

92-05

92-6-16

IN THE BOARD OF COMMISSIONERS
FOR CLATSOP COUNTY

MIN 1 1 1992

ORDINANCE NO. 92-05

(AN ORDINANCE AMENDING THE
(CLATSOP COUNTY COMPREHENSIVE
(PLAN AND LAND AND WATER
(DEVELOPMENT AND USE ORDINANCE
(08-14, AS AMENDED AND RESCINDING
(INCONSISTENT PROVISIONS

The Board of County Commissioners of Clatsop County, Oregon
ordains as follows:

SECTION 1. SHORT TITLE.

This ordinance shall be known as the Ecola Creek Estuary
Periodic Review Amendments.

SECTION 2.

The Board of County Commissioners of Clatsop County, Oregon
recognizes the need to revise and amend the Clatsop County Land and
Water Development and Use Ordinance and Comprehensive Plan. In the
interest of the health, safety and welfare of the citizens of
Clatsop County and in accordance with the recommendations of the
Clatsop County Planning commission and pursuant to State law, the
Board of Commissioners hereby determines the necessity of amending
the said Clatsop County Land and Water Development and Use
Ordinance #80-14, as amended.

The Board of County Commissioners determines and takes notice
that the adoption procedure for this ordinance complies with the
Post Acknowledgement rules of the Land Conservation and Development
Commission. The County Planning Commission has sought review and
comment and has conducted the public hearing process pursuant to

the requirements of ORS 215.050 and 215.060. The Planning Commission held a hearing on February 20, 1992 and March 19, 1992. The Board received and considered the Planning Commission's recommendation on this request and held a public hearing on this ordinance pursuant to law on May 20, 1992 and June 10, 1992.

SECTION 3. CONFORMITY WITH THE LAW.

This ordinance shall not substitute for nor eliminate the necessity for conformity with any and all laws or rules of the State of Oregon, or its agencies, or any ordinance, rule or regulation of Clatsop County.

SECTION 4. INCONSISTENT PROVISIONS.

This ordinance shall supercede, control and repeal any inconsistent provision of the Clatsop County Comprehensive Plan, as amended, the Clatsop County Land and Water Development and Use Ordinance, as amended, or any other ordinance or regulation made by Clatsop County.

SECTION 5. SEPARABILITY.

If any section, subsection, sentence, clause, phrase or any other portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. EFFECTIVE DATE.

This ordinance shall be in full force and effective 30 days following the date of the recording of this ordinance.

SECTION 7. ADOPTION CLAUSE.

The Board of Commissioners hereby adopts the Ecola Creek Estuary Periodic Review Amendments set forth in Exhibit "A" attached hereto and by reference herein made a part of this ordinance in its entirety.

ADOPTED this 10th day of June 1992.

THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

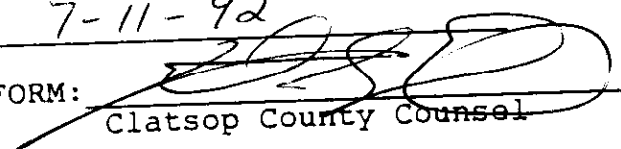
By 

Don Haskell, Chair

By 

Misty Moore, Recording Secretary

Effective Date: 7-11-92

APPROVED AS TO FORM: 

Clatsop County Counsel

ECOLA CREEK ESTUARY INTRODUCTION AND SHORELANDS

| <u>CONTENTS</u> | <u>PAGE</u> |
|--|-------------|
| 1. <u>Introduction</u> | 2 |
| 2. <u>Planning Requirements</u> | 3 |
| 3. <u>Ecola Creek Estuary Inventory</u> | 5 |
| 4. <u>Ecola Creek Estuary Shorelands Inventory</u> | 6 |
| 5. <u>Ecola Creek Estuary Planning Goals</u> | 6 |
| 6. <u>Ecola Creek Estuary Shorelands Planning Goals</u> | 8 |
| 7. <u>Ecola Creek Estuary and Shoreland Policies</u> | 9 |
| 8. <u>Implementation</u> | 14 |
| <u>Ecola Aquatic Conservation Zone</u> | 14 |
| <u>Ecola Creek Estuary and Necanicum Estuary Impact Assessment and Resource Capability Determination</u> | 17 |
| <u>Shoreland Overlay District</u> | 22 |

1. Introduction

The Ecola Creek (~~sometimes referred to as Elk Creek~~) Estuary and Coastal Shorelands ~~is an Element (Goals 16 and 17)~~ is part of the Clatsop County Comprehensive Plan. This element fulfills the County's Comprehensive Planning needs for the Ecola Creek Estuary under Statewide Planning Goals 16 and 17.

The inventory information contained within this element has been derived from several sources: the Cannon Beach Urban Growth Boundary Plan, Cannon Beach Wastewater Treatment Plan, and ~~in~~ from a memo written by Rainmar Bartl and Duncan Thomas for Clatsop County. This plan element was originally developed in 1983. It was updated in 1992.

An exception has been adopted by the County (1985) to allow ~~for~~ Cannon Beach to expand its wastewater treatment plant into Ecola Creek Estuary wetlands. The area covered by the exception has since been added into the Urban Growth Boundary.

2. Planning Requirements

Statewide Planning Goals 16 and 17 are addressed in this plan element as they pertain to the Ecola Creek Estuary. Statewide Planning Goal 16, Estuarine Resources, establishes the following specific goals:

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Statewide Planning Goal 17, Coastal Shorelands, establishes the following specific goals:

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, 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

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 Oregon's coastal shorelands.

The planning requirements performed by the County under these goals are outlined below, and carried out in the rest of this plan element, and in the County's Land and Water Development and Use Ordinance.

Goal 16 Inventory Requirements: information on the nature, location and extent of physical, biological, social and economic resources.

Goal 16 Comprehensive Plan Requirements:

- Identify each estuarine area;
- Describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;
- Classify the estuary into management units;
- Establish policies and use priorities for each management unit using the standards and procedures set forth below.
- Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections.

Goal 16 Implementation Requirements:

BOOK 787 PAGE 206

- Impact Assessment
- Dredging and Filling Restrictions
- Existing State and Federal Programs
- Minimum Fresh-water Flow Rates
- Mitigation
- Dredged Material Disposal
- Single-purpose Docks
- Restoration Areas
- State Agency Planning Responsibilities

Goal 17 Inventory Requirements: information on the nature, location and extent of geologic and hydrologic hazards and shoreland values, including fish and wildlife habitat, water-dependent uses, economic resources, recreational uses, and aesthetics.

Goal 17 Comprehensive Plan Requirements:

- Identify coastal shorelands (which includes estuarine shorelands)
- Establish policies and uses of coastal shorelands
- Establish policies and uses of coastal shorelands in accordance with the Goal's standards.

Goal 17 Implementation Requirements:

- Forested Shorelands
- Mitigation Sites
- Dredged Material Disposal Sites
- Riparian Vegetation
- Erosion Protection
- Public Access

3. Ecola Creek Estuary Inventory

Ecola Creek is a well-mixed tidal creek having very low ~~marine~~ estuarine biological and moderate terrestrial values. ~~Tidal influence extends between 250-350 feet above the U.S. Highway 101 bridge crossing the creek; a total distance of one-half mile. The head of tide is between 250 and 350 feet upstream of the Highway 101 bridge. The estuarine portion of Ecola Creek (that is, the tidally-influenced portion) is slightly more than one-half mile long. The upstream limit of salt water intrusion is not known. Most of the estuary is in the Cannon Beach City Limits and UGB.~~

The Statewide Planning Goals define an estuary as:

A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.

Ecola Creek has no definable major tracts of salt marsh, tideflats, ~~and or~~ seagrass and or algae beds. According to the *Estuarine Resources of the Oregon Coast*, by the Oregon Coastal Conservation and Development Commission, 1974, Ecola Creek may qualify as a Type III or "Conservation Estuary" (areas to be designated for long-term uses of renewable resources and that do not require major alteration of the estuary, except for purposes of restoration). The report also states that due to the existence of minimal estuarine characteristics, Ecola Creek may also be considered a "drowned tidal creek". For these reasons, Ecola Creek was found not to warrant a natural designation. The entire tidal portion of the creek has been designated conservation. Ecola Creek has sediments of mixed sand, gravel, and mud. These sediment types combined with low salinity limit use of Ecola Creek to small anadromous fish runs of coho and steelhead trout. But for its size, Ecola Creek sustains a fairly large run of native searun cutthroat trout.

The land edge character upstream from the Highway 101 bridge is moderately diverse. The study, *Development and Evaluation of Wetlands/Marsh Wastewater Treatment System*, undertaken for the City of Cannon Beach, identified three habitat types: blackberry/alder, alder/sedge, and spruce/alder. ~~The Division of State Lands has determined that alterations up along the Highway 101 bridge below the seven foot contour could require mitigation and that alterations below the 7 foot contour would require a state fill and removal permit. The removal of log jams further upstream has been identified as a possible restoration. This could improve the fish runs on the creek.~~

In 1983, the City of Cannon Beach is proposing to using proposed using approximately 15 acres of the 100 acre wetland area adjacent to the southern edge of Ecola Creek for a wetlands/marsh wastewater treatment system. Development of that system ~~will result~~ resulted in the filling of approximately .03 acres of estuarine area. The County has adopted an Exception to the Estuarine Resources Goal and the Coastal Shorelands Goal to permit this development (see Exceptions, Appendix B). The area covered by the exception has since been added into the Urban Growth Boundary.

4. Ecola Creek Estuary Shorelands Inventory

The Estuary Coastal Shorelands Boundary around the Ecola Creek Estuary is 50 feet landward measured from the line of Mean Higher High Water (MHHW), or measured from the upper limit of aquatic vegetation when it is present. The Boundary extends further where wetlands adjacent to the estuary itself are included. The boundary is shown on the attached map.

5. Ecola Creek Estuary Policies Planning Goals

The Ecola Creek Estuary is classified ~~by the Plan~~, as a *conservation* estuary. The Estuarine Resources Goal ~~defines~~ describes a conservation estuary or management unit as follows:

In all estuaries, except those in the overall Oregon Estuary classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above [natural areas], and recreational or commercial oyster and clam beds not included in (1) above [natural areas]. Areas that are partially altered and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

The Estuarine Resources Goal 16 allows the following uses in Conservation Aquatic management units:

- a. undeveloped low-intensity, water-dependent recreation;
- b. research and education observations;
- c. protection of habitat, nutrient, fish, wildlife and aesthetic resources;
- d. passive restoration measures;
- e. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;
- f. riprap for protection of uses existing as of October 7, 1977, unique natural resources, historical and archeological values; and public facilities;
- g. bridge crossings;
- h. communication facilities;

i. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;

j. pipelines, cables and utility crossings, including incidental dredging necessary for their installation;

k. installation and maintenance of tidegates in existing functional dikes;

l. bridge crossing support structures and dredging necessary for their installation;

m. active restoration for purposes other than those listed in (i); and

n. temporary alterations.

6. Ecola Creek Estuary Shorelands Planning Goals

The Coastal Shorelands Goal identifies the following minimal extent of Coastal Shorelands:

1. Areas subject to ocean flooding and lands with 100 feet of the ocean shore or within 50 feet of an estuary or a coastal lake;
2. Adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body;
3. Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas;
4. Areas of significant shoreland and wetland biological habitats whose habitat quality is primarily derived from or related to the association with coastal water areas;
5. Areas necessary for water-dependent and water-related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities, dredge material disposal and mitigation sites, and areas having characteristics suitable for aquaculture;
6. Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or related to the association with coastal water areas; and
7. Coastal headlands.

The Ecola Creek Estuary shorelands include lands identified under number 1, above, as well as riparian zones (number 3), and wetlands (number 4).

7. Ecola Creek Estuary and Shoreland Policies

1. The Oregon Department of Fish and Wildlife considers Ecola Creek an important searun cutthroat trout stream. The Creek also contains a coho salmon and steelhead run. Activities which would further degrade the habitat value of the creek and its adjacent wetlands shall be prohibited.

2. Efforts to improve and protect the Ecola Creek wild run fishery are supported by Clatsop County.

3. Alterations to the shoreline of the Creek which would alter the flow of the stream are not permitted.

~~4. As an active restoration activity, the removal of log jams upstream from the U.S. Highway 101 to the bridge would be appropriate if performed under the supervision of the Oregon Department of Fish and Wildlife and other resource agencies. Active restoration activity shall not involve dredging or filling of Ecola Creek.~~

4.5. Riparian vegetation along Ecola Creek shall be protected, except where removal is permitted or when an a valid Exception to the Coastal Shorelands Goal has been taken.

5.6. All activities in the Ecola Creek Estuary shall be coordinated with the City of Cannon Beach to insure they are compatible with the City Comprehensive Plan.

~~6.7. Adverse impacts to estuarine resources resulting from dredge or fill or dredged material disposal activities (public or private) permitted in intertidal or tidal marsh areas shall be mitigated by creation, restoration or enhancement of estuarine areas. Such mitigation shall improve or maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality. The cost of mitigation shall be included as part of project cost analysis.~~

~~Actions exempted from the mitigation requirement above, include:~~

~~a. Removal or filling of less than 50 cubic yards of material or when an Oregon State Removal and Fill Permit is not otherwise required;~~

~~b. Filling for repair and maintenance of existing functional dikes when there is negligible physical or biological damage to tidal marsh or intertidal areas;~~

~~c. Riprap to allow protection of an existing bank line with clean, durable erosion resistant material provided that the need for riprap protection is demonstrated and that this need cannot be met with natural vegetation, and no appreciable increase in existing upland occurs;~~

~~d. Filling for repair and maintenance of existing roads when there is negligible physical or biological damage to tidal marsh or intertidal areas;~~

~~e. Dredging or filling required as part of an estuarine resource creation, restoration or enhancement project agreed to by local, state and federal agencies, and~~

~~f. Other proposed projects or activities where, upon determination of the Oregon Division of State lands, the proposed alteration would have negligible physical, biological and water quality impacts.~~

7. Clatsop County will not require compensatory mitigation for actions in the Ecola Creek Estuary when exempt from the State of Oregon's mitigation requirements.

8. Clatsop County supports the development of the City of Cannon Beach's wetlands/marsh wastewater treatment system and has taken an Exception to the Estuarine Resources Goal and the Coastal Shoreland Goal to permit its development.

~~9. Filling of Ecola Creek or the adjacent wetlands below the 7 foot contour shall be allowed only with permit approval from the Division of State Lands. Filling below the 5 foot contour may require mitigation as prescribed by the Division of State Lands.~~

10. Dredging may be permitted only for:

~~a. Aquaculture;~~

a.b. Active restoration or estuarine enhancement;

~~b.e. Bridge crossing support structure;~~

~~c.d. Submerged cable, sewer line, water line, or other pipeline; or~~

d. Incidental dredging necessary for the construction of a through c above.

~~The above mentioned dredging in aquatic areas shall be allowed only if:~~

~~a. A public need is demonstrated~~

~~b. No alternative upland locations exist, and~~

~~c. Adverse impacts are minimized~~

Dredging shall disturb the minimum area necessary for the project and shall be conducted so as to protect or enhance wetlands and other estuarine resources.

11. Proper management of existing streamside vegetation is the preferred method of shoreline stabilization, followed by planting of vegetation. Where vegetative protection is inappropriate (because of high erosion rate, the use of the site, or other factors), structural means such as riprap or bulkheading may be considered, if consistent with the restrictions in the estuarine zone.

12. Fill activities ~~are~~ may be permitted only as part of the following uses and activities:

- a. Maintenance and protection of man-made structures existing as of October 7, 1977;
- b. Active restoration or estuarine enhancement;
- c. Bridge crossing support structure;
- d. ~~Aquaculture~~;
- ~~d.e.~~ In conjunction with a use for which an Exception has been taken.

~~The above mentioned filling in aquatic areas shall be allowed only if:~~

- ~~a. A public need is demonstrated;~~
- ~~b. No alternative upland locations exist;~~
- ~~e. Adverse impacts are minimized.~~

13. The dredging and filling provided for in Policies 10 and 12 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 requirements of the State Estuarine Resources Goal;
- 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 be allowed if the requirements in (b), (c), and (d) are met.

~~14. 13.~~ Where a use could potentially alter ~~the integrity of~~ the estuarine ecosystem, the City County shall require a clear presentation of the impacts of the proposed alteration ~~and a demonstration of the public's need and gain that would warrant such modification or less.~~

~~15. 14.~~ 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 County Development Code (Section 5.960 Resource Capability Determination).

The following uses must be shown to be consistent with the resource capabilities of the area and the purposes of the estuarine zone:

- a. Riprap shoreline stabilization for purposes other than protection of uses existing as of October 7, 1977, unique natural resources, historical and archeological values, and public facilities;
- ~~b. Bulkhead installation necessary to protect an aquaculture facility;~~
- ~~e- b.~~ Storm water and treated wastewater outfalls;
- ~~d- c.~~ Active restoration for purposes other than restoration of fish and wildlife habitat or water quality and estuarine enhancement;
- ~~e- d.~~ Bridge crossing support structures;
- ~~f.~~ Water dependent portions of aquaculture facilities, and
- ~~g- e.~~ Dredge, fill or piling necessary for the installation of uses listed above.

16. Temporary alterations are permitted in the estuary so long as they:

- a. Are of short term duration (generally less than 3 years.)
- b. Are consistent with the resource capabilities of the area; and
- c. Are such that the area and affected resources can be restored to their original condition, and
- d. Are needed to facilitate a use allowed by the plan.

17. The County shall rely on the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Agriculture where applicable to assess the impacts of actions affecting water quality, including wastewater effluent and the use of chemicals.

THE ECOLA CREEK ESTUARY PLAN
~~PERMITTED USES BELOW THE 7' CONTOUR LINE~~
PERMITTED USE ACTIVITY TABLE

BOOK 787 PAGE 215

| | |
|--|---|
| 1. Bridge Crossing and Bridge Crossing Support Structure | C |
| 2. Diking | |
| Maintenance and Repair of Dikes | P |
| Temporary Dike | P |
| Emergency Dike Repair | P |
| 3. Dredging | C |
| 4. Fill | C |
| 5. Docks | C |
| 5.6. Restoration | |
| Passive | P |
| Active | C |
| 6.7. Marine Research and Educational Observations | P |
| 7.8. Non-motorized Boating, Individual | P |
| 8.9. Piling | C |
| 9.10. Shoreline Stabilization | |
| Vegetative | P |
| Riprap | C |
| Bulkhead | C |
| 10.11. Storm Water and Treated Wastewater Outfalls | C |
| 11.12. Submerged Cable, Sewer Line, Water Line, or other Pipeline | C |
| 12.13. Temporary Alterations | C |
| 13.14. Estuarine Enhancement | C |

P: Permitted uses and activities may be undertaken subject to the standards set forth in the zoning ordinance and applicable State and Federal regulations.

C: Conditional uses and activities may be undertaken subject to written findings, adopted after a public hearing, that the proposed use or activity is consistent with the policies of the comprehensive plan, appropriate zoning standards and, where required, that the use or activity is consistent with the resource capability of the area and the purpose of the estuary zone.

8. IMPLEMENTATION

This section includes the key tools at the County's disposal for implementing the Policies contained in Section 7.

Section 3.700 Ecola Aquatic Conservation Zone (EAC)

Section 3.702 Purpose. The purpose of the EAC zone is to assure the conservation of: ~~(1) fish and wildlife habitats, (2) essential properties of the estuarine resource (e.g., dynamic geological processes, continued biological productivity, unique or endemic communities of organisms, maintenance of species diversity), and (3) the long term use and conservation of renewable estuarine resources. The designation provides for development uses for low to moderate intensity that do not require major alterations of the estuary, with an emphasis on maintaining estuarine natural resources and benefits.~~ designate areas for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses. Included are tracts of significant habitat, and recreational shellfish beds. Areas which are partially altered and adjacent to existing development of moderate intensity are also included.

Section 3.704 ~~Permitted Developments and Uses Permitted.~~ The following ~~developments/uses and activities, and their accessory developments/uses and activities,~~ are permitted under a Type I procedure, Section 2.110, subject to applicable development standards in Section 3.710:

1. Passive restoration measures.
2. Vegetative shoreline stabilization.
3. ~~Marine~~ Research and educational observations.
4. Emergency repair to existing dikes, subject to state and federal requirements.
5. Temporary dike for emergency flood protection, limited to 60 days, subject to state and federal requirements.
6. Maintenance and repair of dikes.
7. Undeveloped low intensity, water-dependent recreation.
8. Emergency repair to the existing Highway 101 bridge or in an emergency situation, temporary bridge crossing, bridge crossing support structures and any necessary filling or dredging necessary for their installation, limited to 60 days, subject to state and federal requirements.

Section 3.706 Conditional Developments and Use. The following uses and activities, and their accessory developments uses and activities, may be permitted under a Type II procedure, Section 2.120, and Section 5.010 to 5.025 Conditional Development and Use, and subject to applicable criteria and development standards of Section 3.710 and site plan review.

1. Submerged cable, sewer line, water line, or other pipeline.
2. Maintenance and repair of structures or facilities existing as of October 7, 1977, which no longer meet the purposes of the Ecola Aquatic Conservation zone.
3. Bridge crossings.

Section 3.708 Conditional Developments and Subject To Use and Resource Capability. The following uses and activities and their accessory developments uses and activities may be permitted under a Type II procedure, Section 2.120, and Section 5.010 to 5.025 Conditional Development and Use, and subject to applicable criteria and development standards of Section 3.710 and site plan review.

It must also be determined if these uses and activities meet the resource capability of the EAC zone area in which the uses and activities occur and if the uses and activities are consistent with the purpose of the EAC zone as stated above. The procedures of Section 5.960, Resource Capability Determination, will be used to make this determination.

1. Riprap shoreline stabilization.
- ~~2. Bulkhead installation necessary to protect an aquaculture facility.~~
- ~~2.3.~~ Storm water and treated wastewater outfalls.
- ~~3.4.~~ Active restoration of fish habitat, wildlife habitat or water quality.
- ~~4.5.~~ Bridge crossing support structures and dredging necessary for their installation.
- ~~6. Water dependent portions of aquaculture facilities.~~
- ~~5.7.~~ Dredging, fill, or piling installation necessary for the installation of a conditional use listed above.
- ~~6.8.~~ Uses and activity permitted by an approved Goal Exception.
7. Temporary alterations.

Section 3.710 Additional Development Standards and Procedural Requirements.

- a-1. All uses shall satisfy applicable standards of the Standards Document. Where a proposal involves several uses, the standards applicable to each use shall be satisfied.
- b-2. When a proposal includes several uses, the uses shall be reviewed in aggregate under the more stringent procedure. In addition, a proposal with several uses shall be reviewed in aggregate for consistency with the resource capability and purposes of the EAC zone, when a resource capability determination is required.
- e-3. All applicable policies in the County Comprehensive Plan shall be adhered to.
- d-4. ~~Uses and activities that would potentially alter the integrity of the estuarine ecosystem shall be preceded by a clear presentation of the Section 5.950, Impact Assessment. A proposal which requires new dredging, fill, in-water structures, riprap, water in-take or withdrawal and effluent discharge, application of pesticides and herbicides, or other activities which could affect the estuary's physical processes or biological resources is subject to an Impact Assessment, Section 5.950.~~
- e-5. No use shall be allowed in the EAC zone which would cause a major alteration of the estuary.
- f. ~~A development project which is determined to require an Environmental Impact Assessment through the Corps of Engineers permit process shall be allowed only:~~
 - ~~if required for navigation or other water dependent uses that require an estuarine location, and~~
 - ~~if a public need is demonstrated, and~~
 - ~~if no alternative upland locations exist, and~~
 - ~~if adverse impacts are minimized as much as feasible.~~

6. Uses and activities permitted under Section 3.704 of this zone, Permitted Developments, are subject to the public notice provisions of Sections 6.110 and 6.115. Procedures for Mailed Notice and Published Notice, if an impact assessment is required pursuant to Section 5.950; or if a resource capability determination is required pursuant to Sections 5.960; or if a determination of consistency with the purpose of the EAC Zone is required pursuant to Section 5.960; or if the Planning Director determines that the permit decision will require interpretation or the exercise of factual, policy, or legal judgement.

Section 5.950 Ecola Creek Estuary and Necanicum Estuary Impact Assessment and Resource Capability Determination

Section 5.952 Purpose. The purpose of this section is to provide an assessment process for development alterations which could potentially alter the integrity of the estuarine ecosystem. Further, certain uses and activities proposed for particular management areas and zones will require an assessment of resource capability before the use or activity is permitted as consistent with the purpose and resource capability of the zone. The impact assessment procedure is intended to be a comprehensive as-e-gent presentation of the impacts expected from a particular development proposal. This procedure will provide the information necessary to judge the capability of the resource to accommodate the identified impacts without altering the integrity of the resource as it relates to the stated purpose of the particular management area or zone.

1. Impact Assessment Requirement An Impact Assessment in accordance with the provisions of this section shall be required for the following uses and activities when proposed for estuarine aquatic ~~and shoreline~~ areas:

- a) Filling or dredging ~~in intertidal areas.~~
- b) ~~Proposals for active restoration~~ In-water structures.
- c) ~~Placement of navigational structures~~ Riprap.
- d) ~~Industrial or commercial uses in development aquatic zones.~~ Water intake or withdrawal.
- e) ~~Dredging for new navigational projects~~ Pesticide application.
- f) Effluent discharge.
- g) Other activities which could affect the estuary's physical processes or biological resources.

Further, an Impact Assessment shall be required:

- h) When a use or activity requires a determination of consistency with resource capability.

Note that Federal Environmental Impact Statements or Impact Environmental Assessments may substitute for this requirement if available at the time of permit review. The Planning Director may require an impact assessment for uses not listed above when the Director believes the use may involve significant impacts.

2. Use of Impact Assessment

a) Information contained in impact assessments shall be used in the evaluation of a use or activity during a ~~Conditional Use Permit~~ permit review procedure. The Impact Assessment shall be used to:

- (1) identify potential development alterations of significant estuarine fish and wildlife habitats and disturbances of essential properties of the estuarine resource,
- (2) determine whether potential impacts can be avoided and minimized, and
- (3) to provide a factual base of information that will ensure that applicable standards in Section 3.950 are met.

b) Where a use requires a Resource Capability Determination, information in the Impact Assessment will be used to determine consistency of proposed uses and activities with the resource capability and purpose of the affected management area or zone. Resource capability analysis shall be based on the requirements of the Information to be Provided in the Impact Assessment section.

3. Information to be Provided in the Impact Assessment Information compiled in the Impact Assessment may be drawn from available data and analysis contained in: Ecola Estuary Inventory, Necanicum Estuary Inventory, environmental impact statements or environmental assessments prepared for previous projects in the vicinity of the present development proposal; or other published environmental and estuarine studies pertaining to the ~~Necanicum River~~ estuary. The Impact Assessment should apply available information to the following general areas of analysis. The County may waive inapplicable items for any particular use or project.

a) Aquatic life forms and habitat, including information on: habitat type and use (e.g., rearing, spawning, feeding/resting area, migration route), species present, seasonal abundance, sediment type and characteristics, vegetation present. Type of alteration, including information detailing the extent of alteration (e.g., area measurement, depths to which alteration will extend, volumes of materials removed and/or placed as fill), impacted species (including threatened or endangered species), life stages and life cycles affected with regard to timing of the proposed alteration, percent of total available habitat type subject to alteration.

b) Shoreland life forms and habitat, including information on: habitat type and use (e.g., feeding, resting or watering areas, flyways), species present, seasonal abundance, soil types and characteristics, vegetation present. Type of alteration, including information detailing the extent of alteration (e.g., area measurement, extent of grading and excavation, removal of riparian vegetation), impacted species (including threatened or endangered species), life stages and cycles affected with regard to timing of the proposed alteration, percent of total available habitat type subjected to alteration.

c) Water quality, including information on: increases in sedimentation and turbidity, decreases in dissolved oxygen concentration, changes in biological and chemical oxygen demand, contaminated sediments, alteration of salinity regime, disruption of naturally occurring water temperatures, changes due to reduction, diversion or impoundment of water.

d) Hydraulic characteristics, including information on: changes in water circulation patterns, shoaling patterns, potential of erosion or accretion in adjacent areas, changes in the floodplain, decreases in flushing capacity or decreases in rate of water flow from reduction or diversion or impoundment of water sources.

e) Air quality, including information on: quantities of emissions of particulates, expected inorganic and organic airborne pollutants.

f) The impact of the proposed project on navigation and public access to shoreline and aquatic areas.

g) Demonstration that any proposed structures or devices are properly engineered.

h) Demonstration that the ~~public need and gains which warrant such modification or less 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 the potential cumulative impact of the proposed development, including alteration of adjacent significant estuarine fish and wildlife habitat and disturbance of essential properties of the estuarine resource.

k) Determination of methods for accommodation of the proposed development alteration, based on items (a) through (j) above, in order to minimize preventable adverse impacts. Determination of need for mitigation.

4. Impact Assessment Findings Resulting from the analysis of the information presented in the Impact Assessment, one of the following findings shall be concluded:

a) The proposed uses and activities are in conformance with all Comprehensive Plan policies and standards and do not represent a potential degradation or reduction of significant fish and wildlife habitats and essential properties of the estuarine resource. Where an Impact Assessment is required for a resource capability determination, the proposed uses are consistent with the resource capability and purpose of the affected management area or zone.

b) The proposed uses and activities are in conformance with all Comprehensive Plan policies and standards, but represent a potential degradation or reduction of significant fish and wildlife habitats and essential properties of the estuarine resource. The Impact Assessment is required for a resource capability

determination, the adverse environmental impacts have been minimized to be consistent with the resource capability of the management area or zone. The proposed uses and activities may be accommodated and found to be consistent with resource capabilities and meet the purposes of the management.

c) The proposed uses and activities are not in conformance with all Comprehensive Plan policies and standards. The Impact Assessment and analysis indicate that unacceptable loss will result from the proposed development alteration. The proposed uses and activities represent irreversible changes and actions and unacceptable degradation or reduction of significant estuarine fish and wildlife habitats and essential properties of the estuarine resource will result; or, that the adverse consequences of the proposed uses and activities, while unpredictable and not precisely known, would result in irreversible trends or changes in estuarine resource properties and functions.

d) Available information is insufficient for predicting and evaluating potential impacts. More information is needed before the project can be approved.

Section 5.960 Resource Capability Determination

1. **Purpose** ~~Certain uses and activities in estuarine zones~~ Conservation and Natural aquatic management units are allowed only if determined to meet the resource capability and purpose of the zone in which the use or activity occurs. The purpose of this section is to establish procedures for making a resource capability determination.

2. **Definition of Resource Capability** Resource capability is defined as the degree to which the natural resource can be physically, chemically, or biologically altered, or otherwise assimilate an external use and still function to achieve the purpose of the zone in which it is located.

3. Purpose of Different Estuarine Zones

a) **Aquatic Conservation zone:** ~~The purpose of the Aquatic Conservation zone is to manage areas for low to moderate intensity of development that does not require major alteration of the estuary, with emphasis on maintaining aquatic resource and recreational benefits~~ designate areas for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. Included are tracts of significant habitat, and recreational shellfish beds. Areas which are partially altered and adjacent to existing development of moderate intensity are also included.

b) Aquatic Natural zone: The purpose of the Aquatic Natural zone is to provide for preservation and protection of estuarine resources, including significant fish and wildlife habitats, essential properties of the estuary, such as dynamic geological processes, continued biological productivity, unique communities of organisms, maintenance of species diversity. Low intensity uses consistent with the protection of natural values are appropriate.

4. Resource Capability Procedure In order to determine whether a use or activity is consistent with the resource capability and purpose of the zone for which the use or activity is proposed, the following procedure is required:

- a) Identification of the zone and area in which the activity is proposed and the resources in the area;
- b) Identification of adverse impacts of the proposed use or activity on the resources identified in (a) above. This information is included in the Impact Assessment, Section 5.950.
- c) Determination of whether the resources can continue to achieve the purpose of the zone in which the use or activity is proposed.

5. ~~Identification of Resources and Impacts~~ The applicant for a proposed use or activity in which a resource capability determination must be made shall submit the following:

- a) Information on resources present in zone in which the use or activity is proposed;
- b) Impact assessment as specified in Section 5.950, Impact Assessment Procedure. (Federal Environmental Impact Statements or ~~Impact~~ Environmental Assessments may be substituted if available at the time of the permit request).

If in the course of review, additional information is required to satisfy the provisions of this ordinance, notification shall be made to the applicant outlining the additional information needed and the reason. Although the applicant shall be responsible for providing all necessary information, the Planning Department will assist the applicant in identifying inventory sources and information. Sources which can be used to identify resources included: Necanicum Estuary Inventory, environmental impact statements for project in same areas, or other published studies concerning the Necanicum Estuary. Identification of resources shall include both environmental (e.g., aquatic life and habitat present, benthic populations, migration routes) and social and economic factors (navigation channels, public access facilities).

6. Resource Capability Administrative Provisions A resource capability determination for a use or activity identified in this ordinance as a Conditional Use shall be made in accordance with the Conditional Use Procedure set forth in Section 5.000. Public notice of development proposals which require determination of consistency with resource capabilities shall be sent to all affected parties. State and federal resource agencies with mandates and authorities for planning, permit issuance and resource decision-making, including the following, will be notified: Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Army Corps of Engineers.

SECTION 4.082. PURPOSE

The purpose of this district is to manage uses and activities in coastal shoreland areas which are not designated as a Shoreland Zone in a manner consistent with the resources and benefits of coastal shorelands and adjacent estuarine aquatic area.

SECTION 4.084. DESIGNATION OF SHORELANDS OVERLAY DISTRICT

This overlay district refers to areas described in the Estuarine and Coastal Shoreland Element of the Comprehensive Plan and designated on official Clatsop County Zoning Maps. It does not include shoreland areas of the Columbia River Estuary designated Marine Industrial Shoreland, Conservation Shoreland, or Natural Shoreland. Included in this overlay district are:

1. Areas subject to ocean flooding and lands within 100 feet of the ocean shore or within 50 feet of an estuary or a coastal lake.
2. Areas of geological instability in or adjacent to the shoreland boundary when the geologic instability is related to or will impact a coastal water body.
3. Natural or man-made riparian resources, especially vegetation which function to stabilize the shoreline or maintain water quality and temperature necessary for the maintenance of fish habitat and spawning area.
4. Areas of significant shoreland and wetland biological habitats whose habitat quality is primarily derived from or related to the association with coastal and estuarine areas.
5. Areas necessary for water-dependent and water-related uses, including areas appropriate for port facilities and navigation, dredged material disposal and mitigation sites, and areas suitable for aquaculture.
6. Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or associated with the coastal or estuarine areas.
7. Areas of recreational importance or public access which utilize coastal waters or riparian resources.
8. Locations of archaeological or historical importance associated with the estuary.
9. Coastal headlands.
10. Dikes and their associated inland toe drains.

SECTION 4.086. CATEGORIES OF COASTAL SHORELANDS

There are two categories of Coastal Shorelands as described below:

Category 1: Those shorelands described in the Estuarine and Coastal Shoreland Element of the Comprehensive Plan as:

- a. Significant, non-estuarine marshes;
- b. Riparian resources;
- c. Significant fish and wildlife habitat;
- d. Exceptional aesthetic resources;
- e. Historical and archaeological sites.

Category 2: All shorelands which do not fall within 1(a)-(e) and are not currently designated Marine Industrial Shorelands, Conservation Shorelands or Natural Shorelands are the second category of Coastal Shorelands.

SECTION 4.088. DEVELOPMENTS PERMITTED WITHIN CATEGORY 1 COASTAL SHORELANDS

Only the following uses and activities are permitted under a Type I procedure (Section 2.110) within shorelands defined in Section 4.086(1) (a)-(e):

1. Low-intensity, water-dependent recreation.
2. Existing and compatible farm uses and activities, excluding structures.
3. Forest operations only if natural values of the resource are protected, as determined by administration of the Oregon Forest Practices Act, where applicable, otherwise as determined by the Planning Department under a Type II procedure.
4. Research or educational activities which maintain or enhance the natural characteristics of the area and its resources.
5. navigational aids.
6. Vegetative shoreline stabilization.
7. Maintenance and repair of existing and serviceable dikes.
8. New dikes.

SECTION 4.090. DEVELOPMENTS PERMITTED WITHIN CATEGORY 2 COASTAL SHORELANDS

Within coastal shorelands defined in Section 4.086(2) the following uses and activities are permitted if otherwise allowed in the underlying zone, and subject to the requirements and standards of the use in the underlying zone:

1. Uses allowed in Section 4.088 above.
2. Single-family dwellings provided that, if possible, the dwelling is to be located on a portion of the property outside of the Coastal Shoreland Boundary.
3. Limited home occupation.
4. Home occupation in an existing building.
5. Signs.
6. Water-dependent recreation.
7. Projects for the protection of habitat, nutrient, fish, wildlife and aesthetic resources.
8. Aquaculture.
9. Utilities as necessary for public service.
10. Water-dependent commercial and industrial uses.

Other uses and activities within Category 2 Coastal Shorelands are allowed under a Type IV procedure upon findings that such uses and activities are compatible with the objectives of the Comprehensive Plan to protect riparian vegetation and wildlife habitat.

SECTION 4.092. DEVELOPMENT STANDARDS

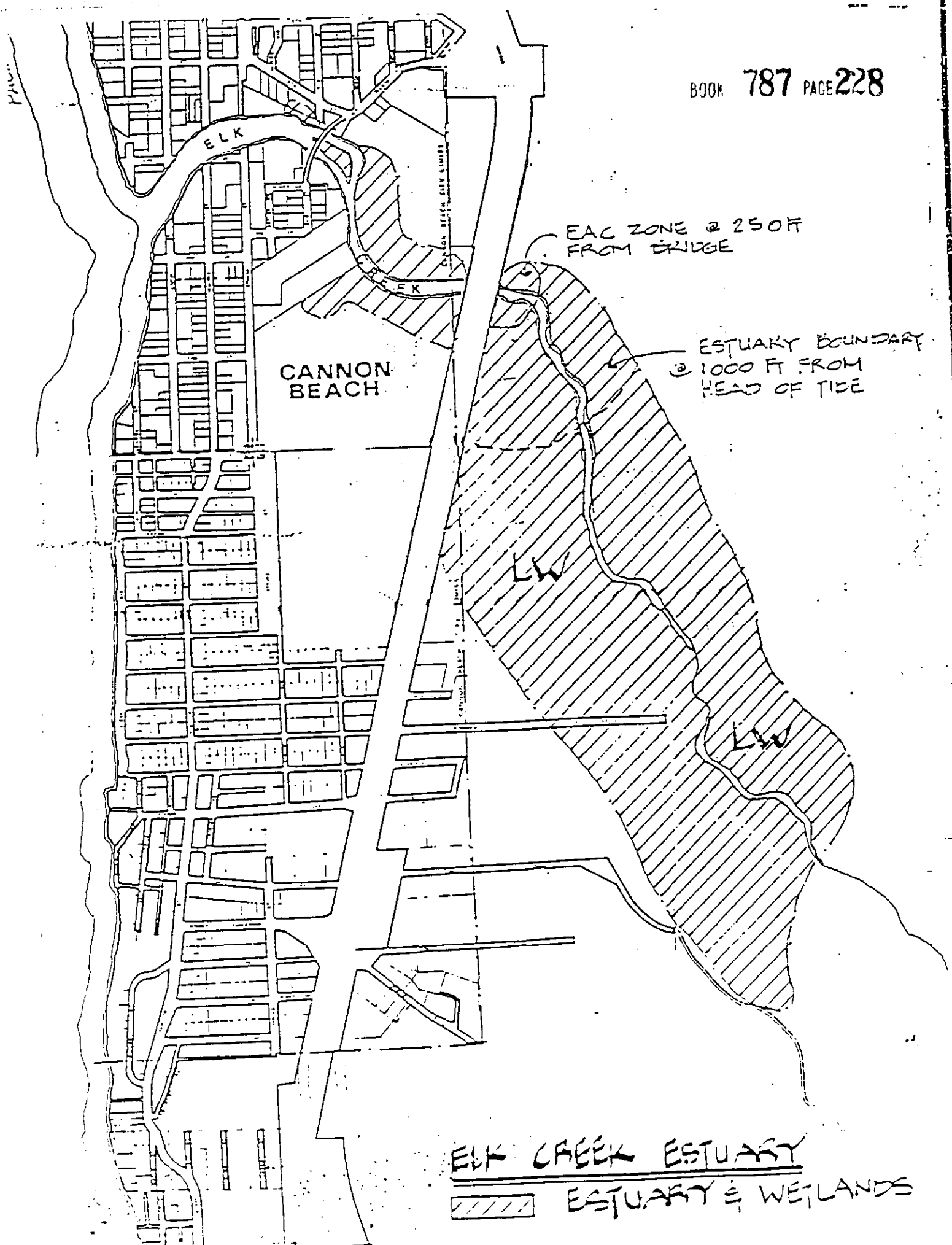
1. All uses and activities in the Columbia River Estuary Shoreland Overlay District will satisfy applicable Columbia River Estuary Shoreland and Aquatic Area Use and Activity Standards contained in the Development and Use Standards document.
2. If a proposal involves several uses, the standards applicable to each use shall be satisfied.
3. For parcels totally within the Coastal Shoreland Boundary, structures shall be sited according to lot line setbacks and Riparian Vegetation Standards in S4.500 et seq.

4. For parcels partially within and partially outside of the Coastal Shorelands Boundary, structures shall be located outside the Boundary. This requirement may be waived by the Planning Director only upon a showing that the portion of the site outside of the Boundary cannot accommodate the use or is of such value for resource purposes that the use would impact resource productivity less if located within Coastal Shorelands.

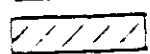
5. Proposed development in shoreland areas with identified hazards to development shall be evaluated prior to construction to assure that new hazards are not created or existing hazards are not worsened on adjacent property.

SECTION 4.095. STATE AND FEDERAL PERMITS

Applicants for developments which require a state or federal permit shall submit to the Planning Director a copy of the completed permit application and other supporting material which demonstrates that the development is consistent with the Comprehensive Plan and this Ordinance.



ELK CREEK ESTUARY

 ESTUARY & WETLANDS