

## MEMORANDUM

March 7, 2019

To: Councilors Cockram and Fackerel  
From: Carole Connell, AICP City Planner

Re: Vegetation trimming and removal in the A2 Aquatic Conservation Zone

Purpose of memo: The purpose is to interpret the land use documents as they relate to vegetation removal and trimming adjoining Gearhart's Necanicum estuary shoreline.

Location: The Necanicum estuary shoreline is zoned A2 Aquatic Conservation. According to the zone map the A2 zone boundary adjoins the shoreline at the mouth of Neacoxie Creek and extends west where it adjoins the Park zone boundary at approximately Hager Street. See attached map.

Documents: The relevant sections of the Gearhart Comprehensive Plan Goals 16 and 17, the relevant Zoning Ordinance definitions, A2 Zone Section 3.11 and Riparian Vegetation Section 6.175. These sections are discussed and included herein.

Other documents that reference vegetation removal and are indirectly relevant include the Comprehensive Plan Background Report. It is an informational document that does not have the authority to provide legal policy or zoning standards like the Plan and Zoning Ordinance. In addition the R-1 and R-2 Zones have a Neacoxie Creek setback restriction that prohibits structures and vegetation removal within 50 feet of the creek. GZO Section 6.195 Preservation and Removal of Trees applies in all zones except the BAD zone, which is regulated by that zone. It regulates tree cutting and requires a city permit.

### Summary Analysis

The purpose of this analysis is to interpret the land use documents as they relate to vegetation removal and tree trimming in the Necanicum estuary shoreline zoned A2.

1. The Comprehensive Plan Background Report (page 23) describes the value of riparian vegetation and the negative impacts from its removal. It states the City has adopted Zoning Ordinance requirements to control the removal of vegetation. The narrative is not a Comprehensive Plan policy or a zoning standard.
2. The Comprehensive Plan Goal 17 states, Policy 2: Riparian vegetation shall be maintained and where appropriate restored consistent with the provision of water-dependent uses. The City will implement a program to maintain a 50-foot riparian zone on either side of Neacoxie Creek, Mill Creek and the Necanicum Estuary.



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The City has applied the 50-foot riparian zone setback to either side of the Neacoxie Creek zoned R-1 and R-2. The city's tree trimming, cutting and noxious weed removal in the Necanicum estuary may or may not be interpreted as effectively maintaining the riparian vegetation, but it does not clearly retain vegetation in that setback.

3. Section 6.175 Riparian Vegetation requires retaining vegetation in a 50-foot setback on Neacoxie Creek from the mean high-water line on estuarine portions and the ordinary high water line for non-estuarine portions of these streams. Riparian vegetation within this setback shall be protected as specified in Section 6.175 except that the City may approve the removal of riparian vegetation not covered by provisions of subsection (3) where a proposed plan of vegetation removal has been reviewed and approved by the Oregon Department of Fish and Wildlife ODFW.
4. The A2 zone is designed to protect and conserve natural and recreational resources from major alterations. The zone allows passive restoration and vegetative shoreline stabilization as defined by code. Shoreline stabilization standards prefer proper management of existing streamside vegetation over planting of new vegetation.

Section IX Shoreline Stabilization item 2. defines the standards for revegetation and vegetation management as "plant species shall be selected to ensure that they provide suitable stabilization and value for wildlife. Trees, shrubs and grasses native to the area are generally preferred." The A2 zone does not specifically prohibit vegetation removal 50-feet from the water, but it does provide methods to assess the impact of activities.

#### Conclusion

The current A2 zone lacks a clear reference to a 50-foot riparian setback on the Necanicum Estuary, which is spelled out in a Goal 17 Plan policy. But GZO Section 6.175 Riparian Vegetation appears to cover the estuary shoreline requiring protection and retention of riparian vegetation 50 feet from the mean high water mark. The A2 zone provides for impact assessment analysis.

#### Goal 16 and 17 Policies (page 7, 8 & 10 of this report):

*Fish and wildlife habitat of the Necanicum estuary system contributes a great deal to the environmental quality and to the economy of the area. Actions that would reduce the habitat value of the estuary shall be carefully evaluated in this light. The Oregon Department of Fish and Wildlife shall be consulted as wherever such actions are proposed in order to determine the impacts.*

*Streambank vegetation shall be protected in order to provide wildlife habitat, prevent shoreline erosion, filter storm runoff and protect structures from flood hazards and for aesthetic purposes.*

*Policy 2 Riparian Vegetation shall be maintained and where appropriate restored and enhanced consistent with the provision of water-dependent uses. The City will implement a program to maintain a 50-foot riparian zone on either side of Neacoxie Creek, Mill Creek **and the Necanicum Estuary.***

GZO 6.175 Riparian Vegetation (page 22-23 of this report):

Riparian vegetation adjacent to streams and lakes in Gearhart shall be protected in accordance with the following provisions:

1. The following area of riparian vegetation are defined:
  - A. Fifty feet on either side of Neacoxie Creek.
  - B. Fifty feet on either side of Mill Creek.
  - C. Twenty-five feet adjacent to the unnamed lake north of east Pacific Way.

The setback shall be measured from the mean high-water line on estuarine portions and the ordinary high water line for non-estuarine portions of these streams. Riparian vegetation within this setback shall be protected as specified in Section 6.175.

2. All structures and uses shall be located outside of areas listed in (1) above with the following exceptions:
  - A. Where direct water access is required in conjunction with a water-dependent use; or
  - B. Access to a lot where the proposed access is the only reasonable alternative; or
  - C. Structural shoreline stabilization; or
  - D. Trails or other pedestrian walkway that provide access to the water.
3. For area described in (1) above all vegetation shall be retained within the areas listed with the following exceptions:
  - A. Removal of dead, diseased or dying trees, or trees that pose a safety hazard.
  - B. Removal of vegetation necessary to provide for uses listed in (2) above.
  - C. Vegetation removal in conjunction with an approved in-water project.
  - D. The removal of noxious weeds as defined by the City's nuisance ordinance.
  - E. Vegetation removal necessary to maintain proper stream drainage.
4. The City may approve the removal of riparian vegetation not covered by provisions of (3) above where a proposed plan of vegetation removal has been reviewed and approved by the Oregon Department of Fish and Wildlife ODFW.

Considerations

1. Determine that prior city officials did not apply the 50-foot riparian setback in the A2 zone because it is not included in the AC zone provisions as it is in the residential zones that adjoin Neacoxie Creek. For clarity amend the A2 zone to add the 50-foot riparian setback provision as stated in the Comp Plan Policy 17 and the R-1 and R-2 zone standards.

2. Determine that Section 6.175 is being correctly interpreted because the section permits the removal of noxious vegetation and it permits an exception to the removal of riparian vegetation if approved by ODFW.
3. Use the AC zone Section 3.1170 Resource Capability Determination process and procedures on page 22 of this report to determine if the City's approval of vegetation trimming and removal occurring in AC zone areas is in conflict with the estuary resource capabilities and protection policies.
4. Complete an Impact Assessment to determine if vegetation trimming or removal affects physical or biological resources per the following A2 zone provision as follows:

#### SECTION 3.1160 IMPACT ASSESSMENT

Oregon Statewide Planning Goal 16, dealing with estuarine resources, requires that actions which would potentially alter the estuarine ecosystem must be preceded by an assessment of potential impacts. The Impact assessment need not be lengthy and complex, but it should enable reviewers to gain a clear understanding of the impacts expected.

1. Applicability of Impact Assessment Requirements. The following uses and activities, in addition to those so indicated in the aquatic zones, all require an Impact Assessment at the time a permit is reviewed:
  - A. New dredging;
  - B. Aquatic area fill;
  - C. In-water structures;
  - D. Riprap;
  - E. Other uses or activities which could affect estuarine physical or biological resources.
  - F. Uses or activities that require a Resource Capability determination.

## VERBATIM PLAN AND CODE SECTIONS

### GEARHART COMPREHENSIVE PLAN (pages 24 – 34)

#### THE NECANICUM ESTUARY LCDC GOALS 16 AND 17

### OVERALL GOALS AND POLICIES

#### Purpose

The purpose of the following goals and policies is to establish a basis for the conservation and development of the Necanicum Estuary. As mandated by the State Estuarine Resources Goal, the comprehensive plan must recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands. As a conservation estuary, the Necanicum is designated for long-term uses that do not require major alteration of the estuary, except for purposes of restoration. Specific policies and standards are meant to support and further the goals.

#### GOAL

To maintain all identified marsh areas in their natural, productive, conditions.

#### Policies

1. As a conservation estuary, the Necanicum shall be managed so as to protect its natural resource values by providing only for long-term use of the estuary in a manner that does not require major alteration of the estuary, except for the purpose of restoration.
2. The general priority (from highest to lowest) for use of estuarine resources shall be:
  - a. Uses which maintain the integrity of the estuarine ecosystem;
  - b. Water dependent uses requiring estuarine location, consistent with the Oregon Estuarine Classifications;
  - c. Water-related uses which do no degrade the natural estuarine resources and values; and
  - d. Non-dependent, non-related uses which do not alter, reduce, or degrade the estuarine resources and values.
3. Fill activities are allowed in Conservation management units only as part of the following uses or activities:

- a. Maintenance and protection of man-made structures existing as of October 7, 1977;
  - b. Active restoration if a public need is demonstrated;
  - c. Bridge crossing support structure if an estuarine location is required, no alternative locations exist, adverse impacts are minimized as much as feasible, and it is consistent with the resource capabilities of the area and purposes of the management unit;
  - d. Aquaculture, high intensity water dependent recreation and minor navigational improvement if an estuarine location is required, a public need is demonstrated, no alternative upland locations exist for the portion of the use requiring fill, adverse impacts are minimized as much as feasible, and it is consistent with the resource capabilities of the area and the purposes of the management unit;
  - e. Flood and erosion control structure, if required to protect a permitted water dependent use and land use management practices and non-structural solutions are inadequate to protect the use.
4. Fill shall be allowed in the Aquatic Conservation Zone only for:
- a. An approved active restoration or estuarine enhancement project; or
  - b. On-site maintenance of bridge crossing support structures; or
  - c. Temporary alteration: or
  - d. Installation of bridge crossing support structures; or
  - e. Structural shoreline stabilization necessary to protect an existing use, facility or structure.
5. Dredging shall be allowed in the Aquatic Conservation Zone only for:
- a. An approved restoration or estuarine enhancement project: or
  - b. Installation or maintenance of gas or communication lines: or
  - c. Installation or maintenance of an electrical transmission line or support structure: or
  - d. Bridge crossing support structure: or
  - e. Temporary alteration; or

f. Shoreline stabilization.

6. Dredging or filling shall be allowed only:

- a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit or zone; and
- b. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- c. If no feasible alternative upland locations exist; and
- d. If adverse impacts are minimized.

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

7. In permitting uses or activities consideration shall be given to the cumulative impact of additional requests for like actions in the area. The total effect of all uses shall remain consistent with the intent of the Aquatic Conservation Zone.

8. Where a use requires an estuarine location, construction on piling is preferred to filling.

#### GOAL

To manage areas and uses adjacent to marshes to protect the integrity of the marshes themselves

#### Policies

- 1. Development that takes place in areas upland from the estuary shall respect the natural functions of the adjacent water areas. Development of adjacent shoreland areas should, at a minimum give consideration to the control of vegetation removal, storm water runoff and public access. A general [role] rule should be the more intensive the adjacent shoreland development, the more careful the control of its potential adverse impacts.

#### GOAL

To encourage the restoration of the estuary and its physical and biological resources

#### Policies

- 1. All jurisdictions and organizations with an interest in the productivity of the estuary should work together to encourage the U. S. Army Corps of Engineers or other agency to investigate the restoration of the mouth of the estuary in order to improve tidal and salinity patterns.

2. Adverse impacts to estuarine resources resulting from dredge or fill activities permitted in creation, restoration or enhancement of estuarine areas shall be avoided.

#### GOAL

To achieve an improved level of water quality in the estuary by the improvement of wastewater discharge, the careful control of storm water run-off, and the prevention of erosion of uplands area

#### Policies

1. Because of potential damage storm water runoff can cause in estuaries, standards for storm water drainage systems shall provide for the use of natural drainage systems (streams, etc.) wherever possible, and for the dispersion of storm water from parking lots and streets prior to entering the estuary. Existing drainage ways shall not be diverted. Storm water outfalls shall be directed away from marshes and tide flats.

#### GOAL

To protect riparian (streambank) vegetation within the Necanicum Estuary

#### Policies

1. Streambank vegetation shall be protected in order to provide wildlife habitat, prevent shoreline erosion, filter storm runoff, and protect structures from flood hazards and for aesthetic purposes. Revegetation of the (rip-rap) bank shall be required after construction.
2. Through the building permit, zoning and subdivision processes, the City shall provide for setbacks of structures, fills or other alterations from the shoreline.
3. General priorities for shoreline stabilization for erosion control are (from highest to lowest):
  - a. Proper maintenance of existing riparian vegetation;
  - b. Planting or riparian vegetation;
  - c. Vegetated rip-rap;
  - d. Non-vegetated rip-rap;
  - e. Groins, bulkheads, or other structural methods.
4. Structural shoreline stabilization methods shall be permitted only if:
  - a. Flooding or erosion is threatening a structure or an established use; or
  - b. There is a demonstrated public need in conjunction with a water-dependent use; and

- c. Land use management practices or non-structural solutions are inappropriate because of high erosion rates, or the use of the site; and
- d. Adverse impacts on water currents, erosion, and accretion patterns of aquatic life and habitat are avoided or minimized.

#### GOAL

To protect fish and wildlife habitat throughout the Necanicum Estuary

#### Policy

Fish and wildlife habitat of the Necanicum estuary system contributes a great deal to the environmental quality and to the economy of the area. Actions that would or reduce the habitat value of the estuary shall be carefully evaluated in this light. The Oregon Department of Fish and Wildlife shall be consulted as wherever such actions are proposed in order to determine the impacts.

#### GOAL

To increase the public understanding of the value and functioning of the estuary and the river

#### Policies

1. The City strongly encourages the school district and the community college to continue programs in Marine Ecology and Oceanography in order to promote this goal.
2. Existing public ownerships, right-of-ways, and similar public easements in estuary shorelands which provide access to or along the estuary shall be retained or replaced if sold, exchanged or transferred. Right-of-ways may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

#### GOAL

To foster cooperation among jurisdictions and agencies in the management of the estuary

#### Policies

1. Since actions in the estuary extend beyond corporate boundaries, all jurisdictions on the estuary shall participate in the evaluation of development proposals affecting the estuary. This may be carried out in the state and federal permit processes, or through the conditional use or subdivision permit process at the local level. The Oregon Department of Fish and Wildlife shall be used as a resource to evaluate the proposals.
2. The City of Gearhart recognizes the authority of the following State Agency statutes in managing activities that may affect the estuary:
  - a. The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610 – 527.730 and 527.990;

- b. The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service;
- c. The non-point source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL 92-500); and
- d. The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 – 541.665.

#### GOAL

An independent agency, such as the State Department of Environmental Quality or the Federal Environmental Protection Agency, shall be responsible for the monitoring of water quality in the Estuary.

#### GOAL

Inasmuch as Seaside, Gearhart and the County all have an interest in the estuary, there shall be coordination among the jurisdictions on any permit affecting the estuary.

#### GOAL

To limit the proliferation of individual single purpose docks and piers

#### Policy

The proliferation of individual single purpose docks and piers shall be controlled through the encouragement of community facilities common to several uses and interests. The size and shape of docks and piers shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dry-land storage, and launching ramps shall be investigated and considered.

### OVERALL GOALS AND POLICIES

To develop an implementation procedure that insures that estuarine development actions are consistent with the Estuarine Resource Goal of the State-Wide Planning Goals.

#### Policies

1. Where a use could potentially alter the estuarine ecosystem, the City shall require a clear presentation of the impacts of the proposed alteration. In impact assessment procedures is set forth in the Zoning Ordinance. The impact assessment will be used to identify potential alterations of estuarine resources and values, determine whether potential impacts can be avoided and minimized, and to provide factual base information to assure applicable Policies and Standards will be met. If the City requires additional information of an applicant, the City shall specify the nature of the information and shall limit the assessment to addressing those standards and policies that the City determines are relevant.

2. As required by Statewide Planning Goal 16, Estuarine Resources, some development uses and activities in certain management zones must be consistent with the resource capabilities of the management zone or unit. A procedure for determining if a development is consistent with the resource capabilities of the zone is set forth in the City Zoning Ordinance.

In Conservation management units and zones, the following uses permitted in Gearhart must be shown to be consistent with the resource capabilities of the area and the purpose of the management unit.

- a. Active restoration for purposes other than protection of habitat, nutrient, fish wildlife and aesthetic resources.
- b. Temporary alterations.

## COASTAL SHORELANDS LCDC GOAL 17

### GOAL

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shoreland, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

### GOAL

To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of the coastal shoreland area.

### Policies

1. Major marshes and significant wildlife habitat shall be protected. Uses permitted in these areas shall be consistent with the protection of natural values.
2. Riparian vegetation shall be maintained and where appropriate restored and enhanced consistent with the provision of water-dependent uses. The City will implement a program to maintain a 50-foot riparian zone on either side of Neacoxie Creek, Mill Creek and the Necanicum Estuary.
3. Existing public ownerships, right-of-way and similar public easements which provide access to coastal beach areas shall be retained or replaced if sold, exchanged or transferred. Right-of-way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.
4. The City will rely on the requirements of its Flood Hazard Overlay Zone to regulate development in flood hazard areas to ensure that the provisions of the National Flood Insurance Program are met.

5. Where shoreline stabilization measures are required, priority shall be given to non-structural, rather than structural solutions.
6. There are presently no uses in the Gearhart portion of the Necanicum Estuary which require dredging. Uses permitted in Gearhart's portion of the Necanicum Estuary potentially require only a limited amount of dredging. Because of this limited need for dredging, the protection of specific dredge mater disposal sites is not warranted at this time.
  - a. Before final City action which requires a dredge material disposal site, an estuary wide dredge material disposal plan shall be prepared.
  - b. Dredge material shall not be deposited in the water, in other estuarine areas, or fresh water wetlands. Upland sites shall be utilized and engineering practices consistent with Army Corps of Engineer requirements shall be utilized. Proposed dredge material disposal sites shall be carefully evaluated through the permit process and fully coordinated with appropriate State and Federal agencies.
  - c. Identified dredge material disposal sites shall be protected from incompatible uses.
7. Uses permitted in Gearhart's portion of Necanicum Estuary have the potential to generate only a very limited need for mitigation. Because of this limited need for mitigation, the protection of specific mitigation sites is not warranted at this time.
  - a. Before final action on a use which requires a mitigation site, an estuary wide mitigation plan shall be prepared.
  - b. Mitigation sites shall be identified with the assistance of the Division of State Lands and the Oregon Department of Fish and Wildlife.
  - c. Identified mitigation sites shall be protected from incompatible uses.
8. The City will cooperate with affected agencies to protect the habitat of the snowy plover. Specifically, the City will:
  - a. Support the effort of the Oregon Department of Fish and Wildlife to protect and enhance snowy plover habitat.
  - b. Review land use actions in beach and active ferritin areas to ensure compatibility with snowy plover habitat.
9. The City will cooperate with the U. S. Fish and Wildlife Service in the protection of habitat for the Oregon Silverspot Butterfly. Specifically, the City will:

- a. Notify the U. S. Fish & Wildlife of proposed land-use actions in identified Oregon Silverspot Butterfly habitat.
- b. Cooperate with the U. S. Fish & Wildlife Service in the development of site specific habitat protection plans where proposed development has been identified as having the potential to affect habitat.
- c. Participate in the revision to the recovery plan for the Oregon Silverspot Butterfly.

## GEARHART ZONING ORDINANCE

### Relevant Code Definitions:

- 109 **Restoration.** The replacing or restoring of original attributes or amenities such as natural biological productivity and aesthetic or cultural resources which have been diminished or lost by past alterations, activities or catastrophic events. For the purpose of Oregon Statewide Planning Goal 16, 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, and may not have been a functioning part of the estuarine system when alteration work began.
- 110 **Restoration, Active.** Involves the use of specific remedial actions such as removing dikes or fills, installing water treatment facilities, or rebuilding or removing deteriorated urban waterfront areas, or returning filled areas to tidal influence.
- 111 **Restoration, Passive.** The use of natural processes, sequences or timing to effect restoration after the removal or reduction of adverse stress.
- 112 **Resource Enhancement.** The use of artificial means such as hatcheries or rearing ponds to improve the quantity or quality of a specific resource.
- 113 **Shoreline Stabilization.** The protection of the banks of a tidal or non-tidal stream, river or estuarine waters by vegetative or structural means.

## SECTION 3.11:A-2 ZONE: AQUATIC CONSERVATION ZONE

Section 3.1110	Purpose and Areas Included
Section 3.1120	Uses and Activities Permitted
Section 3.1130	Conditional Uses and Activities Permitted
Section 3.1135	Prohibited Uses
Section 3.1140	Additional Development Standards and Procedural requirements
Section 3.1150	Estuarine Uses and Activities Standards
Section 3.1160	Impact Assessment
Section 3.1170	Resource Capability Determination

### SECTION 3.1110 PURPOSE AND AREAS INCLUDED

The purpose of the Aquatic Conservation zone is to conserve designated areas for long-term uses of renewable resources that do not require major alterations of the estuary, except for the purpose of restoration. They are managed for protection and conservation of the resources found in these

areas. The Aquatic Conservation Zone includes areas needed for the maintenance and enhancement of biological productivity, recreational resources, aesthetic feature and aquaculture. The Aquatic Conservation Zone includes areas that are smaller or of less biological importance than Aquatic Natural areas. Areas that are partially altered and adjacent to existing moderate intensity development which do not possess the resource characteristics of other aquatic areas are also included in this zone.

#### SECTION 3.1120      USES AND ACTIVITIES PERMITTED

The following uses and activities are permitted in the Aquatic Conservation Zone, subject to the provisions of Section 3.1140, Additional Development Standards and Procedural Requirements.

1. Passive restoration measures; see definition above
2. Vegetative shoreline stabilization; see definition above
3. Marine research and educational observation.
4. Maintenance and repair of existing structures or facilities;
5. Placement of piling in conjunction with a permitted use above;
6. Dredging in conjunction with a permitted use above;
7. Fill in conjunction with a permitted use above.

#### SECTION 3.1130      CONDITIONAL USES AND ACTIVITIES PERMITTED

The following uses and activities are allowed as conditional uses when authorized in accordance with Article 7, Conditional Uses. The uses and activities are also subject to the provisions of Section 3.1140, Additional Development Standards and Procedural Requirements.

1. Storm water outfalls;
2. Pipelines, cables, utility crossings requiring dredging or excavation.
3. Communication facilities; including necessary foundation or support structures;
4. Bridge crossings or replacement of existing culverts;
5. Active restoration of fish habitat, wildlife habitat, or water quality; see definition above dikes, fills
6. Structural shoreline stabilization;
7. Estuarine enhancement, including mitigation;
8. Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources, as designated in the Comprehensive Plan.
9. Bridge crossing support structures.

**10. Culverts.**

THE FOLLOWING CONDITIONAL USES ARE SUBJECT TO:

- SECTION 3.1140: Additional Standards and Procedural Requirements; and
  - SECTION 3.1160: An Impact Assessment; and
  - SECTION 3.1170: A Resource Capability Determination; and
  - ARTICLE 7: Conditional Uses
11. Active Restoration for purposes other than protection of habitats, nutrient, fish, wildlife, or aesthetic resources;
12. Individual dock;
13. Temporary Alteration;
14. Placement of piling, in conjunction with any of the above except bridge crossing;
15. Dredging in conjunction with any of the above uses except bridge crossing;
16. Fill in conjunction with any of the above uses except bridge crossings and storm water and waste water outfalls.

**SECTION 3.1135 PROHIBITED USES**

1. The sale or holding out for sale, or allowing others to sell or hold out for sale, more than (1) new or used vehicle, motor home, trailer, recreational vehicle, motorcycle, or boats at any one time on a tax lot.

**SECTION 3.1140 ADDITIONAL DEVELOPMENT STANDARDS AND PROCEDURAL REQUIREMENTS**

All uses shall satisfy applicable aquatic use standards in Section 3.1150. Where a proposal involves several uses, the standards applicable to each use shall be satisfied.

1. When a proposal includes several uses, the uses shall be reviewed in aggregate under the more stringent procedure.
2. All policies in the City Comprehensive Plan shall be adhered to.
3. All other applicable ordinance requirements shall also be satisfied.
4. The maximum height of structures shall be 20 feet.
5. A use which requires dredging, fill, in-water structures, rip-rap, or other activities which could affect the estuary's physical processes or biological resources must be subject to an Impact Assessment. (Section 3.1160).

**SECTION 3.1150 ESTUARINE USES AND ACTIVITIES STANDARDS**

The standards in this section are applicable to all development proposals in estuarine areas in Gearhart.

## **I. DOCK**

1. Community docks shall be given higher priority than private docks.
2. Where a private individual dock is proposed, the applicant must provide evidence that alternatives such as community docks mooring buoys or boat ramps are not available, or are impractical.
3. Evidence shall be provided by the applicant that the size and shape of the dock is the minimum necessary to fulfill the purpose.
4. Covered docks shall not be allowed.
5. Open pile piers or secured floats shall be used for dock construction., Fills in aquatic areas to create a dock are not permitted.
6. Piers and floats shall extend no farther out into the water than is needed to affect navigational access. Conflicts with other water surface uses, such as fishing or recreational boating shall be minimized.

## **II. DREDGE MATERIAL DISPOSAL**

1. Surface runoff from disposal sites shall be controlled to protect water quality and prevent sedimentation of adjacent water bodies, wetlands and drainage ways. Disposal runoff water must enter the waterway through an outfall at a location with adequate circulation and flushing. Underground springs and aquifers must be identified and protected.
2. Dikes shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of solids into the waterway or estuary. Ponds should be designed to maintain at least one foot of standing water at all times to further encourage proper settling. Weirs should have proper crest heights.
3. Land disposal sites that are not intended for immediate subsequent use as development locations, including sites which will be reused for dredged materials disposal, shall be revegetated as soon as disposal site conditions allow in order to retard wind and wave erosion and to restore the fish and wildlife habitat value of the site. Native plant species should be considered for revegetation of disposal areas. However, plant species and revegetation techniques approved by the Soil Conservation Service, the U.S. Army Corps of Engineers and other participating Federal and State resource agencies are appropriate.
4. Height and slope requirements; the final height and slope after each use of a land dredged material site shall be such that:
  - A. The site does not enlarge itself by sloughing and erosion into adjacent aquatic areas;
  - B. Loss of material from the site during storms and freshets is minimized.
  - C. Interference with the view from nearby residences, scenic viewpoints and parks is avoided.

### **III. DREDGING**

1. Dredging may be permitted only if the following criteria are met;
  - A. If specifically allowed by the applicable aquatic zone and required for one or more of the following uses and activities:
    - (1) An approved restoration project;
    - (2) Excavation necessary for approved bridge crossing support structures, or pipeline, cable, or utility crossing;
    - (3) Temporary alterations.
  - B. If a need (i.e., a substantial public benefit) is demonstrated; and
  - C. If the use or alteration does not unreasonably interfere with public trust rights; and
  - D. If no feasible alternative upland locations exist; and
  - E. If adverse impacts are minimized.
2. When dredging is permitted, the dredging shall be the minimum necessary to accomplish the proposed use.
3. Undesirable erosion, sedimentation, increased flood hazard, and other changes in circulation shall be avoided at the dredging site and in adjacent areas
4. The timing of dredging operations shall be coordinated with State and Federal resource agencies, local governments, and private interest to protect estuarine aquatic resources, minimize interference with recreational fishing, and ensure proper flushing of sediment and other materials introduced into the water by the project.
5. Adverse short-term effects of dredging and aquatic area disposal such as increased turbidity, release of organic and inorganic materials or toxic substances, depletion of dissolved oxygen, disruption of the food chain. Loss of benthic productivity and disturbance of fish runs and important localized biological communities shall be minimized.
6. The effects of both initial and subsequent maintenance dredging, as well as dredging equipment marshalling and staging, shall be considered prior to approval of new projects. Projects will not be approved unless disposal sites with adequate capacity to meet initial excavation dredging and at least five years of expected maintenance dredging requirements area available.

### **IV. FILLS**

1. Where fills are permitted, the fill shall be the minimum necessary to accomplish the proposed uses.
2. Fill may be permitted only if all of the following criteria are met:

- A. If required for navigation, or for other water dependent uses requiring an estuarine location or if specifically allowed under the applicable aquatic zone; and
  - B. A substantial public benefit is demonstrated; and
  - C. The proposed fill does not unreasonably interfere with public trust rights; and
  - D. Feasible upland alternative locations do not exist; and
  - E. Adverse impact as identified in the impact assessment, are minimal.
- 3. Where existing public access is reduced, suitable public access as part of the development project shall be provided.
  - 4. Aquatic areas shall not be used for sanitary landfills or the disposal of solid waste.
  - 5. Projects involving fill may be approved only if the following alternatives are examined and found to be infeasible:
    - A. Construct some or all of the project on piling; or
    - B. Construct some or all of the proposed activity on existing upland area;
    - C. Construct the project at an alternative site where adverse impacts are less significant.

#### **V. LAND TRANSPORTATION FACILITIES**

- 1. Fill supported causeways or bridge approach fills across aquatic areas shall not be permitted. Bridge abutments may be permitted where required.

#### **VI. MITIGATION**

- 1. Mitigation for dredge or fill within intertidal areas or tidal marshes shall be required by the Director of Division of State Lands (under provision of ORS 541.605-541.665). The suitability of a mitigation proposal for an aquatic 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).

#### **VII. PILINGS**

- 1. Piling which could alter the estuary may be allowed only if all of the following criteria are met:
  - A. A substantial public benefit is demonstrated; and
  - B. The proposed use does not unreasonably interfere with public trust rights; and
  - C. Feasible alternative upland locations do not exist; and
  - D. Potential adverse impacts, as identified in the impact assessment, are minimized.

2. The piling will meet with all State and Federal engineering standards.
3. Piling shall be used in lieu of fill wherever the use engineering feasible. The number of pilings shall be the minimum necessary to accomplish the proposed use.

#### **VIII. RESTORATION/RESOURCE ENHANCEMENT - ACTIVE**

1. Proposals for restoration projects shall present evidence that:
  - A. The restored area is a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed; and
  - B. The restored area may not have been a functioning part of the estuarine system when alteration work begins; and
  - C. 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.
2. Estuarine enhancement project proposals shall identify:
  - A. The original conditions to be enhanced;
  - B. The cause of the loss of degradation; and
  - C. The location and extent of action necessary to achieve the enhancement objective.
3. Estuarine enhancement project proposals shall present evidence that the project will result in an overall improvement in the features of an estuary, which will outweigh any adverse impacts.
4. Dredge, fill, shoreline stabilization, 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.

#### **IX. SHORELINE STABILIZATION**

1. General Standards
  - A. Proper management of existing streamside vegetation is the preferred method of stabilization, followed by planting of vegetation. Where vegetative protection is inappropriate (because of the high erosion rate, the use of the site or other factors) structural means such as rip-rap may be used.
  - B. In the placement of stabilization materials, factors to be considered include, but are not limited to : effects on bird and wildlife habitat, uses of lands and waters adjacent to the bank, effects on fishing areas, effects on aquatic habitat, relative effectiveness of the various structures, engineering feasibility, cost and erosion, flooding and sedimentation of adjacent areas.

- C. Emergency repair to shoreline stabilization facilities is permitted, notwithstanding the other regulations in these standards, subject to the standards imposed by the State of Oregon, Division of State Lands and the U.S. Army Corp of Engineers.
- D. Structural shoreline stabilization may be allowed only if all of the following criteria are met:
  - (1) A substantial public benefit is demonstrated; and
  - (2) The proposed use does not unreasonably interfere with public trust rights; and
  - (3) Feasible alternative upland locations do not exist; and
  - (4) Potential adverse impacts, as identified in the impact assessment, are minimized.

2. Standards for revegetation and vegetation management

- A. Plant species shall be selected to ensure that they provide suitable stabilization and value for wildlife. Trees, shrubs and grasses native to the area are generally preferred.

3. Standards for Riprap

- A. Standard engineering and construction practices shall be used in the placement of riprap, with regard to slope, size, composition and quality of materials, excavation of the toe trench, placement of a grave filter blanket, and operation of equipment in the water. State and Federal agency regulations should be consulted in this regard.
- B. Proposals for new riprap bank line slopes steeper than 1.5 to 1 (horizontal to vertical) must demonstrate that adequate shallow areas will be available for juvenile fish shelter or that the area is not typically used for juvenile fish shelter.
- C. Rip rapped banks should be vegetated to improve bird and wildlife habitat, where feasible.
- D. Shoreline protection measures shall not restrict existing public access to public shorelines.
- E. Shoreline protection measures should be designed to minimize their impacts on the aesthetic qualities of the shoreline.
- F. Bank line protection is not in itself a way to increase land surface area. Where severe erosion has occurred, fill may be used to obtain the desired bank slope and restore the previous bank line. Any extension of the bank line into traditional aquatic areas shall be subject to the standards for fill. Disruption of tidal marsh, tidal flat and productive subtidal areas shall not be permitted.
- G. Construction of shoreline protection measurers shall be coordinated with State and Federal agencies and local interests to minimize the effects on aquatic resources and habitats. Relevant State and Federal water quality standards shall be met. Stream channelization should be avoided.

## **X. UTILITIES**

1. Overhead electrical or communication transmission lines shall be located so as not to unduly interfere with migratory bird flyways and significant habitat of resident waterfowl, birds of prey and other birds. In case of serious conflict, utility facilities should be located underground.
2. Utility facilities such as communications facilities and cable crossings, shall be permitted only if all the following criteria are met:
  - A. A public (i.e. a substantial public benefit) exists and the use or alteration does not unreasonably interfere with public trust right; and
  - B. Alternative non-aquatic locations are unavailable or impractical; and
  - C. Dredge, fill and other adverse impacts are avoided or minimized.
3. Storm water shall be directed into existing natural drainage wherever possible, and shall be dispersed into several locations so as to minimize the impact on the estuary. Special precautions shall be taken to ensure that contamination of estuarine areas by oil sediment or other pollutant does not occur. This shall be achieved through use of holding ponds, or other similar means.

## **SECTION 3.1160 IMPACT ASSESSMENT**

Oregon Statewide Planning Goal 16, dealing with estuarine resources, requires that actions which would potentially alter the estuarine ecosystem must be preceded by an assessment of potential impacts. The Impact assessment need not be lengthy and complex, but it should enable reviewers to gain a clear understanding of the impacts expected.

2. Applicability of Impact Assessment Requirements. The following uses and activities, in addition to those so indicated in the aquatic zones, all require an Impact Assessment at the time a permit is reviewed:
  - A. New dredging;
  - B. Aquatic area fill;
  - C. In-water structures;
  - D. Riprap;
  - E. Other uses or activities which could affect estuarine physical or biological resources.
  - F. Uses or activities that require a Resource Capability determination.
3. Information needed for an Impact Assessment. Information needed to complete the Impact Assessment may be obtained from sources other than the permit application, such as a Federal Environmental Impact Statement. An assessment of impacts of aquatic area pesticide and herbicide application shall be provided by the Oregon Department of Agriculture and the Oregon Department of Environmental Quality.

A complete Impact Assessment includes the following information:

- A.** Aquatic life forms and habitat, including information on both the extent of and impacts on: habitat type and use, species present (including threatened or endangered species), seasonal abundance, sediments, and vegetation.
  - B.** Shoreland life forms and habitat, including information on both the extent of and impacts on: habitat type and use, species present, (including threatened or endangered species), seasonal abundance, soil types and characteristics, and vegetation present.
  - C.** Water quality, including information on: sedimentation and turbidity, dissolved oxygen, biochemical oxygen demand, contaminated sediments, salinity, water temperatures, and expected changes due to the proposed use or activity.
  - D.** Hydraulic characteristics, including information on: water circulation, shoaling patterns, potential for erosion or accretion in adjacent areas, changes in flood levels, flushing capacity, and water flow rates.
  - E.** Air quality, including information on quantities of particulates and expected airborne pollutants.
  - F.** Public access to the estuary and shoreline, including information on: proximity to public-owned shorelands and public street ends; effect on public boat launches, marinas and docks; and impact on inventoried public access opportunities.
  - G.** Demonstration that proposed structures or devices are properly engineered.
  - H.** Demonstration that the project's potential public benefits will equal or exceed expected adverse impacts.
  - I.** Demonstration that non-water dependent uses will not preempt existing or future water dependent utilization of the area.
  - J.** Determination of methods for mitigation and accommodation of the proposed development, based on items (a) through (i) above, in order to avoid or minimize preventable adverse impacts.
- 4.** Impact Assessment Conclusion. Based on the information and analysis in Section 3.1160(2) one of the following four (4) conclusions shall be reached:
- A.** The proposed uses and activities do not represent a potential degradation or reduction of estuarine resource.
  - B.** The proposed uses and activities represent a potential degradation or reduction of estuarine resources. The Impact Assessment identifies reasonable alterations or conditions that will eliminate or minimize to an acceptable level expected adverse impacts.
  - C.** The proposed uses and activities will result in unacceptable losses. The proposed development represents irreversible changes and actions and unacceptable degradation or reduction of estuarine resource properties will result.

- D.** Available information is insufficient for predicting and evaluating potential impacts. More information is needed before the project can be approved.

#### **SECTION 3.1170      RESOURCE CAPABILITY DETERMINATION**

Some users and activities may only be approved when consistent with the resource capabilities of the area and the purposes of the zone. This section describes procedures for making this determination. A completed Resource Capability Determination consists of the following elements:

- 1.** Identification of the affected area's zone, and its purpose.
- 2.** Identification of the types and extent of estuarine resources present and expected adverse impacts. This information is included in the Impact Assessment.
- 3.** A determination of whether the use or activity is consistent with the resource capabilities of the affected zone. A use or activity is consistent with the resource capabilities of the area when either:
  - A.** Impact on estuarine resources are not significant; or
  - B.** Resources of the area will be able to assimilate the use and activity and their effects and continue to function in a manner which, in Conservation Aquatic Zones, conserves long-term use of renewable resources, natural biological productivity, recreation and aesthetic values and aquaculture.
- 4.** For temporary alterations, the Resource Capability Determination must also include:
  - A.** Determination that potential short-term damage to estuary and shoreland resources is consistent with the resource capabilities of the area; and
  - B.** Determination that the area and affected resources can be restored to their original condition.

## Zoning Ordinance Section 6.175 Riparian Vegetation

### SECTION 6.175 RIPARIAN VEGETATION

Riparian vegetation adjacent to streams and lakes in Gearhart shall be protected in accordance with the following provisions:

5. The following area of riparian vegetation are defined:

- A. Fifty feet on either side of Neacoxie Creek.
- B. Fifty feet on either side of Mill Creek.
- C. Twenty-five feet adjacent to the unnamed lake north of east Pacific Way.

The setback shall be measured from the mean high-water line on estuarine portions and the ordinary high water line for non-estuarine portions of these streams. Riparian vegetation within this setback shall be protected as specified in Section 6.175.

6. All structures and uses shall be located outside of areas listed in (1) above with the following exceptions:

- A. Where direct water access is required in conjunction with a water-dependent use; or
- B. Access to a lot where the proposed access is the only reasonable alternative; or
- C. Structural shoreline stabilization; or
- D. Trails or other pedestrian walkway that provide access to the water.

7. For area described in (1) above all vegetation shall be retained within the areas listed with the following exceptions:

- A. Removal of dead, diseased or dying trees, or trees that pose a safety hazard.
- B. Removal of vegetation necessary to provide for uses listed in (2) above.
- C. Vegetation removal in conjunction with an approved in-water project.
- D. The removal of noxious weeds as defined by the City's nuisance ordinance.
- E. Vegetation removal necessary to maintain proper stream drainage.

8. The City may approve the removal of riparian vegetation not covered by provisions of (3) above where a proposed plan of vegetation removal has been reviewed and approved by the Oregon Department of Fish and Wildlife.