

SECTION 3.120: REVIEW OF REGULATED ACTIVITIES

- (1) **PURPOSE:** The purpose of this Section is to provide an assessment process and criteria for local review and comment on State and Federal permit applications which could potentially alter the integrity of the estuarine ecosystem.
- (2) **REGULATED ACTIVITIES:** Regulated activities are those actions which require State and/or Federal permits and include the following:
 - (a) Fill (either fill in excess of 50 c.y. or fill of less than 50 c.y., which requires a Section 10 or Section 404 permit from the U.S. Army Corps of Engineers).
 - (b) Dredging (either dredging in excess of 50 c.y. within a 12 month period, or dredging of less than 50 c.y., which requires a Section 10 permit from the U.S. Army Corps of Engineers).
 - (c) Dredged material disposal including flow lane disposal.
 - (d) Piling/dolphin installation.
 - (e) Shoreline stabilization, bank line or streamline alteration involving fill or dredging in excess of 50 c.y.
 - (f) In-water lot storage.
- (3) **PROCEDURE FOR REVIEWING REGULATED ACTIVITIES:** Review of State and Federal permit notices are an Administrative function of the Planning Department. Regulated activities and any associated use or uses as a whole shall be reviewed according to the requirements of the zone(s) in which the proposed uses and activities are to be located (Section 3.100 to 3.110), standards relevant to the proposed uses and activities (Section 3.140), an impact assessment (Section 3.120 (6)), requirements for degradations or reductions of estuarine natural values where applicable (Section 3.120 (7)) and comments from State and Federal agencies having responsibility for permit review (Section 3.120 (8)). Based on this review, the Department will decide whether the proposed uses and activities comply with this Ordinance and will forward this decision to the appropriate permitting agencies and the permit applicant prior to the final date set for comments. Decisions of the Planning Department or Planning Commission may be appealed (Section 3.120 (9)).
- (4) **ZONE REQUIREMENTS:** Uses and activities shall be allowed only if they are allowed in the zones in which they are to be located. Accessory uses proposed for adjacent upland areas must be allowed in the upland zones in which they are to be located as well as the SHORELANDS OVERLAY ZONE (Section 3.090). Uses that are permitted with standards must comply with the standards of Section 3.140. Uses listed as Conditional Uses shall be reviewed according to the procedures of Article 6 and the standards of Section 3.140. If a

Conditional Use review is required, the Planning Department shall notify the applicant and State and Federal permitting agencies and shall request an extension of the comment period.

- (5) **IMPACT ASSESSMENTS:** The Planning Department shall, with the assistance of affected State and Federal agencies, develop impact assessments for regulated activities. Federal Environmental Impact Statements or Assessments may be substituted if made available to the Planning Department. The following considerations must be addressed in the impact assessment.
 - (a) The type and extent of alterations expected.
 - (b) The type of resource(s) affected including, but not limited to aquatic life and habitats, riparian vegetation, water quality and hydraulic characteristics.
 - (c) The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary.
 - (d) The methods which could be employed to avoid or minimize adverse impacts.
- (6) **REQUIREMENTS FOR RESOURCE CAPABILITY DETERMINATIONS:** Uses and activities for which a resource capability determination is required by Section 3.140, shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposes of the zone(s) in which they are to be located. An activity will be found to be consistent with the resource capabilities of a management unit (as described in Section 2 of the Estuarine Resources Element of the Tillamook County Comprehensive Plan) when either (1) the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or; (2) that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.
- (7) **SIGNIFICANT DEGRADATIONS OR REDUCTIONS OF ESTUARINE NATURAL VALUES:**
 - (a) **Definition:** Significant degradations or reductions of estuarine natural values include dredging, fill, and other activities which will cause significant off site impacts as determined by the impact assessment (Section 3.120 (5)).
 - (b) **Requirements:** Dredging and fill must comply with the standards in Section 3.140 (Subsections (5) and (7) respectively). Other reductions and degradations of estuarine natural values shall be allowed only if:
 - (1) A need (i.e. a substantial public benefit) is demonstrated and the use or

alteration does not unreasonably interfere with public trust rights; and

- (2) No feasible alternative upland locations exist; and
 - (3) Adverse impacts are minimized as much as feasible.
- (8) **STATE AND FEDERAL REVIEWING AGENCY COMMENTS:** In the review of regulated activities, the Planning Department shall notify the following agencies: Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Army Corps of Engineers. Notice will be mailed within 7 days of County receipt of the State or Federal permit notice. The notice will include permit reference, identification of the local decisions to be made, references to applicable policies and standards, and notification of comment and appeal periods. The Planning Department shall consider any comments received no later than seven days before the closing date for comments on the State or Federal permit notice.
- (9) **APPEALS:** Planning Department decisions on regulated activities may be appealed according to the requirements of Section 10.020. Planning Commission decisions on regulated activities that involve a Conditional Use may be appealed according to the requirements of Section 10.030. If the decision of the Planning Department or Planning Commission is appealed, the Planning Department shall notify the appropriate State and Federal permitting agencies and shall request an extension to the comment period to allow for the local appeals process.