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To:

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Thank you for the opportunity to comment on the development of the Yaquina Bay Estuary Management Plan update, both at the November 29, 2022 meeting of the advisory committee and with these follow-up comments.

The Oregon Shores Conservation Coalition's immediate and urgent concern is with public participation in the development of the plan. Public participation opportunities as described to date are vague and uncertain as to form, and do not appear to be adequate for a process within which very specific local knowledge is needed, and which has such far-reaching implications for the natural and human communities of the Yaquina watershed.

The crux of the matter is that the current process led by Willamette Partnership, involving the steering and advisory committees, is clearly a planning process and should be subject to Goal 1, which mandates public involvement at each phase. We understand that Lincoln County does not plan to hold public hearings until it is formally considering plan amendments based on the EMP. That is legally permissible on their part, if narrow. However, the county and cities will have the final proposal submitted by the steering committee under consideration. At that point, since the comprehensive plans for the county and cities must be in accord on the EMP, there will be almost ineluctable momentum toward adopting the final recommendations from the steering committee. This means that the ongoing work on the YBEMP is not some sort of preliminary; it is the actual planning process, and should be treated as such. If public participation is to be meaningful, it must come sooner than the final round of consideration by the county and cities, while the plan is still in an early enough stage that substantial public input can be incorporated readily.

Plans for public participation at this point seem to consist of informal, feedback-gathering sessions at "town halls and open houses," or at presentations to the meetings of community groups. This is well and good for disseminating information and awareness about the plan process to the public, but the actual public comment period should come after this, once the public has had the process explained and has had a chance to study the maps and resource

inventories. For a planning process this complex, the comment period should be 60 days. There should be at least one online public session. And both the advisory and steering committees, meeting after this period, should have a procedure for considering and incorporating public input.

There should then be a second public comment period after the steering committee's "final" proposal is unveiled, but *before* it goes to the three local government jurisdictions, so that substantial public critiques of the proposed plan can lead to revisions prior to the point at which it is submitted to the county and cities.

We would consider the above sequence to be the minimum to conform to the Goal 1 mandate to involve the public at each phase. In reality, there should have been a comment period focused on the Needs & Gaps Assessment as well.

We appreciate that for various reasons, primarily the pandemic and the fact that this is the first, pilot effort at an EMP update, the Yaquina Bay EMP process has been delayed, and that the intended timeline is now foreshortened in an attempt to complete the work by September, when the Coastal Management Program's NOAA-funded grant project ends. We don't intend to cast blame. But we also would state firmly that public participation should not be shorted. The public comment periods we have suggested could be accommodated in a basic process (leading up to the steering committee recommendations) that would last through September. Consideration by the local jurisdictions, with their own public hearings, could come after that.

Our concern is not just with the Yaquina Bay EMP process, but even more with the goal of the Coastal Management Program to use this process as the test case for developing a guidance document that will serve as a template for EMP updates for other Oregon estuaries. If the Yaquina Bay EMP's public involvement component to date falls short of fulfilling the spirit of Goal 1, still less would this be an appropriate model for the rest of the state. While we would urge that a robust public comment component such as is described above be included in the Yaquina Bay planning process, we would urge all the more strongly that this degree of public involvement (including an opportunity for the public to engage with the Needs & Gaps Assessment) be incorporated within the OCMP's guidance document. (A chance to engage the public early in an EMP process is coming up soon for Coos Bay.)

A second major concern we have with the EMP process to date is the relationship between Goal 16 and Goal 17. This was addressed during the Nov. 29 meeting of the advisory committee, but not resolved. Goal 16 references Goal 17. Planning for the estuary per se is incomplete and even incoherent without taking into account the uses of adjacent lands. The interpenetration of estuaries and shorelands is perfectly illustrated on DLCD's web page devoted to Goal 17. The photo accompanying the text is of sea lions on a dock—in the middle of an estuary (in fact, probably Yaquina Bay, although not identified). The point being made is that the dock heads up on shoreland that falls under Goal 17, but the point perhaps inadvertently being made is that estuaries and their shorelands are a continuum.

This would be a concern even under relatively stable conditions. But it becomes acute when climate change, with its inevitable sea level rise, higher storm surges, and increased flooding, is brought into consideration. The entire historic extent of the estuary must be included in the scope of this plan, to allow for upslope migration of habitats and buffering of flooding, not to mention mitigation for impacts to the existing estuary. Areas appropriate for mitigation, restoration, and eventual migration of habitats as well as relocation of infrastructure, are currently governed by Goal 17. To plan meaningfully for the long-term future of Yaquina Bay, then, or for any other estuary, it is essential to include both goals within the scope of the plan.

From DLCD’s own contract language for this work:

“The primary goal of this project is to develop and implement a practical strategy for updating Oregon’s estuary plans within a climate change and coastal hazards context... work with Yaquina Bay Estuary Management Plan communities to update the EMP, understand and incorporate hazard and climate impacts for estuary management...”

This round of EMP updates is Oregon’s best opportunity to address the long-term future of its estuaries in the face of climate change, development pressures, water quality challenges, and endangered species concerns. The effects of climate change are apparent now. The threats it poses to estuarine resources isn’t a problem to be addressed during some future planning effort. Tweaking estuary management plans just enough to bring them forward to the present, while dismissing holistic planning for the estuary’s future as “visionary,” will lead to plans that fail to protect key resources, grow rapidly out of date, and leave challenges unaddressed until they become crises. It may sound paradoxical, but long-term thinking is the immediate need.

Another general concern we have is with vague terms that leave it uncertain as to whether a resource will actually be protected: “significant,” “preferred,” “appropriate,” “temporary.” We would urge that before this becomes a final plan, what is “significant wildlife habitat” (to take one example) should be stated more definitely.

In addition to these broad concerns we have about the YBEMP process to date, we would also offer further, more detailed comments, derived through consultation with the attorneys with the Crag Law Center who are our partners in the Coastal Law project:

## **1. General Comments**

- 1.1 The draft edits to the Plan Part II Overall Management Policies and Plan Part IV Classification System appear to simply import Goal 16 language. While it makes sense that the YBEMP policies be consistent with Goal 16, these limited edits miss a critical opportunity to actually update the plan to reflect the updated estuary data and incorporate current community values for the estuary. Goal 16 was last amended in 1984. It can hardly be called an “update” to simply adopt language from 1984 into the YBEMP.

- 1.2 When evaluating existing or potential conflicts, the plan should consider climate change-related impacts. These impacts include ocean acidification, sea level rise, temperature changes, storm surges and associated impacts to infrastructure.
- 1.3 Given current information about development patterns in the estuary, best available science about the importance of estuaries for native fish and associated cultural and economic services, as well as the impact of climate change on these habitats, the YBEMP should adopt more protective standards for the estuary, particularly for natural and conservation management areas, while remaining consistent with the Goal 16 framework.
- 1.3 The plan includes “cultural” characteristics and features of the estuary, in Plan Part II and the proposed Process for Restoration List Site Selection, but fails to incorporate any procedural or substantive provisions that would actually work to identify or protect cultural areas or resources in the estuary. The update should include provisions for coordination with tribes and incorporation of traditional ecological knowledge into decision-making.
- 1.4 According to the cover letter “the Steering Committee ultimately recommends **final language** for the Plan update for the jurisdictions and their elected officials and board members to engage with the public through their own official planning processes ... on the way to codification.” (Emphasis added). We understand that there will be additional planning processes for each jurisdiction. However, as noted, the language recommended by the steering committee will carry significant weight as “final language” proposed.

Goal 1 requires that community members “shall have the opportunity to be involved in the phases of the planning process” including preparation of plans, plan content, minor changes and major revisions in the plan. Goal 1 also requires that technical “information necessary to reach policy decisions shall be available in a simplified, understandable form” and that a copy of all technical information shall be available to the public. This process, so far, is falling short of Goal 1. Technical information has not been made available, the meetings are not publicly noticed or open to the public, and the mechanism for incorporating community feedback is unclear.

If this process is intended to be a model for other estuary updates, it is critical that the public engagement process is clear, transparent, and accessible.

## 2. Specific Comments

### 2.1 Comments on Plan Part IV Classification System Draft Amendments

- 2.1.1. The incorporation of Goal 16 language into results in substantive changes without any evidence that these changes are supported by the community or by the updated

data. One key example is the addition of pipelines (and dredging for their installation) to the list of permissible uses in Natural Management Units. Goal 16 provides that these “may be allowed,” however, nothing requires that these be allowed in Yaquina Bay. Given current state climate policies to move away from fossil fuels, improved understanding of seismic hazards on the coast, and community risks posed by pipelines, there is no reason to blindly incorporate this use type at the plan level.

- 2.1.2. The proposed edits include undefined terms that will add confusion and uncertainty, rather than increasing clarity. For example, the addition of “temporary alterations” to the list of allowed uses in natural management areas where that term is not defined creates uncertainty. What is the length of time that qualifies as “temporary”? Is any alteration allowed so long as it is not permanent? What are the requirements for removal and restoration following a temporary alteration? If this use is included, the plan should also include proposed definitions and requirements to evaluate whether a use qualifies as a temporary alteration.
- 2.1.3. The inclusion of these uses at the natural management unit level carry through to the conservation and development units as well, therefore the updates should include as much clarity as possible to avoid additional confusion regarding allowed uses in all management areas.
- 2.1.4. The draft edits propose introductory language in the Development Management Unit stating “As appropriate, the following uses shall also be permissible....” This phrase again creates additional uncertainty, rather than clarity. How should a local government determine what is “appropriate” for development? This phrase makes sense in the statewide goal, but does not make sense when incorporated into a local plan. This update process should use new data and community input to determine what is “appropriate” – not simply defer that determination to another stage in the absence of any guidance.

## 2.2 Comments on Plan Part II Overall Management Policies Draft Amendments

- 2.2.1. The standard for allowing dredging and/or filling should include a requirement to demonstrate that adverse impacts will be avoided first, minimized where impacts cannot be avoided, and mitigated. This approach could be modeled from the Clean Water Act Section 404(b)(1) Guidelines developed by U.S. EPA, where:

“**Avoidance** means mitigating an aquatic resource impact by selecting the least-damaging project type, spatial location and extent compatible with achieving the purpose of the project. Avoidance is achieved through an analysis of appropriate and practicable alternatives and a consideration of impact footprint. **Minimization** means mitigating an aquatic resource impact by managing the severity of a project's impact on resources at the selected site. Minimization is achieved through the incorporation

of appropriate and practicable design and risk avoidance measures. **Compensatory Mitigation** means mitigating an aquatic resource impact by replacing or providing substitute aquatic resources for impacts that remain after avoidance and minimization measures have been applied, and is achieved through appropriate and practicable restoration, establishment, enhancement, and/or preservation of aquatic resource functions and services.”

### 2.3 Comments on Plan Part III Sub-Area Policies Draft Amendments

- 2.3.1. The Sally’s Bend Sub-Area Policy 2 now states that impacts will be required (in place of “may”) for maintenance and possible expansion of the deep draft channel. What is the technical basis for this amendment?
- 2.3.2. The Yaquina Sub-Area Policy 1 revision removes the requirement to demonstrate that development cannot be accommodated within the urban area. What is the technical basis for this amendment?

### 3. Process Questions

- 3.1 What is the timeline for public participation? When will notices go out to obtain community feedback, and how does the Project Team anticipate giving notice?
- 3.2 Has the Needs and Gaps process included a separate, government-to-government process with tribal governments?
- 3.3 What sources of data are being used for the inventory, and how are they being integrated into the Needs and Gaps assessment?
- 3.4 When will the Inventory maps be shared? What is the status of these maps?
- 3.5 How will feedback on the needs and gaps assessment be incorporated into the options memo?
- 3.6 What is the status on the DLCD blueprint guide that is meant to come from the YBEMP update process? How can the public and members of the advisory group provide input on that guide?

And a final comment regarding maps and data: Data on maximum observed extent of eelgrass from the PMEP website should be included—will it be? The PMEP data referenced is here: <https://psmfc.maps.arcgis.com/home/item.html?id=12ed43ed0fe342bc86225268cbb638c7>

This data should be used along with the CMECs biotic map data to inventory eelgrass. However, areas of Z. Marina are not clear on that map. The map needs labels to show the different component codes, and the colors of areas of aquatic vegetation should be differentiated.

