

## CITY OF WHEELER, OREGON ZONING ORDINANCE

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### ARTICLE 8. ESTUARY ZONE

#### Section 8.010. Estuary Zones. Areas Included.

Estuary Zones shall be applied to all estuarine water, intertidal areas, submerged and submersible lands and tidal wetlands up to the line of non-aquatic vegetation or the Mean Higher High Water (MHHW) line, whichever is most landward.

#### Section 8.015. Uses Permitted Outright (P)

The following uses are permitted outright within all Estuary Zones:

- A. Maintenance and repair of existing structures or facilities not involving a regulated activity. For the purpose of this ordinance, "existing structures and facilities" are defined as structures or facilities in current use or good repair as of the date of adoption of this ordinance, including structures or facilities which are in conformance with the requirements of this ordinance and non-conforming structures or facilities established prior to October 7, 1977.
- B. Low-intensity, water-dependent recreation, including but not limited to fishing, crabbing, clamming, wildlife observation, swimming and hunting.
- C. Research and educational observation.
- D. Passive restoration.
- E. Dike maintenance and repair for:
  - 1. Existing serviceable dikes, including those that allow some seasonal inundation; and
  - 2. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has not reverted to estuarine habitat; and
  - 3. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has reverted to estuarine habitat only if the property is in the Farm, F-1, zone and it 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. Wheeler will rely on the U.S. Army Corps of Engineers and the Division of State Lands to determine whether an area has reverted to estuarine habitat. For the purpose of this subsection, agricultural use means using an area for pasture several months of the year or harvesting this area once a year.
- F. Grazing of livestock.

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- G. Fencing, provided that it is not placed across publicly owned areas so as to restrict public access to, or recreational boating access across said lands and intertidal areas.

SECTION 8.020. ESTUARY NATURAL ZONE (EN).

Section 8.025. Purpose and Areas Included.

The purpose of the EN zone is to provide for preservation and protection of significant fish and wildlife habitats and other areas which make an essential contribution to estuarine productivity or fulfill scientific, research or educational needs.

The EN zone includes the following areas within the estuary:

Major tracts of tidal marsh, intertidal flats and seagrass and algae beds. The "Major tract" determination is made through a consideration of all the following four criteria: size; habitat value; scarcity; and degree of alteration.

Section 8.030. Uses Permitted with Standards (PS).

The following uses are permitted with standards (PS) within the EN zone, provided that the development standards in Section 11.110 have been met and procedures of Section 11.115, Regulated Activities and Impact Assessment, have been followed.

- A. Maintenance and repair of existing structures or facilities involving a regulated activity.
- B. Navigational aids.
- C. Vegetative shoreline stabilization.
- D. Temporary dikes for emergency flood protection.
- E. Mooring buoy.
- F. Tidegate installation in existing functional dike.
- G. Aquaculture facilities limited to temporary or easily removed bottom or in-the-water column structures (stakes, racks, trays, longlines, or rafts) or ground culture aquaculture.
- H. Bridge crossings and bridge crossing support structures.

Section 8.040. Conditional Uses (C).

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The following uses are Conditional (C) within the EN zone and may be permitted by the Planning Commission, subject to the provisions of Article 15 and the development standards in Section 11.110 and the procedures of Section 11.115 Regulated Activities and Impact Assessment, have been followed.

- A. Aquaculture and water dependent portions of aquaculture facilities which do not require dredging or fill and water intake structures for out-bay aquaculture.
- B. Riprap to protect unique natural resources, historical and archeological values, public facilities uses existing as of October 7, 1977 and uses allowed by this zone.
- C. Water, sewer, gas or phone lines.
- D. Electrical distribution lines and line support structures.
- E. Active restoration and estuarine enhancement.
- F. Temporary low water bridges.
- G. Temporary alterations.
- H. Boat ramps for public use where no dredging or fill for navigational access is needed.

### Section 8.050. Regulated Activities (RA).

The following regulated activities are permitted within the EN zone, provided that the requirements of Section 11.110 have been met. Regulated Activities shall be reviewed by the procedure provided in Section 11.115.

- A. Regulated activities for the purpose of on-site maintenance and repair of existing structures or facilities, limited to:
  - 1. Dredging for on-site maintenance of:
    - (a) Drainage tiles
    - (b) Drainage ditches
    - (c) Tidegates
    - (d) Bridge crossing support structures
    - (e) Water, sewer, gas or phone lines
    - (f) Electrical distribution lines and line support structures
    - (g) Outfalls.
  - 2. Fill or riprap for on-site maintenance of:
    - (a) Dikes
    - (b) Bridge crossing support structures or other land transportation facilities.

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- B. Riprap for structural shoreline stabilization or protection of uses allowed by this zone.
- C. Piling installation for:
  - 1. Navigational aids
  - 2. Aquaculture Facilities
  - 3. Public boat ramp
  - 4. Bridge crossing support structures.
- D. Dredging for installation of:
  - 1. Water, sewer, gas or phone lines.
  - 2. Electrical distribution lines and line support structures.
  - 3. Tidegates in existing functional dikes adjacent to EN zones.
  - 4. Water intake facilities.
  - 5. Bridge crossing support structures.
  - 6. Public boat ramps.
- E. Regulated activities in conjunction with an approved Active Restoration or estuarine enhancement project.
- F. Regulated activities in conjunction with temporary alterations.
- G. Fill for installation of public boat ramps or bridge crossing support structures.
- H. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

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SECTION 8.070. ESTUARY DEVELOPMENT ZONE (ED)

Section 8.075. Purpose. The purpose of the ED Zone is to:

- A. Provide for long-term maintenance, enhancement, expansion or creation of structures or 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 to the general use priorities outlined in Section 8.010.

The ED zone includes the following areas within Development Estuaries:

- A. Areas which contain public facilities which are utilized for shipping, handling or storage of water-borne commerce, or for moorage or 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 minimum biologic significance needed for uses requiring alteration of the estuary not included in the EN Zone.
- D. Where an acknowledged Goal 16 exception has been taken, areas of biological 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.

Section 8.080. Uses Permitted with Standards (PS).

The following uses are permitted with Standards (PS) within the ED zone, provided that the development standards in Section 11.110 have been met and the procedures of Section 11.115 Regulated Activities and Impact Assessment have been followed:

- A. Maintenance and repair of existing structures or facilities involving a regulated activity.
- B. Navigational structures and navigational aids.
- C. Vegetative shoreline stabilization.
- D. Structural shoreline stabilization.
- E. Tidegate installation in existing functional dikes adjacent to ED zones.

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- F. Water, sewer, gas and phone lines.
- G. Electrical distribution lines and line support structures.
- H. Temporary dikes for emergency flood protection.
- I. Mooring buoys.
- J. Temporary low-water bridges.
- K. Temporary alterations.
- L. Active restoration or estuarine enhancement.
- M. Bridge crossing and bridge crossing support structure.

### Section 8.085. Conditional Uses (C)

The following uses are Conditional (C) within the ED zone, and may be permitted by the Planning Commission subject to the provisions of Article 15 and the development standards in Section 11.110 and the procedures of Section 11.115 Regulated Activities and Impact Assessment have been followed.

- A. Water-dependent commercial uses, including docks, moorages, marinas for commercial marine craft (including seaplanes).
- B. Water-dependent industrial uses, including:
  - 1. Piers, wharves, and other terminal and transfer facilities for passengers or water-borne commerce, such as fish, shellfish, metal, timber or timber products.
  - 2. Water intake and discharge structures.
  - 3. Water access structures of facilities which require access to a water body as part of the manufacturing, assembly, or fabrication or repair of marine craft, or marine equipment due to the size of the craft or equipment.
- C. Water-dependent public recreational facilities, including:
  - 1. Boat ramps.
  - 2. Commercial docks, moorages and marinas for recreational marine craft (including seaplanes).

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- D. Aquaculture and water-dependent portions of aquaculture facilities.
- E. Other water-dependent uses. A use is determined to be water-dependent when it can be carried out only on, in, or adjacent to the water, and the location or access is needed for:
  - 1. Water-borne transportation.
  - 2. Recreation
  - 3. A source of water (such as energy production, cooling of industrial equipment or wastewater, or other industrial processes).
- F. Water-related industrial uses not requiring the use of fill, including, but not limited to:
  - 1. Fish or shellfish processing plants.
  - 2. Warehouse and/or other storage areas for marine equipment or water-borne commerce.
- G. Water-related commercial uses not requiring the use of fill, including, but not limited to:
  - 1. Fish or shellfish retail or wholesale outlets.
  - 2. Marine craft or marine equipment sales establishments.
  - 3. Sport fish cleaning, smoking or canning establishments.
  - 4. Charter fishing offices.
  - 5. Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water-dependent use.
  - 6. Restaurants which provide waterfront views and which are in conjunction with a water-dependent or water-related use such as a seafood processing plant or charter office.
- H. In-water sorting, storage and handling of logs in association with water-borne transportation of logs.
- I. Other water-related uses not requiring the use of fill. A use is determined to be water-related when the use:
  - 1. Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses).



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2. 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 will involve a subjective consideration of economic, social and environmental consequences of the use.
- J. Accessory uses or structures in conjunction with a conditional use listed in A-H above limited in size to a maximum of 10% of the lot or parcel size.
- K. Mining and mineral extraction.
- L. Storm water and sewer outfalls.
- M. Non-water-dependent and non-water-related uses not requiring the use of fill.
- N. New dike construction if:
  1. Required for a water-dependent use for which a substantial public benefit is demonstrated, the use or alteration does not unreasonably interfere with public trust rights and for which no practicable upland locations exist.
  2. Adverse impacts are avoided or minimized to be consistent with the purposes of the area.
- O. Water-related or non-dependent, non-related uses requiring the use of fill, provided that a Goal 16 exception has been approved and included as an amendment to the Tillamook County Comprehensive Plan or Wheeler Comprehensive Plan.

### Section 8.090. Regulated Activities (RA)

The following regulated activities are permitted within the ED zone, provided that the requirements of Section 11.110 have been met. Regulated activities shall be reviewed by the procedure provided in Section 11.115.

- A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities.
- B. Dredging for:
  1. Maintenance of existing facilities.
  2. Navigational improvements.
  3. Water-dependent portions of aquaculture facilities or operations.
  4. Water-dependent uses.
  5. Mining and mineral extraction.
  6. Bridge crossing support structure installation.
  7. Outfall installation.

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8. Water, sewer, gas or phone line installation.
  9. Electrical distribution line installation.
  10. Tidegate installation in existing functional dikes adjacent to ED zones.
- C. Fill for:
1. Water-dependent uses.
  2. Water-dependent portions of aquaculture facilities.
  3. Navigational structures or navigational improvements.
  4. Structural shoreline stabilization.
  5. Bridge crossing support structures.
  6. New dike construction.
  7. Water-related or non-water-dependent uses in areas where Goal 16 exceptions have been taken and approved as part of the Tillamook County Comprehensive Plan or Wheeler Comprehensive Plan.
- D. Piling and dolphin installation in conjunction with a Permitted with Standards or Conditional Use within this zone.
- E. Rip-rap for structural shoreline stabilization or protection of utility lines allowed in this zone.
- F. Dredged material disposal in an approved DMD site or in conjunction with an approved fill project, subject to state and federal permit requirements for dredged material disposal.
- G. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.
- H. Flow-land disposal of dredged material, subject to State and Federal permit requirements.
- I. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.
- J. Regulated, activities in conjunction with temporary alterations.

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### SECTION 8.100. MITIGATION SITE PROTECTION ZONE (MP)

The purpose of the Mitigation Site Protection Zone is to protect identified mitigation sites from incompatible and preemptive uses that may prevent their ultimate restoration or addition to the estuarine ecosystem.

#### Section 8.110. Designation of MP Zones.

The Mitigation Site Protection Zone shall be designated on the City of Wheeler Comprehensive Plan/Zone Map and shall conform to the specifications of the overall mitigation plan for the Nehalem Estuary. Subsequent revisions to the overall mitigation plan shall be duly recorded by Ordinance amendment to the Comprehensive Plan/Zone Map.

#### Section 8.120. Uses and Activities Permitted in the MP Zone.

In a Mitigation Site Protection Zone all activities necessary to accomplish an approved mitigation project may be permitted as review uses. In addition, only those uses and activities permitted in the underlying zone which are determined not to preempt the area's future use as a mitigation site may be permitted, subject to the procedural requirements for that use in the underlying zone.

Incompatible and preemptive use of mitigation sites includes:

- (1.) Uses requiring substantial structural or capital improvements (e.g., construction of permanent buildings).
- (2.) Elevation of the site by the placement of fill.
- (3.) Uses that include changes made to the site that would prevent expeditious use of the site for mitigation (uses which would delay use of the site for mitigation beyond the period of time commonly required to obtain the necessary Federal, State, and local development permits (approximately 90 days)).

#### Section 8.130. Procedure for Review of Uses in an MP Zone.

Proposed activities necessary to accomplish an approved mitigation project are review uses/activities and shall be reviewed in accordance with procedures specified in Article 13. Other proposed uses and activities in the Mitigation Site Protection Zone shall follow the procedures required for that use in the underlying zone.