreational, archaeological, or historic values of the site; and
 - k. conformity of the final use, after dredged material disposal, with the Comprehensive Plan.

2. Whenever practicable ocean disposal in an approved ocean disposal site shall be the preferred method of disposal of dredged materials. The designation of additional ocean disposal sites shall occur only after a formal site review and impact analysis by all federal and state agencies with regulatory authority, and is subject to final approval by the U.S. Army Corps of Engineers and the Environmental Protection Agency. Copies of site review and impact analysis shall be made available.

3. When engineering or economic considerations preclude the use of approved ocean disposal sites for dredged materials disposal, sites identified in the Nehalem Bay DMD Plan as "Presently Acceptable" shall be used for dredged material disposal.

4. Sites identified in the Nehalem Bay DMD Plan as "Presently Unacceptable" for dredged material disposal shall be used for disposal of dredged material only after an amendment to the Wheeler Comprehensive Plan, Zoning Ordinance, and Zoning Map. If an exception to the Oregon Statewide Planning Goal is required, the exception shall be included as part of the amendment.

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5. Coordination with affected state and federal resource agencies shall occur during this amendment process. State and federal permits must be obtained prior to disposal of dredged material.
6. As needs arise, additional disposal sites shall be approved for dredged material disposal. Designation of additional dredged material disposal sites shall be coordinated with state and federal resource agencies with regulatory authority over dredged material disposal. The Wheeler Comprehensive Plan and Zoning Ordinance shall be amended as required. If an exception to an Oregon Statewide Planning Goal is required, the exception shall be included in part of the amendment.
7. Sites identified as priority sites in the Nehalem Bay DMD Plan shall be preserved for future dredged material disposal use. When a priority site is removed, the DMD Plan shall be amended consistent with the Wheeler Comprehensive Plan.
8. Tillamook County, in conjunction with local ports, affected local jurisdictions, and state and federal resource agencies, shall review the Nehalem Bay DMD Plan at no more than five year intervals to re-examine dredging needs, site availability, new permit requirements, and degree of plan implementation.
9. Use of dredged material from navigational or other dredging actions, as fill for approved fill projects shall be encouraged. Prior determination shall be made to ensure that the structural characteristics of the material are suitable for the intended use.
10. Whenever practicable, stockpile sites of dredged material suitable for use as fill shall be established and the dredged material sold. Particular emphasis shall be given to establishing stockpile sites in areas where acceptable disposal sites are presently or likely to be limited.
11. Flow-lane disposal of dredged material shall be limited to ED zones and shall be allowed only where monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of the effected natural and conservation management units.
12. Dredged material disposal is subject to the requirements of the Clean Water Act of 1977, Oregon Fill or Removal Laws and other state and federal laws which regulate the disposal of dredged materials.

E. DREDGING IN ESTUARINE WATER, INTERTIDAL AREAS AND TIDAL WETLANDS

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1. Dredging in estuarine waters, intertidal areas and tidal wetlands shall be allowed only if required for:
 - a. navigation, port facilities, marinas, or other water-dependent uses that require an estuarine location; or
 - b. an approved active restoration, estuarine enhancement, or mitigation project deemed necessary to fulfill a public need and for the future environmental well being of the estuary subject to Wheeler Comprehensive Plan Restoration and Mitigation policies and standards; or
 - c. on-site maintenance of existing drainage tiles, drainage ditches or tide gates; or
 - e. installation or maintenance of bridge crossing support structures, electrical transmission line support structures, or water, sewer, gas, or communication lines; or
 - f. incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks; or
 - g. temporary alterations.
2. Proposed dredging in estuarine waters, intertidal areas, or tidal wetlands shall be allowed only if:
 - a. required for navigation or other water-dependent uses that require an estuarine location or are specifically allowed by the management unit or zone; and
 - b. a need and a substantial public benefit is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - c. no feasible alternative upland location exists; and
 - d. adverse impacts are avoided or minimized to be consistent with the purposes of the area.
3. Dredging shall be the minimum amount possible to accomplish the proposed use.
4. Dredging in intertidal areas or tidal wetlands shall be subject to the requirements of the Wheeler Comprehensive Plan Mitigation policies and the Oregon Fill and Removal Laws (ORS 541.605-541.695).

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5. Proposals for new dredging projects in the Nehalem Bay shall be reviewed against the long-range Nehalem Bay DMD Plan to ensure that sufficient DMD sites are available to meet initial and maintenance dredged material disposal needs.
6. Dredging within estuarine water, intertidal areas or tidal wetlands is subject to the requirements of the Oregon Fill and Removal Law (ORS 541.065-541.665), the Rivers and Harbors Act of 1899, and other applicable state and federal laws.
7. Dredging in the Estuary Natural (EN) zones shall be permitted only if the City determines, in coordination with the Oregon Department of State Lands and the U.S. Army Corps of Engineers, that dredging is consistent with the resource capabilities of the area and purposes of the management unit, and if required for:
 - a. an approved restoration or estuarine enhancement project subject to Wheeler Comprehensive Plan Restoration and Estuarine Enhancement Policies and Standards;
 - b. on-site maintenance of existing drainage tiles, drainage ditches, tide gates, bridge crossing support structures, or electrical transmission line support structures;
 - c. installation or maintenance of water intake facilities, sewer outfalls, gas, or communications lines;
 - d. installation or maintenance of an electrical transmission line or line support structure;
 - e. bridge crossing support structures;
 - f. temporary alterations;
 - g. public boat ramps; or
 - h. incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

F. FILL IN ESTUARINE WATER, INTERTIDAL AREAS, AND TIDAL WETLANDS

1. Construction of facilities or structures on pilings is preferred over construction on fill.
2. Fill for the purpose of on-site maintenance and repair of existing man-made structures or facilities or the construction of authorized temporary low-water bridges shall be permitted within all estuary zones.
3. New fill within estuarine waters, intertidal areas, or tidal wetlands shall be permitted only if:
 - a. required for navigation or water-dependent uses or other uses for which an estuarine location is required; and
 - b. a need and a substantial public benefit are demonstrated, and the use or alteration does not unreasonably interfere with public trust rights; and

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- c. no feasible alternative or upland locations exist for the portion of the use requiring fill; and
 - d. no practicable alternative design or construction methods exist which could eliminate the use of fill; and
 - e. potential adverse impacts have been identified and avoided or minimized to be consistent with the purposes of the area and the Wheeler Comprehensive Plan.
4. The placement of fill shall be consistent with the protection of property, estuarine habitat and diversity, aesthetics, water quality and recreational resources. Loss of estuarine surface area and volume shall be avoided or minimized and/or mitigated.
5. Fill within intertidal areas or tidal wetlands shall be subject to the requirements outlined in the mitigation policies and Oregon Fill and Removal Laws ORS 541.605 to 541.665.
6. New fill in the Estuary Natural (EN) zone shall be allowed only for:
- a. an approved active restoration or estuarine enhancement project, subject to Wheeler Comprehensive Plan Restoration and Enhancement Policies and Standards); or
 - b. on-site maintenance of dikes or bridge crossing support structures; or
 - c. temporary alterations; or
 - d. installation of public boat ramps or bridge crossing support structures.
7. New fill in Estuary Development (ED) zones shall be permitted only for:
- a. an approved active restoration or estuarine enhancement project subject to Wheeler Comprehensive Plan Restoration and Enhancement Policies and Standards;
 - b. on-site maintenance of dikes or bridge crossing support structures;
 - c. temporary alterations;
 - d. installation of or bridge crossing support structures;
 - e. temporary alterations;
 - f. minor navigational improvements;
 - g. water-dependent portions of aquaculture facilities;
 - h. water-dependent recreational facilities;
 - i. navigational structures and navigational improvement;
 - j. water-dependent uses that require an estuarine location;
 - k. dredged material disposal, in conjunction with an approved fill project;
 - l. communication facility support structures;
 - m. boat ramps; or
 - n. flood control structures or structural shoreline stabilization subject to Wheeler Comprehensive Plan Shoreline Stabilization Policies and Standards if:

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- (1) required to protect a water-dependent use or an existing use, facility or structure; and
 - (2) land use management practices and non-structural solutions are inadequate to protect the use.
8. In certain ED zones for which an exception has been taken in the Tillamook County Comprehensive Plan to the overall Goal 16 requirements for dredge and fill, fill shall also be allowed for non-water dependent use and for which:
- a. no feasible alternative upland locations exist for the portion of the use requiring fill; and
 - b. need and a substantial public benefit are demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - c. no practicable alternative design or construction methods exist which would eliminate the use of fill; and
 - d. potential adverse impacts have been identified and avoided or minimized and/or mitigated.

H. FISHERIES

1. Intertidal flats, tidal marshes, subtidal and intertidal seagrass and algae beds and other estuarine areas of major significance for rearing and other life stages of marine fish and invertebrates that have been identified in estuary inventory reports shall be protected from conflicting uses through designation as Estuary Natural (EN).
2. In order to maintain and improve fish runs and fisheries in the area, wise management of fishery resources, fish enhancement programs, and maintenance of reproductive stocks are strongly supported.
3. The City shall designate adequate Estuary Development (ED) Zone to provide dock and moorage space for present and anticipated future commercial and sport fishing vessels and for fish processing, cold storage and other water-dependent support facilities.
4. Traditional sport and commercial fishing areas, shellfish harvesting areas, and subtidal shell fish seed beds should be protected when dredging, filling, pile driving, constructing pile dikes or rock jetties, or other disruptive in-water activities are permitted.
5. The City shall encourage the maintenance, improvement or enhancement of anadromous fish habitat or shellfish habitat by seeking to assign appropriate estuary zones, by encouraging the establishment of protective stream corridors, and by controlling excessive sedimentation from shorelands.

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G. ENERGY FACILITIES AND UTILITIES

1. Maintenance and repair of existing energy facilities and utilities shall be permitted in all Estuary Zones.
2. In selecting sites for development of new energy facilities and utilities, the City shall weigh economic considerations, the need for services in a particular area, and social benefits against environmental losses within estuaries. Site priorities from highest to lowest are:
 - a. non-shoreland sites;
 - b. shoreland sites;
 - c. Estuary Development (ED) zones;
 - d. Estuary Natural (EN) zones;
3. New energy facilities and utilities shall be permitted within estuarine waters, intertidal areas or tidal wetlands only if:
 - a. a need and a substantial public benefit are demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - b. no feasible alternative or upland locations exist; and
 - c. adverse impacts are avoided or minimized.
 - d. Waste treatment plants shall not be located within estuarine waters, intertidal areas, and tidal wetlands.
4. In the Estuary Natural (EN) Zone, new energy facilities and utilities shall be permitted only if consistent with the resource capabilities of the area and the purpose of the management unit, and shall be limited to electrical transmission lines, line support structures, and phone water, sewer, or gas lines.
5. New energy facilities and utilities in Estuary Development (ED) zones shall be permitted where consistent the resource capabilities of the area, the purposes of the management unit, and with the maintenance of navigation and other needed public, commercial and industrial uses.

H. FORESTRY AND THE FOREST PRODUCTS INDUSTRY

1. New or expanded log handling, sorting and storage areas shall be limited to Estuary Development (ED) zones, and shall be allowed only if:
 - a. the handling, sorting and storage area is an integral part of the process of water-dependent transportation of logs; and

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- b. a need and a substantial public benefit are demonstrated and the use or alteration does not interfere with public trust rights; and
 - c. no feasible alternative upland locations exist; and
 - d. adverse impacts are minimized.
2. The City, in conjunction with the County, shall cooperate with the Department of Environmental Quality to develop standards for in-water log storage and handling facilities prior to their establishment in Tillamook County.

J. INDUSTRIAL AND COMMERCIAL USES IN ESTUARINE WATERS, INTERTIDAL AREAS AND TIDAL WETLANDS

1. Maintenance and repair of existing industrial and commercial uses shall be permitted in all estuary zones.
2. Expansion and new construction of industrial and commercial uses other than water-dependent recreation facilities shall be limited to ED designated areas.
3. The following shall be considered in the designation of ED zones for the purpose of new development or expansion of existing authorized industrial or commercial uses:
 - a. value of the area to local communities as an economic resource;
 - b. proximity to land transportation facilities;
 - c. availability of water and sewer service and power supplies;
 - d. proximity to urban or urbanizable areas;
 - e. availability of developable shorelands;
 - f. degree of existing estuarine or shoreland alteration;
 - g. type, extent, and scarcity of biologic resources in the area; and
 - h. proximity to navigation channels.
4. Development and improvement of existing commercial and industrial sites is encouraged prior to development of new commercial and industrial sites.
5. Water-dependent industrial facilities include, but are not limited to:
 - a. piers, wharves, and other terminal and transfer facilities for passengers or water-borne commerce such as fish, shellfish, or timber or timber products; and
 - b. water intake and discharge facilities of timber processing plants; and

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- c. portions of facilities for the extraction of minerals, aggregate, petroleum, natural gas, earth products or geothermal resources (ORS 522.010) which require access to water during the extraction process;
 - d. portions of facilities for the refining or processing of minerals, aggregate, earth products, or geothermal resources (ORS 522.010) which require access to a water body for intake or release of water during the refining or processing procedure;
 - e. portions of facilities for manufacturing, assembly, fabrication, maintenance or repair of marine craft or marine equipment which require access to a water body as part of the manufacture, assembly or fabricating process, due to the size of the craft or equipment which is being constructed;
 - f. portions of aquaculture facilities, including hatchery sites or fish release/recapture sites which require access to or use of water; and
 - g. in-water handling, sorting and storage of logs in association with water-borne transportation of logs.
6. Water-dependent commercial facilities include, but are not limited to, commercial marinas and moorages (including seaplane moorages) and ancillary facilities such as marine craft or equipment repair facilities or fueling stations.
7. The City may determine other uses to be water-dependent if the use can only be carried out on, in, or adjacent to water, and the location or access is needed for:
- a. water-borne transportation;
 - b. recreation; or
 - c. a source of water (such as energy production, cooling of industrial equipment or wastewater, or other industrial processes).
8. Industrial uses shall be identified as water-related industrial uses on a case-by-case basis, with consideration given to the public loss of quality in goods or services which would result if the use were not offered adjacent to water. Water-related industrial uses could include:
- a. fish or shellfish processing plants; and
 - b. warehousing and/or other storage areas for marine equipment or water-borne commerce.
9. Commercial uses shall be identified as water-related commercial uses on a case-by-case basis with consideration given to the public loss of quality in goods or services which would

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result if the use were not offered adjacent to water. Water-related commercial uses could include:

- a. fish or shellfish wholesale outlets;
 - b. marine craft or marine equipment sales establishments;
 - c. sport fish cleaning, smoking or canning establishments;
 - d. charter fishing offices;
 - e. retail trade establishments providing primarily products necessary for the commercial and recreational fishing industry, such as ice, bait, tackle, nautical charts, gasoline, or other products incidental to, or used in conjunction with a water-dependent use; or
 - f. restaurants which provide a waterfront view.
10. The City may determine other uses to be water-related if the use:
- a. provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses); and
 - b. if not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use.
11. Multipurpose and cooperative use of piers, wharves, parking areas, or handling and storage facilities shall be provided for, whenever practicable.
12. Water-related and non-dependent, non-related industrial and commercial uses in Estuary Development zones shall be limited to those uses which:
- a. do not require the use of fill; and
 - b. do not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.

K. LAND TRANSPORTATION FACILITIES

1. Maintenance and repair of existing roads, railroads, airports, bridge crossing support structures, and bridge approach ramps, and establishments of low water bridges shall be allowed in all estuary zones.
2. Replacement of bridge crossing support structures and bridge approach ramps may be considered a form of maintenance if the resulting bridge support structure or ramp is the minimum size necessary to accommodate the same number of traffic lanes as exist on that portion of the highway.

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3. In selecting sites for development of new land transportation facilities, priorities are, from highest to lowest:
 - a. upland sites;
 - b. shoreland sites;
 - c. Estuary Development (ED) zones.

The City, however, realizes that this priority list is subject to modification by economic considerations, or by the need for services in a particular area.

4. New land transportation facilities within estuarine waters, intertidal marshes or tidal wetlands shall be permitted only if:
 - a. no feasible alternative upland route exists; and
 - b. a need and a substantial public benefit are demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - c. adverse impacts are avoided or minimized.
5. New land transportation facilities in Estuary Development (ED) zones shall be permitted only if consistent with the purposes of the management area and the maintenance of navigation and other allowed public commercial and industrial water-related uses.
6. When bridge crossing support structures are needed, the amount of estuarine surface area occupied shall be the minimum amount possible.
7. Bridges, piers, and trestles shall be designed so as not to impair tidal flow in respect to volume, velocity, or direction.
8. Proposals for new land transportation facilities shall be reviewed locally to determine land and water use compatibility and resource capabilities.
9. Construction and maintenance of land transportation facilities shall be timed and conducted so that mass soil wasting or excessive surface erosion does not occur. State, county, and U.S. Highway Departments, and natural resource agencies shall coordinate with the City of Wheeler in order to meet this objective.
10. In order to preserve significant fish and wildlife habitats and maintain biological productivity, new land transportation facilities in Estuary Natural (EN) zones shall be limited to low-water bridges, bridge crossings and bridge crossing support structures. Bridge crossing support structures are allowed only if consistent with the resource capabilities of the area and the purposes of the management unit.

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11. Dredged material stockpile sites shall be used as a source for fill material for land transportation facilities whenever practicable.
12. Roadway construction should be scheduled to avoid critical periods of breeding, feeding and migration of coastal species.

L. MINING AND MINERAL EXTRACTION

1. Petroleum extraction and drilling operations shall not be allowed in estuarine waters, intertidal areas, tidal wetlands, or beneath aquatic areas.
2. To ensure the preservation of significant fish and wildlife habitats and the maintenance of biological productivity within estuaries, mining and mineral extraction shall not be permitted within Estuary Natural (EN) and Estuary Development (ED) Zones.

M. MITIGATION

1. Dredging or fill within intertidal areas or tidal wetlands shall be mitigated by the restoration or enhancement of estuarine areas within the Nehalem Bay area consistent with the priorities of the Nehalem Bay Estuary Management Plan.
2. Mitigation projects shall comply with the requirements of Oregon Fill and Removal Laws (ORS 541.605-541.665).
3. Mitigation sites shall be identified and shall generally correspond to the types and quantity of intertidal areas in the Nehalem Bay Estuary Management Plan.
4. The City shall coordinate with Tillamook County, local ports, and affected local jurisdictions to preserve priority sites for future mitigation use.

N. NAVIGATIONAL STRUCTURES AND NAVIGATIONAL AIDS

1. Navigational aids (beacons, buoys, channel markers) and maintenance and repair of existing navigational structures (breakwaters, jetties, groins, and pile dikes) shall be permitted within all estuary zones. Expansion or new construction of navigational structures is only permitted in Estuary Development (ED) zones.
2. Navigational structures shall be permitted only if:

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- a. required for navigation or in conjunction with a water-dependent recreational, commercial or industrial use for which there is a need and a substantial public benefit are demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- b. the need cannot be met by non-structural solutions; and
- c. adverse impacts on water currents and erosion and accretion patterns are avoided or minimized to be consistent with the purposes of the area.

O. PILING/DOLPHIN INSTALLATION

- 1. Replacement of existing pilings and dolphins shall be permitted within all estuary zones.
- 2. In the Estuary Natural (EN) zone, new pilings shall be limited to:
 - a. individual unconnected pilings in conjunction with an approved aquaculture facility or a navigation aid;
 - b. temporary alterations;
 - c. active restoration and estuarine enhancement.
- 3. Piling and dolphin installation in the Estuary Development (ED) zone shall be permitted if:
 - a. required in conjunction with navigation or water-dependent use for which no feasible alternative upland location exists; or
 - b. required in conjunction with a water-related use or a non-dependent, non-related use, only if consistent with the maintenance of navigation and other needed public and industrial water-dependent uses.
- 4. Replacement of existing pilings and dolphins and installation of new pilings and dolphins shall be subject to the requirements of the Rivers and Harbors Act of 1899, and other applicable state and federal laws.

P. PUBLIC ACCESS TO THE ESTUARIES AND ITS SHORELANDS

- 1. The City recognizes the value of maintaining and improving public access to estuaries and its shorelands.
- 2. Further acquisition, sale or development of estuaries and shorelands owned by the county, federal, state and local governments and lands held in private ownership shall be carried out in a manner to retain existing public access and maximize future public access to these

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publicly owned shorelands, consistent with resource capabilities and site sensitivity to human use. To this end:

- a. Existing public ownership, rights-of-way, and similar public easements which provide access to estuaries and shorelands shall be retained or replaced if sold, exchanged or transferred.
 - b. Rights-of-way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.
 - c. The City should avoid closing their lands to public use unless protection of fragile resources outweighs the benefits to be derived from public use.
 - d. All entities providing or supporting public access to the estuaries and shorelands should give particular attention to protecting areas from over-use and to preventing potential damage to resources.
 - e. Public access to shorelands should be improved where feasible and consistent with authorized use.
 - f. The City should consider the purchase of conservation or scenic easements whenever feasible.
 - g. The City supports the voluntary use of the open space special tax assessment law when it will result in property owners maintaining natural areas or providing visual or physical access to public areas.
 - h. Public access to estuaries and shorelands shall be provided consistent with the Americans with Disabilities Act Accessibilities Guidelines.
3. The private use of privately owned intertidal areas, tidal wetlands and shorelands is legitimate and is protected against encroachment. Public access through and the use of, private property shall require the consent of the owner, and is trespass unless appropriate easements and accesses have been acquired in accordance with the law.
 4. Where shoreline developments are allowed, they should not exclude the public from shoreline access to areas traditionally used for fishing, hunting or other shoreline activities.
 5. The need to retain open space and improve public access to estuaries and shorelands is important in urban and urbanizing areas. Industrial and commercial facilities shall, where feasible, provide physical or visual access to estuaries and shorelands.

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6. The City shall carry out a program of providing public access to Nehalem Bay by retaining existing public ownership, rights-of-way, and similar public easements which provide access to coastal waters or replacing such access if they are sold, exchanged or transferred. Rights-of-way may be vacated so long as equal or improved access is provided as part of a development project.

R. RECREATION AND RECREATIONAL FACILITIES

1. Maintenance and repair of existing docks, moorages, marinas, and other recreational facilities shall be permitted within all estuary zones and shoreland zones.
2. Low-intensity water-dependent recreation shall be permitted within all estuary zones and shoreland zones.
3. To preserve significant fish and wildlife habitat and provide for continued biological productivity, recreation in the Estuary Natural (EN) zone shall be limited to boat ramps for public use where no dredging or fill for navigational access is needed.
4. Recreational off-road vehicle use shall not be permitted in estuarine waters, intertidal areas or tidal wetlands.
5. Consistent with the need to retain open space and improve publicly owned access local, state, and federal agencies are encouraged to provide for recreational facilities and public access points to ocean, estuaries, rivers and shorelands.
6. Dredge, fill, shoreline stabilization, or piling/dolphin installation in conjunction with recreational facilities shall be subject to the respective policies and standards for these activities.

R. RESTORATION AND ENHANCEMENT

1. Habitat types, resources or amenities which are in shortest supply as compared with historical abundance shall be identified as part of the restoration plan element of the Tillamook County Comprehensive Plan, and shall be priority sites for restoration projects.
2. Restoration and enhancement activities may serve as part of a mitigation project, subject to the requirements of the Oregon Fill and Removal Laws (ORS 541.605-541.665) and other applicable state and federal laws.

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3. Passive restoration shall be permitted in all estuary zones. Passive restoration is the use of natural processes, sequences and timing which occur after the removal or reduction of adverse stresses without other specific positive remedial action.
4. In Estuary Development (ED) zones, only those passive restorative projects shall be permitted which do not:
 - a. interfere with the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent development; and
 - b. preempt the use of adjacent shorelands especially suited for water-dependent development.
5. Estuarine Restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed.
6. Estuarine restoration includes but is not limited to:
 - a. Diked lands restoration
 - b. Removal of fills to restore estuarine surface area.
 - c. Establishment of tidal marsh vegetation.
7. Estuarine enhancement is an action which results in the long-term improvement of existing estuarine functional characteristics and processes that are not considered a creation or restoration action. Estuarine enhancement includes but is not limited to:
 - a. Removal of old pilings and structures:
Priority shall be given to the removal of old pilings, buildings or navigational structures which are a hazard to navigation, pose a danger to life and property, are structurally unsound or serve no demonstrated public use.
 - b. Restoration of shoal areas:
Priority shall be given to estuarine channel areas where excessive shoaling has resulted in loss or decrease in navigability.
 - c. Restoration of eroded areas:
Priority shall be given to areas where erosion constitutes a hazard.
 - d. Restoration of river channels and mouths for purposes of flood control:

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Priority shall be given to river channels and mouths where shoaling or concentration of debris has occurred. Proposed restoration projects for the purposes of flood control must demonstrate that flooding conditions will be reduced to those which existed at the time of the physical dimensions (e.g. depth and width) to which the channel is being restored.

e. Salmon habitat/spawning restoration projects:

Priority shall be given to projects involving the re-graveling of streams where excessive siltation has occurred, and/or removal of bypass constructions, such as old tide gates, dams or waterfalls.

8. Active restoration and estuarine enhancement as defined shall be permitted in all estuary zones, subject to the following requirements:
 - a. In Estuary Natural (EN) zones, active restoration shall be limited to restoration of fish and wildlife habitat or water quality. Active restoration and estuarine enhancement shall be consistent with the resource capabilities of the area and the purposes of the management unit.
 - b. In Estuary Development (ED) zones, active restoration shall not interfere with the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses or the use of adjacent shorelands especially suited for water-dependent development.
 - c. In major marshes, significant wildlife habitat coastal headlands, and exceptional aesthetic resources within coastal shorelands, active restoration shall be consistent with the protection of natural values.

S. SCIENTIFIC RESEARCH, PLANNING AND PUBLIC EDUCATION IN ESTUARIES AND SHORELANDS

1. To ensure local coordination and to provide useful information for local estuary management decisions, all agencies, consultants, university personnel and private individuals conducting research or developing plans in the City should:
 - a. contact the City during the project planning stage, to outline the research objectives and schedules and the means of reporting project results; and
 - b. convey research results to local government agencies.

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T. SHALLOW DRAFT PORT FACILITIES AND MARINAS

1. Maintenance and repair of existing port facilities and marinas shall be permitted within all estuary zones.
2. Expansion and new construction of port facilities and marinas is only allowed in Estuary Development (ED) zones and the following conditions shall be evaluated:
 - a. proximity to navigation channel;
 - b. degree of existing estuarine or shoreland alteration;
 - c. relative biological significance;
 - d. proximity to land transportation facilities;
 - e. availability of water and sewer service and power supplies;
 - f. value of the area to the community as an economic resource;
 - g. proximity to urban or urbanizable areas;
 - h. need for, and availability of, developable shorelands;
 - i. proximity to industrial areas or potential upland industrial sites;
 - j. initial and long term dredging and dredged material disposal requirements and availability of dredged material disposal sites.
3. In shallow draft development estuaries (Tillamook and Nehalem Estuary), the depth of those portions of the main channel which are maintained by dredging shall not exceed 22 feet in depth.
4. Safe navigation access to existing and future port facilities shall be maintained.
5. To encourage the most efficient use of waterfront and water surface area:
 - a. public or private community marina facilities are encouraged over the proliferation of individual, single-purpose piers, and mooring facilities;
 - b. concentrated marinas are preferred over small, widely distributed marinas; and
 - c. dry land, rather than in-water, storage of boats is preferred, when feasible.

U. SHORELINE STABILIZATION

1. Maintenance and repair of existing shoreline stabilization measures shall be permitted within all estuary and shoreland zones, and other shoreland areas.

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2. Within estuarine waters, intertidal areas, tidal wetlands, and along shoreland zones, and other shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:
 - a. proper maintenance of existing riparian vegetation;
 - b. planting of riparian vegetation;
 - c. vegetated rip-rap;
 - d. non-vegetated rip-rap;
 - e. groins, bulkheads and other structural methods.
3. Proper maintenance of existing riparian vegetation and planting of additional vegetation for purposes of shoreline stabilization shall be permitted within all estuary zones, and along shoreland zones and other shoreland areas
4. Structural shoreline stabilization methods within estuary zones and shorelands zones shall be permitted only if:
 - a. flooding or erosion is threatening a structure or an established use or there is a demonstrated need and a substantial public benefit and the use or alteration does not unreasonably interfere with public trust rights; and
 - b. land use management practices or non-structural solutions are inappropriate because of high erosion rates, or the use of the site; and
 - c. adverse impacts on water currents, erosion and accretion patterns, and aquatic life and habitat are avoided or minimized.
5. In Estuary Natural (EN) zones, structural shoreline stabilization shall be limited to riprap, which shall be allowed only to protect:
 - a. existing uses, structures, or facilities, which are in conformance with all applicable ordinances;
 - b. pre-existing nonconforming uses, structures, and facilities;
 - c. unique natural resources or sites with unique historical or archaeological values; and
 - d. established uses.
6. A resource capability determination shall be required for riprap in the Estuary Natural (EN) zone for purposes other than the protection of unique natural resources, historical and archaeological values, public facilities and uses existing as of October 7, 1977.
7. In the Estuary Development (ED) zone, structural shoreline stabilization (riprap, groins or bulkheads) shall be permitted only if consistent with the maintenance of navigation and other needed public, commercial, and industrial water-dependent uses

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V. WATER QUALITY

1. The following state and federal authorities shall be utilized for maintaining water quality and minimizing man-induced sedimentation in estuaries:
 - a. the Oregon Forest Practices Act and Administrative Rules for forest lands (ORS 527.610-527.730, 572.990).
 - b. the non-point source discharge water quality program administered by the Oregon Department of Environmental Quality under Section 208 of the Clean Water Act of 1977 (P.L. 92-500).
 - c. the Fill and Removal Permit Program administered by the Oregon Department of State Lands (ORS 541.605-541.665)
 - d. the program of the Soil and Water Conservation District and local districts of the Soil Conservation Service for Agricultural lands;
 - e. Sections 404 and 402 of the Clean Water Act of 1977 (P.L. 92-500).
2. Gasoline and oil sales on the waterfront may be limited to the servicing of water-dependent facilities and marine craft.
3. Uncontrolled release of pollutants into ocean, river, or estuarine waters is prohibited by state and federal law. Controlled release of treated industrial, domestic and agricultural wastes into ocean, river, or estuarine waters may be permitted only if no practicable alternatives exist. In this case, waste disposal into the ocean or rivers is preferred over estuarine waste disposal.
4. All projects involving dredging, fill, piling/dolphin installation, or navigational structures shall be constructed so that flushing capacity is maintained or improved and so that changes in circulation patterns will not result in water quality problems.

