

## ARTICLE 36

# Supplementary Provisions for Estuarine and Shoreland Areas

### SECTION 3.36.000 Technical Review

All regulated activities in estuarine or shoreland areas shall be reviewed to determine conformance with the Comprehensive Plan and provisions of this ordinance. Regulated activities are those uses which require state and/or federal permits including but not limited to docks, erosion control structures, shoreline stabilization, dredging, filling, dikes, piling and dolphin installation.

The fact that a use or activity is permitted or that a use permit has been approved or denied shall be reported to the permit granting agency within ten working days of a public notice or other request for such information. The report shall contain a statement of whether or not the use or activity is consistent with the Plan and Ordinance; the reason the use or activity is not consistent; standards and conditions which should be applied if the permit is granted and the need, if any, for local permits for uses associated with the regulated activities.

If a proposed use which requires local approval has not been reviewed, notice will be given to the permit-granting agency and the applicant within ten working days of notification, stating what process is required to review the proposed use. Upon completion of the required review, the report mentioned above, including a decision on the request, shall be sent to the permit granting agency.

### SECTION 3.36.010 Consistency Determination

If a use or activity is permitted outright in the zone classification, it shall be considered to be consistent with the Comprehensive Plan, the purpose of the applicable management unit within which it is located and the resource capabilities of the area, and will be considered to have no potential of creating unacceptable degradations of the estuarine or shoreland area.

If a use or activity is permitted with standards or permitted conditionally, local approval of a use permit shall be required. Approval of a request shall be based on findings which constitute a determination that the use or activity is consistent with the Comprehensive Plan, the purpose of the applicable resource management unit and provisions of this ordinance. For estuarine areas, a determination of conformance with the resource capabilities of the area and that other unacceptable degradations of the estuarine environment shall not occur.

**SECTION 3.36.020 Application**

1. No application is necessary for regulated activities which do not require local approval. Local input shall be provided to permit granting agencies in response to public notice provisions of their application procedures.
2. Application for a regulated activity which requires local approval, or other use permitted with standards or permitted conditionally in the zone classification, shall be processed as an Administrative Action pursuant to the provisions of Chapter 2 of this ordinance. The application shall be submitted to the Director on forms provided by him and should include the following information:
  - a. Identification of resources existing at the site;
  - b. Effects of the proposed use on physical characteristics of the estuary and the proposed site, such as: flushing, patterns of circulation and other hydraulic factors; erosion and accretion patterns; salinity, temperature and dissolved oxygen characteristics of the water;
  - c. Effects of the proposed use on biological characteristics of the estuary and the proposed site, such as: benthic habitats and communities; anadromous fish migration routes; fish and shellfish spawning and rearing areas; primary productivity, resting, feeding and nesting areas for migrating and resident shorebirds, wading birds and other waterfowl; riparian vegetation; wildlife habitat;
  - d. Effects of the proposed use on other established uses in the area;
  - e. Impacts of the proposed use on navigation and public access to shoreland or estuarine areas;
  - f. Assurance that structures have been properly engineered;
  - g. Alternative project designs and/or locations which have been considered in order to minimize preventable adverse impacts; and
  - h. Steps which have been taken to minimize or avoid adverse impacts.

If application has been made to the Corps of Engineers or Oregon Division of State Lands for permit approval, applications for local approval shall include the federal/state permit application and information submitted with that request.

3. Based on the type of use proposed, the Director shall determine at the required preapplication conference, pursuant to §2.050, which information is applicable to the request and shall be submitted with the application. Federal Environmental Impact Statements or Impact Assessments, or other prepared material which addresses pertinent issues, may satisfy this requirement if available at the time of application. In any case, the Director may require additional information from the applicant prior to making a decision if it is determined that such information is necessary to assure consistency with applicable criteria.
4. In making a decision, the Director shall consider:
  - a. The proposed use and its location.
  - b. Conformity with the standards for such use in this ordinance.
  - c. Conformity with the Comprehensive Plan.
  - d. Consistency of the proposed use with resource capabilities of the area and the purpose of the applicable resource management unit for estuarine uses.
  - e. Comments from agencies or other persons noticed during the Administrative Action process.
5. No application shall be approved by the Director without verification that all necessary permits from other agencies have been obtained. Approval may be given if conditions are imposed to assure that all such permits be obtained prior to commencement of the activity.

**SECTION 3.36.030 Resource Capabilities Test for Estuarine Natural and Conservation Management Units**

1. Certain uses are permitted in estuarine areas as long as the uses are consistent with the resource capabilities, as defined in §1.090 of this ordinance, of the area and the purpose of the management unit. Technical review of a proposed use shall ensure that, if approved, the use will be consistent with resource values.
2. A determination of consistency with resource capability shall be based on:
  - a. Identification of resources existing at the site, including environmental (e.g., aquatic life and habitat present, benthic populations, migration routes) and social and economic factors (navigational channels, public access facilities, areas especially suited for water-dependent use).

- b. Evaluation of impacts on those resources by the proposed use.
  - c. Determination of whether the resources can continue to achieve the purpose of the management unit if the use is approved.
3. In determining consistency of a proposed use with resource capabilities of the area, Douglas County shall rely on federal or state resource agencies for regulated activities in estuarine areas. Findings showing that the proposed use is consistent with resource capabilities must be made by those agencies before such permits are approved.

For other than regulated activities that may be permitted with standards or conditionally permitted by zoning regulations, the Director shall make a decision based on the information submitted by the applicant, information contained in the Comprehensive Plan and other published studies concerning the Umpqua estuary, and comments received from resource agencies which result from public notice provided pursuant to §2.065.4 of this ordinance. No response by an affected agency shall indicate to the Director that no resource issues have been identified within that agency's area of interest or expertise.

#### **SECTION 3.36.040 Other Alterations**

1. Other alterations in the estuary shall be allowed only:
  - a. 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
  - b. if no feasible alternative upland locations exist; and
  - c. if adverse impacts are minimized.
2. In determining the impact of other alterations on the estuary, Douglas County shall rely on the expertise of affected State and Federal resource agencies. Through consultation with each agency, Douglas County will determine if the alteration is 1) needed, 2) that no feasible alternative upland location exists, and 3) that adverse impacts are minimized. The County shall notify the affected agency of the proposed alteration. Input from each agency shall be used to assist in the impact analysis. No response shall indicate to the Director that the proposed alteration is consistent with the above criteria in the view of the affected State or Federal agency. The affected agency responses will be utilized by the County in making findings on other alteration impacts.

### **SECTION 3.36.050 Standards and Criteria Applicable to Uses and Activities in Estuarine and Shoreland Areas**

In addition to other provisions of this article, uses and activities permitted with standards or permitted conditionally in estuarine and shoreland zones shall comply with any of the following applicable standards and criteria. Applicants for a use permit shall provide information concerning applicable standards and criteria sufficient to allow an evaluation of compliance with these standards and criteria, and shall be apprised of specific requirements at the required preapplication conference.

### **SECTION 3.36.060 Standards and Criteria for Estuarine Zones**

1. General Application
  - a. The amount of estuarine area consumed by any one development shall be minimized in order to limit the commitment of estuarine surface area to the parts of developments that must locate in the estuary as opposed to shorelands and uplands.
  - b. Water quality, including newly created waterways, shall be maintained at levels which will support recognized beneficial uses.
  - c. Water surface area and volume shall be maintained wherever possible.
  - d. The proposed use or activity shall not result in total destruction of a type of natural habitat or biological function which currently exists in the estuary.
  - e. The proposed use or activity shall not diminish the productive capacity of spawning sites for fish species having significant value to humans.
  - f. The size and shape of a dock or pier shall be limited to that required for that use.
  - g. In order to encourage community facilities common to several uses, proposals for the establishment of individual, single-purpose docks and piers shall only be approved when alternatives, such as mooring buoys, dry land storage and launching ramps, have been investigated and considered.

## 2. Dredging and Filling

- a. Dredging and/or filling, shall be allowed only if:
  - (1) the activity is required for navigation or other water-dependent uses that require estuarine location; or if specifically allowed by the applicable management unit requirements of the estuarine goal; and
  - (2) 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
  - (3) no feasible alternative upland location exists for the portion requiring fill; and
  - (4) adverse impacts are minimized; and
  - (5) the activity is consistent with the objectives of the State's Estuarine Resources Goal and with the state and federal law in conformance with Douglas County's Comprehensive Plan.
- b. Fills or structures, when permitted, shall be of minimum size required for the operation of that use or business.
- c. Filling shall be authorized only to accommodate development which has been determined to be in accord with a design approved by the appropriate governing bodies and permit-granting agencies.
- d. Adverse impacts on estuarine resources resulting from dredge or fill activities permitted in intertidal or tidal marsh areas shall be mitigated by creation, restoration or enhancement of an estuarine area. (See standards and criteria for mitigation/restoration, §3.36.070.3.)
- e. Dredging activity shall be consistent with the policies and procedures set forth in the "Channel Development and Dredged Material Management Program of the Umpqua River Estuary" included in the Comprehensive Plan.
- f. Dredged material disposal is prohibited in intertidal and marsh areas unless part of an approved fill project.

## 3. Log Storage

- a. New water storage for logs may be approved only if such storage is an integral part of the operation of an existing wood products facility

or new water-dependent facility approved by the State's Environmental Quality Commission; if there are no feasible upland alternatives; if the area is within a Development or Conservation management unit; if storage is limited to deep water where logs will not go aground at the lowest tide, except as provided in b. below; if storage time for specific logs will not exceed one year; and if water storage will not interfere with navigation.

- b. In-water storage of logs shall not be permitted in areas where logs go aground at the lowest tide unless it is demonstrated that no other reasonable alternatives exist.
  - c. Historical and current log storage sites that are not used for log storage for a five year period shall be removed from further use for log storage.
4. Temporary Alterations
- a. Temporary alterations shall be allowed only if:
    - (1) the alteration is consistent with the purpose of the management unit.
    - (2) the alteration is in support of uses permitted by the specific management unit.
    - (3) the area affected by the alteration is restored to its original condition.

### **SECTION 3.36.070 Standards and Criteria for Shoreland Zones**

- 1. General Application
  - a. Uses and activities shall be compatible with the characteristics and resources of adjacent estuarine areas, lakes and ocean and any geologic or hydrologic hazards.
  - b. Riparian vegetation shall be maintained to the maximum extent possible. Vegetation destroyed or damaged as a result of allowed uses or activities shall be restored and enhanced when appropriate and consistent with the use.
  - c. In all shorelands except those classified for water-dependent uses, development other than flood and erosion control structures and private docks shall be set back 50 feet from the line of non-aquatic vegetation or mean high high water, unless the County finds, after

consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife.

- d. Bridges, roads and railroads, airports and other means of transportation, shall be permitted if found to be consistent with the resources of the area, the objectives of this zoning classification and the Transportation Element of the Comprehensive Plan, and if essential to serve permitted or coordinated uses.
- e. Nonstructural solutions to problems of shoreline erosion and flooding shall be performed over structural methods. Fill activities on shorelands and in adjacent waters, and flood and erosion control structures such as jetties, bulkheads and seawalls shall be permitted only upon a demonstration of need and only if designed and sited to minimize erosion and man-induced sedimentation in adjacent areas and to minimize negative impacts on water currents, water quality, and fish and wildlife.
- f. Public access to shorelands and waters shall be provided as part of an allowed use when such access will not conflict with the type of use or development, create a significant hardship or exceed the resource capabilities of the shoreland area.
- g. The size (length and height) of structures permitted shall be consistent with the need to protect scenic access to the water body.

## 2. Dredged Material Disposal

- a. Disposal of dredged material shall not be permitted in subtidal or intertidal areas of the estuary unless it is part of an approved fill project and if disposal of the material in an approved upland or ocean water site is not feasible.
- b. Disposal of dredged material shall be permitted if the eventual use of the disposal site is consistent with the uses permitted in the applicable district and if the method of disposal is consistent with the policies and procedures of the Dredged Material Disposal Program included in the Comprehensive Plan.
- c. When disposal of dredged material will create opportunity for development and associated improvements, access and services shall be available or planned.



### 3. Restoration and Mitigation

- a. Shoreland areas identified in the Comprehensive Plan as suitable for fulfilling mitigation requirements shall be protected from new uses and activities which would prevent their ultimate restoration or addition to the estuarine ecosystem.
- b. Restoration and mitigation activities shall be consistent with the policies set forth in the "Restoration and Mitigation Program" of the Comprehensive Plan.