



---

*Land of Cheese, Trees and Ocean Breeze*

# MEMO

**Date:** November 3, 2022  
**To:** Tillamook County Planning Commission  
**From:** Sarah Absher, CFM, Director  
**Subject:** Conditional Use Request #851-22-000328-PLNG & Development Permit #851-22-000329-PLNG

The hearing on November 10, 2022, is a continuation of the initial hearing held on October 13, 2022, for this request. Attached to this memorandum is additional testimony received during the public comment portion of the hearing as well as the applicant's final arguments.

An initial framework for conditions of approval is also included should the Planning Commission choose to approve this request. Conditions of approval are marked as "draft".

The public testimony portion of the hearing is closed. Staff will provide final comments at the November 10, 2022, hearing including comments related to estuary comprehensive plan policies for wetland restoration activities, flood hazard overlay zone requirements and the draft conditions of approval. Staff is also available for questions prior to and at the time of Planning Commission deliberations.

If you have any questions about the information received, please do not hesitate to contact me.

Thank You,

A handwritten signature in cursive script that reads "Sarah Absher". The signature is written in black ink and is positioned below the typed name.

# TILLAMOOK COUNTY PLANNING COMMISSION

## LOCATION

Port of Tillamook Bay Conference Center  
4000 Blimp Boulevard, Tillamook, OR 97141

## HEARING DATE

November 10, 2022- Beginning at 7:00p.m.

### VIRTUAL & TELECONFERENCE MEETING INFORMATION

For teleconference access the evening of the hearing, please call 971-254-3149. Conference ID: 887 242 77#. Virtual Meeting Access: <https://www.co.tillamook.or.us/commdev>. Click on Virtual Teams Link. \*Microsoft Teams Meeting Format.

#### I. CALL TO ORDER

#### II. ROLL CALL

#### III. OLD BUSINESS:

**#851-22-000328-PLNG & #851-22-000329-PLNG:** Consolidated review of an Estuary/Floodplain Development Permit and Conditional Use Request for a wetland restoration project. The subject property is zoned Estuary Natural (EN), Estuary Conservation 1 (EC1) and Farm (F-1), is partially located within the Shoreland Overlay zone and lies entirely within the Flood Hazard Overlay zone. The subject property is located to the west of Highway 101 and is designated as Tax Lots 901, 1700 and 1900 in Section 12 of Township 1 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The applicant and property owner are The Nature Conservancy.

#### IV. NEW BUSINESS:

Discussion and consideration of Planning Commission workshop in preparation for proposed draft code amendments to be heard on December 8, 2022.

#### V. AUTHORIZATION FOR CHAIR TO SIGN APPROPRIATE ORDERS, IF NECESSARY

#### VI. ADMINISTRATIVE DECISIONS: Administrative Decisions are available for public review on the Tillamook County Department of Community Development website: <https://www.co.tillamook.or.us/commdev/landuseapps>

#### VII. HOUSING COMMISSION UPDATE

#### VIII. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT

#### IX. ADJOURNMENT

*The Port of Tillamook Bay Conference Center is accessible to citizens with disabilities. If special accommodations are needed for persons with hearing, visual, or manual impairments that wish to participate in the meeting, please contact 1-800-488-8280x3423 at least 24 hours prior to the meeting in order that appropriate communications assistance can be arranged.*



October 20, 2022

Tillamook County  
c/o Sarah Absher  
201 Laurel Ave,  
Tillamook, OR 97141

To Whom it May Concern,

I'm writing on behalf of Wild Salmon Center (WSC) to express the organization's support of The Nature Conservancy's permit application to Tillamook County to restore its property along the lower Kilchis River, known as the Kilchis Porter Project, in the Tillamook Bay basin. One of the most biologically rich regions in the Pacific Northwest, the Tillamook Bay basin has been recognized as a Salmon Stronghold by the State of Oregon through the North American Salmon Stronghold Partnership. Lying in the heart of this stronghold, the Kilchis River boasts robust populations of fall Chinook and chum salmon, and contributes to the region's strong populations of winter steelhead. These runs anchor extraordinary recreational fisheries that are critical to the local economy and draw visitors from around the world.

Since European settlement, over 90% of the basin's tidal wetlands have been eliminated as these habitats were diked, drained, and filled to accommodate agricultural uses and promote urban and rural-residential development. These activities have also severely impaired water quality in the floodplain, limiting salmonid use of the few remaining tidally-connected wetland habitats. Wild Salmon Center applauds The Nature Conservancy's goals of the re-establishing tidal spruce swamp and associated off-channel habitats – directly addressing key factors limiting salmonid populations in the basin, most notably the loss of inter-tidal wetland habitats.

Wild Salmon Center encourages Tillamook County to approve The Nature Conservancy's permit application. If we can provide further information on our support of this project or the salmon stronghold initiative, please don't hesitate to contact me.

Best Regards,

A handwritten signature in cursive script that reads "Cyndi Curtis".

Cyndi Curtis  
North Coast Manager

INTERNATIONAL HEADQUARTERS

721 NW Ninth Avenue, Suite 300 • Portland, Oregon 97209 USA • tel: 503.222.1804 • fax: 503.222.1805

info@wildsalmoncenter.org • www.wildsalmoncenter.org



## TILLAMOOK ESTUARIES PARTNERSHIP

*Healthy watersheds for a thriving community*

503-322-2222

P.O. Box 493  
613 Commercial Street  
Garibaldi, Oregon 97118

[www.tbnep.org](http://www.tbnep.org)

October 18, 2022

Dick Vander Schaaf  
The Nature Conservancy of Oregon

Dear Mr. Vander Schaaf:

I am writing on behalf of Tillamook Estuaries partnership to support The Nature Conservancy's Kilchis Porter Tract Restoration Project. The proposed project falls within the focus area of the Tillamook Bay National Estuary Program and will restore critical spruce swamp habitat and provide important refuges for juvenile fish, including the threatened Oregon Coast coho salmon.

This proposed project, and the corresponding collaborative efforts with community members, advances all three overarching goals within the Tillamook Estuaries Partnership (TEP) Comprehensive Conservation Management Plan (CCMP), our 10-year action agenda:

- Maintain and improve the beneficial uses of estuaries and watersheds for humans and native aquatic and terrestrial species;
- Conserve and restore ecological functions of Tillamook County's estuaries and watersheds to benefit native species and the communities that depend on them; and
- Foster awareness of Tillamook County's estuaries and watersheds, engage in problem solving, and take action to conserve and enhance our natural resources.

Specifically, this project will advance five of TEP's priority actions listed in its CCMP:

- Conserve and restore key habitats in the estuary
- Maximize ecosystem connectivity to ensure a landscape array of ecosystem processes and ease of species movement
- Provide genetically appropriate native vegetation and promote its use among habitat restoration and enhancement partners
- Assess, prioritize, and enhance key native species populations, emphasizing contribution to ecological functions
- Assess and implement best management practices for key habitat conservation

Please feel free to contact me if I can provide any additional information in support of this project.

Sincerely,

Executive Director

### OUR MISSION

Tillamook Estuaries Partnership is a nonprofit organization dedicated to the conservation and restoration of Tillamook County's watersheds through active stewardship, scientific inquiry, community engagement, and education.

80285 Woodland Hts Rd  
Arch Cape, OR 97102

RE Support for 851-22-000328-PLNG/851-22-000329-PLNG

October 11, 2022

Dear Planning Commissioners:

As a coastal resident, I know as well as you do that our fishing families and local economy rely on salmon thriving. For 100 years, we have altered their habitat - by installing dams, culverts, and dikes, and by clearing and filling wetlands. This has resulted in less salmon, altering our natural environment, and hurting our salmon industry. Now salmon face climate change impacts – too warm of streams and rivers, ocean hypoxia events (“dead zones”), and loss of their shell-making prey (e.g., pteropods). We must work quickly to help slow their decline to ensure that fishing is part of our future.

There are relatively few places that tidal Sitka spruce swamp may be effectively restored. This habitat type is critical to juvenile salmon recovery. With this project, The Nature Conservancy has been working diligently to do just that. I understand that it has been difficult, but they have done the work to show that restoration can help support salmon, while protecting neighboring farms.

Change is sometimes hard, but in this era, we must do the work to know that our kids and grandkids might be fishermen too. Thank you for your support.

Sincerely,

Nadia Gardner



November 3, 2022

Sarah Stauffer Curtiss  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
D. 503.294.9829  
sarah.curtiss@stoel.com

**VIA EMAIL ([SABSHER@CO.TILLAMOOK.OR.US](mailto:SABSHER@CO.TILLAMOOK.OR.US);  
[LTONE@CO.TILLAMOOK.OR.US](mailto:LTONE@CO.TILLAMOOK.OR.US))**

Tillamook County Planning Commission  
c/o Ms. Sarah Absher, Director  
Tillamook County Department of Community Development  
1510-B Third Street  
Tillamook, Oregon 97141

**Re: FILE 851-22-000328-PLNG and 851-22-000329-PLNG (Estuary/Floodplain  
Development Permit and Conditional Use Request) – Final Legal Argument of the  
Applicant**

Dear Commissioners:

This office represents The Nature Conservancy, the applicant in the above-referenced matter (“Applicant”). In accordance with your October 13, 2022 order, which extended the deadline for new evidence to October 20, 2022, rebuttal evidence to October 27, 2022, and the Applicant’s final legal argument to November 3, 2022, please find the Applicant’s final legal argument below for submittal to the record.

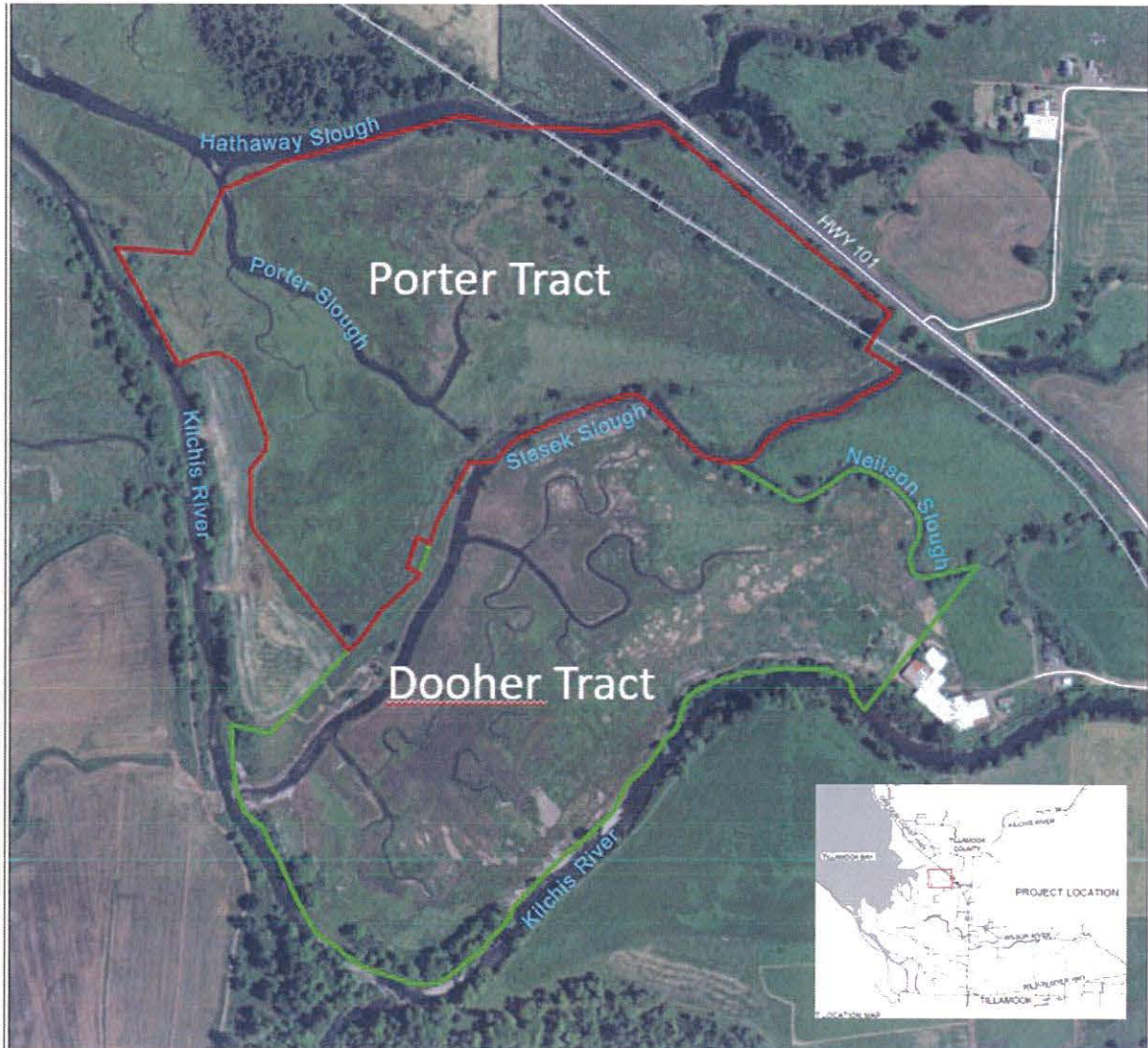
## **I. BACKGROUND**

### **A. Application and Property**

As described in detail in the application, the Applicant is proposing to restore 30 acres of degraded tidal marsh habitat on land owned by the Applicant. The restoration will re-create over 1 mile of tidal channels within the site that will provide critical habitat for juvenile salmon and other organisms. In addition to re-creating tidal channels, site revegetation entails planting over 90,000 wetland plants creating habitats for an array of species including waterbirds, amphibians, and mammals.

This application relates only to the Porter tract of the Applicant’s Kilchis Estuary Preserve. The Applicant previously secured approval from Tillamook County (the “County”) and completed restoration activities for a separate project on the Dooher tract (located to the south of the Porter tract) in 2015. *See Figure 1* below.

Figure 1. Kilchis Estuary Preserve: Dooher and Porter Tracts



Although this submittal addresses a number of comments raised by stakeholders and neighboring landowners related to the Dooher tract, no actions or activities are proposed on the Dooher tract as part of this application.

#### **B. Applicant Engagement with Neighboring Landowners**

The Applicant has been involved in the local community at its Kilchis Estuary Preserve since 2010 when the Applicant acquired the Dooher tract. The Applicant informally vetted the Dooher tract project with neighbors, and designs were modified to reflect neighbors' comments. The

Tillamook County Planning Commission  
c/o Ms. Sarah Absher, Planning Director  
November 3, 2022  
Page 3

restoration activities were permitted through the County in November 2014 and completed in the summer of 2015.

After the major flood in December 2015, the Applicant worked with the emergency contractor for the Tillamook Bay Flood Improvement District (“TBFID”) to provide access over the Applicant’s land for large wood removal from the Kilchis River, as well as deposition of removed materials.

In response to concerns from neighboring landowners related to planned restoration activities on the Dooher tract, the Applicant worked closely with the agricultural community on Senate Bill 1517, both in drafting the legislation and then participating on the County Senate Bill 1517 Task Force for several years to help develop criteria to put the bill into action.

The project proposed in this application is the first wetland restoration project to be subject to the new Senate Bill 1517 County planning provisions. As envisioned by the legislature and the County, the Applicant has worked especially closely with the County and local stakeholders to implement Senate Bill 1517 for this project.

When neighboring landowners raised concerns about the restoration activities planned on the Porter tract in 2019, the Applicant voluntarily agreed to enter mediation to better understand the concerns and attempt to resolve them. The mediation proceedings had both a formal phase that commenced in 2000 and lasted approximately one year and an informal phase that continued with several parties including Tillamook County Creamery Association (“TCCA”), TBFID, and several interested neighbors, for another year into 2022.

In the second, informal phase of mediation, the Applicant and the TCCA funded an independent hydrologic assessment to answer specific technical questions that the mediation parties had drafted. The Applicant then took the recommendations from the assessment and privately funded additional modeling and engineering work to address issues raised. Throughout the mediation effort, the Applicant participated in numerous public meetings, supplied data and documentation, provided presentations of results, and led a field trip to address questions on site from all parties.

Importantly, the Applicant does not view its community engagement as ending with the current project or when the project is put into effect. The Applicant is committed to sharing the monitoring data that it has collected and will continue to collect, and to making the data understandable in a way that it can be beneficial for neighboring farms, as well as the Applicant. The Applicant is also committed to continuing to monitor the progress of the restoration on the entire Kilchis Estuary Preserve and to sharing lessons learned with other restoration practitioners, local government officials, and the local community.



## II. RESPONSE TO ORAL AND WRITTEN TESTIMONY

**A. The restoration activities proposed in this application will positively affect drainage for lands in the Stasek Slough watershed.**

The evidence in the record shows that the restoration activities on the Porter tract will positively affect drainage for lands in the Stasek Slough watershed. As outlined in the NHC Hydraulic Review (p. 21-22), the activities on the Porter tract will improve drainage from Stasek Slough towards Hathaway Slough. The drainage would improve because of a larger connected channel (and removed old culvert/blockage) between Stasek and Porter Slough, and water levels would be reduced in Stasek Slough by up to approximately 1 foot. Thus, the Porter Tract restoration represents an “improvement” from current conditions.

**B. The Applicant has agreed to honor several recent requests from neighboring landowners and is committed to continuing to work with neighboring landowners to address their concerns.**

As noted above, the Applicant is committed to continuing to work with neighboring landowners to respond to concerns related to the Applicant’s restoration activities within the Kilchis Estuary Preserve. Following the public hearing on the application, the Applicant met with TCCA who represented neighboring landowners to discuss several specific requests related to project design, ongoing monitoring, and coordination. Although these discussions are ongoing, the Applicant has already agreed to honor several of the requests, including:

- agreeing to hold an annual meeting with TCCA, TBFID, and neighboring landowners to review and discuss the monitoring data the Applicant has collected and will continue to collect;
- agreeing not to remove sediments that accumulated in lower Stasek Slough after the 2015 flood;
- agreeing not to lower existing dikes on the Porter tract, with the exception of the portion of the dike where the connector channel will be widened at the failing culvert at Stasek Slough and the portion of the dike at the proposed tidal channel connection with Hathaway Slough in the northeast corner of the project area. This will leave in place approximately 1100 feet of dikes that were identified to be lowered in the proposed restoration plan; and
- agreeing to write a letter of support for a TCCA-sponsored grant proposal to study the issue of bank stabilization near the Dooher tract.

Tillamook County Planning Commission  
c/o Ms. Sarah Absher, Planning Director  
November 3, 2022  
Page 5

Again, these discussions with neighboring landowners are ongoing, and the Applicant is committed to continuing to work in cooperation with TCCA, TBFID, neighboring landowners, and the County on these issues.

### III. CONCLUSION

With this argument and the evidence in the record, the Applicant has met the applicable criteria for approval of all aspects of the requested estuary/floodplain development permit and conditional use permit. Accordingly, we respectfully request you approve the Application consistent with the conditions proposed by County staff in the staff report.

Thank you for your consideration of the Applicant's final legal argument.

Very truly yours,



Sarah Stauffer Curtiss

### **RECOMMENDED CONDITIONS OF APPROVAL #851-22-000328-PLNG**

Sections 6.070: COMPLIANCE WITH CONDITIONS, 6.080: TIME LIMIT, requires compliance with approved plans and conditions of this decision, and all other ordinance provisions. Failure to comply with the Conditions of Approval and ordinance provisions could result in nullification of this approval.

1. Applicant/Property Owner shall obtain all required Federal, State, and Local permits and/or licenses and will comply with applicable rules and regulations.
2. Prior to any development activity, Applicant/Property Owner shall provide the Department of Community Development a copy of their Construction Best Management Practices and Operational Best Management Practices, including provisions for vegetation management and erosion control measures during construction. All damaged or disturbed streambanks are to be restored to the slope, pattern, and profiles as reflected in the record for this project.
3. Applicant/Property Owner shall be responsible for restoring, as nearly as possible to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed during the construction process for wetland restoration.
4. During the siting, construction, maintenance, repair or reconstruction of the proposed project, Applicant/Property Owner shall install and maintain fences, gates, cattle guards and other access ways along restoration routes to ensure existing access to grazing and recreation areas are maintained during and post construction activities.
5. The project management plan shall include measuring and monitoring of project effects on adjacent properties, both positive and negative. The project management plan shall include actions to be taken by TNC if project results in unintended consequences, especially increased flooding to adjacent landowners. A copy of the plan shall be provided to the Department of Community Development.
6. Development shall be as described on the provided plans and descriptions. Modification of the provided plans and descriptions is subject to review and approval in accordance with TCLUO Section 3.510: Flood Hazard Overlay (FH) Zone
7. This approval shall be void on November 10, 2024, unless construction of approved plans has begun, or an extension is requested from, and approved by this Department.

### **RECOMMENDED CONDITIONS OF APPROVAL #851-22-000329-PLNG**

Failure to comply with the Conditions of Approval and ordinance provisions could result in nullification of this approval.

1. The Applicant/property owner shall obtain all required Federal, State, and Local permits and/or licenses and will comply with applicable rules and regulations.
2. Development shall adhere to the requirements of the Flood Hazard Overlay Zone, TCLUO Section 3.510, including any requirements for establishment of AE zoning designations and a Letter of Map Revision.
3. Development shall be as described on the provided plans and descriptions. Modification of the provided plans and descriptions is subject to review and approval in accordance with TCLUO Section 3.510: Flood Hazard Overlay (FH) Zone

4. Development shall comply with the applicable standards of TCLUO Section 3.002: Farm (F-1) Zone, Section 3.102: Estuary Natural (EN) Zone, Section 3.106: Estuary Conservation (EC1) Zone, Section 3.140: Estuary Development Standards, Section 3.545: Shoreland Overlay (SH) Zone, Section 3.550: Freshwater Overlay (FW) Zone, Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization and any other applicable standards.
5. The fill shall comply with all Building Code requirements for Construction Materials and Methods for a non-residential structure located in the 'AE' flood zone.
6. This approval shall be void on November 10, 2024, unless construction of approved plans has begun, or an extension is requested from, and approved by this Department.

DRAFT