

SECTION 11.110. SHORELAND & ESTUARINE DEVELOPMENT STANDARDS.

Shoreland and estuarine development standards are requirements that apply to uses in the following zones: Water-Related Commercial (WRC), Water-Related Industrial (IND), Water-Dependent Development (WDD), Estuarine Natural (EN), and Estuarine Development (ED).

Section 11.111 General Shoreland Development Standards.

The following general standards shall apply to all shoreland uses.

1. Setback. The shoreline setback for non-water dependent uses shall be 30 feet. In cases where a proposed use would be located between two existing structures that infringe on the 30-foot setback line, the Planning Commission, after a public hearing, may allow the structure to extend up to the setback of the adjacent structures, but in no case less than ten feet from the shoreline. The setback shall be measured horizontally upland from the line of non-aquatic vegetation or mean higher-high water.
2. Riparian Vegetation. All uses and structures shall be set back fifteen (15) feet from Vosberg Creek unless direct water access is required in conjunction with a water-dependent use. All uses and structures shall be set back twenty-five (25) feet from the estuarine area located east of Highway 101, at the north end of the City (designated EN/mp) unless direct water access is required in conjunction with a water-dependent use. Riparian vegetation shall be protected and retained within the required setback with the following exceptions:
 - a. The removal of trees which pose an erosion or safety hazard;
 - b. Vegetation removal necessary to provide direct water access for a water-dependent use; or
 - c. Vegetation removal necessary to place structural shoreline stabilization when other forms of shoreline stabilization are shown to be inadequate.
3. Waterfront Access. Waterfront access for the public such as walkways, trails and landscaped areas will be provided, whenever possible and where consistent with public safety.
4. Signs. Signs for commercial and industrial uses shall be constructed against a building.
5. Lot Area. Marsh and other aquatic areas will not be used to compute lot area or density, except when a conditional use permit allowing filling or pilings has been granted.

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6. Utilities. Whenever feasible, utility lines will be located underground and along existing rights-of-way. Above ground utilities are subject to design review by the Planning Commission. All above ground utilities should be designed to minimize view interference and the amount of land clearing.
7. Parking. Parking facilities shall not be located over the water, or within 20 feet of the line of non-aquatic vegetation.
8. Architectural Design. All proposals for structural development will be subject to design review standards of Section 11.050.
9. Erosion Control. Non-structural solutions to erosion and flood control problems will be used whenever practical.

Section 11.112 Specific Shoreland & Estuarine Development Standards:

The following specific standards shall also apply to proposed estuarine and shoreland development.

1. Aquaculture Facilities.
 - a. Evidence shall be provided by the applicant and findings made by the city that aquaculture facilities do not prevent access to navigation channels, and that obstruction of access to publicly owned lands and recreation use areas is minimized.
 - b. Aquaculture facilities should be designed to minimize their visual impact (view obstruction). Whenever feasible, submerged structures are preferred over floating structures.
 - c. The design and construction of an aquaculture facility should consider reclamation and re-use of waste water.
 - d. Water diversion structures or man-made spawning channels shall be constructed so as to maintain required stream flows for aquatic life in adjacent streams and avoid significant reduction or acceleration of average water flow in an associated marsh. Water Quality policies shall apply.
 - e. Water discharge from an aquaculture facility shall meet all federal and state water quality standards and any conditions attached to a waste discharge permit. Water Quality policies shall apply.
 - f. All state and federal laws governing environmental quality, resource protection, public health and safety, and engineering standards shall be met in the design, siting, construction and operation of aquaculture facilities. This determination shall be made by the Oregon

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Department of Fish and Wildlife or other state or federal agencies with regulatory authority over aquaculture facilities.

- g. Aquaculture facilities in Estuary Natural (EN) Zones will not require dredging or fill other than incidental dredging for harvest of benthic species or removal of in-water structures.
 - h. Aquaculture in the Estuary Natural (EN) Zone shall be permitted only if the Oregon Department of Fish and Wildlife or the Oregon Department of Agriculture determines that it is consistent with the resource capabilities and purpose of the management unit(s) in which it is to be located.
 - i. Aquaculture in the Estuary Development (ED) Zone shall be permitted only if it will not preclude the provision of maintenance or navigation or other needs for commercial and industrial water-dependent uses, and will not preempt the use of shorelands especially suited for water-dependent development.
 - j. Leasing of publicly owned estuarine waters, intertidal areas or tidal wetlands for aquaculture shall be subject to the requirements of the Division of State Lands.
 - k. Dredge, fill, shoreline stabilization, piling/dolphin installation or other activities in conjunction with an aquaculture facility shall be subject to the respective standards for these activities.
2. Siting, Design, Construction, Maintenance or Expansion of Dikes.
- a. Diking policy requirements in the Wheeler Comprehensive Plan shall be met.
 - b. Proposals for new dike construction or dike maintenance or repair shall be accompanied by a brief statement from the local Soil and Water Conservation Service or a certified engineer stating that:
 - (1) The project is in conformance with good engineering practices and any applicable rules and regulations set forth by the Oregon Division of State Lands and the U.S. Army Corps of Engineers; and
 - (2) Provides for suitable erosion protection for the dike face; and
 - (3) Will produce no appreciable flood and erosion potential upstream or downstream of the proposed project.
 - c. When temporary dikes are constructed in intertidal areas or tidal wetlands, notice must be given to the Division of State Lands within 24 hours following the start of such activity and their approval for continuation of the project must be obtained (ORS 541.615(4)). Intertidal

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areas and tidal wetlands shall be restored by the sponsor of the dike to pre-dike conditions after the removal of temporary dikes.

- d. Fill, shoreline stabilization or other activities in conjunction with dike construction, maintenance or repair shall be subject to the respective standards for these activities.
- e. Repair and maintenance of existing dikes, and construction of new dikes involving fill in intertidal areas and tidal wetlands is subject to the requirements of the State Fill and Removal Law (ORS 541.605-541.665) and the Clean Water Act of 1977 (P.L. 95-217) (applies to fill only).

3. Docks and Moorages.

- a. Docks and Moorages policy requirements in the Wheeler Comprehensive Plan shall be met.
- b. When new construction or expansion of docks and moorages is proposed, evidence shall be provided by the applicant and findings made by the city that:
 - (1) The size of the facility is the minimum necessary to accommodate the number and size of boats using the facility. Maximum size limit for single purpose private docks (excluding walkways) shall be 150 square feet;
 - (2) Alternatives such as dry land storage, launching ramps or mooring buoys are impracticable.
- c. To ensure that consideration is given to the beneficial economic and social impacts of moorages on local communities, proposals for new or expanded moorages should include statements on the impacts to local communities derived from increases in employment or increases in commercial or recreational activity.
- d. Open pile piers or secured floats shall be used for dock construction. Piers and floats shall extend no further out into the water than is needed to provide navigational access.
- e. Floating docks shall be designed so that they do not rest on the bottom at low water.
- f. Single purpose docks shall be permitted if evidence is provided by the applicants and findings made by the city that cooperative use facilities (such as marinas or community docks or mooring buoys) are unavailable, impractical or will not satisfy the need.
- g. Covered or enclosed moorages shall be limited to 10% (in number) of the total moorage spaces of a given moorage.

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- h. To avoid contamination of estuarine waters, intertidal areas or tidal wetlands, public docks and moorages should provide enclosed facilities on shorelands for public dumping of oil and emptying of holding tanks.
 - i. Moorages with a capacity greater than 25 boats shall be subject to Port Facility and Marina standards.
 - j. Dredging, fill, piling/dolphin installation, shoreland stabilization or other activities in conjunction with the construction of docks and moorages shall be subject to the respective standards for these activities.
4. Dredged Material Disposal.
- a. Dredged material disposal shall occur only in approved dredged material disposal sites, or for fill of development sites which have received appropriate local, state and federal permits. All Dredged Material Disposal policy requirements and Fill standards shall apply.
 - b. State and federal water quality standards shall be met during all phases of dredged material disposal. Water Quality policies shall apply.
 - c. The timing of dredged material disposal shall be coordinated with state and federal resource agencies to ensure adequate protection of wildlife habitat, bird nesting areas, fish runs and fish spawning activity and to minimize interference with fishing activities.
 - d. Ocean disposal of dredged material shall be permitted only in an ocean disposal site approved by the U.S. Army Corps of Engineers and the Environmental Protection Agency.
 - e. With regard to in-water disposal in the river, estuary and ocean:
 - (1) Consideration shall be given to the need for the proposed disposal, and the availability and desirability of alternate sites and methods of disposal that might be less damaging to the environment.
 - (2) The physical and chemical characteristics of the dredged material should be compared with those of the disposal site, and consideration should be given to matching the dredged material to the capabilities of the site.
 - (3) In-water disposal requires either an EPA/DEQ water quality certification or a short-term exemption. Polluted materials that cannot meet EPA/DEQ requirements for ocean disposal shall be disposed of on non-aquatic sites designed to properly settle out all pollutants prior to discharge back into the aquatic system. Dredge material disposal shall not be permitted in the vicinity of a public water supply intake.

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- (4) Flow lane disposal of dredged material shall be monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.
- f. Ocean disposal of dredged material shall be conducted to ensure that U.S. Army Corps of Engineers and Environmental Protection Agency standards are met, and that:
1. The amount of material deposited at a site will not seriously impact local ocean resources; and
 2. Interference with sport and commercial fishing is minimized; and
 3. Disposal is confined to the authorized disposal site; and
 4. The sediment transport of the materials after disposal will not return to the bar or to the estuary.

This determination shall be made by the U.S. Army Corps of Engineers and the Environmental Protection Agency during their review of permit applications for ocean disposal of dredged material.

- g. Land disposal of dredged materials shall be conducted to ensure that the integrity of estuarine waters, streams, underground springs and waterways is maintained. To ensure this:
- (1) U.S. Army Corps of Engineers guidelines for design of containment areas at dredged material disposal sites shall be followed. The U.S. Army Corps of Engineers shall be responsible for determining that these guidelines have been met.
 - (2) All surface water runoff from disposed dredged materials shall be controlled and shall enter the waterway or estuary directly through an approved outfall. Outfalls shall be designed so that effluent is routed as directly as practicable to the main channel or deep water for dilution.
 - (3) When necessary, dikes shall be constructed around land dredged material sites.
 - (4) Dredged material disposal settling ponds shall be designed to maintain at least one foot of standing water at all times to encourage proper settling of suspended solids. Secondary dredged material disposal settling ponds may be necessary to ensure the proper treatment of overflow waters, particularly in area used for disposal of spoils containing toxic materials.
 - (5) Runoff from disposed dredged materials must pass over an appropriately designed and operated weir. Weir design and size shall be dependent upon the size of the disposal site and the physical and chemical characteristics of the dredged material.

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- h. The final height and slope after each use of a land dredged material site shall be such that:
 - (1) The site does not enlarge itself by sloughing and erosion at the expense of adjacent aquatic areas; and
 - (2) Loss of material from the site during storms and freshets is minimized; and
 - (3) Interference with the view from nearby residences, scenic viewpoints and parks is avoided.
 - i. Revegetation of land disposal sites shall occur as soon as is practicable in order to retard water or wind induced erosion and to restore agricultural or wildlife habitat value to the site. Native species or non-native species approved by the Soil Conservation Service shall be used, and reference shall be made to the Inter-Agency Seeding Manual prepared by the Soil Conservation Service.
 - j. Disposal of dredged material should occur on the smallest practicable land area consistent with the use of the property and the characteristics of the dredged material. Clearing of the land should occur in stages on an as-needed basis. Reuse of existing disposal sites is preferred over creation of new sites in order to minimize the total land area covered by dredged material.
 - k. Before dredged materials are disposed of on land areas for use as fill in approved fill projects, a determination shall be made that the structural characteristics of the material are suitable for this use.
 - l. Dredging project proposals shall provide at least a 5-year program for disposal of dredged material, consistent with the standards listed above. Disposal programs shall provide a mechanism for establishing stockpile sites of fill material suitable for use in approved fill projects.
5. Dredging in Estuarine Waters, Intertidal Areas & Tidal Wetlands.
- a. The following standards shall apply only to dredging in excess of 50 cubic yards within a 12-month period or dredging of 50 cubic yards or less which requires a Section 10 permit from the U.S. Army Corps of Engineers.
 - b. When dredging in estuarine water, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the City that:
 - (1) The dredging is necessary for navigation or other water dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and,

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- (2) A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - (3) No feasible alternative upland locations exist; and,
 - (4) Adverse impacts are minimized.
- c. Dredging projects shall meet all requirements of the State Fill and Removal Law (ORS 541.605-541.665), Section 10 of the Rivers and Harbors Act of 1899, and other applicable State and Federal laws. These requirements shall be enforced by State and Federal agencies with regulatory authority over dredging projects.
- d. Existing water quality, quantity and rate of flow shall be maintained or improved. Minimum stream flow requirements shall be maintained. Water Quality policies shall apply.
- e. Flushing capacity of estuaries shall be maintained. A hydrologic report from a professional registered hydrologist or engineer may be required by the Planning Commission to ensure that this standard has been met.
- f. Dredging shall be timed in order to minimize the effects of sedimentation and turbidity and to minimize impacts on fish, shellfish and recreational commercial fishery activities. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish & Wildlife Resources (ODFW, 1976) shall be followed unless approval of alternative work periods has been obtained from ODFW.
- g. Evidence shall be provided by the applicant and findings made by the City that projects requiring dredging are sited and designed so that initial and maintenance dredging are minimized.
- h. Dredging proposals shall provide at least a 5-year program for disposal of dredged materials. Programs for disposal of dredged material shall be consistent with Dredged Material Disposal standards.
- i. Dredging proposals requiring mitigation shall include a mitigation plan consistent with Mitigation standards.
- j. New dredging projects shall not be allowed in areas where insufficient data is available to assess the relative biological value. Under these circumstances, the applicant may arrange to provide the necessary information with the technical assistance of state and federal resource agencies.

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- k. When dredging for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be presented by the applicant and findings made by the city that:
- (1) The dredging is necessary to maintain proper operation of the facility; and
 - (2) The amount of dredging proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.
- l. Excavation to create new water surface area shall be subject to the standards listed above and to the following standards:
- (1) Provision shall be made for stabilization of new bank lines prior to the connection of the new water body to existing water bodies. Excavation of as much as is practical of the new water body shall be completed before it is connected to existing water bodies;
 - (2) Toxic substances or other pollutants shall not leak into the water as a result of the excavation.
 - (3) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;
 - (4) Excavation shall occur at a time that will minimize its impact on aquatic life;
 - (5) Excavated materials shall not be disposed of in estuarine water, intertidal areas or tidal wetlands, except as part of an approved fill project subject to Fill standards.
- m. Dredging for the purpose of bankline or stream alteration (i.e. realignment of a stream bank or the entire stream either within or without its normal high-water boundaries) shall be subject to the standards listed above and to the following standards:
- (1) Alignments should make maximum use of natural or existing deep-water channels provided that pockets of stagnant water are not created;
 - (2) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;
 - (3) Temporary stabilization (mulching or sodding), sediment basins or other performance equivalent structures may be required at the discretion of the Planning Commission;
 - (4) Provision shall be made for stabilization of new bank lines. Shoreline Stabilization standards shall apply;

- (5) Adverse impacts on fish spawning, feeding, migration, and transit routes and wildlife habitat shall be evaluated and minimized.
 - n. An impact assessment shall be conducted during local, state and federal review of permit applications for dredging in estuarine water, intertidal areas or tidal wetlands. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.
6. Energy Facilities and Utilities.
- a. When new energy facilities are proposed within estuarine waters, intertidal areas of tidal wetlands, evidence shall be provided by the applicant and findings made by the City that:
 - (1) A public need (i.e. a substantial public benefit) exists and the use or alteration does not unreasonably interfere with public trust rights; and
 - (2) Alternative non-aquatic locations are unavailable or impractical; and
 - (3) Dredging, fill, and other adverse impacts are avoided or minimized.
 - b. Electrical or communication transmission lines shall be located under-ground or along existing rights-of-way unless economically unfeasible.
 - c. Above-ground utilities shall be located to have the least adverse effect on visual and other aesthetic characteristics of the area. Interference with public use and public access to the estuary shall be minimized.
 - d. Whenever practicable, new utility lines and crossings within estuarine waters, intertidal areas or tidal wetlands shall follow the same corridors as existing lines and crossings.
 - e. Water discharge into estuarine waters, intertidal areas and tidal wetlands from an energy facility or utility shall meet EPA and DEQ standards, and shall not produce increases in temperature in the receiving waters which would have adverse impacts on aquatic life. Water Quality policies shall apply.
 - f. When new energy facilities and utilities are proposed in EN Zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the preservation of areas needed for scientific, research or educational needs.

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- g. When new energy facilities and utilities are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the proposed facility will not preclude the provision or maintenance of navigation and other public, commercial and industrial water dependent uses.
- h. Storm water and sewer outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or inter-tidal wetlands. Effluent from outfalls must meet DEQ and EPA water quality standards. Water quality policies shall apply.
- i. Dredge, fill, shoreline stabilization or other activities in conjunction with construction of energy facilities or utilities shall be subject to the respective standards for these activities.
- j. Energy facilities and utilities shall be sited so that they do not and will not require structural shoreline stabilization methods.

7. Fill in Estuarine Waters, Intertidal Areas and Tidal Wetlands.

- a. The following standards shall apply only to fill in excess of 50 c.y. or fill of less than 50 c.y. which requires a Section 10 or 404 permit from the U. S. Army Corps of Engineers.
- b. When fill in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the City that:
 - (1) The fill is necessary for navigation or other water dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and
 - (2) A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - (3) If no feasible alternative upland locations exist; and
 - (4) If adverse impacts are minimized.
- c. When fill for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be provided by the applicant and findings made by the city that:
 - (1) There are no alternatives to fill to maintain proper operation of the facility; and
 - (2) The amount of fill proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.

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- d. Where existing public access is reduced, suitable access as part of the development project shall be provided.
 - e. The fill shall be placed at a time that will minimize sedimentation and turbidity. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to protect Fish and Wildlife Resources (ODFW, 1976) shall be followed unless approval of alternative work periods has been obtained from the ODFW.
 - f. Only non-polluted materials may be used for fill. Materials which would create water quality problems are not permitted.
 - g. The perimeters of the fill shall be provided with erosion prevention measures, consistent with Shoreline Stabilization standards.
 - h. Fills shall be placed so that adjacent or nearby property is not adversely impacted by increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment.
 - i. Fill proposals requiring mitigation shall include a mitigation plan consistent with Mitigation standards.
 - j. Fill in estuarine waters, intertidal areas and tidal wetlands shall be subject to the requirements of the State Fill and Removal Law (ORS 541.605-541.665), the Rivers and Harbors Act of 1899, the Clean Water Act of 1977 (PL 95-217), and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.
 - k. An impact assessment shall be conducted during the local, state and federal review of permit applications for fill in estuarine waters, intertidal areas or tidal wetlands according to the provision outlined in Section 2.238. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.
8. Forestry and Forest Products Industry.
- a. Log storage, sorting and processing areas in shorelands adjacent to estuaries or waterways shall be designed, constructed and operated to control leachates and prevent the loss of bark, chips, sawdust and other wood debris into public waters.
 - b. In-water log handling, sorting, and storage areas, and log storage, sorting and processing areas in shorelands adjacent to estuaries or other water bodies shall be subject to the

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requirements of the water quality program administered by the Department of Environmental Quality. Under the Clean Water Act of 1977 (PL 92-500). DEQ, in conjunction with other affected resource agencies, shall be responsible for determining that the flushing characteristics of in-water log handling, sorting and storage areas, the number of logs and duration of storage, and the bark and debris controls for both in-water and shoreland sites are such that state and federal clean water standards are met.

- c. Leasing of publicly owned aquatic areas for the purpose of in-water log handling, sorting and storage shall be subject to the requirements of the Division of State Lands.
- d. When new in-water log handling, sorting and storage areas are proposed in estuarine waters, evidence must be presented by the applicant and findings made by the City that:
 - (1) The proposed use is an integral part of the process of water-borne transportation of logs (i.e. is water dependent);
 - (2) There is a need (i.e. a substantial public benefit) for the proposed use and the use or alteration does not unreasonably interfere with public trust rights;
 - (3) Alternative non-aquatic locations are unavailable, impracticable or do not meet the need;
 - (4) Conflicts with navigation, aquaculture and commercial and recreational fishing have been avoided or minimized;
 - (5) Easy let-down facilities for transfer of logs from land to water have been provided for (free fall logs dumps shall not be permitted); and
 - (6) Sites are located to avoid shellfish beds, shallow spawning areas, or areas where grounding of logs will occur.

9. Industrial and Commercial Uses in Estuarine Waters, Intertidal Areas and Tidal Wetlands.

- a. Evidence shall be provided by the applicant and findings made by the city that:
 - (1) The amount of estuarine surface area occupied is the minimum required to meet the need; and
 - (2) Provision has been made for public access, view-points and recreational use, consistent with safety and security considerations; and

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- (3) Multipurpose and cooperative use of piers, wharves, parking areas or handling and storage facilities have been provided for, or is impracticable; and
 - (4) Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves; and
 - (5) Alteration of productive intertidal areas and tidal marshes has been avoided or minimized; and
 - (6) Adverse impacts on the following have been avoided or minimized to be consistent with the resource capabilities and purposes of the area:
 - (a) Water quality;
 - (b) Hydrographic characteristics;
 - (c) Aquatic life and habitat;
 - (d) Bird and wildlife habitat;
 - (e) Fish transit and migration routes.
- b. Removal of riparian vegetation shall be permitted only if direct access to water is required in conjunction with a water-dependent use. Replacement of riparian vegetation, or enhancement of existing riparian vegetation shall be required, where consistent with water-dependent use, to enhance attractiveness or assist in bank stabilization.
- c. Visual access to the water shall not be impaired by the placement of signs. When feasible, signs shall be constructed on or against existing buildings to minimize visual obstruction of the shoreline and water bodies. Off-premise outdoor advertising signs shall not be allowed within estuarine waters, intertidal areas or tidal wetlands.
- d. The design and construction of new industrial and commercial facilities should consider reclamation and re-use of waste water.
- e. Provision for the prevention and control of contaminants from entering the water shall be made. A contingency plan to provide for containment of cleanup of spills of contaminants shall be provided.
- f. Industrial outfalls, sewer outfalls, and storm water outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or salt marshes. Effluent from outfalls must meet DEQ and EPA water quality standards. Water Quality policies shall apply.
- g. When water-related or non-dependent, non-related industrial or commercial uses are proposed in Estuary Development (ED) Zones, evidence must be presented that:

- (1) The use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses; and
 - (2) The use will not preempt the use of shorelands especially suited for water-dependent development; and
 - (3) Non-water dependent and non-water related uses which permanently alter estuarine resources and values shall include evidence of the public benefits derived from the project, which shall include:
 - (a) The beneficial economic impacts generated by increases in employment; and/or
 - (b) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
 - h. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.
 - i. Dredging, fill, piling/dolphin installation, shoreline stabilization, disposal or dredged material or other activities in conjunction with industrial and commercial uses shall be subject to the respective standards for these activities.
10. Land Transportation Facilities.
- a. Proposals for new county or state highways, or for railroads, shall provide an evaluation of the proposed project on the following:
 - (1) Land use patterns;
 - (2) Energy use;
 - (3) Air and water quality;
 - (4) Estuarine habitat, functions and processes;
 - (5) Existing transportation facilities;
 - (6) Physical and visual access to estuaries and shorelands.
 - b. Evidence shall be provided by the applicant and findings made by the city that the siting, design, construction and maintenance of land transportation facilities will be conducted to avoid mass soil wasting or excessive surface erosion.

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- c. Land transportation facility proposals shall include a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Site rehabilitation plans shall provide for replacement of riparian vegetation.
- d. Vegetated buffer strips shall be maintained, whenever practicable, along roadways to manage storm drainage runoff.
- e. When culverts are used in association with bridge crossings, spring line natural bottom culverts are preferred over box culverts.
- f. All bridge crossings and culverts shall be positioned and maintained to allow fish passage, avoid interference with anadromous fish runs and to prevent any constriction of natural streams which would result in increases in flood or erosion potential. When culverts are used, no fill shall be allowed in streams, rivers or estuaries.
- g. When new land transportation facilities are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the proposed use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
- h. Dredging, fill, piling/dolphin installation, shoreline stabilization, dredged material disposal or other activities in conjunction with land transportation facilities shall be subject to the respective standards for these activities.
- i. When new bridge crossing support structures are proposed in Estuary Natural (EN) Zones, evidence shall be provided by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities and purposes of the area.

11. Mining and Mineral Extraction.

- a. Mining and Mineral Extraction policy requirements in the Wheeler Comprehensive Plan shall be met.
- b. Mining and mineral extraction proposals shall include a mining plan and a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Any necessary rehabilitation of mining and/or mineral extraction sites shall be completed within two years of the completion of the mining or mineral extraction operation.
- c. Evidence shall be provided by the applicant and findings made by the city that mining and mineral extraction projects are sited, designed, operated and maintained to ensure that adverse impacts on the following are minimized:

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- (1) Aquatic life and habitat, including but not limited to the spawning, rearing and passage requirements of anadromous fish;
 - (2) Bird and wildlife habitat;
 - (3) Hydrographic characteristics, including but not limited to the alteration of local currents that may affect adjacent properties by causing erosion, accretion or increased flooding.
 - (4) Water Quality. (Water Quality policies shall apply.)
- d. Temporary removal of riparian vegetation shall be permitted in cases where direct water access is required as part of a mining or mineral extraction operation. Site rehabilitation plans shall provide for replacement of riparian vegetation.
 - e. Spoils and stockpiles shall not be placed within estuarine water, intertidal areas or tidal wetlands, unless as part of an approved fill project, subject to Fill standards.
 - f. When mining and mineral extraction projects are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
 - g. Dredging, fill or other activities in conjunction with mining and mineral extraction shall be subject to the respective standards for these activities.
 - h. The location and operation of mining and mineral extraction projects shall be in conformance with the requirements of the Division of State Lands (ORS 541.605 - 541.665; ORS 273.551; ORS 273.775 - 273.780), the Department of Geology and Mineral Industries (ORS 520.005 - 520.095) and other applicable state and federal laws governing environmental quality, resource protection, and public Health and safety. These requirements shall be enforced by state and federal agencies with regulatory authority over mining and mineral extraction projects.
12. Mitigation.
- a. Mitigation for dredge or fill within intertidal areas or tidal wetlands shall be required by the Director of the Division of State Lands (under the provisions of ORS 541.605-541.665). The suitability of a mitigation proposal for a given proposed project shall be determined by the Director of the Division of State Lands, according to the procedure established in Administrative Rule 85-245 (Chapter 141.)
 - b. Mitigation projects shall go into effect prior to or at the same time as the development project.
13. Navigational Structures and Navigational Aids.

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- a. When navigational structures are proposed, evidence shall be provided by the applicant and findings made by the city that:
 - (1) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use; and
 - (2) The project will not interfere with the normal public use of fishery, recreation or water resources; and
 - (3) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Department as a result of the impact assessment required in Section 3.120.
 - (4) Non-structural solutions are unavailable, impractical or do not meet the need.
 - b. Navigational structures shall meet all applicable U.S. Army Corps of Engineers engineering standards. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards have been met.
 - c. An impact assessment shall be conducted during local, state and federal review of permit applications for navigational structures. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purpose of the area.
 - d. Dredging, fill or other activities in conjunction with navigational structures and navigational aids shall be subject to the respective standards for these activities.
14. Piling/Dolphin Installation.
- a. When piling or dolphin installation is proposed, evidence shall be provided by the applicant and findings made by the city that:
 - (1) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;
 - (2) The project will not unduly interfere with the normal public use of fishery, recreational or water resources; and
 - (3) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other

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changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.

- b. When new piling or dolphin installation is proposed in Estuary Natural (EN) Zones, evidence shall be provided by the applicant and findings made by the City, that the project is consistent with the resource capabilities and purposes of the area.
- c. When proposals for new piling or dolphin installation in conjunction with a non-water-dependent or non-water related use within Estuary Development (ED) Zones are made, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
- d. Piling/dolphin replacement and new installation shall meet all applicable U.S. Army Corps of Engineers engineering standards and permit requirements. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards and permit requirements have been met.
- e. An impact assessment shall be conducted during local, State and Federal review of permit applications for piling/dolphin installation. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

15. Restoration and Enhancement.

- a. Restoration and enhancement policy requirements in the Wheeler Comprehensive Plan shall be met.
- b. Proposals for restoration projects shall present evidence that:
 - (1) The restored area is a shallow subtidal or an inter-tidal or tidal marsh area after alteration work is performed; and
 - (2) The restored area may not have a functioning part of the estuarine system when alteration work begins; and
 - (3) The restored area is revitalizing, returning or replacing original attributes and amenities which have been diminished or lost by past alterations, activities or catastrophic events.
- c. Estuarine enhancement project proposals shall identify:
 - (1) The original conditions to be enhanced.

- (2) The cause of the loss or degradation.
 - (3) The location and extent of actions necessary to achieve the restoration enhancement objective.
 - d. Estuarine enhancement project proposals shall present evidence that the project will result in an overall improvement in the cultural, historic, economic or navigation features of an estuary, which will outweigh any adverse impact identified in (b) above.
 - e. When active restoration and enhancement projects are proposed in the Estuary Natural (EN) zone, evidence shall be provided by the applicant and findings made by the City that the project is consistent with the protection of significant fish and wildlife habitats, biological productivity, and scientific, research and educational needs.
 - f. When passive or active restoration or enhancement projects are proposed in Estuary Development (ED) zones, evidence shall be provided by the applicant and findings made by the City that the project will not interfere with the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses, and will not interfere with the use of adjacent shorelands especially suited for water-dependent development:
 - g. Dredge, fill, shoreline stabilization, shoreland development, installation of energy facilities or utilities, dredged material disposal and other uses and activities proposed as part of a restoration or enhancement project shall be subject to the respective standards for these uses and activities.
16. Shallow Draft Port Facilities and Marinas.
- a. Evidence shall be provided by the applicant and findings made by the city that:
 - (1) Facilities have been sited and designed to minimize initial and maintenance dredging;
 - (2) Dryland boat storage has been provided for, or is impracticable;
 - (3) Provision has been made for public access, view-points and recreational use, consistent with safety and security considerations;
 - (4) Multipurpose and cooperative use of piers, wharves, parking areas and cargo handling and storage has been provided for, or is impracticable;
 - (5) Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves;
 - (6) The amount of water surface occupied is the minimum required to meet the need;

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- (7) Provision has been made for maintenance of riparian vegetation, except where direct access to water is required;
- (8) Natural or man-made protection from wind, waves, storm or tidal currents or ship wakes has been provided for;
- (9) Adverse impacts on the following have been avoided or minimized:
 - (a) Navigation;
 - (b) Water quality;
 - (c) Hydrographic characteristics;
 - (d) Natural processes of erosion and sedimentation;
 - (e) Aquatic life and habitat.
- b. Marina access channels shall be designed to maximize water circulation and avoid dead spots. Dead-end channels or confined basins should be avoided. Demonstration shall be made that state and federal clean water standards can be maintained. A field study of water circulation patterns may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.
- c. Safe navigational access to port facilities and marinas shall be provided and maintained.
- d. Covered or enclosed moorages shall be limited to 25% (in number) of the total moorage spaces of a given port facility or marina. Where new water surface area is created by a marina or port facilities project, there shall be no limitation on the amount of such new water surface area that is used for covered moorage.
- e. The following provisions for the prevention and control of contaminants from entering the water shall be made:
 - (1) Enclosed shoreland facilities for public dumping of oil and emptying of holding tanks shall be provided:
 - (2) A contingency plan to provide for containment and clean-up of spills of contaminants shall be provided.
- f. Proposals for expansion or creation of port and marina facilities shall be accompanied by a demonstration of the public benefits derived from the project, which shall include:
 - (1) Information on why the capacity of existing facilities is inadequate; and
 - (2) The beneficial economic impacts to local communities derived from increases in employment; and/or

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- (3) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
- g. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.
- h. Dredge, fill, piling/dolphin installation, navigational structures, shoreline stabilization or other activities in conjunction with expansion or creation of new port facilities and marinas shall be subject to the respective standards for these activities.

17. Shoreline Stabilization.

- a. Within estuarine waters, intertidal areas and tidal wetlands, and along shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:
 - (1) Proper maintenance of existing riparian vegetation;
 - (2) Planting of riparian vegetation;
 - (3) Vegetated rip-rap;
 - (4) Non-vegetated rip-rap;
 - (5) Groins, bulkheads or other structural methods.

Shoreline protection proposals shall include justification for the use of a lower priority method over a higher priority method.
- b. Vegetative shoreline stabilization shall utilize native species, or non-native species approved by the Soil Conservation Service. Reference shall be made to the Inter-Agency Seeding manual prepared by the Soil Conservation Service.
- c. When structural shoreline stabilization methods are proposed, evidence shall be presented by the applicant and findings made by the City that:
 - (1) Flooding or erosion is threatening an established use on a subject property or a need (i.e. a substantial public benefit) is demonstrated in conjunction with navigation or water dependent use, and
 - (2) Land use management practices or non-structural solutions are inappropriate or will not meet the need; and

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- (3) The proposed structural stabilization method is the minimum size needed to accomplish the desired stabilization;
 - (4) The proposed project will not restrict existing public access to publicly owned lands or interfere with the normal public use of fishery, recreation or water resources; and
 - (5) The proposed project will not adversely impact adjacent aquatic areas or nearby property through increased erosion, sedimentation, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer, hydrologist, or geologist may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.
A brief statement from the local Soil and Water Conservation Service may serve as evidence that Standards c(2) and c(3) have been met.
- d. Shoreline stabilization projects shall be timed to minimize impacts on aquatic life.
 - e. Proposals for rip-rap shall include evidence that the rock to be used will be effective and will provide justification for use of a slope steeper than 1½ feet horizontal to one foot vertical.
 - f. When bulkheads are proposed, evidence shall be provided by the applicant and findings made by the city that other forms of structural stabilization are inappropriate or will not meet the need. Bulkheads should be designed to be permeable to groundwater and runoff. Fill policies and standards shall apply to bulkhead projects which involve fill within estuarine waters, intertidal areas or tidal wetlands.
 - g. When riprap is proposed in Estuary Natural (EN) Zones, a resource capability determination shall be required for riprap for purposes other than the protection of unique natural resources, historical and archaeological values, public facilities and uses existing as of October 7, 1977.
 - h. When structural shoreline stabilization is proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
 - i. An impact assessment shall be conducted during local, state and federal review of permit applications for structural shoreline stabilization seaward of the line of non-aquatic vegetation or the Mean Higher High Water (MHHW) line. The impact assessment shall follow the procedure outlined in Section 11.115. Identified adverse impacts shall be avoided or minimized to be consistent with the resource capabilities and purposes of the area.

18. Riparian Vegetation Protection

Riparian vegetation within identified riparian zones, shall be protected and retained. A twenty-five-foot riparian zone (measured from the ordinary high-water line) is established on each bank of Zimmerman, Jarvis and Vosberg Creeks. A fifty-foot riparian zone (measured from the mean higher high-water line or line of non-aquatic vegetation, whichever is most landward) is established adjacent to Nehalem Bay.

19. Conditional Non-Water Dependent Uses

- a. The development is demonstrably compatible with Comprehensive Plan Policies in terms of use priorities of the zone.
- b. The development shall not obstruct access to publicly owned lands and recreation use areas.
- c. The development design and construction shall not obstruct panorama views of the shorelands.
- d. The development is to be compatible with other public, commercial developments in the zone.
- e. The development shall be subject to all applicable design review criteria in Section 11.050.
- f. The development shall utilize underground utilities whenever possible.

SECTION 11.115. REGULATED ACTIVITIES AND IMPACT ASSESSMENT.

Purpose. The purpose of this section is to provide an assessment process and criteria for local review and comment on state and federal permit applications which could potentially alter the estuarine ecosystems.

Section 11.116. Regulated Activities.

Regulated activities are those actions which require state and/or federal permits, and include the following:

1. Fill (either fill in excess of 50 c.y. or fill of less than 50 c.y. which requires a Section 10 or Section 404 permit from the U.S. Army Corps of Engineers);
2. Dredging (either dredging in excess of 50 c.y. within a 12-month period, or dredging of less than 50 c.y. which requires a Section 10 permit from the U.S. Army Corps of Engineers);
3. Dredged material disposal; including flow-lane disposal.
4. Piling/dolphin installation;

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5. Shoreline stabilization, bankline or stream alteration involving fill or dredging in excess of 50 c.y.;
6. In-water log storage.

Section 11.117. Procedure for Reviewing Regulated Activities.

State and Federal permit notices shall be reviewed by the Planning Commission. Regulated activities and any associated use or uses as a whole shall be reviewed according to the requirements of the zone(s) in which the proposed uses and activities are to be located (Section 8.010 to 8.080), standards relevant to the proposed uses and activities (Section 11.110), an impact assessment (Section 11.119) resource capability and purpose determinations where applicable (Section 11.1191), requirements for degradations or reductions of estuarine natural values where applicable (Section 11.1192), and comments from State and Federal agencies having responsibility for permit review (Section 11.1193). Based on this review, the Planning Commission will decide whether the proposed uses and activities comply with this ordinance and will forward this decision to the appropriate permitting agencies and the permit applicant prior to the final date set for comments. Decisions of the Planning Commission may be appealed to the City Council (Section 18.020).

Section 11.118. Zone Requirements.

Uses and activities shall be allowed only if they are allowed in the zones in which they are to be located. Accessory uses proposed for adjacent upland areas must be allowed in the upland zones in which they are to be located. Uses that are permitted with standards must comply with the standards of Section 11.110. Uses listed as conditional uses shall be reviewed according to the procedures of Article 15 and the standards of Section 11.110. If a conditional use is required, the city shall notify the applicant and state and federal permitting agencies, and shall request an extension of the comment period.

Section 11.119. Impact Assessments.

The city shall, with the assistance of affected state and federal agencies, develop impact assessments for regulated activities. Federal Environmental Impact Statements or Assessments may be substituted if made available to the Planning Department. The following considerations must be addressed in the impact assessment:

1. The type and extent of alterations expected.
2. The type of resource(s) affected including but not limited to aquatic life and habitats, riparian vegetation, water quality and hydraulic characteristics.
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 methods which could be employed to avoid or minimize adverse impacts.

Section 11.1191. Requirements for Resource Capability Determinations.

Uses and activities for which a resource capability determination is required by Section 11.110, shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposed of the zone(s) in which they are to be located. An activity will be found to be consistent with the resource capabilities of a management unit (as described in Section 2 of the Estuarine Resources Element of the Tillamook County Comprehensive Plan) when either (1) the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or; (2) that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.

Section 11.1192. Significant Degradations or Reductions of Estuarine Natural Values:

1. Definition: Significant degradations or reductions of estuarine natural values include dredging, fill, and other activities which will cause significant offsite impacts as determined by the impact assessment (Section 1.119).
2. Requirements: Dredging and fill must comply with the standards in Section 11.110. Other reductions and degradations of estuarine natural values shall be allowed only if:
 - a. A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
 - b. No feasible alternative upland locations exist; and
 - c. Adverse impacts are minimized as much as feasible.

Section 11.1193. State and Federal Reviewing Agency Comments.

In the review of regulated activities, the City shall notify the following agencies: 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 and U.S. Army Corps of Engineers.

Notice will be mailed within 7 days of the City's receipt of the State or Federal permit notice. The notice will include permit reference, identification of the local decisions to be made, reference to applicable policies and standards, and notification of comment and appeal periods. The City shall consider any comments received no later than seven days before the closing date for comments on the State or Federal permit notice.

Section 11.1194. Appeals.

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The Planning Commission decisions on regulated activities may be appealed according to the requirements of Section 18.020. If the decision of the Planning Commission is appealed, the City shall notify the appropriate State and Federal permitting agencies and shall request an extension of the comment period to allow for the local appeals process.

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SECTION 11.120. PROTECTION OF RIPARIAN VEGETATION.

All uses and structures shall be set back fifteen (15) feet from Zimmerman Creek, Jarvis Creek, and the portion of Vosberg Creek not located within the Coastal Shoreland Boundary unless direct water access is required in conjunction with a water-dependent use. Riparian vegetation shall be protected and retained within the required setback with the following exceptions:

1. The removal of trees which pose an erosion or safety hazard;
2. Vegetation removal necessary to provide direct water access for a water dependent use; or
3. Vegetation removal necessary to place structural shoreline stabilization when other forms of shoreline stabilization are shown to be inadequate.
4. Vegetation removal necessary to place the following permitted uses when no other alternatives are available.
 - a. Bridge crossings and bridge crossing support structures.
 - b. Water, gas, sewer, or phone lines.
 - c. Electrical distribution line or line support structures.
 - d. Storm water or sewer outfalls.

SECTION 11.130. ACCESSORY USES.

An accessory use shall comply with all requirements for a principal use, except as this ordinance specifically allows otherwise, and shall comply with the following limitations:

1. An accessory structure separated from the main building may be located in the required rear and side yard, except in the required street side yard of a corner lot, provided it is not closer than five feet to a property line.

SECTION 11.140. PREVENTION OF AIR, WATER & NOISE POLLUTION.

All uses permitted by this ordinance shall be in conformance with applicable Federal and State air and water quality standards, and noise standards.