



1510 - B Third Street
Tillamook, Oregon 97141
www.tillamookcounty.gov
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Building (503) 842-3407
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Land of Cheese, Trees and Ocean Breeze

**ESTUARY DEVELOPMENT PERMIT #851-23-000514-PLNG
ESTHER CREEK – CULVERT/TIDEGATE REPLACEMENT**

*NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:
ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,
IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER*

July 12, 2024

Dear Property Owner:

This is to confirm that the Tillamook County Department of Community Development **APPROVED WITH CONDITIONS** the above-cited request on July 12, 2024. A copy of the application, along with a map of the request area and the applicable criteria for review are available for inspection on the Tillamook County Department of Community Development website: <https://www.tillamookcounty.gov/commdev/landuseapps>. Department of Community Development office located at 1510-B Third Street, Tillamook, Oregon 97141.

Appeal of this decision. This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. Forms and fees must be filed in the office of this Department before **4:00pm on July 24, 2024**. This decision will become final on July 24, 2024 after 4:00pm unless an appeal is filed in accordance with Tillamook County Land Use Ordinance Article X.

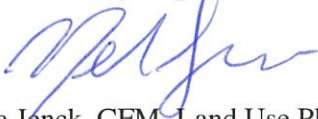
- Request:** An Estuary and Floodplain Development Permit for the replacement of an existing culvert and tide gate within Esther Creek, a tributary of Tillamook River.
- Location:** Located west of the City of Tillamook, the project is located adjacent to Tomlinson Road, a County road, as depicted on the map in 'Exhibit A'.
- Zone:** Estuary Conservation 1 (EC1) Zone
- Applicant:** Liz Ransom, 7125 Bewley Creek Road, Tillamook, OR 97141
- Property Owner:** Eric Peterson, 140 Bayocean Road, Tillamook, OR 97141

CONDITIONS OF 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 be as described on the provided plans and descriptions.
3. Development shall comply with the applicable standards of TCLUO Section 3.106, 'Estuary Conservation 1 (EC1)', TCLUO Section 3.510, 'Flood Hazard Overlay (FH) Zone' and TCLUO Section 4.140, 'Requirements for Protection of Water Quality and Streambank Stabilization', and any other applicable standards.
4. The fill shall comply with all Building Code requirements for Construction Materials and Methods for a structure located in the 'AE' flood zones.
5. This approval shall be void on July 12, 2024, unless construction of approved plans has begun, or an extension is requested from, and approved by this Department.

Sincerely,

Tillamook County Department of Community Development



Melissa Jenck, CFM, Land Use Planner II

Sarah Absher, CFM, Director

Enc.: Vicinity, Assessor's and Zoning maps



Land of Cheese, Trees and Ocean Breeze

**ESTUARY DEVELOPMENT PERMIT REQUEST
851-23-000514-PLNG:
ESTHER CREEK – CULVERT/TIDEGATE REPLACEMENT**

ADMINISTRATIVE DECISION & STAFF REPORT

Decision Date: July 12, 2024

**Decision: APPROVED WITH CONDITIONS
(This is not Building or Placement Permit Approval)**

Report Prepared by: Melissa Jenck, CFM, Senior Planner

I. GENERAL INFORMATION:

Request: An Estuary and Floodplain Development Permit for the replacement of an existing culvert and tide gate within Esther Creek, a tributary of Tillamook River.

Location: Located west of the City of Tillamook, the project is located adjacent to Tomlinson Road, a County road, as depicted on the map in 'Exhibit A'.

Zone: Estuary Conservation 1 (EC1) Zone

Applicant: Liz Ransom, 7125 Bewley Creek Road, Tillamook, OR 97141

Property Owner: Eric Peterson, 140 Bayocean Road, Tillamook, OR 97141

Proposal Description: The Applicant is proposing to replace an existing culvert and tide gate, with a new culvert and tide gate within the locations of Esther Creek, with its confluence with Tomlinson Creek (Exhibit B). The replacement includes a culvert sized for ODFW fish passage standards, and the tide gate will be fitted with Muted Tidal Regulator to improve fish passage (Exhibit B). The development will include the installation of fish habitat log structures within Esther Creek (Exhibit B).

The area of proposed construction is depicted on the maps included in the Applicant’s submittal, found in ‘Exhibit B’ of this report. The project area is within Tomlinson Road, a County road, which traverses over Esther Creek. This location is approximately 1.0 mile west of the City of Tillamook limits (Exhibit A).

As indicated on FEMA FIRM #41057C0560F dated September 28, 2018, the subject property is located entirely in an ‘AE’ Area of Special Flood Hazard of the Tillamook River (Exhibit A).

The application is an Estuary and Floodplain Development Permit approval for the replacement of an existing tide gate and culvert (Exhibit B). The criteria and standards for this review is addressed below in this Staff Report.

II. APPLICABLE ORDINANCE AND COMPREHENSIVE PLAN PROVISIONS:

The desired use is governed through the following Sections of the Tillamook County Land Use Ordinance (TCLUO). The suitability of the proposed use, in light of these criteria, is discussed in Section III of this report:

- A. TCLUO Section 3.106, ‘Estuary Conservation 1 (EC1) Zone’
- B. TCLUO Section 3.120, ‘Regulated Activities and Impacts Assessments’
- C. TCLUO Section 3.140, ‘Estuary Development Standards
- D. TCLUO Section 3.510, ‘Flood Hazard Overlay (FH) Zone’
- E. TCLUO Section 3.545, ‘Shoreland Overlay’
- F. TCLUO Section 4.140, ‘Requirements for Protection of Water Quality and Streambank Stabilization’

III. ANALYSIS

The project is located within the regulatory floodplain (AE Zone) and Estuary zone and is subject to a Type II review per TCLUO Article X: Development Approval Procedures. TCLUO Section 10.070 requires notification of Type II applications to be mailed to landowners within 250 feet of the subject properties, to allow at least 14 days for written comment and requires staff to consider comments received in making the decision.

Findings: Notice of the request was mailed to property owners and agencies on March 29, 2024. Staff finds that notification requirements have been met. Comments were received from the Oregon Department of State Lands and the Oregon Department of Fish and Wildlife and are included as “Exhibit C”.

A. TCLUO Section 3.106, ‘Estuary Conservation 1 (EC1) Zone’

(1) PURPOSE AND AREAS INCLUDED: The purpose of the EC1 zone is to:

- (a) Provide for long-term utilization of areas which support, or have the potential to support valuable biological resources.*
- (b) Provide for long-term maintenance and enhancement of biological productivity.*
- (c) Provide for the long-term maintenance of the aesthetic values of estuarine areas, in order to promote or enhance the low intensity recreational use of estuarine areas adjacent to rural or agricultural shorelands.*

....
ESTUARY ZONES shall be applied to all estuarine waters, intertidal areas, submerged and submersible lands and tidal wetlands up to the line of non-aquatic vegetation or the Mean Higher High Water (MHHW) line, whichever is most landward.

...
(2) USES PERMITTED WITH STANDARDS:

- (f) Tidegate installation in existing functional dikes adjacent to EC1 zones.*

(i) Active restoration and estuarine enhancement.

...

(n) Bridge crossings and crossing support structures.

(4) **REGULATED ACTIVITIES:** The following Regulated Activities are permitted subject to the procedure of Section 3.120 and the standards in Section 3.140.

...

(e) Fill For:

(1) Bridge crossing support structures.

(f) Regulated Activities in conjunction with an approved active restoration or estuarine enhancement project.

Findings: Applicant is proposing to replace the existing culvert located in Esther Creek, and repair the tide gate, which includes placement of two (2) fish habitat log structures within Esther Creek (Exhibit B). A site plan was included in 'Exhibit B', which demonstrates that the proposed siting location is within the EC1 zone (Exhibit B).

Staff finds that the culvert as a crossing support structure, and maintenance of the existing tide gate are outright permitted uses in the Estuary Conservation (EC1) Zone. Dredging for maintenance of the tide gate, fill to support the installation of the culvert, and the placement of the two (2) fish habitat logs are subject to TCLUO Section 3.120 and Section 3.140, discussed below.

B. Section 3.120: Review of Regulated Activities

Findings: The purpose of this section is to provide an assessment process and criteria for local review and comment on State and Federal permit applications which could potentially alter the integrity of the estuarine ecosystem. This project includes regulated activities which are subject to State and Federal permits. Notification of the application was provided to Federal and State agencies in accordance with the provisions outlined in TCLUO Section 3.120(8).

The applicant's submittal includes the OWEB application and an engineer's memo regarding project details and habitat assessment (Exhibit B). Comments were received from Department of State Lands (DSL) that determined the proposed project will require permitting with DSL (Exhibit C). Oregon Department of Fish and Wildlife (ODFW) provided comments stating the proposal will need to work with ODFW for fish passage approval (Exhibit C).

Staff finds that the applicants materials and comments from ODFW and DSL satisfies the development standards that must be addressed as part of the impact assessment outlined in TCLUO Section 3.120.

C. Section 3.140: Estuary Development Standards

Applicable subsections:

- Section 3.140(7): Fill in Estuarine Waters, Intertidal Areas and Tidal Wetlands
- Section 3.140(10): Land Transportation Facilities
- Section 3.140(14): Piling/Dolphin Installation

Findings: The Applicant's narrative addresses the relevant standards and subsections of TCLUO Section 3.140 (Exhibit B). The purpose of the project is to replace an existing culvert and repair a tide gate, along with installation of (2) fish habitat logs within Esther Creek (Exhibit B). Applicant describes the to replace a culvert with improvements a 58-foot long, 72-inch diameter pipe and the tide gate includes a Muted Tidal Regulator (MTR) (Exhibit B). The fish habitat logs are described as approximately 15 to 20-feet in length

and 18 to 24-inches in diameter (Exhibit B). Erosion control measures and timing of construction is addressed in the approved OWEB application (Exhibit B). The proposed culvert is to be positioned for fish passage (Exhibit B). The applicant provided the required evaluation of the impact of proposed project on the area as required in Section 3.140(10)(i) and 3.140(14)(d) (Exhibit B).

Staff concludes these criteria have been met.

D. TCLUO Section 3.510 ‘Flood Hazard (FH) Overlay’

(5) GENERAL STANDARDS: In all areas of special flood hazards the following standards are required:

...

CONSTRUCTION MATERIALS AND METHODS

(d) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(e) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(f) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be elevated to prevent water from entering or accumulating within the components during conditions of flooding. In Flood Zones A, A1-A30, AE, V, V1-V30 or VE, such facilities shall be elevated three feet above base flood elevation. In Flood Zone AO, such facilities shall be elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified).

...

(14) Development Permit Review Criteria

- (1) The fill is not within a Coastal High Hazard Area.*
- (2) Fill placed within the Regulatory Floodway shall not result in any increase in flood levels during the occurrence of the base flood discharge.*
- (3) The fill is necessary for an approved use on the property.*
- (4) The fill is the minimum amount necessary to achieve the approved use.*
- (5) No feasible alternative upland locations exist on the property.*
- (6) The fill does not impede or alter drainage or the flow of floodwaters.*
- (7) If the proposal is for a new critical facility, no feasible alternative site is available.*

Findings: Applicant submitted the required information on forms provided by the Community Development Department and as attachments thereto (Exhibit B). The entire property is located in an AE Area of Special Flood Hazard of the Tillamook River and no alternative upland location exists (Exhibits A and B). The project area is tidally influenced and is not located within the regulatory Floodway. The Applicant describes the to replace a culvert with improvements a 58-foot long, 72-inch diameter pipe and the tide gate includes a Muted Tidal Regulator (MTR) (Exhibit B). The fish habitat logs are described as approximately 15 to 20-feet in length and 18 to 24-inches in diameter (Exhibit B).

Staff finds that these criteria are met.

E. TCLUO Section 3.545 ‘Shoreland Overlay’

In the vicinity of the proposed project, the Goal 17 element of the Tillamook County Comprehensive Plan identifies all areas within 1,000 feet of estuaries and 500 feet of coastal lakes as within the Shorelands Boundary which may be subject to the provisions of TCLUO Section 3.545, ‘SH Shoreland Overlay’. TCLUO Section 3.545 defines those areas within the Shorelands Boundary included within

the Shoreland Overlay Zone. Relevant to the proposed development, TCLUO Section 3.545(2) identifies areas within 50 feet of estuaries as areas included in the Shorelands Overlay zone.

Findings: Staff finds that portions of the culvert replacement and tide gate repair is located within the Shorelands Boundary as identified in the Goal 17 element of the Tillamook County Comprehensive Plan. Staff has reviewed the proposed development and determined that shoreland areas on the subject property are categorized as 'Rural Shorelands' as described in TCLUO 3.545(3) and are subject to the use limitations identified in TCLUO 3.545(4)(a)(1) and the standards identified in TCLUO 3.545(6). Staff has reviewed the significant shoreland inventory contained in the Goal 17 element of the Comprehensive Plan and has verified that there are no inventoried shorelands near the subject property.

TCLUO Section 3.545(4) USES PERMITTED: Uses authorized by the underlying zone as outright or conditional uses are permitted, except at locations identified in (3) above.

(a) Rural Shorelands in General:

(1) Rural Shorelands uses are limited to:

...

(f) Other uses are allowed only upon a finding by the County that such uses satisfy a need which cannot be accommodated at any alternative upland location, except in the following cases:

...

TCLUO Section 3.545(6) STANDARDS: Uses within the SHORELAND OVERLAY ZONE are subject to the provisions and standards of the underlying zone and of this section. Where the standards of the SHORELANDS OVERLAY ZONE and the underlying zone conflict, the more restrictive provisions shall apply.

(a) Riparian vegetation shall be protected and retained according to the provisions outlined in Section 4.140, REQUIREMENTS FOR PROTECTION OF WATER QUALITY AND STREAMBANK STABILIZATION.

(b) Development in flood hazard areas shall meet the requirements of Section 3.510, FLOOD HAZARD OVERLAY ZONE.

Findings: Staff finds the project is necessary and cannot be accommodated at an upland location and the culvert and tide gate are existing (Exhibit B). The requirements of TCLUO Section 4.140 and 3.510 are addressed in this report.

Staff finds these criteria have been met.

F. TCLUO Section 4.140, 'Requirements for Protection of Water Quality and Streambank Stabilization'

1) The following areas of riparian vegetation are defined:

(a) Fifty (50) feet from lakes and reservoirs of one acre or more, estuaries, and the main stems of the following rivers where the river channel is more than 15 feet in width; Nestucca, Little Nestucca, Three Rivers, Tillamook, Trask, Wilson, Kilchis, Miami, Nehalem and North and South Fork Nehalem River.

...

For estuaries, all measurements are horizontal and perpendicular from the mean high water line or the line of non-aquatic vegetation, whichever is most landward. Setbacks for rivers, streams, and coastal lakes shall be measured horizontal and perpendicular from the ordinary high water line.

(2) All development shall be located outside of areas listed in (1) above, unless:

(a) For a bridge crossing; or

Findings: The proposal is for replacement of an existing culvert and tide gate within Esther Creek, along

with fish habitat log installation (Exhibit B). The Applicant describes measures taken for erosion control timing of construction activities to address the site, along with a vegetation plan for post construction (Exhibit B).

Staff finds that these standards have been met.

V. DECISION: APPROVED WITH CONDITIONS

Based on the findings shown above, Staff concludes that the Applicant has satisfied the review criteria, and can meet all applicable ordinance requirements at the time of application. Therefore, the Department approves Estuary Development Permit 851-23-000514-PLNG subject to the Conditions of Approval in section VI of this report.

Appeal of this decision. This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. The forms and fees must be filed in the office of this Department before **4:00 PM on July 24, 2024.**

VI. CONDITIONS OF 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 be as described on the provided plans and descriptions.
3. Development shall comply with the applicable standards of TCLUO Section 3.106, 'Estuary Conservation 1 (EC1)', TCLUO Section 3.510, 'Flood Hazard Overlay (FH) Zone' and TCLUO Section 4.140, 'Requirements for Protection of Water Quality and Streambank Stabilization', and any other applicable standards.
4. The fill shall comply with all Building Code requirements for Construction Materials and Methods for a structure located in the 'AE' flood zones.
5. This approval shall be void on July 12, 2024, unless construction of approved plans has begun, or an extension is requested from, and approved by this Department.

VII. EXHIBITS

All Exhibits referred to herein are, by this reference, made a part hereof:

- A. Location map, Assessor map, Zoning map, FEMA FIRM, NWI Wetlands map
- B. Applicant's submittal
- C. Public Comments

EXHIBIT

C



Response Page

Department of State Lands (DSL) WN# *

WN2024-0227

Responsible Jurisdiction

Staff Contact	Jurisdiction Type	Municipality
Melissa Jenck	County	Tillamook
Local case file #	County	
851-23-000514-PLNG	Tillamook	

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
01S	10W	26		1401

Street Address

2 Tomlinson Rd

Address Line 2

City

Tillamook

Postal / Zip Code

97141

State / Province / Region

OR

Country

Tillamook

Latitude

45.453615

Longitude

-123.880724

Wetland/Waterway/Other Water Features



- There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- The National Wetlands Inventory shows wetland, waterway or other water features on the property
- The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- The property includes or is adjacent to designated Essential Salmonid Habitat.
- The property includes or is adjacent to state-owned waters.

Your Activity



- It appears that the proposed project **will** impact Essential Salmonid Habitat and, therefore, **requires** a State permit.

- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.
- A state permit is required for any amount of fill, removal, and/or other ground alteration in Essential Salmonid Habitat and within adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

Closing Information

Additional Comments

Based on review of the submitted 60% design plans, it appears that the proposed project (replace existing culvert & tidegate, realign portion of Tomlinson Creek) will impact Essential Salmonid Habitat (ESH) creeks and wetlands, and therefore requires a state Removal-Fill permit.

It's possible that the applicant may have been in communication with DSL's Aquatic Resource Coordinator for Tillamook County in early design phases, in which case I am happy to discuss DSL's recommendations further. However, DSL does not appear to have a wetland delineation report or permit application on file for this project, which is required for projects in ESH areas.

It is recommended that the applicant hire a qualified wetland consultant to prepare a wetland & waters delineation report for DSL's review and approval prior to submitting a permit application. Alternatively, the applicant can assume that ALL proposed ground-disturbance activities (including staging areas) take place in jurisdictional wetlands & waters, in which case a permit application that accounts for appropriate mitigation may be accepted in place of delineation report approval. Please be sure to confirm with DSL's Aquatic Resource Coordinator (currently vacant, but covered by Bethany Harrington) that this second approach is appropriate for the project before application submittal.

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

- A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

4/30/2024

Response by:

Jessica Salgado

Response Phone:

541-408-1892

Melissa Jenck

From: BRADLEY Robert * ODFW <Robert.BRADLEY@odfw.oregon.gov>
Sent: Friday, March 29, 2024 3:22 PM
To: Melissa Jenck
Subject: EXTERNAL: RE: Notice of Application - Estuary Creek DP 851-23-000514-PLNG

[NOTICE: This message originated outside of Tillamook County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Melissa,

This is a good project with benefits to the stream, fish and the landowner. ODFW fish passage approval still needs to be obtained (we have been working with the applicant but the approval has not been issued yet).

Robert

Robert W. Bradley
District Fish Biologist
Oregon Department of Fish and Wildlife
North Coast Watershed District
4907 Third St
Tillamook, OR 97141
503-842-2741 x18613 (w)
503-842-8385 (fax)

From: Melissa Jenck <Melissa.Jenck@tillamookcounty.gov>
Sent: Friday, March 29, 2024 9:20 AM
To: Melissa Jenck <Melissa.Jenck@tillamookcounty.gov>
Cc: Lynn Tone <Lynn.Tone@tillamookcounty.gov>
Subject: Notice of Application - Estuary Creek DP 851-23-000514-PLNG

Good afternoon,

Please see the Notice of Application for an Estuary & Floodplain Development Permit for Liz Ransom and Eric Peterson. The proposal is to replace an existing culvert and tidegate with a new culvert and tidegate.

A copy of the notice can be found on the Land Use Application [page here](#).

Sincerely,

*** Please note that the Tillamook County domain has changed, and my email address is now Melissa.Jenck@tillamookcounty.gov so please update your contact information as needed. Thank you. ***



Melissa Jenck (she/her) | Senior Planner
TILLAMOOK COUNTY | Community Development
1510-B Third Street
Tillamook, OR 97141
Phone (503) 842-3408 x 3301
Melissa.Jenck@tillamookcounty.gov

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The Department is excited to announce that we are OPEN to the public by appointment. To review the list of services provided and to schedule an appointment with us, please visit <https://www.tillamookcounty.gov/commdev> to access the appointment scheduler portal.