

The Yaquina Bay Estuary Management Plan Update

FREQUENTLY ASKED COMMENTS/QUESTIONS & RESPONSES

Last updated: August 31, 2023

The following comments/questions were among some of the most frequently submitted as part of the public comment period for the draft Yaquina Bay Estuary Management Plan with responses from the Project Team.

Include a comprehensive restoration plan in Plan Part VII - Mitigation & Restoration

There already exists a recent (2022) and comprehensive OWEB approved Strategic Action Plan (SAP) that encompasses restoration actions in Yaquina Bay. This SAP led to a successful Focused Investment Partnership grant from OWEB that has led to over \$12 million in restoration investments in the Yaquina and Alsea Bays over the next six years. Furthermore, this is a regulatory land use plan and not a restoration plan. Goal 16 requires listing of potential restoration sites, not a comprehensive restoration plan. This Draft Plan does not preclude a separate comprehensive restoration planning process from taking place, but it is not a suitable home for it.

Re-evaluate management unit section based on new natural resource inventory

Response: The comments that the Management Unit Descriptions need to be substantially revised and expanded are based principally on the assertions that (a) the revised drafts of the MU descriptions do not take into account current resource inventory information and, (b) that the MU descriptions represent the primary information used by local jurisdictions to make individual land use decisions on proposed estuarine alterations. Neither of these statements is accurate.

The new inventory information proposed for incorporation into the plan was available and informed the evaluation of each management unit. This information was considered in revising MU descriptions and in arriving at recommended MU boundaries and classifications. To the extent that errors or omissions were made in interpreting this information for purposes of the MU evaluations, the project team is open to specific input to rectify such errors or oversights.

The purpose of the MU descriptions is to provide a summary of the information that is **relevant to the establishment of MU boundaries and classifications** in accordance with Goal 16 requirements. In an effort to help simplify an otherwise complex document, the brevity is intentional. The MU descriptions are not intended to provide a complete recitation of all known resource information for the unit. Because each description is a summary of information included in the plan inventory, it is not intended to be used as the primary source of evidentiary information for establishing the record for an individual land use decision. That is the purpose of the plan inventory, and a principal reason that the plan inventory is adopted as a part of the plan. It should also be noted that permit applicants and other

parties to a land use proceeding may introduce and utilize as evidence any information deemed relevant to a decision, whether or not such information is in the plan inventory.

Commit to completion of Tier 2 work tasks at a time certain

Response: The Needs and Gaps Assessment designated three of 15 identified modernization tasks as “Tier 2”, meaning that these three tasks were deemed to be beyond the scope of the current update process. At present, there are no identified sources of funding that would allow the local governments (Newport, Toledo and Lincoln County) to commit to specific timelines to undertake these tasks.

It should be noted that the three Tier 2 tasks affect only two of the current ten plan parts. The 12 Tier 1 tasks identified in the assessment have been completed, the result being that the remaining eight plan parts have been comprehensively updated and/or revised. It is not correct that the completion of the Tier 2 work identified in the assessment would constitute a more "comprehensive" or "in depth" update. To the contrary, the Tier 1 priorities were selected to ensure that the foundational components of the plan; especially the spatial elements (i.e., MU boundaries and classifications) and the plan implementation provisions, along with the overall policies, mitigation and restoration, and sub-area guidance, were all fully updated.

Commit to time certain updates of the Plan and prescribe requirements for adaptive management

Response: The draft update includes a new plan part that provides a description of the plan amendment process and general policy direction on the issues and situations that may warrant evaluation for amendments or updates. Given that local resources for future plan updates are unknown, policy that prescribes mandatory deadlines for plan updates is not recommended.

As described in the Plan, the plan amendment process is set by state statute, and includes mandatory notices and multiple public hearings, among other due process requirements. Due to the rigidity and relative complexity of this process, creating a prescribed process or mandatory triggers for ongoing adaptation of relevant plan provisions is not a practicable approach.

Use the 2014 CMECS estuary and habitat maps developed by DLCD to define the boundary of the estuary

The jurisdictional/regulatory boundary of the Lincoln County estuary management plan is the extent of current estuarine conditions defined as extending upstream to the head of tide; their landward extent is Mean Higher High Water or the line of non-aquatic vegetation - whichever is furthest landward. That combination of criteria was confirmed by staff at the Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of State Lands (DSL) and used by staff at the University of Oregon's Institute for Policy, Research, and Engagement when developing the Map Inventory. CMECS data was used as the backbone of the Map Inventory and was utilized when delineating the estuary boundary for the management unit maps. CMECS data was juxtaposed with every individual management unit, and, where appropriate, boundaries were realigned to capture the natural resources

consistent with each management unit. The Project Team also sought the input and review of technical experts (e.g., ODFW, DSL) to evaluate the management units. The new map clearly shows the publication of where the head of tides are in Yaquina Bay. It is important to note that the boundary of the estuary is not static - it is intended to be dynamic. Any project proposed to be undertaken in the estuary requires a professional wetland delineator to delineate the boundary of the line of non-aquatic vegetation.

Expand the definition of mitigation

Response: Several commenters have advocated for incorporating the definition of “mitigation” employed by state and federal regulatory authorities, rather than the narrower, more specific definition used in the Statewide Planning Goals. These alternative definitions incorporate avoidance and reduction of adverse impacts (followed by compensation) in a hierarchy of preferences. Commenters have stated that because the current goal definition of mitigation is limited to compensation for impacts of dredge or fill in tidal wetlands through resource replacement, this means that local permit decisions are not required to consider avoidance or reduction of impacts. This represents a misunderstanding of Goal 16 implementation requirements.

Implementation requirement 2 of Goal 16 requires a showing, for all estuarine alterations, that “adverse impacts are minimized”. Correspondingly, implementation requirement 1 directs required impact assessments to include a showing of “methods which could be employed to avoid or minimize adverse impacts”. These provisions are incorporated into implementing land use regulations and represent the functional equivalent of the more expansive state and federal definition of “mitigation”, but expressed in different terminology.

To avoid confusion and ensure alignment with Goal 16 and Oregon’s estuarine resource replacement policy (ORS 196.830), retaining the current Statewide Planning Goals definition of mitigation is recommended.

Integrate Goal 17 planning into the current Plan update

Response: The YBEMP is currently structured to fulfill the spatial planning and implementation requirements of Goal 16; it is not directly applicable to adjacent shoreland areas. Local government land use authorities (Newport, Toledo and Lincoln County) have in place coordinated land use designations and implementing regulations for adjacent shorelands that comply with Goal 17. The scope of the current project is to modernize the YBEMP; the project scope does not extend to a review and revision of the existing city and county comprehensive plan elements that implement Goal 17, which would be a complex undertaking. As required by Goal 16, proposed revisions to the YBEMP include consideration of the adjacent upland characteristics and existing land uses. In addition, to ensure coordination with estuarine designations, general policy guidance for the planning of adjacent shorelands is provided in the Sub-Area policies.

Remove Sally’s Bend, Johnson Slough, and MU 33 from Part IX, Future Development Sites

Response: Updating Part IX was identified in the assessment as a Tier 2 priority and therefore is not addressed in the draft update. However, this issue was raised during two Town Halls and multiple direct

comment letters and emails. Many people have, with good cause, pointed out that it does not make sense to both protect areas with exceptional natural resources and identify them for development. These special policies and Plan Part IX are merely a legacy holdover from the original EMP and have no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

Remove Sally's Bend Sub Area Policy 2

Response: Sally's Bend Sub Area policy 2 is informational. It acknowledges that maintenance dredging of the federally authorized navigation channel does and will continue to take place within the sub-area, which is otherwise comprised of areas classified and managed for natural resource protection. It also notes that any expansion of the channel and/or turning basin would require additional alteration of protected natural resource areas. This policy statement does not serve to approve, permit or otherwise authorize such channel expansion; it simply points out the fact that should such an expansion occur, its location would, of necessity, impact otherwise protected natural resource areas.

Remove Poole Slough Goal 16 exception

Response: Appendix C, Goal Exceptions, was not addressed as part of the current update. As pointed out, the Goal 16 exception that authorizes aquaculture development at Poole Slough appears largely obsolete. However, because the exception has not been evaluated as a part of this update, any initiative by the county to repeal or otherwise alter this portion of the appendices should be preceded by a complete analysis and consultation with the current property owner.

Active restoration should be allowed as an outright use.

Response: Local plans cannot be more permissive than Goal 16, which requires discretionary review of proposed active restoration measures. Authorizing this change would necessitate an amendment to Goal 16.

Establish decision outcome requirements for climate vulnerability assessments.

Response: Climate vulnerability has been added in the draft update as a factor to be addressed in the required impact assessment of proposed estuarine alterations. (Goal 16, implementation requirement 1). The goal 16 impact assessment requirement is informational and does not establish any approval criteria or threshold. Other implementation requirements establish these thresholds; i.e., implementation requirement 2, and the requirement for consistency with the resource capabilities for certain uses. These requirements must consider all impacts, including climate vulnerabilities, identified in the impact assessment.

However, examples of how to determine applicable climate vulnerabilities for a specific project type will be provided in the EMP Guidance document. The EMP Guidance document was drafted by the Project Team and will be under internal review by DLCD prior to public release. It was determined by the Steering Committee that providing examples inside of the Plan would insinuate thresholds which do not exist.

Prioritize the list of restoration sites/develop comprehensive restoration plan.

Response: The basic purpose of the YBEMP is to establish a spatial basis for the allocation of uses and development within the estuary. The function of the restoration site inventory within the Plan is primarily to ensure that management units that either encompass or are adjacent to potential restoration areas are designated to accommodate restoration activity and avoid conflicts. Establishing priorities among sites or establishing policies to guide or control restoration strategies is beyond the scope and purpose of the YBEMP. Indeed, such a prioritization would not be binding on project funders or sponsors, and would therefore serve no functional purpose.