

5-7-21

Report for the May PC meeting

What is being considered: Tree or vegetation removal restrictions on the Necanicum estuary shoreline east of the ocean front building line and the BAD zone.

Location: In this location the Necanicum estuary shoreline is zoned either Parks and Open Space P or Residential R-1 near the Neacoxie Creek mouth. Both zones are adjoined by the A2 Aquatic Conservation Zone to the south. **Maps will be available on your screen at the meeting.**

The focus of the conversation is on the area from Neacoxie Creek to the ocean front building line west of South Ocean Avenue.

Documents: The relevant sections of the Gearhart Comprehensive Plan are: Goals 16 and 17 The Necanicum Estuary and Goal 17 Shorelands. The relevant Zoning Ordinance sections are GZO Section 3.11 A2 Zone, Section 6.070 Landscaping, Vegetation & Revegetation and Tree Preservation and the BAD zone Section 3.12 D. Pruning, trimming and removal of vegetation and trees.

In addition, the R-1 and R-2 Zones have a Neacoxie Creek setback restriction that prohibits structures and vegetation removal within 50 feet of the mean high-water line. GZO Section 6.070 regulates tree cutting of a tree that is 12 inches or greater in diameter at 4.5' high. A city permit is required if more than 5 trees are cut within one year.

### Summary Analysis

The purpose of this analysis is to interpret existing land use documents as they relate to vegetation removal and tree trimming on the Necanicum estuary where there are three intersection zones, Public Park, Residential R-1 and A2.

1. The Comprehensive Plan Goal 17 states, “Policy 2: Riparian vegetation shall be maintained and where appropriate restored consistent with the provision of water-dependent uses” and, “The City will implement a program to maintain a 50-foot riparian zone on either side of Neacoxie Creek, Mill Creek and the Necanicum estuary”.
2. Zone code Section 6.070 #5. Riparian Vegetation adjacent to streams and lakes requires retaining vegetation in a 50-foot setback on Neacoxie Creek, Mill Creek and the Palmberg Lake from the mean high-water line on estuarine portions and the ordinary high-water line for non-estuarine portions of these streams. **The Necanicum estuary was not included in this section.**

Riparian vegetation within this setback shall be protected as specified, except that the City may approve the removal of riparian vegetation subject to the exception provisions of subsection (C) or where a proposed plan of vegetation removal has been reviewed and approved by the Oregon Department of Fish and Wildlife ODFW.

Section 6.070 #8. Preservation & Removal of Trees regulates tree cutting of a tree that is 12 inches or greater in diameter at 4.5' high citywide. A city permit is required if more than 5 trees are cut within one year. The Planning Commission may grant or deny a permit to cut more than 5 trees over 12" in diameter on the basis of the criteria set forth in subsection 8. F.

However, if trees are considered dangerous, either obviously or by an arborist, the tree may be cut down without a permit. An example, 7 trees greater than 12" were recently determined hazardous by an arborist. No permit was necessary. The arborist did ask Chad to inspect the trees, pictures were taken, and the council was updated. No permit was required.

3. The A2 zone is roughly 200 feet south of the private properties on the estuary. Its purpose is to protect and conserve natural and recreational resources from major alterations for biological productivity, recreational resources, aesthetic features and aquaculture. The A2 zone allows passive restoration and vegetative shoreline stabilization, marine research, educational observation pilings, dredging and fill in conjunction with a permitted use, and conditional uses such as utility structures, bridges, structural stabilization, restoration projects for fish habitat and wildlife. Shoreline stabilization standards prefer proper management of existing streamside vegetation over planting of new vegetation.

Historically, the City finds the ODFW will not determine the vegetation on the estuary is of biological necessity because it is a saltwater estuary where vegetation does not add significant habitat for the fish and crab within those waters. This is what ODFW has said when the City was working on the vegetation policy in the dunes.

The City finds it is debatable whether trees or the grasses are more beneficial to shoreline stabilization. Trees tend to kill all growth underneath the root system and may not offer more stabilization than grasses. The scotch broom is used for shoreline stabilization in other countries and is one of the reasons it was planted in this region.

The A2 zone does not specifically prohibit vegetation removal on the shoreline, but it does provide a method to formally assess the impact of shoreline activities, more typically applicable to activities such as buildings, pilings, dredging or fill projects adjoining the estuary. *But the estuary shoreline is all zoned public park or private property, not A2.*

#### Conclusion

The current A2 zone lacks a riparian setback on the Necanicum estuary likely because the zone boundary is so far from the bank. Existing code riparian setbacks of 50 feet from the high-water mark are ineffective from the A2 zone boundary.

Possible Solution: Amend the A2 zone to require an approximately 200-foot setback requirement for structures and tree removal from the zone boundary. This likely affect all property owners on the estuary. Exact measurements have not been determined.