

March 29, 2021

To: House Committee On Energy and Environment  
Representative Marsh, Committee Chair  
Representatives Helm and Brock Smith, Committee Vice-Chairs  
Members of the Committee

**Re: HB 2488 – Summary of -2 Amendments**

Thank you for the opportunity to give testimony in support of the -2 amendments to House Bill 2488.

In the March 8 hearing of this committee, Beyond Toxics provided both oral and written testimony outlining the changes between the HB 2488 as-introduced and the -1 amendments. The -2 amendments are almost identical in substance to the -1, but provide further refinements to the bill language and include additional accommodations for local governments.

Rather than providing duplicative testimony to that provided on March 8, the purpose of this letter is to describe the process that will occur once the -2 version of this bill is passed. Specifically, this letter sets out how HB 2488-2 would operate to develop, establish and implement a new statewide land use planning goal for climate, equity and environmental justice – a Goal 20 – which would function alongside and interact with the other nineteen existing goals.

As explained in the March 8 testimony, instead of the broad remit contained in the bill as-introduced, the dash-two amendments give a specific and confined direction to DLCDC to develop a new Goal 20. That process of developing the language of the new goal and then adopting it is a rulemaking process. While Section 2 of HB 2488-2 confines the scope and gives direction as to the subject matter of the new Goal 20, the real substance of the new goal will be a matter for that rulemaking process, and will be the product of robust, statewide public participation.

Beyond Toxics and other advocates for HB 2488 have worked closely with DLCDC and the bill's Chief Sponsors to produce clear and accurate language that clarifies the process for that rulemaking. This process is described in Section 3 of the -2 version. According to that Section, when HB 2488 passes:

- DLCDC will appoint a rulemaking advisory committee, and this RAC will be comprised of a diverse group of stakeholders including members of disadvantaged groups, which Section 2(1)(b) of HB 2488-2 defines as “a group that may experience past or current discrimination, patterns of exclusion or an unfair distribution of resources, access and opportunity;”
- DLCDC will then hold at least 5 hearings; that is, at least one in each congressional district in this state. Those hearings will be an appropriate and effective opportunity to get

feedback from industry, from agricultural and forestry interests, from land owners, local governments, conversation groups, from the general public – from stakeholders across the board;

- DLCDC will then take that feedback, finalize a draft of the goal language, and present it to a 2023 committee of the Legislature and to the Land Conservation and Development Commission. After at least 60 days, the Commission will hold a separate hearing for further feedback on the Goal. The Commission will then finalize the goal and adopt it at a subsequent meeting, on or before June 30, 2023.
- Although the new goal will be finalized by the end of this biennium, compliance with the goal will not be required until the end of the following biennium, and at that time only for the largest local governments. Mid-sized and smaller local governments will have even longer, and our smallest governments will be exempt from the goal unless they opt into compliance.

The tiered timeline for implementation by local governments is something that the advocates for the bill have been very careful to make sure we get right. We do not want unreasonable burdens being placed on local governments. On the contrary, we want our local governments empowered and given explicit authority to figure out how to best undertake the kind of work that many of them are beginning to explore to create climate-smart policies. This includes larger cities (like the City of Salem, that has already begun a community-wide effort to develop a Climate Action Plan and reduce greenhouse gases) and smaller coastal communities (like Newport, which has adopted their Climate Change Proclamation, or the Lincoln County Commissioners, who have adopted Resolution 18-28-11A on climate change partnerships).

Because we are not looking at compliance with this goal until mid-2025, and only then for Oregon's largest local governments, this gives this legislature a bit more lead time to figure out how to make sure those local governments have the assistance they need to incorporate this new goal into their planning decisions, and DLCDC has the resources to provide that assistance. To lay the groundwork for achieving this, Section 7 of this bill establishes a separate fund for the purpose of assisting local governments in relation to this new goal, and which we expect will allow DLCDC to attract grants that are anticipated from the federal government as part of President Biden's Build Back Better program.

The advocates for this bill have endeavored to listen and respond to the feedback from a broad range of stakeholders, including mid-size and small governments. Thus, Section 5(4)(a) of HB 2488-2 takes the step to ensure that DLCDC prioritizes assisting those smaller cities and counties that are less well-resourced and may be understaffed.

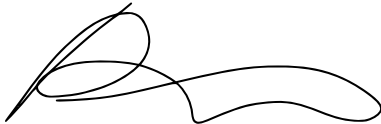
The Goal 20 development, adoption and implementation process set-out in this bill gives a lot of flexibility and control to local governments to consider climate and equity priorities *alongside* and balanced with our existing land use planning goals, not before or above them. To illustrate this point, **attached** to this letter are three examples of Oregon's Goals. Goal 3 (Ag Lands), Goal 7 (Natural Hazards) and Goal 17 (Ocean Shores) illustrate the nature of Goal language. The Goals tell local governments "what to work on" – in the case of HB 2488: climate, equity

and environmental justice – but not “how to do it.” Some goals, such as Goal 7 for Natural Hazards, provide clear guidance without needing any additional implementing rules. The -2 amendments to HB 2488 allow Goal 20 to be developed in a similar manner.

An explicit land use planning goal covering how Oregon communities prepare for climate impacts allows cities and counties to be more deliberate in their planning, and gives certainty and structure to a lot of the great work our cities and counties are already doing in this area. Future costs can be mitigated by cities incorporating their current climate-smart and equity planning straight into their Comprehensive Plans to satisfy the Goal guidances.

An unpredictable climate poses a myriad of risks to Oregon’s economy, infrastructure and public health. State government can help local governments prepare for and mitigate these risks by adopting fact-based planning guidelines. A Goal 20 for climate and equity will be the first new land use planning goal in fifty years and reflects the deliberate and careful planning that has served Oregon to this point. We therefore urge you to support the -2 amendments to HB 2488. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny Noonan', with a long, sweeping underline.

Danny Noonan  
Legislative Affairs Manager  
Beyonds Toxics

# Oregon's Statewide Planning Goals & Guidelines

## GOAL 3: AGRICULTURAL LANDS

### OAR 660-015-0000(3)

#### **To preserve and maintain agricultural lands.**

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

#### **USES**

Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices.

#### **IMPLEMENTATION**

Zoning applied to agricultural land shall limit uses which can have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices.

Counties shall establish minimum sizes for new lots or parcels in each agricultural land designation. The minimum parcel size established for farm uses in farmland zones shall be consistent with applicable statutes. If a county proposes a minimum lot or parcel size less than 80 acres, or 160 acres for rangeland, the minimum shall be appropriate to maintain the existing commercial agricultural enterprise within the area and meet the requirements of ORS 215.243.

Counties authorized by ORS 215.316 may designate

agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by law.

LCDC shall review and approve plan designations and revisions to land use regulations in the manner provided by ORS Chapter 197.

#### **DEFINITIONS**

***Agricultural Land*** -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

**Farm Use** -- is as set forth in ORS 215.203.

**High-Value Farmlands** -- are areas of agricultural land defined by statute and Commission rule.

growth. The interchange of such lands should not be subject to tax penalties.

## **GUIDELINES**

### **A. PLANNING**

1. Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.
2. Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

### **B. IMPLEMENTATION**

1. Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity.
2. Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213 and 215.283.
3. Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203, 215.213, and 215.283, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.
4. Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural

## Oregon's Statewide Planning Goals and Guidelines

### GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

**To protect people and property from natural hazards.**

#### A. NATURAL HAZARD PLANNING

1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.

2. Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides,<sup>1</sup> earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards.

#### B. RESPONSE TO NEW HAZARD INFORMATION

1. New hazard inventory information provided by federal and state agencies shall be reviewed by the Department in consultation with affected state and local government representatives.

2. After such consultation, the Department shall notify local governments if the new hazard information requires a local response.

3. Local governments shall respond to new inventory information on natural hazards within 36 months after being notified by the Department of Land Conservation and Development, unless extended by the Department.

#### C. IMPLEMENTATION

Upon receiving notice from the Department, a local government shall:

1. Evaluate the risk to people and

property based on the new inventory information and an assessment of:

a. the frequency, severity and location of the hazard;

b. the effects of the hazard on existing and future development;

c. the potential for development in the hazard area to increase the frequency and severity of the hazard; and

d. the types and intensities of land uses to be allowed in the hazard area.

2. Allow an opportunity for citizen review and comment on the new inventory information and the results of the evaluation and incorporate such information into the comprehensive plan, as necessary.

3. Adopt or amend, as necessary, based on the evaluation of risk, plan policies and implementing measures consistent with the following principles:

a. avoiding development in hazard areas where the risk to people and property cannot be mitigated; and

b. prohibiting the siting of essential facilities, major structures, hazardous facilities and special occupancy structures, as defined in the state building code (ORS 455.447(1)

(a)(b)(c) and (e)), in identified hazard areas, where the risk to public safety cannot be mitigated, unless an essential facility is needed within a hazard area in order to provide essential emergency response services in a timely manner.<sup>2</sup>

4. Local governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and

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<sup>1</sup> For "rapidly moving landslides," the requirements of ORS 195.250-195.275 (1999 edition) apply.

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<sup>2</sup> For purposes of constructing essential facilities, and special occupancy structures in tsunami inundation zones, the requirements of the state building code - ORS 455.446 and 455.447 (1999 edition) and OAR chapter 632, division 5 apply.

implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements.

#### **D. COORDINATION**

1. In accordance with ORS 197.180 and Goal 2, state agencies shall coordinate their natural hazard plans and programs with local governments and provide local governments with hazard inventory information and technical assistance including development of model ordinances and risk evaluation methodologies.

2. Local governments and state agencies shall follow such procedures, standards and definitions as may be contained in statewide planning goals and commission rules in developing programs to achieve this goal.

#### **GUIDELINES**

##### **A. PLANNING**

1. In adopting plan policies and implementing measures to protect people and property from natural hazards, local governments should consider:

- a. the benefits of maintaining natural hazard areas as open space, recreation and other low density uses;
- b. the beneficial effects that natural hazards can have on natural resources and the environment; and
- c. the effects of development and mitigation measures in identified hazard areas on the management of natural resources.

2. Local governments should coordinate their land use plans and decisions with emergency preparedness, response, recovery and mitigation programs.

##### **B. IMPLEMENTATION**

1. Local governments should give special attention to emergency access when considering development in identified hazard areas.

2. Local governments should consider programs to manage stormwater runoff as a means to help address flood and landslide hazards.

3. Local governments should consider nonregulatory approaches to help implement this goal, including but not limited to:

- a. providing financial incentives and disincentives;
- b. providing public information and education materials;
- c. establishing or making use of existing programs to retrofit, relocate, or acquire existing dwellings and structures at risk from natural disasters.

4. When reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties.

5. Local governments should consider measures that exceed the National Flood Insurance Program (NFIP) such as:

- a. limiting placement of fill in floodplains;
- b. prohibiting the storage of hazardous materials in floodplains or providing for safe storage of such materials; and
- c. elevating structures to a level higher than that required by the NFIP and the state building code.

Flood insurance policy holders may be eligible for reduced insurance rates through the NFIP's Community Rating System Program when local governments adopt these and other flood protection measures.

# Oregon's Statewide Planning Goals & Guidelines

## GOAL 17: COASTAL SHORELANDS

### OAR 660-015-0010(2)

(Please Note: Amended 08/05/99; Effective 08/20/99)

**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.**

Programs to achieve these objectives shall be developed by local, state, and federal agencies having jurisdiction over coastal shorelands.

Land use plans, implementing actions and permit reviews shall include consideration of the critical relationships between coastal shorelands and resources of coastal waters, and of the geologic and hydrologic hazards associated with coastal shorelands. Local, state and federal agencies shall within the limit of their authorities maintain the diverse environmental, economic, and social values of coastal shorelands and water quality in coastal waters. Within those limits, they shall also minimize

man-induced sedimentation in estuaries, near shore ocean waters, and coastal lakes.

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

1. Promote uses which maintain the integrity of estuaries and coastal waters;
2. Provide for water-dependent uses;
3. Provide for water-related uses;
4. Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;
5. Provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;
6. Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

### **INVENTORY REQUIREMENTS**

Inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide 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 in sufficient detail to establish a sound basis for land and water use management.

The inventory requirements shall be applied within an area known as a coastal shorelands planning area. This planning area is not an area within which development or use is prohibited. It is an area for inventory, study, and initial planning for development and use to meet the Coastal Shorelands Goal.

The planning area shall be defined by the following:

1. All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:

(a) In Tillamook County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips Drive (County Road 915) northerly from Pacific City to its junction with Sandlake Road (County Road 871), Sandlake-Cape Lookout Road, (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665) northerly from its junction with the Sandlake-Cape Lookout Road (County Road 871) to its junction at Netarts with State Highway 131, and northerly along State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

(b) In Coos County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Oregon State 240, Cape Arago Secondary (FAS 263) southerly from its

junction with the Oregon Coast Highway to Charleston; Seven Devils Road (County Road 33) southerly from its junction with Oregon State 240 (FAS 263) to its junction with the Oregon Coast Highway, near Bandon; and

2. All lands within an area defined by a line measured horizontally (a) 1000 feet from the shoreline of estuaries; and

(b) 500 feet from the shoreline of coastal lakes.

## **COMPREHENSIVE PLAN REQUIREMENTS**

Based upon inventories, comprehensive plans for coastal areas adjacent to the ocean, estuaries, or coastal lakes shall:

1. Identify coastal shorelands;  
2. Establish policies and uses of coastal shorelands in accordance with standards set forth below:

### **Identification of Coastal Shorelands.**

Lands contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:

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. 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.

### **Coastal Shoreland Uses**

1. Major marshes, significant wildlife habitat, coastal headlands, and exceptional aesthetic resources inventoried in the Identification Section, shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting, wild crops, and low intensity water-dependent recreation.

2. Water-Dependent Shorelands.

**Location.** Shorelands in the following areas that are suitable for water-dependent uses shall be protected for water-dependent recreational, commercial, and industrial uses:

(a) urban or urbanizable areas;

(b) rural areas built upon or irrevocably committed to non-resource use; and

(c) any unincorporated community subject to OAR Chapter 660, Division 022 (Unincorporated Communities).

**Minimum Acreage.** Within each estuary, the minimum amount of shorelands to be protected shall be equivalent to the following combination of factors as they may exist:

(a) Acreage of estuarine shorelands that are currently being used for water-dependent uses; and

(b) Acreage of estuarine shorelands that at any time were used for water-dependent uses and still possess structures or facilities that provide or provided water-dependent uses with access to the adjacent coastal water body. Examples of such facilities or structures that provide water-dependent access would be wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures, or navigational aids.

**Suitability.** Any shoreland area within the estuary may be designated to provide the minimum amount of protected shorelands. However, any such designated shoreland area shall be suitable for water dependent uses. At a minimum, such water-dependent shoreland areas shall possess, or be capable of possessing, structures or facilities that provide water-dependent uses with physical access to the adjacent coastal water body. Such designations shall comply with applicable Statewide Planning Goals.

**Permissible Nonwater-Dependent Uses.** Other uses which may be permitted in these areas are temporary uses which involve minimal capital investment and no permanent

structures, or a use in conjunction with and incidental and subordinate to a water-dependent use.

**Applicability.** Local cities and counties are not mandated by this requirement to make changes to their acknowledged local comprehensive plans or land use regulations for existing water-dependent shorelands. However, if a local government chooses to revise the boundary of or allowed uses of a designated water-dependent shoreland site, then this requirement shall apply.

3. Local governments shall determine whether there are any existing, developed commercial/industrial waterfront areas which are suitable for redevelopment which are not designated as especially suited for water-dependent uses. Plans shall be prepared for these areas which allow for a mix of water-dependent, water-related, and water oriented nondependent uses and shall provide for public access to the shoreline.

4. Shorelands in rural areas other than those built upon or irrevocably committed to nonresource use and those designated in (1) above shall be used as appropriate for:

- (a) farm uses as provided in ORS Chapter 215;
- (b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
- (c) private and public water-dependent recreation developments;
- (d) aquaculture;
- (e) water-dependent commercial and industrial uses, water-related uses and other uses only upon a finding by the county that such uses satisfy a

need which cannot be accommodated on uplands or in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

## **IMPLEMENTATION REQUIREMENTS**

1. The Oregon Department of Forestry shall recognize the unique and special values provided by coastal shorelands when developing standards and policies to regulate uses of forest lands within coastal shorelands. With other state and federal agencies, the Department of Forestry shall develop forest management practices and policies including, where necessary, amendments to the FPA rules and programs which protect and maintain the special shoreland values and forest uses especially for natural shorelands and riparian vegetation.

2. Local government, with assistance from state and federal agencies, shall identify coastal shoreland areas which may be used to fulfill the mitigation requirement of the Estuarine Resources Goal. These areas shall be protected from new uses and activities which would prevent their ultimate restoration or addition to the estuarine ecosystem.

3. Coastal shorelands identified under the Estuarine Resources Goal for dredged material disposal shall be protected from new uses and activities which would prevent their ultimate use for dredged material disposal.

4. Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resources, riparian vegetation shall be maintained; and where appropriate ,

restored and enhanced, consistent with water-dependent uses.

5. Land-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective structures; and fill, whether located in the waterways or on shorelands above ordinary high water mark, shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns.

6. Local government in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access. Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

#### **GUIDELINES FOR GOAL 17**

The requirements of the Coastal Shorelands Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to coastal shoreland areas and implementation of the Coastal Shorelands Goal.

Because of the strong relation of estuarine shorelands to adjacent

estuaries, the inventory and planning requirements for estuaries and estuarine shorelands should also be fully coordinated. Coastal shoreland inventories and planning should also be fully coordinated with those required in other statewide planning goals, supplementing them where necessary. Of special importance are the plan requirements of the Goals for Agricultural Lands; Forest Lands; Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Areas Subject to Natural Disasters and Hazards; Recreational Needs; and Economy of the State.

#### **A. INVENTORIES**

In coastal shoreland areas the following inventory needs should be reviewed. The level of detail of information needed will differ depending on the development or alteration proposed and the degree of conflict over the potential designation.

1. Hazard areas, including at least:

(a) Areas the use of which may result in significant hydraulic alteration of other lands or water bodies;

(b) Areas of geological instability in, or adjacent to shorelines; and

(c) The 100-Year Floodplain.

2. Existing land uses and ownership patterns, economic resources, development needs, public facilities, topography, hydrography, and similar information affecting shorelands;

3. Areas of aesthetic and scenic importance;

4. Coastal shoreland and wetland biological habitats which are dependent upon the adjacent water body, plus other coastal shoreland and

adjacent aquatic areas of biological importance (feeding grounds, nesting sites, areas of high productivity, etc.) natural areas and fish and wildlife habitats;

5. Areas of recreational importance;
6. Areas of vegetative cover which are riparian in nature or which function to maintain water quality and to stabilize the shoreline;
7. Sedimentation sources;
8. Areas of present public access and recreational use;
9. The location of archaeological and historical sites; and
10. Coastal headlands.

## **B. FLOODPLAIN**

In the development of comprehensive plans, the management of uses and development in floodplain areas should be expanded beyond the minimal considerations necessary to comply with the National Flood Insurance Program and the requirements of the Flood Disaster Protection Act of 1973. Communities may wish to distinguish between the floodway and floodfringe in developing coastal shoreland plans; development in the floodway should be more strictly controlled. Government projects in coastal shorelands should be examined for their impact on flooding, potential flood damage, and effect on growth patterns in the floodplain. Nonwater-dependent emergency service structures (such as hospitals, police, and fire stations) should not be constructed in the floodplain. Although they may be flood-proofed, access and egress may be prevented during a flood emergency.

## **C. OPEN SPACE, NATURAL AREAS AND AESTHETIC RESOURCES, AND RECREATION**

Coastal shorelands provide many areas of unique or exceptional value and benefit for open space, natural areas, and aesthetic and recreational use. The requirements of the Goals for Open Spaces, Scenic and Historic Areas, and Natural Resources (Goal 5) and Recreational Needs (Goal 8) should be carefully coordinated with the coastal shoreland planning effort. The plan should provide for appropriate public access to and recreational use of coastal waters. Public access through and the use of private property shall require the consent of the owner and is a trespass unless appropriate easements and access have been acquired in accordance with law.

## **D. DEVELOPMENT NEEDS**

In coordination with planning for the Estuarine Resources Goal, coastal shoreland plans should designate appropriate sites for water-dependent activities, and for dredged material disposal.

Historic, unique, and scenic waterfront communities should be maintained and enhanced, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

## **E. TRANSPORTATION**

The requirements of the Transportation Goal should be closely coordinated with the Coastal Shorelands Goal. Coastal transportation systems frequently utilize shoreland areas and may significantly affect the resources and values of coastal shorelands and adjacent waters; they should allow appropriate

access to coastal shorelands and adjacent waters, and be planned in full recognition of the protection needs for the special resources and benefits which shorelands provide.

#### **F. EXAMPLES OF INCIDENTAL USES**

Examples of uses that are in conjunction with and incidental to a water-dependent use include a restaurant on the second floor of an existing seafood processing plant and a retail sales room as part of a seafood processing plant. Generally, to be in conjunction with and incidental to a water dependent use, a nonwater-dependent use must be constructed at the same time or after the water-dependent use of the site is established and be carried out together with the water-dependent use. Incidental means that the size of nonwater-dependent use is small in relation to the water-dependent operation and that it does not interfere with conduct of the water-dependent use.