

# TILLAMOOK COUNTY PLANNING COMMISSION

To Be Held  
October 28, 2021- Beginning at 7:00 p.m.

## VIRTUAL & TELECONFERENCE MEETING

*The Tillamook County Courthouse is closed to the public at this time and hearing proceedings are taking place in virtual meeting format only. The hearing can also be accessed via teleconference. 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:
- IV. NEW BUSINESS:

**RE: #851-21-000366-PLNG:** An appeal of the Planning Director's decision to approve Exception request #821-21-000076-PLNG to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling. Located within the Pacific City/Woods Unincorporated Community and accessed from Nestucca Boulevard, a County road, the subject property is designated as Tax Lot 12300 in Section 19CB of Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. Appellants are Jeff Hunter, Margie Dogotch and Gary and Roberta Moriarty. Property Owner and Applicant is Dale Lydegraph.

- 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 Courthouse 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 1-800-488-8280 at least 24 hours prior to the meeting in order that appropriate communications assistance can be arranged.*

**Tillamook County**



**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
*BUILDING, PLANNING & ON-SITE SANITATION SECTIONS*


1510 – B Third Street  
Tillamook, Oregon 97141  
[www.tillamook.or.us](http://www.tillamook.or.us)

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280

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*Land of Cheese, Trees and Ocean Breeze*

# ***MEMO***

**Date:** October 21, 2021  
**To:** Tillamook County Planning Commission  
**From:** Sarah Absher, CFM, Director   
**Subject:** October 28, 2021, Planning Commission Hearing

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Included in this packet is a copy of the appeal submittal, staff report and related materials regarding #851-21-000366-PLNG an appeal of the Planning Director's decision to approve Exception request #821-21-000076-PLNG to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling.

The Applicants sought relief of the required 50-foot riparian setback from the Nestucca River though an Exception request under TCLUO Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization, Subsection (2)(c) and (d). Exception requests are considered based upon the criteria outlined in TCLUO Section 4.140(2), specifically the language at the end of this subsection where the TCLUO states that setbacks may be reduced under the provisions of (c) and (d) only if the threat of erosion will not increase and a minimum 20-foot riparian setback is maintained. The TCLUO states determinations of habitat values will be made by the Oregon Department of Fish and Wildlife. A copy of TCLUO Section 4.140 is included for your review.

Th Appellants are challenging the determination made by ODFW and the approval of the Exception request, with focus on lack of information provided by ODFW to support the determination under TCLUO Section 4.140(c) and (d).

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

Thank You,

Sarah Absher, CFM, Director  
503-842-3408 Ext. 3317  
[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)

- (d) Vegetation removal and re-vegetation practices,
  - (e) Foundation design (if special design is necessary),
  - (f) Road design (if applicable), and
  - (g) Management of storm water runoff during and after construction.
- (8) The GEOLOGIC HAZARD report shall include the following summary findings and conclusions:
- (a) The type of use proposed and the adverse effects it might have on adjacent areas;
  - (b) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use;
  - (c) Methods for protecting the surrounding area from any adverse effects of the development;
  - (d) Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
  - (e) The proposed development is adequately protected from any reasonably foreseeable hazards including but not limited to GEOLOGIC HAZARDS, wind erosion, undercutting, ocean flooding and storm waves; and
  - (f) The proposed development is designed to minimize adverse environmental effects.

**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.
  - (b) Twenty-five (25) feet from all other rivers and streams where the river or stream channel is greater than 15 feet in width.
  - (c) Fifteen (15) feet from all perennial rivers and streams where the river or stream channel is 15 feet in width or less.

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

- (b) Direct water access is required in conjunction with a water dependent use; or
- (c) Because of natural features such as topography, a narrower riparian area protects equivalent habitat values; or
- (d) A minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values.

Setbacks may be reduced under the provisions of (c) and (d) above only if the threat of erosion will not increase and a minimum 20 foot setback is maintained. Determinations of habitat values will be made by the Oregon Department of Fish and Wildlife.

- (3) Exemptions from (2) above and from the applicable setback requirement for the front or rear yard that is opposite the riparian area may be granted without a variance for uses on:
  - (a) Lots located in areas identified in the Comprehensive Plan's Goal 2 exception element as "built and committed" and which existed as of the date of adoption of this Ordinance, and single family residential "lots of record" as defined and used in Chapter 884 Oregon Laws 1981 as amended, with a depth measured according to (1) above that is;
    - i. Less than 95 feet in places where the area of riparian vegetation is 50 feet wide; or
    - ii. Less than 70 feet in places where the area of riparian vegetation is 25 feet wide.
  - (b) Other lots in identified Abuilt and committed areas and other Alots of record≅ where the combination of setbacks required by this section result in a buildable lot depth of less than 45 feet.

Exemptions from the riparian setback shall be the minimum necessary to accommodate the proposed use after the yard opposite the riparian area has been reduced to a width of no less than ten feet.

- (4) All trees and at least 50 percent of the understory vegetation shall be retained within areas listed in (1) above, with the following exceptions:
  - (a) Removal of trees that pose an erosion or safety hazard to existing uses allowed by the underlying zone.
  - (b) The mowing, planting, or maintenance of existing lawn and pasture, including the control of noxious weeds.
  - (c) Vegetation removal necessary in conjunction with an approved in-water project or to provide direct access for a water-dependent use.
  - (d) Structural shoreland stabilization subject to the shoreline stabilization standards in Section 3.140.
  - (e) Vegetation removal for new bridge construction or routine repair, operation, or maintenance of bridges and highways.
  - (f) Vegetation removal necessary for maintenance of clear vision areas and the removal of roadside hazards.

- (g) Vegetation removal necessary for construction of a minor highway improvement within an existing right-of-way.

Forest operations for which notification is required by ORS 527.670 (2) shall be governed by the Oregon Forest Practices Act.

#### SECTION 4.150: DEMOLITIONS OR ALTERATIONS OF HISTORIC STRUCTURES

- (1) Demolitions of HISTORIC STRUCTURES identified in the Comprehensive Plan inventory of HISTORIC BUILDINGS:
  - (a) The Planning Department shall hold applications for demolition for 45 days before issuing the permit.
  - (b) During the 45 day period, the Planning Department shall take the following action: Notify the State Historic Preservation Office and the Pioneer Museum of the proposed demolition; advertise in a newspaper of general circulation the nature of the request and the historical values that would be lost; inform the applicant of the historic character of the building and the incentive associated with historic preservation.
  - (c) If after 45 days the Planning Department finds that there is no reasonable possibility for protecting the building, the demolition permit shall be issued.
- (2) Alterations of the following buildings identified in the Comprehensive Plan as having significant historic and architectural merit: Isom/Fox Cottage, Povey Cottage, Wentz Cottage, Doyle Cottage, Churchill Cottage, Tillamook Naval Air Station Blimp Hangars.
  - (a) Exterior alterations (except painting), additions, and construction of auxiliary buildings shall be reviewed by the Planning Department and the Curator of the Pioneer Museum.
  - (b) Alterations shall be approved if proposed exterior materials and details are consistent with the building's historical character and maintenance of the building's predominant architectural features.

#### SECTION 4.160: PROTECTION OF ARCHAEOLOGICAL SITES

- (1) The Planning Department shall review building permits and other land use actions that may affect known ARCHAEOLOGICAL SITES. If it is determined that the proposed action may affect the integrity of an ARCHAEOLOGICAL SITE, the Planning Director shall consult with the State Historic Preservation Office on appropriate measures to preserve or protect the site and its contents. No permit shall be issued until either the State Historic Preservation Office determines that the proposed activity will not adversely affect the ARCHAEOLOGICAL SITE, or the State Historic Preservation Office has developed a program for the preservation or excavation of the site.
- (2) Indian cairns, graves and other significant archaeological resources uncovered during construction or excavation shall be preserved intact until a plan for their excavation or reinterment has been developed by the State.

#### SECTION 4.170: MIXED USE DEVELOPMENT (MUD)



NOTICE OF APPEAL  
TO THE TILLAMOOK COUNTY



)  
 ) OFFICE USE ONLY  
 )  
 ) Hearing Scheduled \_\_\_\_\_  
 )  
 ) Public Notice Completed \_\_\_\_\_  
 )  
 ) Property Owner Notice Completed \_\_\_\_\_  
 )  
 ) Fee Paid \_\_\_\_\_

APPELLANT:

1. Name Gary and Roberta Moriarty

*Only personal names. If you are also representing an organization, place its name on line number 4.*

2. Address 12704 NW 39th Ave Vancouver Wa 98685

3. Telephone (Daytime) 360-574-3954 360-921-4260 cell

4. Representing \_\_\_\_\_  
*Place your organizations name here IF you are an official representative of an organization that has authorized this appeal. Proof of such authorization must be shown by the time of the public hearing. (You need not represent an organization in order to file an appeal.)*

5. Date of Planning Department / Planning Commission Decision (circle one)  
September 8, 2021

6. Action Appealed (e.g. Variance, Condition Use Permit, etc.)  
Variance of Riparian Set-Back #851-21-000078 LYDEGRAF

7. Decision Appealed (Denied, Granted) granted

8. Name of Applicant Dale Van Lydegraf

9. Additional Comments Other home owners have followed set-back requirements. It is unfair that one owner is allowed a variance.  
Others may follow. This could lead to irreparable damage to the riparian area in the future.

*You will be notified by mail of the date and time set for the public hearing before the Planning Commission.*

Date 9/17/2021

Signature *Gary L Moriarty*  
*Roberta Moriarty*

Gary and Roberta Moriarty  
12704 NW 39<sup>th</sup> Ave  
Vancouver, WA 98685  
360-574-3953  
[moriear@hotmail.com](mailto:moriear@hotmail.com)



Sep 17, 2021

Department of Community Development Office  
Appeals Department  
1510-B Third Street  
Tillamook, OR 97141

Dear Department of Community Development Office:

I wish to appeal the Community Development departments decision to approve a riparian exemption for Riparian Exemption Request #851-21-000076-PLNG: Lydergraf. Attached is the requested form and my payment.

We wish to appeal this decision on the grounds that the decision is inconsistent with existing development and creates an unfair benefit to Mr. Dale Van Lydegraf that was not afforded to other property owners when their residences were constructed. This decision provides Mr. Dale Van Lydegraf an entitlement that was not afforded other property owners. Mr. Dale Van Lydegraf was fully aware of Tillamook County's construction requirements when he purchased the property, approval of this exemption will adversely impact neighboring properties and will be inconsistent with other structures in the area and have a negative impact on the environment. We ask the board what is the purpose of having established set-backs and construction standards if they can be waived just for asking. Dis-approval of this exemption will in no way impact Mr. Dale Van Lydegraf's ability to constructed a house consistent with the current neighborhood. Also, it should be noted that a similar request when 34625 Nestucca Blvd, Cloverdale, OR 97112 had to be re-build due to flooding was disapproved as in-consistent with community development standards. I look forward to appealing this decision through the formal hearing process.

Sincerely,

Gary and Roberta Moriarty



L. Robert Moriarty  
1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685 (Mailing Address)  
34555 Nestucca Blvd., Pacific City, OR 97135  
Oct 7, 2021



To Tillamook County Planning Commission:  
Honorable Commissioners: Chairman Mr. Heckenroth  
Members: Roberts, Dusele, Gillas, LeFrance, Allen, Sievert,  
1510 B Third Street  
Tillamook, Or. 97141

Dear Tillamook County Planning Commission:

I am writing this letter and have prepared the attached package for your review and use in the appeal of Riparian Variance # 851-21-000076-PLING: Lydegraf approval. I have prepared this information on behalf of my parents Gary and Roberta Moriarty who own the cabin at 34555 Nestucca Blvd., Pacific City, OR 97135 and have filed the appropriate appeal regarding the application. Unfortunately, I'm unable to attend the virtual appeal in person, I'll be working at a remote location without internet access. To provide you some background, as a civil engineer with over 35 years of experience in the commercial, residential, federal, state & local engineering, design, permitting, and construction industry, I have extensive experience in environmental engineering, vertical and horizontal construction, wetland remediation, habitat restoration, and fish hatchery design and maintenance. I'm currently the United States Fish and Wildlife Region 12 Acting Engineering Branch Chief, supervising a team that manages around \$50M - \$60M in construction and restoration projects across the west coast annually including several current and past projects in Tillamook County. I've personally managed nearly \$2B in construction globally during my career.

I want to be clear that this letter and the attached information is presented based on my professional background and experience and IS NOT presented on behalf of the USFWS or in my official capacity with the agency. I only share this information to ensure the planning commission is provided relevant and accurate information necessary to make the right decision regarding the riparian variance reduction.

Based on the information the applicant has provided, in my professional opinion, they have not met the local codes and standards to justify the exemption and have not demonstrated that the reduced riparian zone would not adversely impact the riparian ecosystem or the adjacent riparian zones.

Please feel free to contact me if any information presented generates any additional questions from the commission. I would be happy to meet with the commission in the future if needed.

Sincerely,

**L. Robert  
Moriarty**

L. Robert Moriarty

Digitally signed by L.  
Robert Moriarty  
Date: 2021.10.17 20:16:12  
-07'00'

Attachments:

1. Biological Opinion Dispute Letter
2. Tillamook County Code Application Verification Letter
3. Supplemental project location report



L. Robert Moriarty, CEM  
Civil Engineer  
1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685 (Mailing Address)  
34555 Nestucca Blvd., Pacific City, OR 97135  
Oct 7, 2021

To Tillamook County Planning Commission:  
Honorable Commissioners: Chairman Mr. Heckenroth  
Members: Roberts, Dusele, Gillas, LeFrance, Allen, Sievert,  
1510 B Third Street  
Tillamook, Or. 97141

Dear Tillamook County Planning Commission:

Request the Biological Opinion email issued by Mr. Robert W. Bradley, District Fish Biologist, Oregon Department of Fish and Wildlife on Feb 16, 2021 (attached) be removed from consideration by the planning commission in regards to the Riparian Variance # 851-21-000076-PLING: Lydegraf for the following reasons:

1. The biological opinion issued by Mr. Bradley is incomplete and does not meet statutory requirements as required by federal, state, and county laws/ordinances/codes/standards.
2. Email does not reference or provide a complete summary of the project site and the associated impacts as required by Oregon Endangered Species Act (OESA).
3. Email does not comply with ORS 496.171 in any way.
4. Email does not comply with or meet Section 4.140 of the Tillamook County Article IV Development Standards.
5. Email does not address National Marine Fisheries Service (NMFS) requirements.
6. Email does not provide analysis of the action's likely effects on essential fish habitat (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which require conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH.
  - a. The Nestucca River falls within the purview of MSA as determined by Annie Birnie, fishery biologist with the Oregon Coast Branch of the Oregon State Habitat office in Sep 21, 2012 record of decision, NMFS No: 2011/05745.
7. Email does not provide a "verifiable" measure of scientific information and no peer panel review was completed by outside experts with a vested interest in the process.
8. The email fails to demonstrate the potential public benefits of the proposed action outweighs the potential harm.
9. Reasonable mitigation and enhancement measures are not provided or outlined.

- a. In the case of the application, it appears Tillamook County generated mitigation measures. No consultation with ODFW and Oregon DEQ could be located in the provided application information as required by Tillamook County standards.
10. Email does not comply with Oregon Department of Fish and Wildlife Policy DO\_100\_02 and does not follow the required content and format required by ODFW for biological opinions, reports, or publications.
11. No documentation was provided that the email was reviewed by the appropriate ODFW staff prior to submission, review is required in all cases where ODFW staff have primary authorship, which this email clearly indicates.
  - a. The review is required to ensure ODFW promotes high quality, clearly-written information and that information and analyses are accurate and appropriately applied.
  - b. The review ensures conclusions are logical and appropriately applied.
  - c. The review protects and preserves the scientific integrity of the investigation so that the information and conclusions are recognized as credible and reproducible.
12. The biological opinion does not address all development requirements required by Tillamook County under Article IV Development Standards section 4.140. The applicant has not demonstrated 1) "no threat of erosion increase exists" and 2) "determination of habitat values by ODFW" has not been completed as required by section 4.140 para 2.
13. The email fails to meet nearly all statutory and mandatory requirements for a biological opinion.

As a result of these errors and omission from the ODFW's provided biological opinion email and per Tillamook County Code, the email cannot be used in the determination of the variance request.

Please feel free to contact me if any information presented generates any additional questions from the commission.

Sincerely,  
**L. Robert  
Moriarty**  
L. Robert Moriarty, CEM  
Civil Engineer

Digitally signed by L. Robert  
Moriarty  
Date: 2021.10.17 21:00:37 -07'00'

Attachments:

1. Biological Opinion Email from ODFW

From: Robert Bradley Robert.Bradley@state.or.us  
Subject: 4S1019CB12300  
Date: Feb 16, 2021 at 4:25:31 PM  
To: Melissa Jenck mjenck@co.tillamook.or.us, Sheila  
Shoemaker sshoemak@co.tillamook.or.us  
Cc: Angela Rimoldi arimoldi@co.tillamook.or.us, Sarah  
Absher sabsher@co.tillamook.or.us,  
iredo4u@me.com

I looked at this lot today at the end of Nestucca Blvd. in Pacific City. Attached you will find an aerial photo with lines approximating the following setback measurements:

Red line is the 50 foot estuary setback.

Blue line is a 40 foot setback, roughly equivalent to the rear of the house on the lot to the north.

Green line is a 30 foot setback, roughly equivalent to the rear of the deck off the back of the house to the north.

The adjoining area is highly developed with residential houses. The lot between the estuary and the 50 foot setback is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties (especially the north side).

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)

Nestucca River Riparian Zone Background Report

L. Robert Moriarty, Civil Engineer

Author Address:

1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685 (Mailing)

34555 Nestucca Blvd, Pacific City, OR 97112

### Abstract

The purpose of this report is to provide the Tillamook County Planning Commission supplemental information associated with the Riparian zone along the Nestucca River in Pacific City, OR. The report provides historical background on the proposed project site and illustrates potential impacts to the riparian zone that runs parallel with Nestucca Blvd and summarizes potential impacts that a Riparian Variance may generate to the affected river bank.

The report is based on historical information collected online and from interviews with local residents.

L. Robert Moriarty  
1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685 (Mailing Address)  
34555 Nestucca Blvd., Pacific City, OR 97135  
Oct 7, 2021

To Tillamook County Planning Commission:  
Honorable Commissioners: Chairman Mr. Heckenroth  
Members: Roberts, Dusele, Gillas, LeFrance, Allen, Sievert,  
1510 B Third Street  
Tillamook, Or. 97141

Dear Tillamook County Planning Commission:

Below is a review of the requested Riparian Variance # 851-21-000076-PLING: Lydegraf under Article IV Development Standards are applied to the application. Since Tillamook County utilized consolidated development standards for both residential and commercial construction, it is important to note that not all sections are intended for residential application.

**SECTION 4.140: REQUIREMENTS FOR PROTECTION OF WATER QUALITY AND  
STREAMBANK  
STABILIZATION**

Adopted May 27, 2015 Tillamook County Land Use Ordinance Article 4 13

- (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.
  - (b) Twenty-five (25) feet from all other rivers and streams where the river or stream channel is greater than 15 feet in width.
  - (c) Fifteen (15) feet from all perennial rivers and streams where the river or stream channel is 15 feet in width or less.

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.

Response: RIPARIAN EXCEPTION REQUEIST #851-21-000076-PLNG: LYDEGRAF application requests an exemption from Article IV Development Standards for Tillamook County, the application justification appears to request an exemption to construct a single-family residence at a location that codes require a 50' riparian set-back. The applicant has provided no additional information in the application on why this exemption is needed, why the structure cannot be constructed without the exemption and how if approved; the exemption would provide public benefits as a result of the exemption. OESA, ORS, NMFS, and EFH all require the applicant to provide justification on the public benefits of the proposed action and justify that they outweigh the potential harm. This information is absent from the provided application.

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

- (a) For a bridge crossing; or

Response: Applicant is not constructing a bridge crossing; this requirement is not met for this application.

- (b) Direct water access is required in conjunction with a water dependent use; or

Response: Applicant is not constructing water dependent use structure; this requirement is not met for this application.

- (c) Because of natural features such as topography, a narrower riparian area protects equivalent habitat values; or

- (d) A minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values.

Response: Per email from ODFW (if utilized by the commission) does not indicate a narrower riparian area will provide an equivalent habitat. The proposed project site is not located in an area of dense development. Per Land Conservation and Development Department Chapter 660 Division 38 as provided by Tillamook County, this section of Pacific City is identified as a low-density development. The developed area has less than 1,076 residents spread across 3.861 square miles and only single-family homes are allowed to be developed at the proposed project site.

Summary: The applicant does not meet any of the Tillamook County required conditions to allow construction within the code established riparian set-back, the exemption should not be granted.

Setbacks may be reduced under the provisions of (c) and (d) above only if the threat of erosion will not increase and a minimum 20 foot setback is maintained. Determinations of habitat values will be made by the Oregon Department of Fish and Wildlife.

Response: Habitat determination provided with the original exemption application do not meet ODFW standards. In addition, information provided by ODFW clearly state "encroaching within the estuary setback between the 50- and 30-foot lines would be expected to have MINIMAL additional biological consequences" as required by code, setbacks may only be reduced if the threat of erosion will not increase. ODFW's opinion does not address the erosion requirement. In addition, ODFW indicated a "Minimal" biological consequence, but does not provide habitat values IAW ODFW policy. Information provided in the application does not illustrate this code condition has been met.

- (3) Exemptions from (2) above and from the applicable setback requirement for the front or rear yard that is opposite the riparian area may be granted without a variance for uses on:
  - (a) Lots located in areas identified in the Comprehensive Plan's Goal 2 exception element as "built and committed" and which existed as of the date of adoption of this Ordinance, and single family residential "lots of record" as defined and used in Chapter 884 Oregon Laws 1981 as amended, with a depth measured according to (1) above that is;
    - i. Less than 95 feet in places where the area of riparian vegetation is 50 feet wide; or
    - ii. Less than 70 feet in places where the area of riparian vegetation is 25 feet wide.

Response: The proposed exemption application does not meet this requirement, the lot in question was established after the creation of Chapter 884, Oregon Laws 1981.

- (b) Other lots in identified  built and committed areas and other  lots of record  where the combination of setbacks required by this section result in a buildable lot depth of less than 45 feet.



Response: The proposed lot listed in the exemption does not meet this requirement, the lot depth in excess of 45'.

Exemptions from the riparian setback shall be the minimum necessary to accommodate the proposed use after the yard opposite the riparian area has been reduced to a width of no less than ten feet.

Response: This exemption does not apply, application does not include the proposed use information that a reduced width of 10' condition would exist.

- (4) All trees and at least 50 percent of the understory vegetation shall be retained within areas listed in (1) above, with the following exceptions:
  - (a) Removal of trees that pose an erosion or safety hazard to existing uses allowed by the underlying zone.

Response: Proposed exemption application does not have any trees; this does not apply to this application

- (b) The mowing, planting, or maintenance of existing lawn and pasture, including the control of noxious weeds.

Response: The Riparian zone outlined in the proposed exemption application does not have existing lawn or pasture, however non-native plants including noxious weeds do exist on the property.

- (c) Vegetation removal necessary in conjunction with an approved in-water project or to provide direct access for a water-dependent use.

Response: Proposed exemption application does not have any trees; this does not apply to this application.

- (d) Structural shoreland stabilization subject to the shoreline stabilization standards in Section 3.140.

Response: Proposed exemption application does not include any proposed shoreland stabilization; this information is required by code to be included in the application and provided to the commission for review and consideration prior to approval. This information is absent and the application should be rejected until it is provided to the commission.

- (e) Vegetation removal for new bridge construction or routine repair, operation, or maintenance of bridges and highways.

Response: Applicant is not constructing a bridge crossing. This requirement does not apply for this application

- (f) Vegetation removal necessary for maintenance of clear vision areas and the removal of roadside hazards.

Response: Applicant does not need to remove vegetation for clear vision areas and the removal of roadside hazards.

- (g) Vegetation removal necessary for construction of a minor highway improvement within an existing right-of-way.

Response: Applicant is not a constructing a commercial project, this requirement does not apply for this application

Additional comments for consideration:

The tentatively approved application incorrectly states "TCLUO Section 3.333: Pacific City/Woods Medium Density Residential (PCW-R1) Zone" applies to this application.

Response: The proposed project is located in a zone Section 3.332: Pacific City/Woods Low Density Residential Zone (PCW-R1) the proposed project site does not meet TCLUO Section 3.333 zoning use. The project location is limited to single family dwelling only.

In summary, the applicant does not meet any of the Tillamook County's required conditions to for a Riparian Exception and the application does not include all the required information by county or state requirements. Request the commission re-evaluate this application and deny the exemption.

Sincerely,

**L. Robert Moriarty**  
Digitally signed by  
L. Robert Moriarty  
Date: 2021.10.17  
21:04:16 -07'00'  
L. Robert Moriarty

Attachment:

1. 851-21-00076-plng\_decision

)  
)

)  
)



1510 - B Third Street  
Tillamook, Oregon 97141  
www.tillamook.or.us

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280

*Land of Cheese, Trees and Ocean Breeze*

**RIPARIAN EXCEPTION REQUEST #851-21-000076-PLNG: LYDEGRAF**

**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:**

**ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,  
IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER**

September 8, 2021

Dear Property Owner:

This is to confirm that the Tillamook County Department of Community Development **APPROVED WITH CONDITIONS** the above-cited Riparian Exception Request on September 8, 2021.

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.co.tillamook.or.us/commdev/landuseapps> and is also available for inspection at the 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 **4:00 PM on September 20, 2021.**

**Request:** An exception request to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling.

**Location:** Located within the Pacific City/Woods Unincorporated Community and accessed from Nestucca Boulevard, a County road, the subject property is designated as Tax Lot 12300 in Section 19CB of Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

**Zone:** Pacific City/Woods Medium Density Residential (PCW-R2)

**Applicant & Property Owner:** Dale Van Lydegraf, 5514 Commercial Street SE, Salem, OR 97306

) )  
) )

### CONDITIONS OF APPROVAL

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

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 Federal, State, and Local permits, as applicable.
2. All applicable permits, including a consolidated Zoning and Building Permit from the Tillamook County Department of Community Development shall be obtained prior to construction the proposed dwelling.
3. A minimum 30-foot riparian setback from the Nestucca River, determined by the Oregon Department of Fish and Wildlife (ODFW) and measured in accordance with TCLUO Section 4.140, shall be maintained on the subject property. Future development on the subject property shall also maintain the required riparian setback and comply with the requirements of TCLUO 4.140: Development Requirements for Water Quality and Streambank Stabilization.
4. The applicant/property owner shall develop in coordination with ODFW a riparian vegetation enhancement (planting) plan and a copy of the plan shall be submitted to the Department at the time of consolidated Zoning and Building Permit application submittal. The plan submittal shall include written confirmation from ODFW that the plan is acceptable. No trees within the 30-foot riparian corridor shall be removed without written consent from ODFW. Any trees to be removed and any mitigation action for each tree shall also be indicated on the riparian vegetation enhancement plan.
5. Within two years of issuance of this exception approval, the applicant/property owner shall provide written documentation to this Department from ODFW that the accepted planting plan for the 30-foot riparian corridor has been satisfactorily implemented on the subject property to mitigate any increase to the threat of erosion resulting from the proposed development.
6. The applicant/property owner shall submit a site plan drawn to scale that confirms all required setbacks, including the 30-foot riparian setback, are met. The site plan shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
7. The applicant/property owner shall obtain an approved Road Approach permit from the Tillamook County Public Works Department.
8. The applicant/property owner shall obtain a water and sewer availability letter from the Pacific City Joint Water-Sewer Authority and a fire letter from the Nestucca Rural Fire Protection District. Letters shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
9. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.333: Pacific City/Woods Medium Density Residential (PCW-R2) Zone and all other applicable ordinance sections including TCLUO Section 3.530: Beach and Dune Overlay Zone.
10. A Floodplain Development Permit is required for development within the Area of Special Flood Hazard. Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 prior to or at the time of consolidated Zoning and Building Permit application submittal.

11. This approval expires if a Building Permit is not applied for within two (2) years of issuance of this approval.

Sincerely,  
Tillamook County Department of Community Development



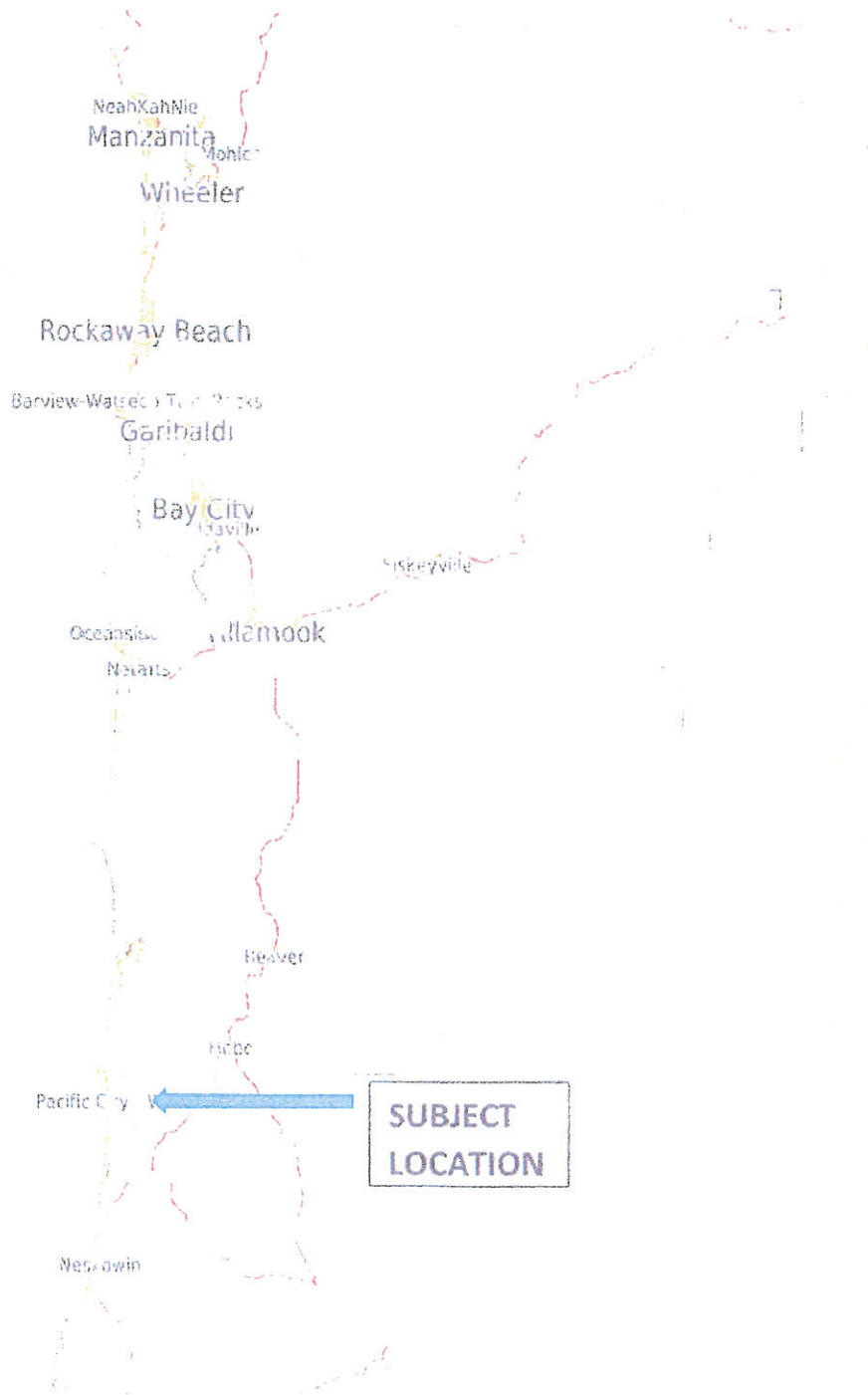
Sarah Absher, CFM, Director

Enc.: Vicinity, Assessor's and Zoning maps

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)

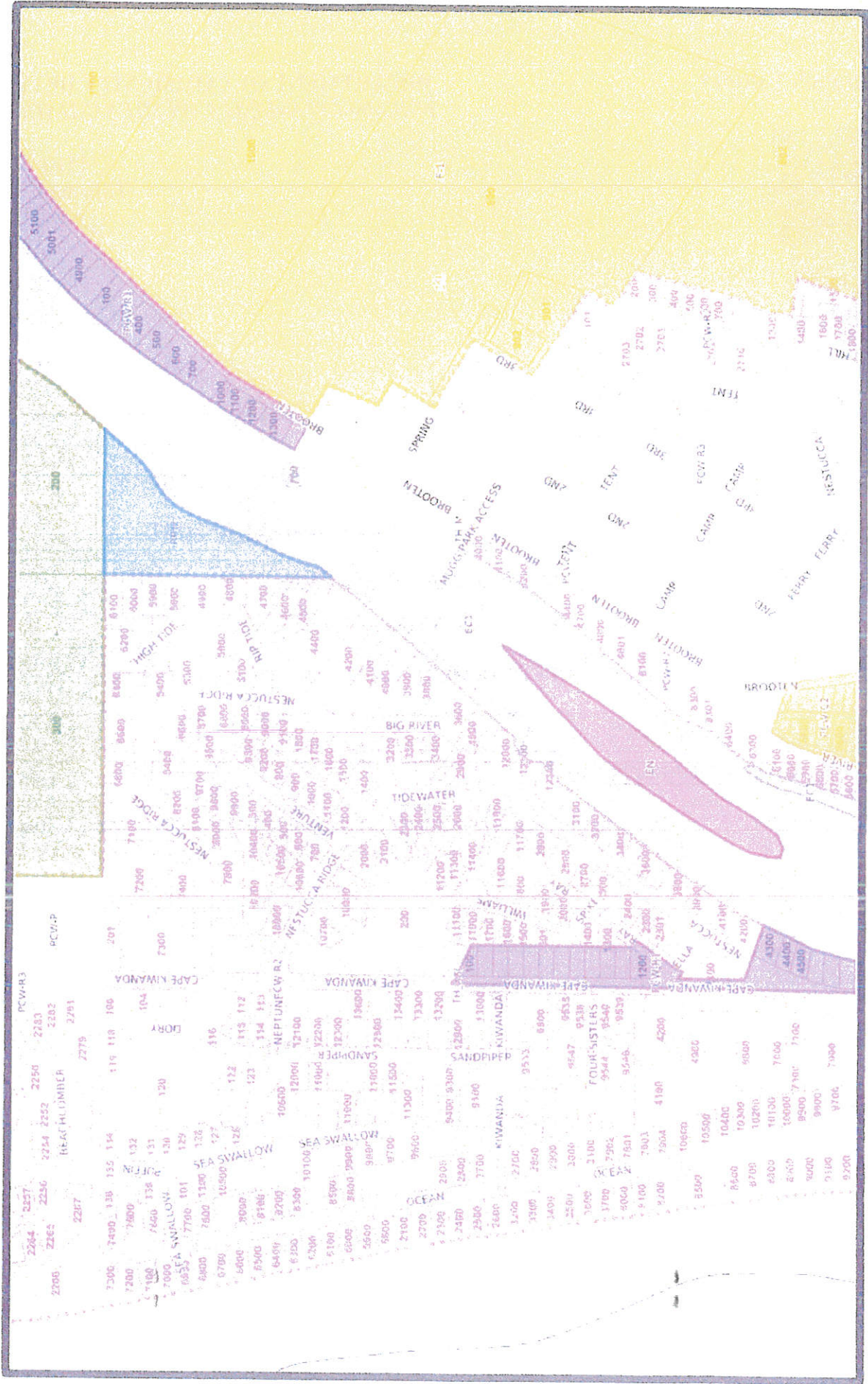
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# VICINITY MAP



**#851-21-000076-PLNG: LYDEGRAPH  
RIPARIAN EXCEPTION**

# Map



Generated with the GeoMOOSE Printing Utilities



1510 – B Third Street  
Tillamook, Oregon 97141  
www.tillamook.or.us

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280

---

*Land of Cheese, Trees and Ocean Breeze*

**RIPARIAN EXCEPTION #851-21-000076-PLNG: LYDEGRAF**

**ADMINISTRATIVE DECISION AND STAFF REPORT**

**DECISION: Approved with Conditions**

**DECISION DATE:** September 8, 2021

**REPORT PREPARED BY:** Sarah Absher, CFM, Director

A handwritten signature in blue ink, appearing to read 'S. Absher', is written over a circular stamp or seal.

---

**I. GENERAL INFORMATION:**

**Request:** An exception request to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling (Exhibit B).

**Location:** Located within the Pacific City/Woods Unincorporated Community and accessed from Nestucca Boulevard, a County road, the subject property is designated as Tax Lot 12300 in Section 19CB of Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon (Exhibit A).

**Zone:** Pacific City/Woods Medium Density Residential (PCW-R2)

**Applicant & Property Owner:** Dale Van Lydegraf, 5514 Commercial Street SE, Salem, OR 97306

**Description of Site and Vicinity:** The subject property encompasses 0.21 acres (9,147 square feet) and is located within Phase 3 of the Nestucca Ridge Development west of the Nestucca River (Exhibit A). The topography at the location proposed for development consists of a moderately flat bench and then slopes down to the Nestucca River (Exhibits A and B). The subject property extends into the river and includes an estuarine area zoned Estuary Conservation 1 (EC1) where no development is proposed (Exhibits A & B). While much of the bench



has been cleared of vegetation, some of the bank slope is vegetated (Exhibits A and B). Riparian habitat values are discussed further in this report. No wetland or natural features are mapped on the subject property outside of the Nestucca River boundary (Exhibit A).

'Exhibit B' contains a site plan and an aerial image of the vicinity which depicts the location of the proposed riparian setback and surrounding development (Exhibit B). Portions of the property are within the AE Area of Special Flood Hazard and Regulatory Floodway as depicted on FEMA FIRM 41057C0855F dated September 28, 2018 (Exhibit A). The subject property is located within the Younger Stabilized Dune and Wet Surge Plain dune classifications within the Beach and Dune Overlay Zone and development is subject to TCLUO Section 3.530 (Exhibit A).

Applicant is proposing to construct a single-family dwelling on the subject property and is requesting to establish a 30-foot riparian setback, a 20-foot reduction to the required 50-foot riparian area from the Nestucca River (Exhibit B).

**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 3.333 Pacific City/Woods Medium Density Residential (PCW-R2) zone
- B. TCLUO Section 3.510 Flood Hazard Overlay (FH) zone
- C. TCLUO Section 4.140 Requirements for Protection of Water Quality and Streambank Stabilization

**III. ANALYSIS:**

Notice of the request was mailed to property owners within 250 feet of the subject property and other agencies on June 11, 2021. Comments received from neighboring property owners, the Oregon Department of Fish and Wildlife and the Oregon Department of State Lands. Primary comments are included in "Exhibit C" of this report and are summarized below:

- Protection of riparian corridor in relation to the proposed reduced setback
- Challenge to ODFW's determination of riparian habitat values
- Alignment of proposed dwelling with structures to the north and south
- Issues raised with actual need for exception to reduce riparian setback when reduction was not necessary for development of adjacent properties
- CC&Rs imposed on property and development

**Findings:** Analysis of the request in relation to the criteria that are the basis for the decision to grant or deny an exception request, including the requirement for a riparian habitat value assessment by ODFW, are discussed in Section C below. Concerns related to protection of the riparian corridor are also addressed below and reflected in the Conditions of Approval.

The subject property is located within the Nestucca Ridge Development, specifically Phase 3. The Covenants, Conditions and Restrictions (CCRs) for this development are outside the scope of the land use review process and the criteria for granting an exception to the riparian setback requirement. Any applicable CC&R is applied through the Nestucca Ridge Development and is a civil matter between the Applicant and Nestucca Ridge.

**A. Section 3.333: Pacific City/Woods Medium Residential (PCW-R2) Zone**

*The purpose of the PCW-R2 zone is to designate areas for medium density single-family and duplex residential development, and other, compatible, uses. Land that is suitable for the R-2 zone has public sewer service available, and has relatively few limitations to development.*

1. **Section 3.333 (4) Standards:** *Land divisions and development in the PCW-R2 zone shall conform to the following standards, unless more restrictive supplemental regulations apply:*

...

*(d) The minimum front yard shall be 20 feet.*

*(e) The minimum side yard shall be 5 feet; on the street side of a corner lot, it shall be no less than 15 feet.*

*(f) The minimum rear yard shall be 20 feet; on a corner lot, it shall be no less than 5 feet.*

*(g) The maximum building height shall be 35 feet, except that the maximum building height shall be 24 feet on ocean or bay frontage lots. Bay frontage lots are defined as those bay/river frontage lots located downstream from the Beachy Bridge (Pacific Avenue).*

...

**Findings:** Applicant's submittal confirms the setbacks of the PCW-R2 zone can be met. Staff finds a Condition of Approval has been made to require demonstration that the applicable development standards of the PCW-R2 zone are met at the time of consolidated Zoning and Building Permit application submittal.

**B. Findings for TCLUO Section 3.510 Flood Hazard Overlay (FH) zone**

Portions of the subject property are within an AE Area of Special Flood Hazard and within the Regulatory Floodway as depicted on FEMA FIRM 41057C0855F dated September 28, 2018 (Exhibit A). Applicant has provided a site plan which indicates portions of the proposed dwelling may be located within the AE flood zone boundary of the Flood Hazard Overlay Zone (Exhibit B). Staff finds that as a Condition of Approval, Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 or certification from a registered private land surveyor confirming the proposed development is outside of the Area of Special Flood Hazard and Flood Hazard Overlay Zone. Confirmation shall be demonstrated at the time of consolidated Zoning/Building Permit application submittal.

**C. Findings for TCLUO Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization**

TCLUO Section 4.140 identifies as areas of riparian vegetation that area within 50 feet of the Nestucca River measured from the more landward of the line of non-aquatic vegetation or the mean high water line. TCLUO Section 4.140 also limits removal of vegetation and development within those areas of riparian vegetation.

TCLUO 4.140(2) requires all development to be located outside of riparia areas with some exceptions. Exceptions include the following:

...

*(c) Because of natural features such as topography, a narrower riparian area protects equivalent habitat values; or*

*(d) A minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values.*

TCLUO 4.140(2) also provides for an Exception process for certain types of development based on a determination to be made by ODFW that a narrow riparian area provides equivalent protection value or minimal vegetation is present and existing development degrades riparian values.

Applicant's Site Plan anticipates that the closest point of the proposed development will be thirty (30) feet from the line of non-aquatic vegetation, and that the yard opposite the riparian area – the front yard – will maintain the required 20-foot front yard setback (Exhibit B).

1

Comments from Robert Bradley, ODFW District Fish Biologist, were included in the Applicant's submittal and are also included in "Exhibit C". Staff finds that ODFW has provided a determination that a minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values as required by TCLUO 4.140(2)(d). Staff finds that the determination by Mr. Bradley meets the criterion of TCLUO Section 4.140(2)(d). To ensure that the threat of erosion will not increase as a result of the proposed activities, a Condition of Approval has been made to require the Applicant to incorporate a vegetation plan for the riparian area to promote bank stabilization. Staff finds that an exception to allow the reduction of the riparian setback from 50 feet to 30 feet can be granted subject to Conditions of Approval requiring that the applicant/property owner provide documentation from ODFW that an acceptable planting plan has been developed and will be implemented within the 30-foot riparian corridor within two years of issuance of this exception approval.

#### **IV. DECISION: APPROVED WITH CONDITIONS AS MODIFIED**

Staff concludes that the applicant has satisfied the review criteria and can meet all applicable ordinance. Therefore, Staff approves this request for an exception to the riparian setback subject to the Conditions of Approval in Section V of this report. No further development shall occur on the subject property without prior land use approval. This approval does not address any additional development of the subject property.

By accepting this approval, the applicant and property owner agrees to indemnify, defend, save and hold harmless Tillamook County, and its officers, agents, and employees from any claim, suit, action or activity undertaken under this approval, including construction under a Building Permit approved subject to this approval. The applicant/property owner shall obtain all the necessary local, state, and federal permits and comply with all applicable regulations for the proposed construction.

**Appeal of this decision.** This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. In such cases, forms and fees must be filed in the office of this Department before **4:00 PM on September 20, 2021.**

#### **V. CONDITIONS OF APPROVAL:**

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 Federal, State, and Local permits, as applicable.
2. All applicable permits, including a consolidated Zoning and Building Permit from the Tillamook County Department of Community Development shall be obtained prior to construction the proposed dwelling.
3. A minimum 30-foot riparian setback from the Nestucca River, determined by the Oregon Department of Fish and Wildlife (ODFW) and measured in accordance with TCLUO Section 4.140, shall be maintained on the subject property. Future development on the subject property shall also maintain the required riparian setback and comply with the requirements of TCLUO 4.140: Development Requirements for Water Quality and Streambank Stabilization.
4. The applicant/property owner shall develop in coordination with ODFW a riparian vegetation enhancement (planting) plan and a copy of the plan shall be submitted to the Department at the time of consolidated Zoning and Building Permit application submittal. The plan submittal shall include written confirmation from ODFW that the plan is acceptable. No trees within the 30-foot riparian corridor shall be removed without written consent from ODFW. Any

trees to be removed and any mitigation action for each tree shall also be indicated on the riparian vegetation enhancement plan.

5. Within two years of issuance of this exception approval, the applicant/property owner shall provide written documentation to this Department from ODFW that the accepted planting plan for the 30-foot riparian corridor has been satisfactorily implemented on the subject property to mitigate any increase to the threat of erosion resulting from the proposed development.
6. The applicant/property owner shall submit a site plan drawn to scale that confirms all required setbacks, including the 30-foot riparian setback, are met. The site plan shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
7. The applicant/property owner shall obtain an approved Road Approach permit from the Tillamook County Public Works Department.
8. The applicant/property owner shall obtain a water and sewer availability letter from the Pacific City Joint Water-Sewer Authority and a fire letter from the Nestucca Rural Fire Protection District. Letters shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
9. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.333: Pacific City/Woods Medium Density Residential (PCW-R2) Zone and all other applicable ordinance sections including TCLUO Section 3.530: Beach and Dune Overlay Zone.
10. A Floodplain Development Permit is required for development within the Area of Special Flood Hazard. Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 prior to or at the time of consolidated Zoning and Building Permit application submittal.
11. This approval expires if a Building Permit is not applied for within two (2) years of issuance of this approval.

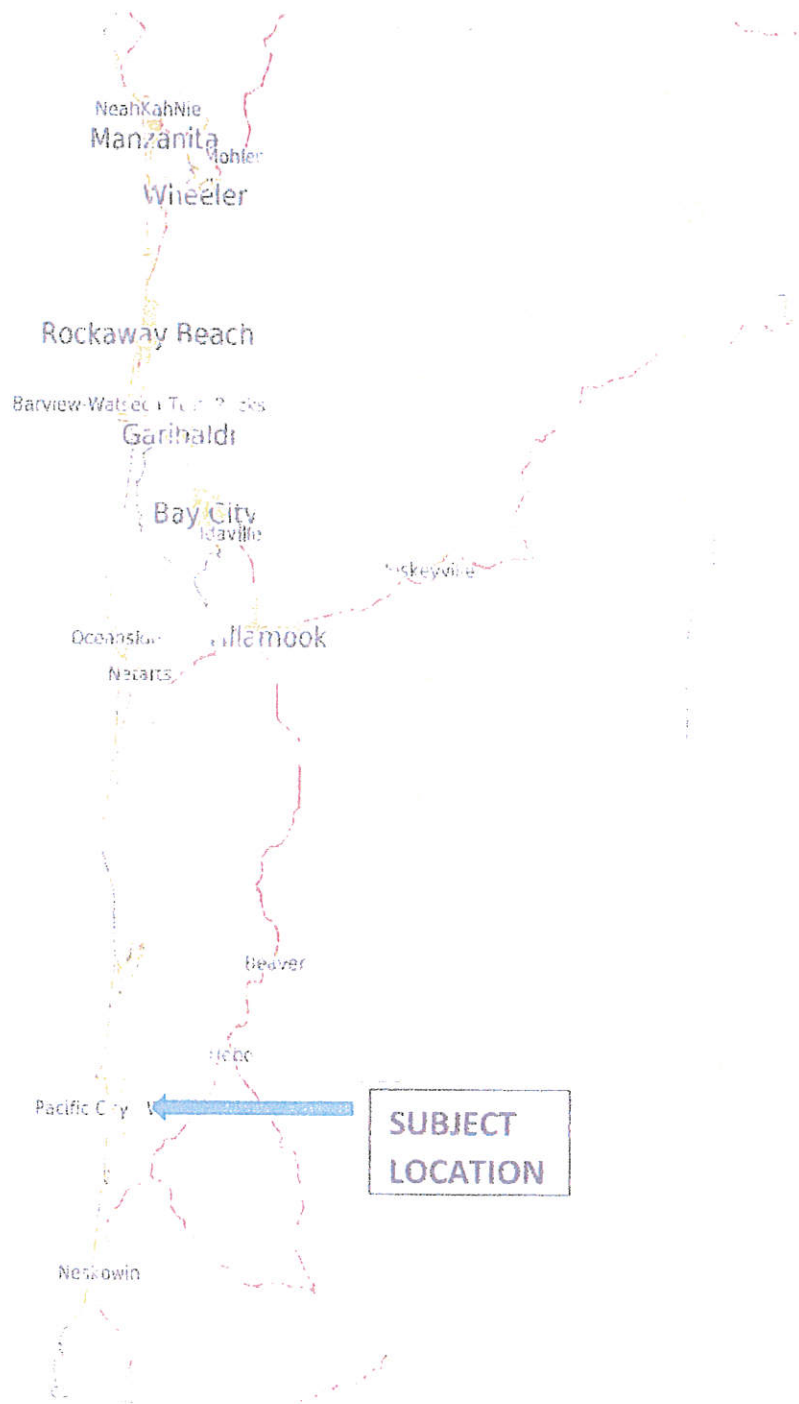
**VI. EXHIBITS**

- A. Vicinity map, Assessor's map, Zoning map, Tax Assessor's Summary Report
- B. Applicant's Submittal
- C. Comments

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) )

# EXHIBIT A

# VICINITY MAP

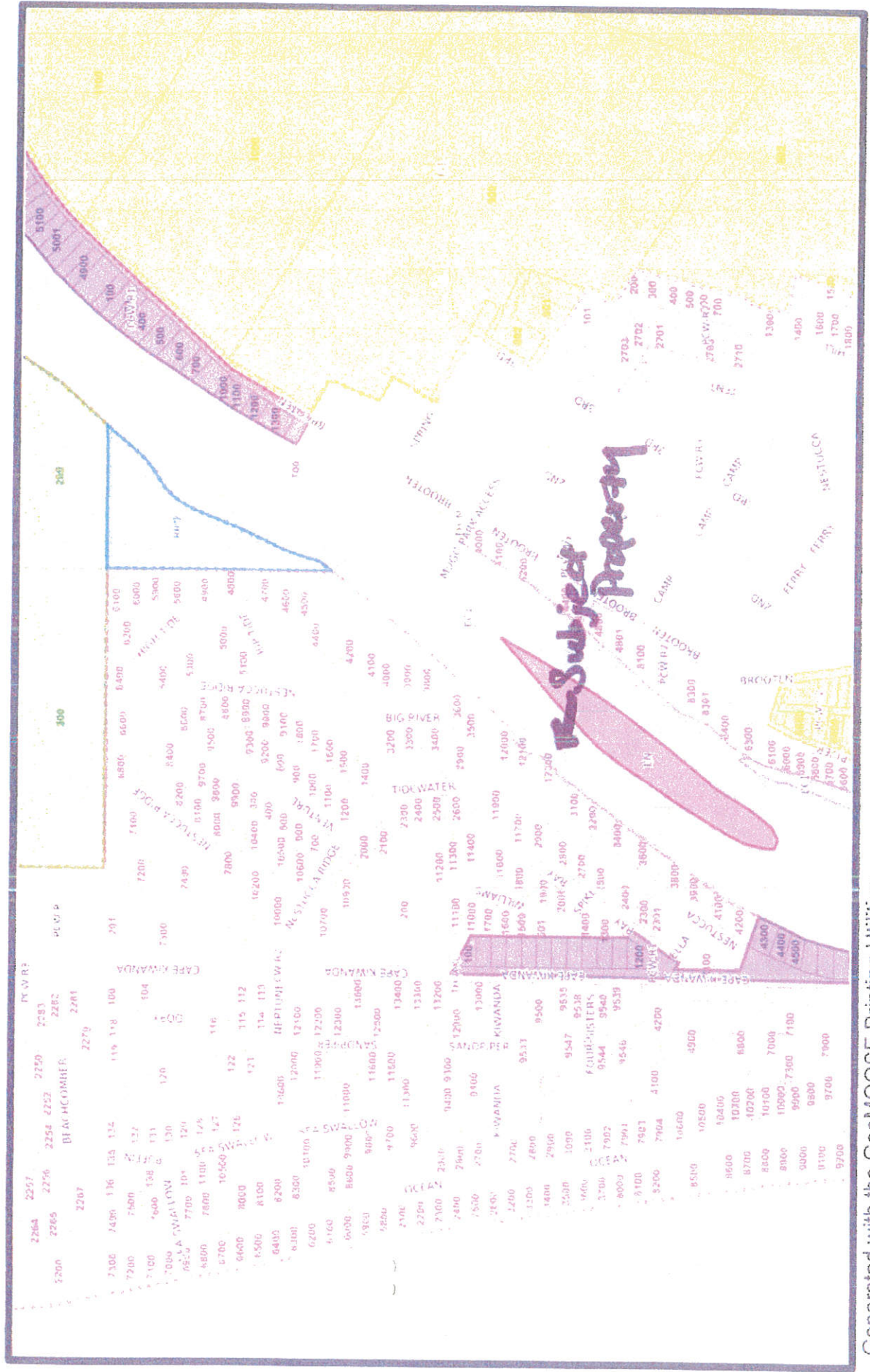


**#851-21-000076-PLNG: LYDEGRAPH  
RIPARIAN EXCEPTION**



#851-21-000076-PLNG: LYDEGRAF AERIAL IMAGE

# Map





# National Flood Hazard Layer FIRMette



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

**SPECIAL FLOOD HAZARD AREAS**

- Without Base Flood Elevation (BFE)
- With BFE or Depth
- Regulatory Floodway

0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile *Zone B*

Future Conditions 1% Annual Chance Flood Hazard *Zone A*

Area with Reduced Flood Risk due to Levee, See Notes. *Zone A*

Area with Flood Risk due to Levee *Zone B*

**OTHER AREAS OF FLOOD HAZARD**

- NO SCREEN
- Area of Minimal Flood Hazard *Zone E*
- Effective LOMRS
- Area of Undetermined Flood Hazard *Zone*

**GENERAL STRUCTURES**

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

**CROSS SECTIONS WITH 1% ANNUAL CHANCE WATER SURFACE ELEVATION**

- Coastal Transsect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transsect Baseline
- Profile Baseline
- Hydrographic Feature

**MAP PANELS**

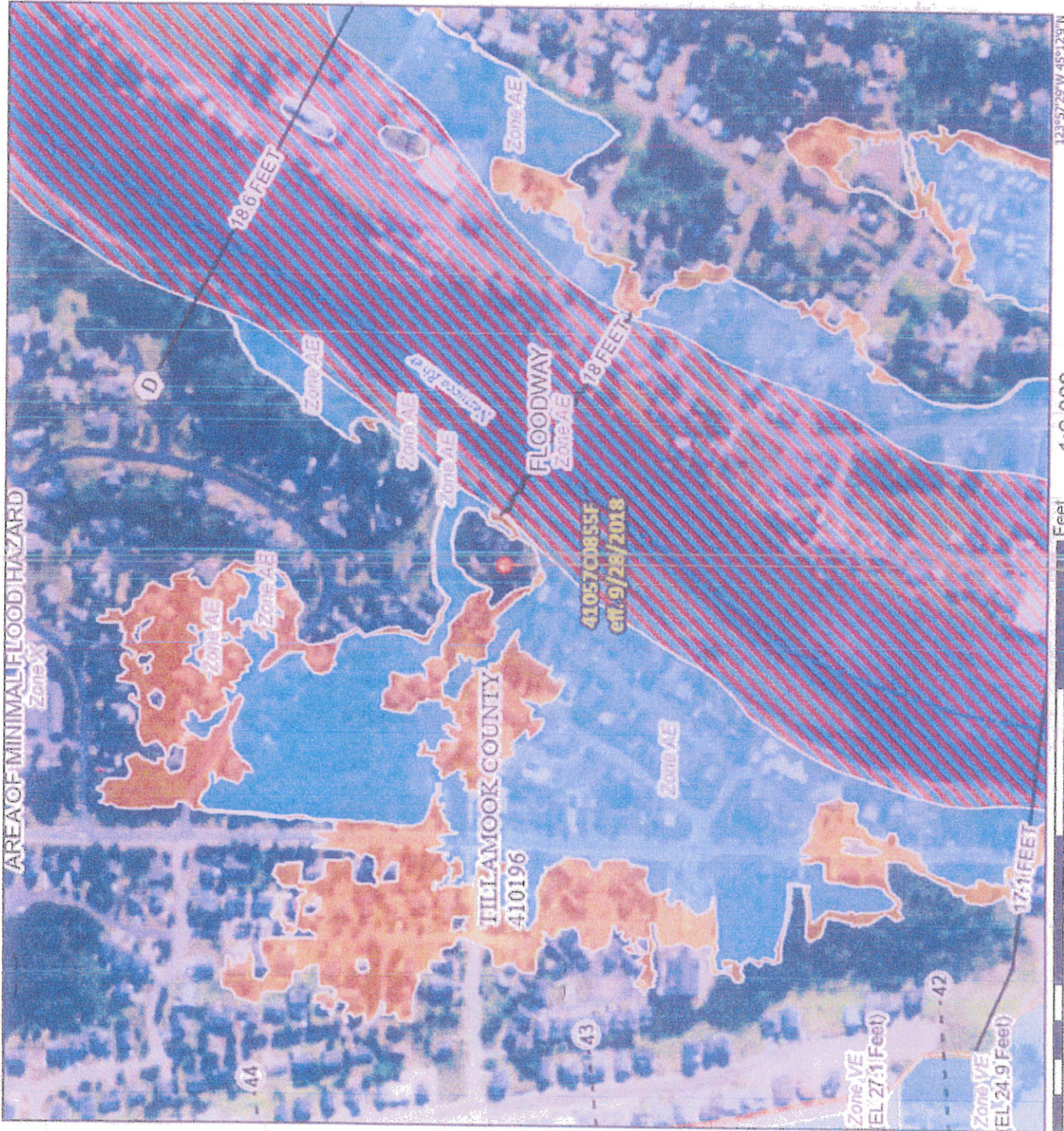
- Digital Data Available
- No Digital Data Available
- Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

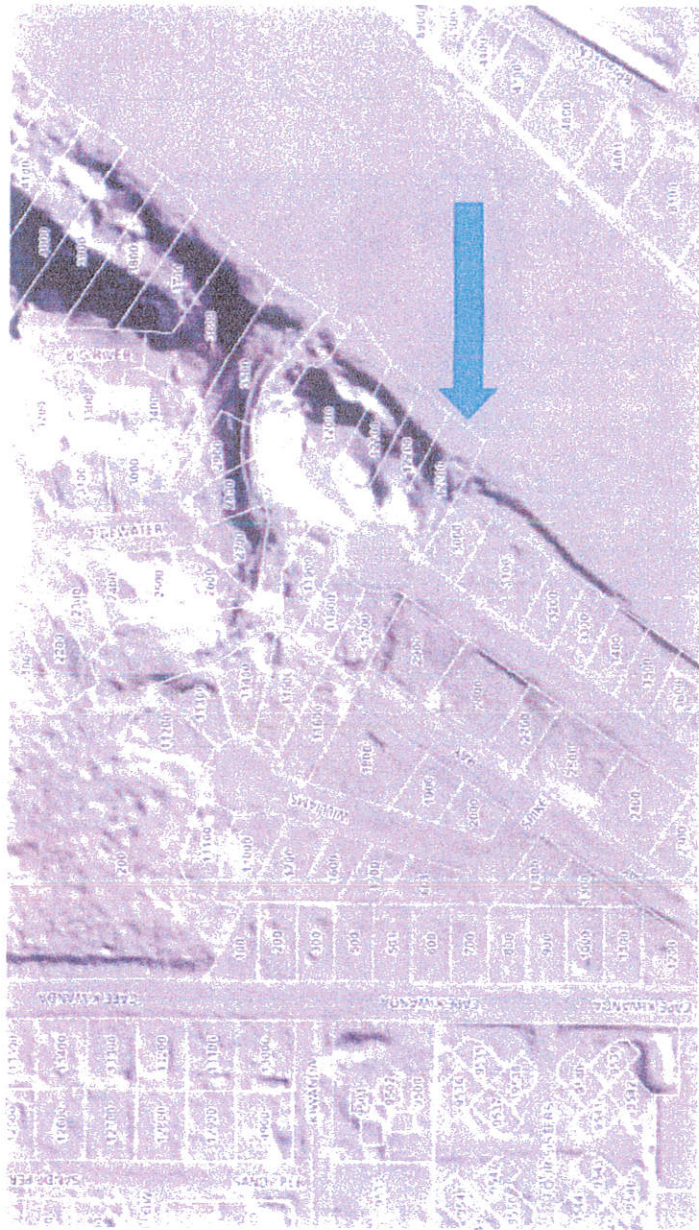
This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 9/6/2021 at 6:47 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



123°57'29\"/>



#851-21-000076-PLNG: LYDEGRAF LIDAR IMAGE

# EXHIBIT B



Tillamook County Department of Community Development  
 1510-B Third Street, Tillamook, OR 97141 | Tel: 503-842-3408 Fax: 503-842-1819  
[www.co.tillamook.or.us](http://www.co.tillamook.or.us)

## PLANNING APPLICATION

<b>RECEIVED</b>	
<b>OFFICE USE ONLY</b>	
Date Stamp:	MAR 15 2020
BY:	SCD [Signature]
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by:	SS
Receipt #:	
Fees:	1000
Permit No:	851-2-2020-PLNG

Applicant  (Check Box if Same as Property Owner)

Name: Dale Van Lynden Phone: 503 931-2298  
 Address: 5519 Commercial St SE  
 City: Seaside State: OR Zip: 97138  
 Email: Dalevan@dalesremodeling.com

### Property Owner

Name: Phone:  
 Address:  
 City: State: Zip:  
 Email:

Request: Would like to set property line at 30ft not 50ft from the riparian

### Type II

- Farm/Forest Review
- Conditional Use Review
- Variance
- Exception to Resource or Riparian Setback
- Nonconforming Review (Major or Minor)
- Development Permit Review for Estuary Development
- Non-farm dwelling in Farm Zone
- Foredune Grading Permit Review
- Neskowin Coastal Hazards Area

### Type III

- Appeal of Director's Decision
- Extension of Time
- Detailed Hazard Report
- Conditional Use (As deemed by Director)
- Ordinance Amendment
- Map Amendment
- Goal Exception

### Type IV

- Appeal of Planning Commission Decision
- Ordinance Amendment
- Large-Scale Zoning Map Amendment
- Plan and/or Code Text Amendment

### Location:

Site Address: Lot 118, Nestlewood Ridge 3  
 Map Number: 451019CB12300  
Township Range Section Tax Lot(s)

Clerk's Instrument #: \_\_\_\_\_

### Authorization

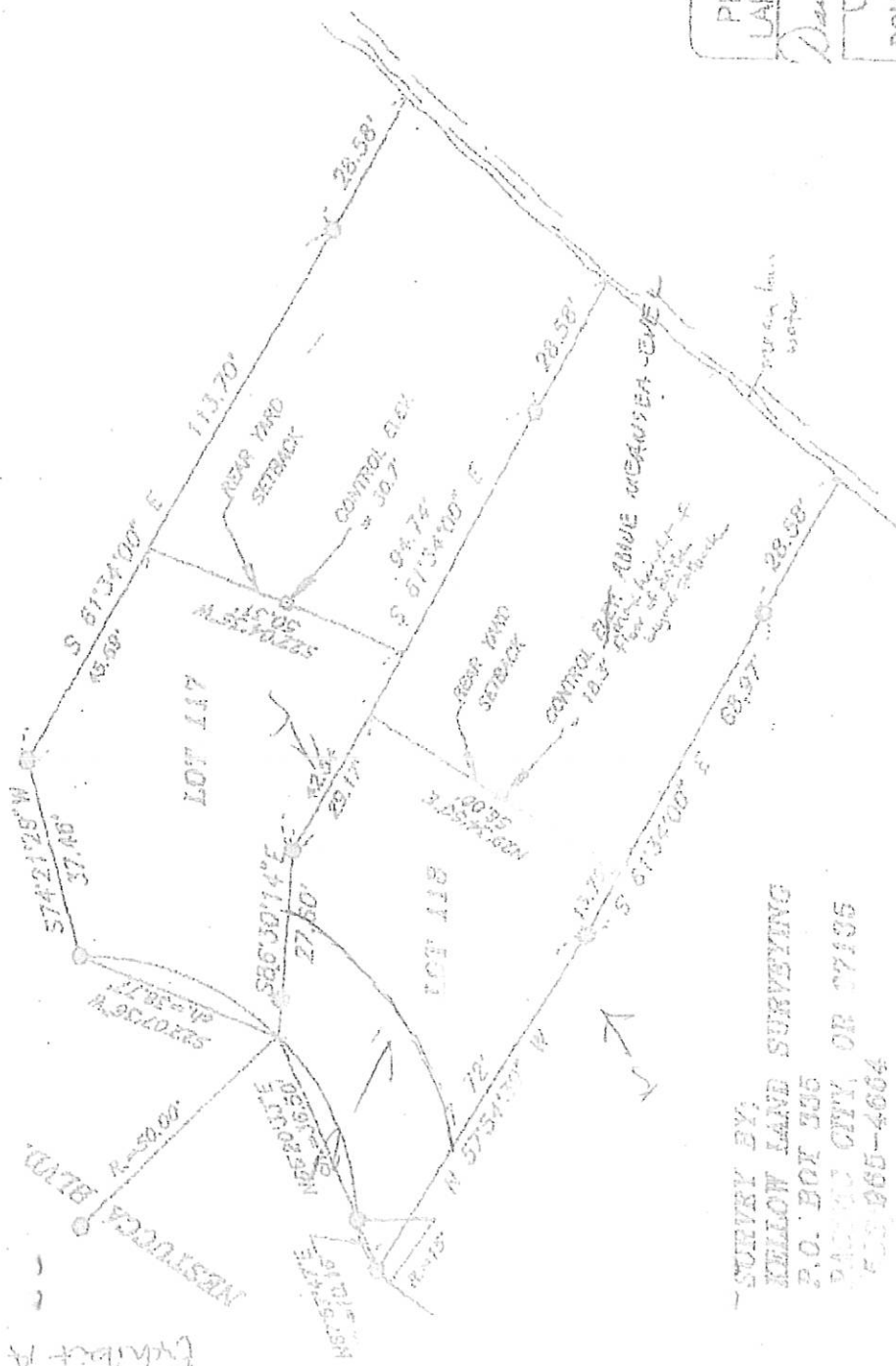
This permit application does not assure permit approval. The applicant and/or property owner shall be responsible for obtaining any other necessary federal, state, and local permits. The applicant verifies that the information submitted is complete, accurate, and consistent with other information submitted with this application.

Property Owner Signature (Required) \_\_\_\_\_ Date 3-8-2021

Applicant Signature \_\_\_\_\_ Date

CCRS - DRIVEWAYS MAX  
2' WIDTH AT  
ROAD PAVED HARD  
SURFACE.

- BUILDING MAX  
35' HEIGHT  
- PITCH OF ROOF  
4/12



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas H. Kellow*

OREGON  
FEBRUARY 1, 1982  
DOUGLAS H. KELLOW  
2057

RENEWAL DATE: 6/30/87

SURVEY FOR  
NESTUCCA RIDGE DEVELOPMENT, INC.

LOTS 117 & 118, NESTUCCA RIDGE 3, IN  
SEC. 10, T. 4 S., R. 10 W.M., TILLAMOOK  
COUNTY OREGON

SURVEY BY:  
KELLOW LAND SURVEYING  
P.O. BOX 336  
SANDY CITY, OR 97135  
PHONE 865-4664

SCALE: 1" = 30'  
DATE: JUNE 10, 1997

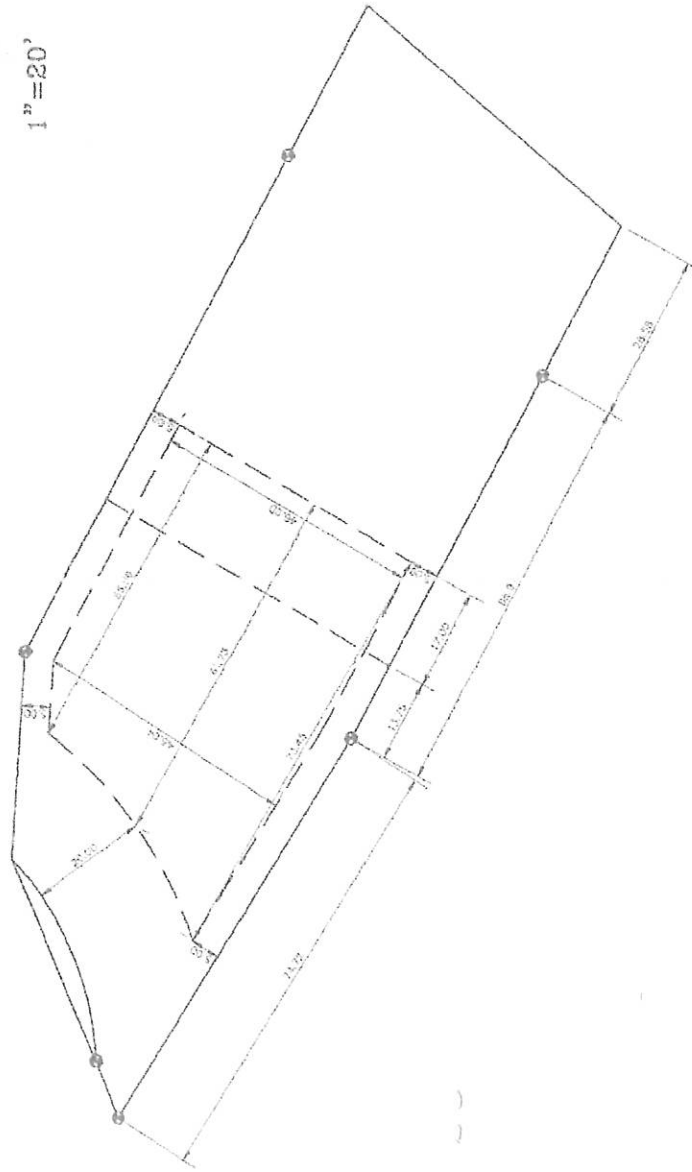
*Exhibit A page 1 of 2*

CONTRACTOR:  
DALES HOMES, LLC

# SITE PLAN



1" = 20'



SUBDIVISION: CREEKSIDE LOT: 14 BLK:  
NAME: DALES HOMES, LLC PH. #  
ADDRESS: CDA:  
ASBUILT # MAP #  
STORM DRAINAGE:  
WATER SERVICE LEVEL: CODE: PS:  
SIDEWALK:

APPROVAL STAMPS

From: Robert Bradley Robert.Bradley@state.or.us  
Subject: 4S1019CB12300  
Date: Feb 16, 2021 at 4:25:31 PM  
To: Melissa Jenck mjenck@co.tillamook.or.us, Sheila  
Shoemaker sshoemak@co.tillamook.or.us  
Cc: Angela Rimoldi arimoldi@co.tillamook.or.us, Sarah  
Absher sabsher@co.tillamook.or.us,  
iredo4u@me.com

I looked at this lot today at the end of Nestucca Blvd. in Pacific City. Attached you will find an aerial photo with lines approximating the following setback measurements:

Red line is the 50 foot estuary setback.

Blue line is a 40 foot setback, roughly equivalent to the rear of the house on the lot to the north.

Green line is a 30 foot setback, roughly equivalent to the rear of the deck off the back of the house to the north.

The adjoining area is highly developed with residential houses. The lot between the estuary and the 50 foot setback is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties (especially the north side).

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)

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Nestucca Blvd

Nestucca Blvd

Nestucca Blvd

34530

34575

34555

Request 30' setback prop. to North

34585

34515

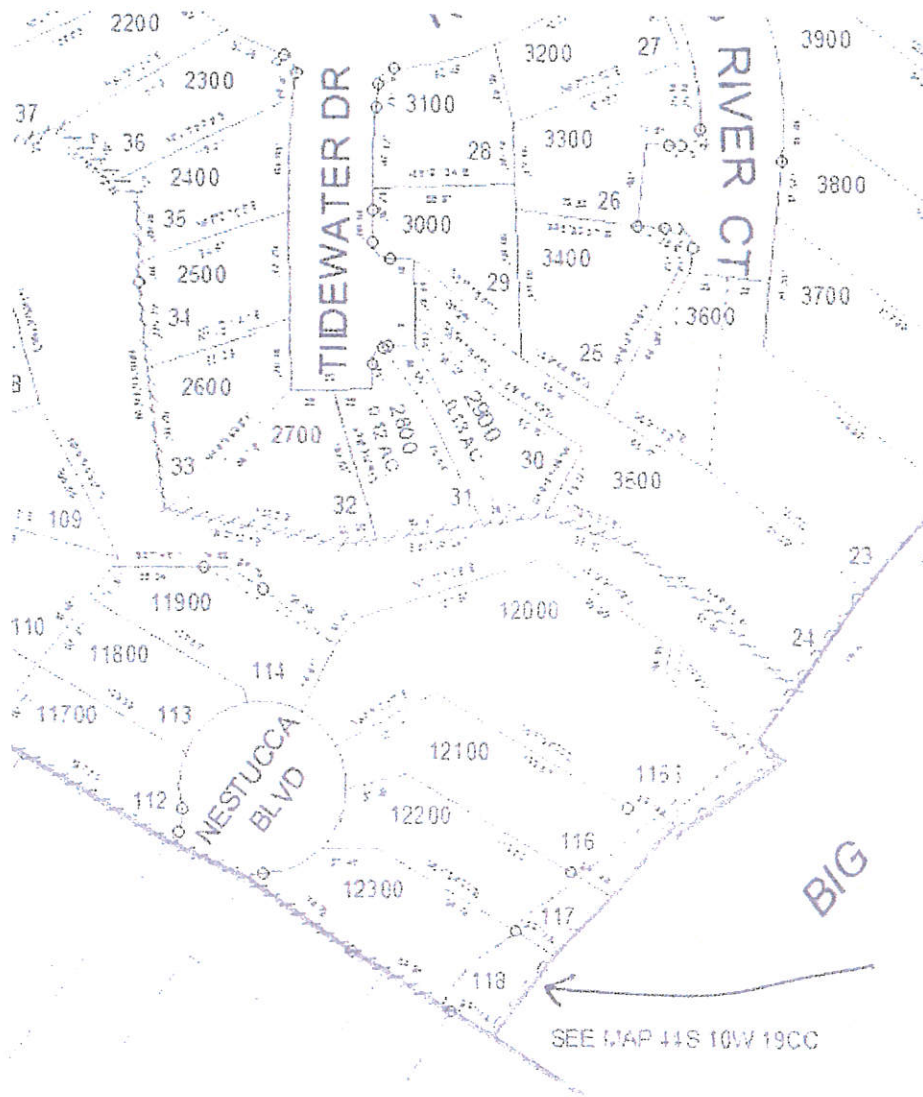
34505

7:26



4 Messages  
**Lot 118**

[Back](#)



[See More](#)



GPS



After recording return to:  
Dale Van Lydegraf  
5514 Commercial St SE  
Salem, OR 97306

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Dale Van Lydegraf  
5514 Commercial St SE  
Salem, OR 97306

File No.: 7081-3676218 (TJ)  
Date: February 08, 2021

THIS SPACE RESERVED FOR RECORDER'S USE

Tillamook County, Oregon      **2021-02030**  
03/08/2021 02:28:00 PM  
DEED-DWARR  
\$10.00 \$11.00 \$10.00 \$61.00 - Total = \$92.00  
I hereby certify that the within instrument was received  
for record and recorded in the County of Tillamook,  
State of Oregon.  
Tassi O'Neil, Tillamook County Clerk

FIRST AMERICAN 3676218

**STATUTORY WARRANTY DEED**

**Charles M. Gehling**, Grantor, conveys and warrants to **Dale Van Lydegraf**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Tillamook, State of Oregon, described as follows:

**Lot 118, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision Plat recorded June 14, 1995 in Plat Cabinet B-400, Tillamook County Records.**

**TOGETHER WITH an undivided interest in common areas of Nestucca Ridge.**

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$175,000.00**. (Here comply with requirements of ORS 93.030)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 4 day of MARCH, 2021.

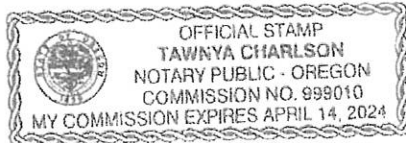
Charles M. Gehling  
Charles M. Gehling

STATE OF Oregon )  
County of Hood River )ss.  
Willamook )

This instrument was acknowledged before me on this 4 day of March, 2021 by **Charles M. Gehling**.

Tawnya Charlson

Notary Public for Oregon  
My commission expires: April 14, 2024



# EXHIBIT C

## Sarah Absher

---

**From:** BRADLEY Robert \* ODFW <Robert.BRADLEY@odfw.oregon.gov>  
**Sent:** Thursday, July 8, 2021 8:19 AM  
**To:** Melissa Jenck; Sheila Shoemaker  
**Cc:** Angela Rimoldi; Sarah Absher; iredo4u@me.com  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Yes, you should include this as this is a better representation of the setback distances than the previous version.

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)

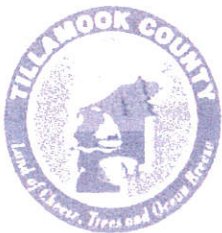
Note new email address as of 4/26/21: Robert.Bradley@odfw.oregon.gov

**From:** Melissa Jenck <mjenck@co.tillamook.or.us>  
**Sent:** Wednesday, July 07, 2021 5:03 PM  
**To:** BRADLEY Robert \* ODFW <Robert.BRADLEY@odfw.oregon.gov>; Sheila Shoemaker <sshoemak@co.tillamook.or.us>  
**Cc:** Angela Rimoldi <arimoldi@co.tillamook.or.us>; Sarah Absher <sabsher@co.tillamook.or.us>; iredo4u@me.com  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good afternoon Robert,

Thank you for this information. Shall I included it on the record for the Lydagraf request? I know they have a Riparian Exception request currently in our office.

Thank you,



Melissa Jenck (she/her) | CFM, Land Use Planner I  
1000 1st St SW | Community Development  
1510-B Third Street  
Tillamook, OR 97141  
Phone: (503) 842-3408 x3301  
[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)

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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.co.tillamook.or.us/govt/online> to access the appointment scheduler portal.

**From:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>  
**Sent:** Wednesday, July 7, 2021 4:49 PM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Sorry about that! Here you go.

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)

**Note new email address as of 4/26/21:** [Robert.Bradley@odfw.oregon.gov](mailto:Robert.Bradley@odfw.oregon.gov)

**From:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>  
**Sent:** Wednesday, July 07, 2021 4:38 PM  
**To:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good afternoon Robert,

I'm not see that there was a new attachment included on your email. Can you please re-send with the referenced attachment?

Thank you,



**Melissa Jenck** (she/her) | CFM, Land Use Planner II  
TILLAMOOK COUNTY | Community Development  
1510-B Third Street  
Tillamook, OR 97141  
Phone (503) 842-3408 x3301  
[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)

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**From:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>  
**Sent:** Wednesday, July 7, 2021 11:04 AM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>

**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [fredofu@tmo.com](mailto:fredofu@tmo.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Melissa,

I re-visited this site again to re-mark the setback. Based on my field observations, I am providing you a revised version of the estuary setback marks for this site with some slight adjustments. The pink line represents the 30 foot setback, green line is 40 foot, and blue line is 50 foot. All lines are approximate on this photo.

Biologically speaking, there is not much, if any, difference in impact for building at any of these lines as I stated earlier. The green line is roughly equivalent to the extent of development on either side of this lot.

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)

Note new email address as of 4/26/21: [Robert.Bradley@odfw.oregon.gov](mailto:Robert.Bradley@odfw.oregon.gov)

**From:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>  
**Sent:** Thursday, February 18, 2021 8:10 AM  
**To:** Robert Bradley <[Robert.Bradley@state.or.us](mailto:Robert.Bradley@state.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [fredofu@tmo.com](mailto:fredofu@tmo.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good morning Robert,

I thank you for providing this information. Staff will place this with the property file for future proposals.

Thank you!

Due to non-essential measures regarding the ongoing COVID-19 pandemic, the Department of Fish and Wildlife is adhering to the Public Health Department's Staff Continuity Work Plan for the April 2021 period. Additional information on this plan is available at <https://www.oregon.gov/odfw/Pages/StaffContinuity.aspx>.

Melissa Jenck | CFM Land Use Planner |  
Phone: (503) 842-3408 x3303

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.co.tillamook.or.us/gis/CgmDev/> to access the appointment scheduler portal.

**From:** Robert Bradley <[Robert.Bradley@state.or.us](mailto:Robert.Bradley@state.or.us)>  
**Sent:** Tuesday, February 16, 2021 4:25 PM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>



Cc: Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
Subject: EXTERNAL: 451019CB12300

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

I looked at this lot today at the end of Nestucca Blvd. in Pacific City. Attached you will find an aerial photo with lines approximating the following setback measurements:

Red line is the 50 foot estuary setback.

Blue line is a 40 foot setback, roughly equivalent to the rear of the house on the lot to the north.

Green line is a 30 foot setback, roughly equivalent to the rear of the deck off the back of the house to the north.

The adjoining area is highly developed with residential houses. The lot between the estuary and the 50 foot setback is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties (especially the north side).

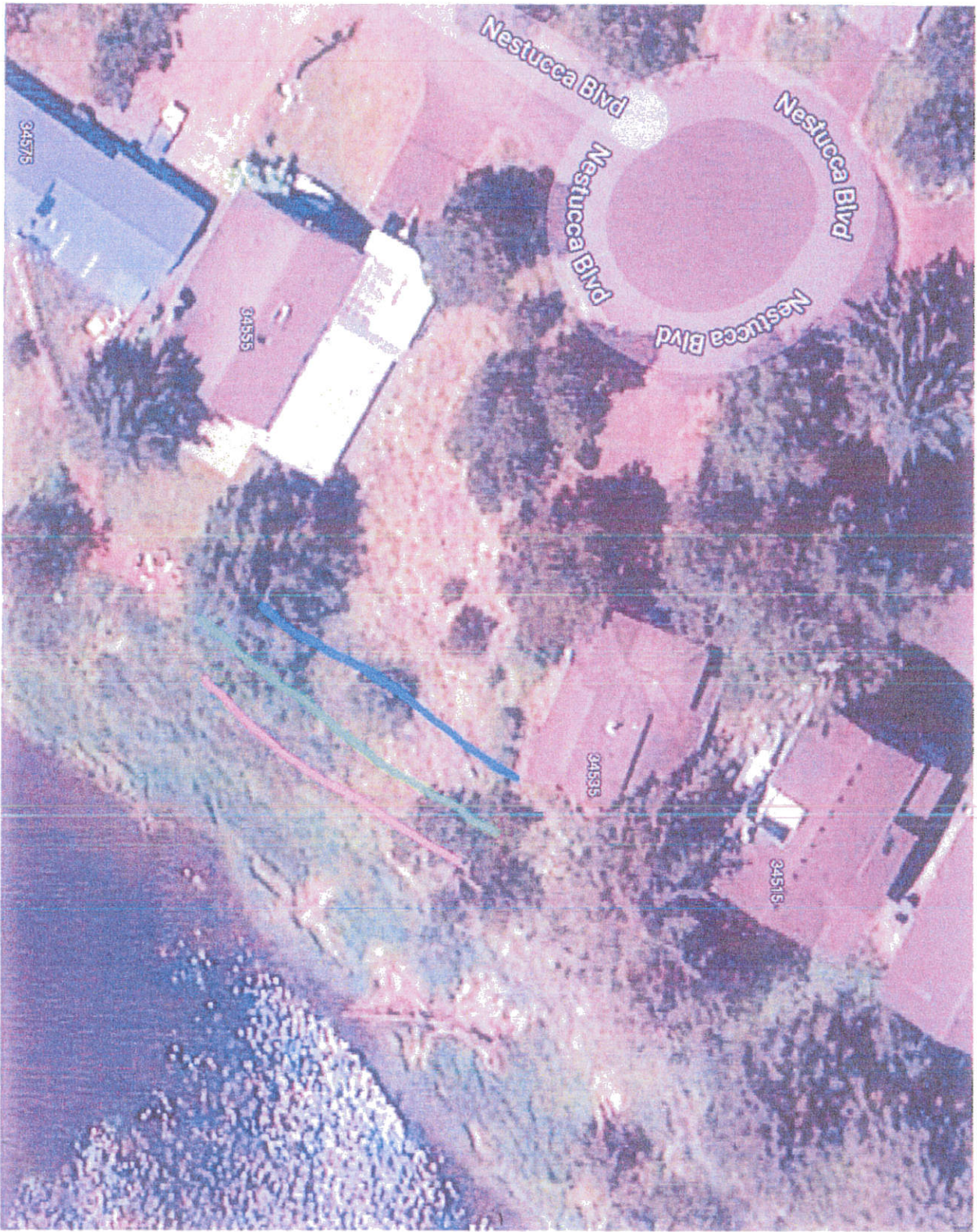
Robert

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)

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# Wetland Land Use Notice Response

## Response Page

Department of State Lands (DSL) WN# \*

WN2021-0671

## Responsible Jurisdiction

### Staff Contact

Sarah Absher

### Jurisdiction Type

County

### Municipality

Tillamook

### Local case file #

851-21-000675-PL/23

### County

Tillamook

## Activity Location

### Township

R13

### Range

10E

### Section

10

### QQ section

SE

### Tax Lot(s)

12301

Nestucca Pt

1000

1000

1000

1000

Tillamook

### Latitude

45.240000

### Longitude

-124.063500

## 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 property includes or is adjacent to designated Essential Salmonid Habitat

The property includes or is adjacent to state-owned waters.

## Your Activity

- A state permit will not be required for the proposed project because based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways, or other waters.

## Closing Information

### Additional Comments

Best Management Practices for erosion and sediment control are recommended during construction due to site proximity to the ESI/Nestlaca River.

This is a preliminary jurisdictional determination and is advisory only.

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

### Contact Information

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

### Response Date

7/30/2021

### Response by:

Dana Evans

### Response Phone:

503-988-6271

## For Official Use Only

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### For Official Use Only

This document contains information that is not for public release.

#### Maps

WIN20210669 NwNhdEshLidar50%Exceedance.tif	2.47MB
WIN20210669 SoilsAerial.tif	2.47MB

#### Request Received

6/15/2021

#### There was an Onsite Visit \*

Yes  No

#### Has Wetlands \*

Yes

#### Permit Required \*

No

#### Delineation Required \*

No

#### ESH \*

Yes

#### Wild and Scenic \*

No

#### State Scenic \*

No

#### State-owned Water

Yes

#### Coast Zone \*

Yes

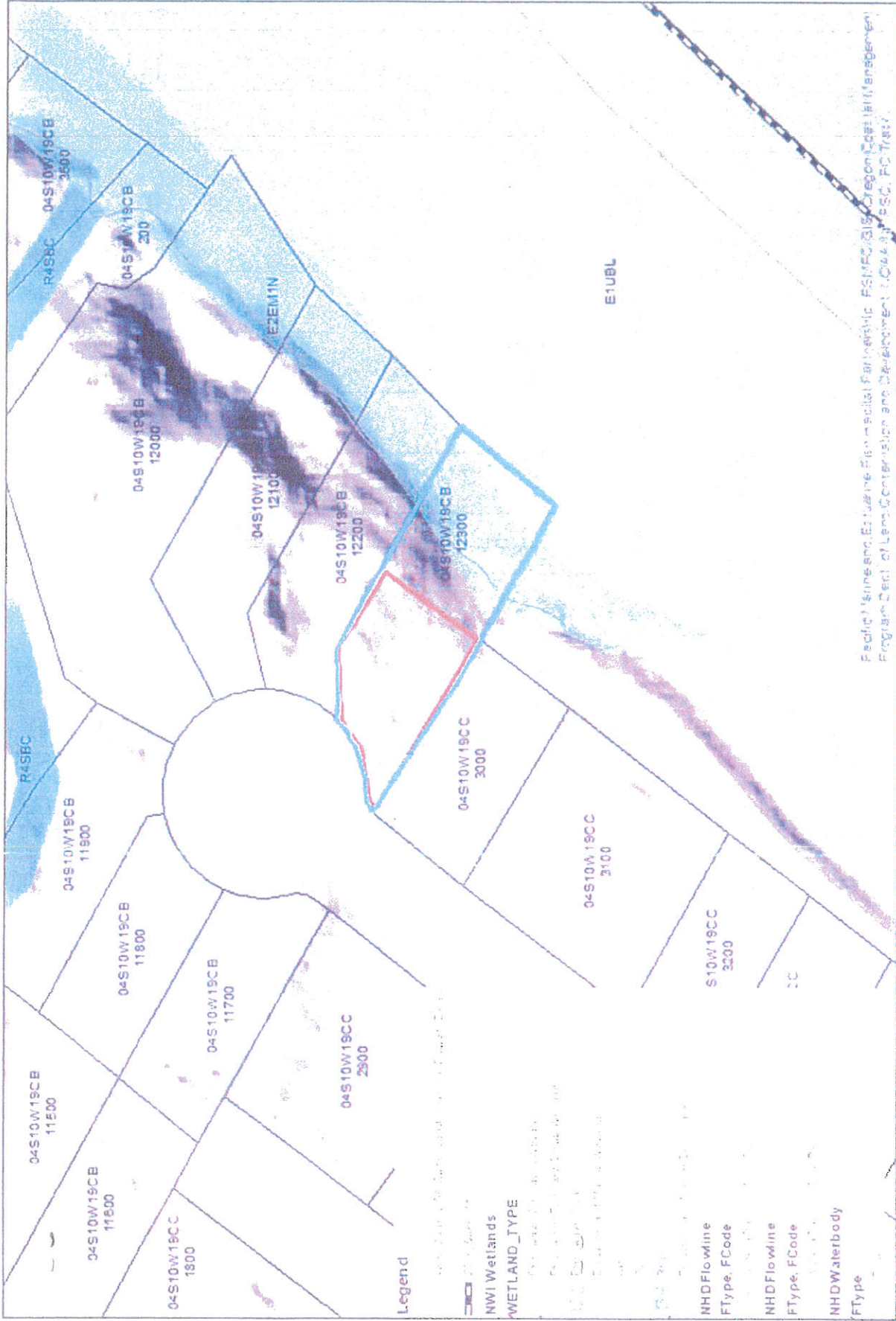
#### Adjacent Waterbody

Nestucca River

}  
}

}  
}

# WN20210671 NwInhdEshLidar50%Exceedance



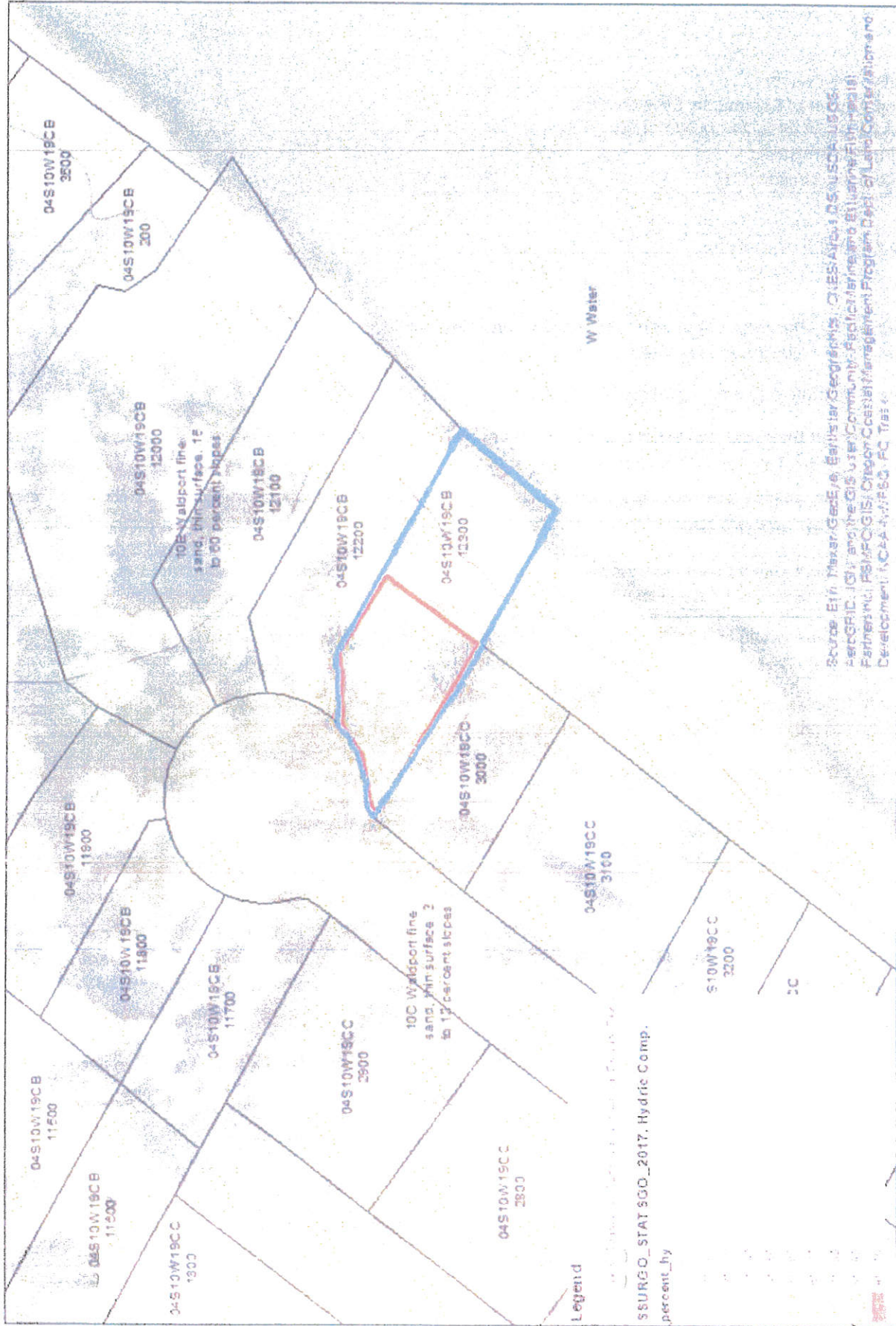
## Legend

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- 04S10W19CB 11800
- 04S10W19CB 11800
- 04S10W19CB 11700
- 04S10W19CC 2500
- 04S10W19CC 3000
- 04S10W19CC 3100
- 04S10W19CC 3200
- 04S10W19CC 3300
- 04S10W19CB 2000
- 04S10W19CB 2100
- 04S10W19CB 2200
- 04S10W19CB 2300
- 04S10W19CB 2400
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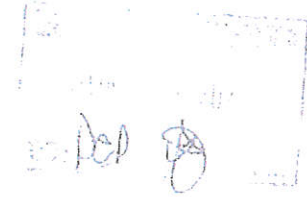


Pacific Marine and Estuarine Fish and Wildlife - PNWFCIS (Oregon Dept. of Fish and Wildlife)  
 Program Dept. of Land Conservation and Development - CLM & JPL - ESC, FC Treat

# WN20210671 SoilsAerial



Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141



To whom it may concern,

I am writing this letter in opposition to the Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF and request that it not be granted.

I have multiple concerns regarding this request.

1. The study, as listed in the request, states only minimal additional biological consequences, so clearly there would be negative consequences.
2. This would be the first exception granted on this side of the river and on the last undeveloped river front property.
3. This would be the first exception granted in the HOA, an HOA build with a requirement of preserving the natural beauty of the area.
4. There would be significant negative economic impact to the property values of the adjacent properties without even an offer of compensation.
5. The aesthetic beauty of the riverbank would be significantly affected by allowing a single home to encroach much further than any other building on the bank.
6. The new property owner recently purchased the land in full knowledge of the building requirements. It appears now they did not purchase in good faith of the requirements but to ask for changes in an attempt to add additional value above the original requirements intent.
7. There would be a significant negative impact to the views of the adjacent property owners as well as reducing the privacy of the current property owners.

I am not opposed to the property being developed. I am just requesting that the recent purchaser be held to the same standards of building that the property was purchased under. To purchase a property with the intent to de-value surrounding property owners, encroach on already fragile ecosystems and corrupt the aesthetics of the river they intend to capitalize on is a truly not a neighbor any one wants. My family has been enjoying Pacific City for 4 generations in the same home. We have watched it grow, change and mature. We want to pass down the traditions and magic that Pacific City has provided us for the last 60 years to the next generation. Please do not grant any building exception on this property.

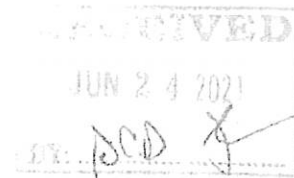
Sincerely,

Sean Morjarty



LAURIE SCHEER

11411 NE 2nd Ave, Vancouver, WA 98685



June 21, 2021

To Tillamook Community Development,

As a family member of a Pacific City resident and homeowner, grandma has asked me to contact you to oppose a Riparian Exception set-back request, the reference number is 851-21-000076-PLNG. This request is not consistent with existing community standards or in compliance with the local building and environmental laws codes. Why would your board grant any exception that would adversely impact the Nestucca river and its riparian zone? The application tries to make it look like there is no "real" impact, but that's not really true. There is an impact, the exemption will result in a reduced habitat, could increase riverbed erosion in the area and is just bad for the community. When this new owner purchased the lot, they knew what they were buying, where they were buying it and the codes and standards that applied to their purchase. Its like buying a residential lot and then putting a business on it, that's not what the land was zoned for. I and my family oppose granting this exception and request that you deny this application. There are multiple reports that document the impacts of reducing riparian zones along rivers in Oregon and all of them recommend against it. Please don't allow this land owner to mess up a part of the Nestucca River for everyone for the next 50 - 80 years, have them comply with the same standards the rest of us built our homes to. Also, it seems like the application should have a lot more information in it to justify the impact, an email from a state biologist without any testing, data collection, or other justification/data seems like the application is incomplete and needs more information to be considered. Also, the biologist short email

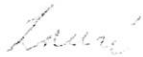
Street Address | City | State | Code

Office Telephone | Website

even says granting this exemption will result in an impact, how many small impacts need to happen before a big impact destroys the community we love.

In conclusion, I strongly request and recommend the board not approve this exception.

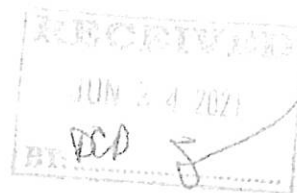
Thank you,



Laurie

# Robert Moriarty

1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685



23 Jun 2021

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

## Dear Department of Community Development:

I opposed the Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF to allow for an exemption to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling. I request that the exemption not be granted for the following reasons:

- 1) Only 39 homes reside on the North shore of the Nestucca River in Pacific City. All of the existing homes are in compliance with the county approved riparian setbacks that were in effect when they were constructed. A records review of these homes indicates there were several exemptions requested and none were approved. This denotes that the Tillamook County Department of Community Development determined that a 50-foot riparian setback was required along the Nestucca River in this area for the protection of water quality and streambed stabilization.
- 2) In the exception request there is an included letter from Mr. Robert Bradley, the Oregon Department of Fish and Wildlife's District Fish Biologist stated that the "adjoining area is highly developed with residential houses" but failed to note that all of the existing home are in compliance with the approved set-back requirements. His assessment that the setback exemption would have "only minimal additional biological consequences" is a violation of federal, state and local laws and associated land development codes. In the Nestucca River basin and the Nestucca Bay Estuary it is prohibited to allow ANY construction that will adversely impact the riparian zone. From the letter is clear that there would be SOME biological consequences. These consequences would be avoided if the proposed development was constructed in accordance with (IAW) the applicable planning codes.
- 3) The proposed lot is part of the development for Nestucca Ridge. The development company "Nestucca Ridge Family of Companies" owned by Jeff Schones and Mary Jones promoted responsible development for all sites developed as part of the project. They committed to protect the resource as well as property rights when applying to develop the sites. Adjoining land owners were told this would be complied with for all development within

the proposed property. Under the Environment Impact Statement and the associated Record of Decision posted in 1991, all construction within the development would comply with applicable federal, state and local laws and codes. This property would be the first exception requested by any property owner within the development to deviate from the riparian setback requirements. If an exemption is granted, a review by the Tillamook County and Oregon Department of Ecology should occur to ensure a deviation from the approved environmental "record of decision" is not incurred.

- 4) As indicated on the exception application the land owner was fully aware of the applicable land use laws and regulations when they purchased the lot. Their proposed construction should comply with the same standards enforced on all the adjacent property owners. All adjacent land owners were required to meet the 50-foot riparian setback in order to obtain approval to construct the residential structures, even back in the 1950's up to today. The exemption should not be approved.
- 5) It should be noted that the proposed development is not part of the 1950's -1960's development along Nestucca Blvd. These older homes have development restrictions placed on them by the USACE. The assumptions by ODFW biologist lacks an understanding of the history and phases of development in the area. The proposed lot's property lines where the exemption is being requested extends well beyond the existing residential homes located on Nestucca Blvd. This is an important distinction between the proposed lot which is part of the Nestucca Ridge Development in the 1990's and the adjoining residential houses. This further supports the need for the proposed development to comply with existing setback requirements. The ODFW biologist opinion of homes constructed in the 1950's to different codes and standards should not confuse their impact with proposed new construction that should be required to meet all current codes and set-backs.
- 6) As Pacific City, Oregon grew from its 1893 birth, the need for development brought the USACE to Pacific City in the 1950's. Under a request from the State of Oregon for federal assistance, the USACE developed and dredged the Nestucca river and was tasked to operate and maintain the first 7.0 miles of navigable waterways. As a result, all property owners along the riverbank within the developed city had conservation and land use access easements which required construction outside the riparian zones associated with the river. Just because the proposed development is just outside the USACE original dredging and river bank stabilization project, that is even more reason to protect and preserve the riparian zone.
- 7) The Nestucca River has been identified and is protected under the Oregon Scenic Waterways Program. All activities within the Oregon Scenic Waterways must be undertaken according to the Oregon Scenic Waterways Act and its rules. The provided application (Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF) does not include the required Oregon Parks and Recreation Department (OPRD) consultation and record of decision required in the act. The act provides protection for private property rights but discourages unsightly structures or inappropriate developments that could be a nuisance to neighboring landowners or even depreciate property values. IAW the act, the riparian zone is special and distinct. It occupies a small area and possesses a climate, water temperature, soil makeup and plant arrangement very different from the land surrounding it. The

simplest and most effective technique for protecting the riparian zone is to leave natural vegetation, soil, and debris such as leaves and fallen trees undisturbed. The area will be less vulnerable to damage, and a home will be protected from flooding, storms and sun glare. An undisturbed riparian zone also provides privacy from the public using the river. The plan requires private building construction along the riverbank to prevent erosion which decreases the chance of personal property loss during a flood. In addition, to protect and preserve the natural character of the view from the river. All new developments must be completely screened from the river, usually by topography. In approval of all other residences located along the river that are part of the Nestucca Ridge development they were required to utilize topography to screen them from the river, this proposed development should also comply with this requirement which would require compliance with the 50-foot setback. Adjacent property owners to the northeast have topographical and geographical features installed that preserve the natural appear of visitors using the river for public use such as fishing and recreation. The proposed development should also be required to utilize this same approach as part of their development. This approach requires compliance with the 50-foot riparian setback requirements.

- 8) From the application it can not be determined if there are covenants or deed restrictions from the HOA that would influence what the new owner can/cannot build. This information should have been provided with the application, request the application be rejected for lack of the required supporting information.
- 9) The application lacks historical and archaeological clearances to determine the impact of the project. Prior to the 1980's development of Nestucca Ridge development the hillside including this home site was a treasure trove of Native American artifacts and was well documented hunting and fishing area for the Confederated Tribes of the Coos, Siuslaw and Lower Umpqua Indians. Since the proposed building site is the last remaining undeveloped lot in an area known to have support Native Americans prior to the exemption application, the land owner should consult with the Oregon State Historic Preservation Office and the local tribes. The areas closest to the river are the most likely locations for many of these artifacts. This is another reason to not approve the exemption.
- 10) The construction of the proposed residence that close to the river will adversely impact the existing river views of adjacent property owners and though property values are currently increasing, the development of an obstructed view of the river will result in a reduced value to adjacent property owners. Approval of the exception also provides an unfair advantage to the developer that existing property owners were not provided when their residences were constructed.
- 11) All new structures visible from a scenic waterway are subject to specific design criteria. For example, structures cannot be taller than 30 feet on sides facing the river. Large exterior surfaces, like roofs, must be non-reflective, and finished in muted colors that blend in with the surroundings. Construction disturbance should be minimal, and re-vegetation is always an important postconstruction measure. The exemption should not be approved because it lacks a complete picture of the proposed development to ensure not only does the proposed structure meet the required set-back, but that it also complies with scenic waterway requirements.

The Nestucca Bay Watershed Report prepared by the Oregon Department of Environmental Quality dates Apr 2002 highlights the impacts of riparian zone disturbances.

From the Nestucca Neskowin Watershed Council Action Plan, the Nestucca Neskowin Watershed Council has been very active both in assessing the environmental quality in the Nestucca Bay Watershed and developing and prioritizing an Action Plan for future projects. The actions in the plan range from enhancement of riparian vegetation to long-term monitoring of water quality in the watershed. They have determined that as a result of disturbed riparian habitat the cumulative effects on the ecosystem include increased water temperatures, increase sediment have adversely impacted fish and wildlife in the Nestucca River basin.

The proposed exemption is within the rearing habitat and migratory habitat of Spring Chinook, Fall Chinook, Coho, Chum, as well as winter and summer steelhead. The report highlights the temperature standard applicable in the Nestucca Bay Watershed requires that "no measurable surface water temperature increase resulting from anthropogenic (human induced) activities is allowed". Reduction of the riparian zone has been documented to directly impact water temperature in rivers and lakes. Temperatures Monitoring has shown that water temperatures in the Nestucca Bay Watershed often exceed recommended standards as a result of development. The required set-back was established to promote and protect the delicate ecosystem of the Nestucca River basin which is why no other riparian zone reduction has been approved in the past. The science supports a 50-foot riparian setback because it provides the minimum level of protection required by federal, state and local laws. Therefore, since the proposed development will have an impact, though small, on the riparian zone for the Nestucca River the exception should not be granted.

Riparian vegetation, stream morphology, hydrology, climate, and geographic location all influence stream temperature. While climate and geographic location are outside of human control, riparian condition, channel morphology and hydrology are affected by land use activities. Human activities that contribute to degraded thermal water quality conditions in the Nestucca and Little Nestucca Watersheds are associated with agriculture, forestry, roads, urban development and rural residential related riparian disturbance. Since the proposed development will disturb and possibly eliminate a portion of the riparian zone, the exception request should not be approved.

The approved 2016 Cape Kiwanda Master Plan highlights the requirement for protecting the beauty and natural resource values within the surrounding community; minimizing and mitigating the adverse effects of visitors. The Riparian Exception Request #851-21-000076-PLNG falls within the identified focus area of the approved Master Plan. A riparian setback reduction is not consistent with the approved 2016 Cape Kiwanda Master Plan.

The Riparian Area adjacent to the river is the area of transition from an aquatic ecosystem to terrestrial ecosystem. Tillamook county has a requirement to comply with the Land Conservation and Development Department Chapter 660 "Goal 5". The Oregon Department of Ecology has identified the Nestucca river and its estuary as a conservation area, destruction and or removal of the ecosystem by development is strictly prohibited, the new owner of the property should comply with existing community development standards, the exception should not be permitted/granted.

The Nestucca Bay estuary is designated as a Conservation estuary under the Oregon Estuary Classification system. The proposed housing unit is adjacent to the Nestucca Bay estuary that has special mitigation sites and mandatory shoreline management units the proposed development also falls within the Nestucca Bay salmon habitat. The proposed exception does not meet the

2. Nestucca Bay Watershed Total Maximum Daily Load (TMDL) Prepared by Oregon Department of Environmental Quality Apr 2002.
3. National Assessment of Shoreline Change: Historical Shoreline Change Along the Pacific Northwest Coast, published by the US Department of the Interior, US Geological Survey, Open-File Report 2012-2017.
4. The Oregon Scenic Waterways Program, Oregon Parks and Recreation.
5. Nestucca Bay Watershed WQMP Report 4-02, 2002.
6. Tracking Prehistoric Cascadia Tsunami Deposits at Nestucca Bay, Oregon, Robert C. Witter, USGS and Eileen Hemphill-Haley, Humboldt State University.
7. Climate Change Preparedness Strategy Nestucca Estuaries Partnership.
8. FEMA, 2016 Multi-hazard Risk Report for Tillamook County Including the Cities of Bay City, Garibaldi, Manzanita, Nahalem, Rockaway Beach, Tillamook, Wheeler, and Unincorporated
9. Communities of Neskowin, Oceanside, Netarts, and Pacific City.
10. Estuary Technical Group reports on tidal wetland restoration in Tillamook, December 2020 by Laura Brophy.

Doc  
[Handwritten signature]

Dear Department of Community Development,

The Riparian Exception Request #851-21-000076-PLNG to reduce riparian set-backs should not be approved.

The land owner was fully aware of the land use restrictions when they purchased the lot, their proposed construction should comply with the current land use restrictions that were enforced on all other property owners in the area. It is unfair to existing neighbors, landowners, and the community if this new land owner is allowed to deviate from the established standards. This exemption also would allow for a significant increase in land value if approved at the expense of existing land owners/neighbors.

If approved the exemption would have a biological consequence to the Nestucca River and the Nestucca Bay Estuary where the property is located. As I understand the current laws in Oregon this is prohibited unless a documented mitigation was provided with the application and none were presented in the application available on the Tillamook County Department of Community Development. The application should be denied based on a lack of information and transparency and the applicant's failure to fully disclose the impacts of the proposed construction.

Sincerely,

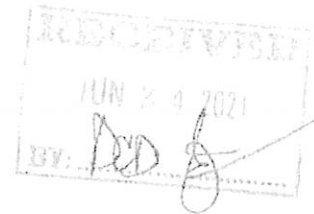
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Collette Delphin



Ned Golden

11411 NE 2<sup>nd</sup> Ave  
Vancouver, WA 98685



22 Jun 2021

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

Dear Planning Department,

As a visitor that often explores Pacific City and stays with friends who live in the area, on my recent trip we saw the notice requesting an exception to reduce the 50-foot riparian setback from the Nestucca River to 30-foot. It appears as request 851-21-000076-PLNG on your website. I would like to voice my concern regarding the approval of this request and ask the development board to not approve requests that have an adverse impact to our environment and the community. Pacific City is a beautiful and vibrant community, the natural environment, the ocean, the river, the dunes, the wildlife, etc. are part of what make this community unique and a popular place to visit. Construction that adversely impact the river, estuary and wildlife destroys what makes Pacific City unique. Though the impact in the exemption is small, it is still an impact and if everyone of the 200+ homes on the river were allowed to be built on the river the cumulative impacts would be significant, I would request the board not set a precedent that homes or any structure can be constructed less than 50 feet from the river, the long-term impacts of this decision would have significant impacts to the ecosystem and could change the face of Pacific City forever. Pacific City is not Lincoln city where condos are built right up to the ocean or people can open their back door right up to Devils Lake. Please don't allow construction like the homes on the Siletz River where homes are so close to the river their foundations are built into the bank. Everyone loves kayaking and fishing on the Nestucca river, allowing this exemption would take away a small part of the beauty of the river for thousands of visitors. In addition, the new home would be more prone to flooding and the wildlife that live, nest, and play in the proposed area would be forced out. This would have an impact on the

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ecosystem that you are charged with protecting along with private owners' interests. Please do not grant this exemption.

Sincerely,

*Ned Golden*

Ned Golden

**Attention: Sarah Absher, CFM, Director**

Department of Community Development

1510-B Third Street

Tillamook, Oregon 97141

June 22, 2021

Re: Riparian Exception Request #851-21-000076-PLING: Lydengraf

Dear Ms. Absher,

We are neighbors to the north of the property subject to this request for variance to the existing riparian building setback. [Lot 12100, Section 19CB of Township 4 South, Range 10 West]. We and the other two river front lots of Nestucca Ridge Development accessed off of Nestucca Blvd. abided by the Riparian setbacks mapped by Tillamook County. We could have argued it was an inconvenience to our building plans as well. And it needs to be noted that we are all high bank lots further separated from the river by elevation than this subject lot. Siting a home on such small lots and staying in compliance was a challenge for each of us. In fact, your own maps show the flood zone dips into this subject lot more than it does to any of the other three lots to the North thus having more impact on Riparian values than ours.

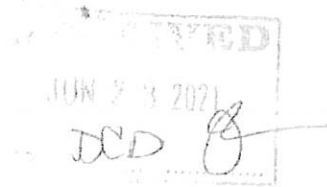
Having three lots, all built since 2002, in compliance with the County riparian setbacks and then granting a large variance [30 ft.] to the fourth, which is much closer to the highwater elevation and thus more impactful to riparian values, seems unfair and unjustified. Additionally, from the aerial photo provided with the application, it appears that all the homes downstream from the applicant adhere to or exceed the 50 ft riparian setback requirement. We fail to see a justification for granting a variance to this property.

Sincerely,

Jeffrey Hunter and Margery Dogotch

34535 Nestucca Blvd, Pacific City, Oregon

*Jeffrey Hunter*  
*Margery Dogotch*



Angela Rimoldi

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From: Barbara Beattie <beattieb55@gmail.com>  
Sent: Tuesday, June 15, 2021 8:52 AM  
To: Angela Rimoldi  
Subject: Re: EXTERNAL: PC set back variance request 851-21-000076-PLNG

Thank you. I see I get the red flag warning on my emails because I am not local. My family purchased a lot on Sunset Drive in 1962. My dad and grandfather built our small cabin that year. My sister and I jointly own the family home that we both enjoy. Though I don't reside in PC I definitely feel part of the community and our tax record would agree!

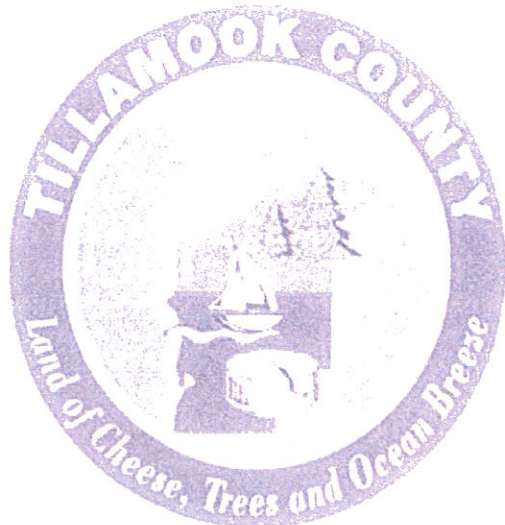
Thanks for considering my comments.

On Tue, Jun 15, 2021 at 8:33 AM Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)> wrote:

Good Morning,

Thank you for your comment on the Riparian Exception Request made. At this time, no decision has been made by staff as we are still within the public comment period. We will document your comments into the file for staff to review during their review for decision.

Best Regards,



Angela Rimoldi / Permit Technician

Tillamook County / Community Development

1510-B Third Street

Tillamook, OR 97141

Phone (503) 842-3435 x3315

[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)

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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.co.tillamook.or.us/gov/CamDev/> to access the appointment scheduler portal.*

From: Barbara Beattie <[beattieb55@gmail.com](mailto:beattieb55@gmail.com)>  
Sent: Sunday, June 13, 2021 8:01 PM  
To: Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
Cc: L Mahar <[burnerlaurie6080@gmail.com](mailto:burnerlaurie6080@gmail.com)>  
Subject: EXTERNAL: PC set back variance request 851-21-000076-PLNG

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RE 851-21-000076-PLNG

Dale Van Lydegraf

We urge you to deny this request for reduction in setback from the river. This is a bad idea. The lot in question can be developed without this change in river setback. The property owners can build with out hardship if this is denied. Strong regulations protect property rights, property values and protect riparian areas. You must consider future consequences by weakening the setback regulation. These consequences are dire for the existing community.

We strongly disagree with Robert Bradley's short ODFW addressing 4.140 (2). He states that expansion into this riparian area would have minimal consequence. We have kayaked frequently in this area and have observed many migratory birds, hawks, eagles, otters, fish and seen signs of beavers at or near this area. The adjacent properties up river also house many animal species. The invasive plants on the property is not a determining factor in deciding the worthiness for preservation. This is simply destruction of a riparian area. Just because a piece of property has been poorly maintained should not be a reason to change the setback as described in Section 4.140 (1). Blackberries and scotch broom do provide cover for many species. It may not be native species but this lot is directly connected to a lush riparian area just upstream. The creatures are there, observed by users of the river and neighbors. Encroaching in this area will significantly impact wildlife. There is no need to change this setback to a minimal amount. The property is not impacted by other setbacks that would prohibit building a home. Allowing this reduction in setback will impact the river shoreline, species that use it, and the views and property values of existing homes.

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Simply because the setback area contains blackberries and scotch broom is not reason enough to allow this variance. Are we to assume if we let these plant species grow on our property we can push our home closer than

current set backs allow? This request would create a precedent to ignore the riparian setbacks designed to protect our shorelines if we just let these bad boy plants grow.

In addition it will create loss of views and property value for the neighbors. It will set a dangerous precedent for other developments in Pacific City. We feel compassion for the neighbors of this lot and the community that they will suffer the losses. This request must be denied to maintain regulations that prevent a "Taking" of neighbors property values and property enjoyment and to protect riparian areas, even if they contain blackberries and scotch broom.

We urge you to deny this request. There is no apparent demonstrated need other than to possibly create a superior view home at the expense of the riparian area and riparian corridor just upstream. Every neighbor's views and property values will be impacted. Keep regulations strong to protect existing property values, protect shorelines and maintain community character by denying this variance.

Barbara Beattie and Laurel Mahar

Home Owners @

35545 Sunset Drive

Pacific City

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Barbara Beattie

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Barbara Beattie

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## Allison Hinderer

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**From:** Allison Hinderer  
**Sent:** Tuesday, June 29, 2021 4:32 PM  
**To:** dalevan@dalesremodeling.com  
**Cc:** Sarah Absher  
**Subject:** Additional Testimony  
**Attachments:** Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF; FW: EXTERNAL: Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF; MX-6240N\_20210629\_153655.pdf

Good afternoon Dale,

Please see attached additional public testimony we have received.

Director Absher will do her best to contact you by Friday to discuss how to move forward.

Thanks!



Allison Hinderer | Office Specialist 2  
TILLAMOOK COUNTY | Community Development | Surveyor's Office  
1510-C Third Street  
Tillamook, OR 97141  
Phone (503)842-3423 ext. 3423  
[ahinderer@co.tillamook.or.us](mailto:ahinderer@co.tillamook.or.us)

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**Allison Hinderer**

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**From:** Sarah Absher  
**Sent:** Tuesday, June 29, 2021 10:45 AM  
**To:** Allison Hinderer  
**Subject:** Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF  
**Attachments:** Dept Comm. Dev letter 6-24-20021.docx; Original deed for lot 118 Nestucca Ridge Development.pdf; Original lot 117 Deed to Jeff and Margie.pdf; 1998\_99 \_advertising\_from\_nestucca\_ridge\_development\_001.jpg; Setback Restriction Lot # 118.pdf

Hello Allison,

Additional testimony below and attached.

Sincerely,  
Sarah

**From:** Jeff Hunter <jeffhunter1859@gmail.com>  
**Sent:** Thursday, June 24, 2021 4:23 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Archangeli@tucsonartisanbuilders.com  
**Subject:** EXTERNAL: Re Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF

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Ms Absher,

This is a follow-up to our objections to granting the above-referenced riparian exception for development. Additionally, we are providing evidence of our view protection easement across the subject lot in form of deeds to our property and that of Mr. Lydergraf. Also the separate legal and map references to this easement and a sales flyer from when we purchased the property with easement included.

We have other points to make as well why this variance is a bad idea.

We apologize that this makes more work for you and your staff. But correcting this now may save a great deal of time later.

Cordially,

Jeffrey Hunter 541 490 6006  
Margie Dogotch 541 490 7529

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Sarah Absher, CFM, Director  
Department of Community Development  
1510-B Third  
Tillamook, Oregon 97141

Reference: Riparian Exception Request #851-21-000076-PLING: Lydengraf.

Dear Ms. Absher,

Two days ago we sent via registered mail and also by email an objection to approval of this 20 ft. construction set back variance to the designated Riparian area. This objection was made based on fairness to the other Nestucca Ridge homeowners with Nestucca River frontage who abided by the rules. Simple observation shows the low shore areas along the tidewater portion of this lot are part of the best preserved section left within the urban portion of Pacific City.

That should settle the matter. But there are other objections in addition:

1. We own lot R4S10E 19CB 12200 directly to the north and have a view easement over the subject lot. This provides an additional no-build area of approximately 12 to 14 ft west of the designated riparian area. Evidence of said easement is found in the two attached recorded Warranty Deeds for our lot 12200 and adjacent lot 12300 plus attached map and legal description. This precludes development in the Riparian area.
2. Speaking with the former owner, Charles Gehling and the Realtors involved from Shorepine realty, we understand Dale Van Lydengraf was presented with all this information in writing prior to purchase and was well aware of this limitation to his building envelope.
3. We understand there is a fairly recent precedent granting a variance to a property nearby the subject to construct a shed in the 50 ft setback from the mean high water mark. That is a different situation. There were no riparian values there because the lot was rip rapped long ago leaving a level, dry back yard, --unless irrigated-- ending in the rip-rap.
4. It has been difficult for us small river frontage owners to fit houses on these smaller lots. But the 50 ft riparian setback is a good rule for the long term health of our struggling Nestucca River. Upon more careful reading of Mr. Robert Bradley's ODFW biologist's report, we strongly object to his characterization of this riparian area as being in poor condition. His description that it is covered primarily with introduced grasses and invasive blackberries and scotch broom is simply not true. First, much of this area is low elevation and as witnessed by us, regularly floods in the winter time. The former owner who sold this property this past March regularly kept the blackberries and scotch broom cut out. He left a few scotch broom plants that are favorites of the deer that regularly, almost daily, use that area. The deer eat the tender shoots and these plants look like manicured shrubs from an English garden.  
The grasses may not be native but they provide good riparian cover. There are several old snags as well that provide cover and hunting perches for the blue herons, king fishers and river-otter. Salmon smolt and many other varieties of small fish feed regularly in those grasses at high tide. We've observed this for twenty-two years. Mr. Bradley is correct that much of the riparian zone has been abused. But that's not true for the long Riparian area bordering the Nestucca Ridge Development. And in fact, though quite small in size, this habitat subject to the variance proposal is among the best habitat still left.

Cordially,

Jeffrey Hunter – 541 490 6006  
Margie Dogotch-541 490 7529

BOOK 415 PAGE

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AMER

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FIRST

THIS SPACE RESERVED FOR RECORDER S USE

653781

After recording return to: Roger M Duncan 15627 Broadway Snohomish, WA 98296

Until a change is requested all tax statements shall be sent to the following address:

Roger M. Duncan 15627 Broadway Snohomish, WA 98296

Escrow No 00150021 Title No. 653755

#### **STATUTORY WARRANTY DEED**

NESTUCCA RIDGE DEVELOPMENT, INC., an Oregon Corporation as an estate in fee simple, Grantor, conveys and warrants to ROGER . DUNCAN and JANET F. DUNCAN, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein

See Exhibit "A" attached hereto and made a part hereof

*Lot 118. Nestucca Ridge 3*

This property is free of liens and encumbrances, EXCEPT:

See Exhibit "A" attached hereto and made a part hereof

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS, BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$79,900.00 (Here comply with the requirements of ORS 93.030)

Dated this

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1<sup>st</sup> day of February, 2000.

Nestucca Ridge Development, Inc.

By: m

Mary J. Jones, President

STATE OF OREGON County of Tillamook

\$ ss.

This instrument was acknowledged before me on this M day of Belaruary by Mary J. Jones as president of Nestucca Ridge Development 2000

uce Money

No:ary Public for Oregon

**DENICE TONEY**

My commission expires 07/02/2000

OFFICIAL SEAL

DENICE TONEY NOTARY PUBLIC-OREGON .  
COMMISSION NO. 055509 Vlt COMMISSION EXPIRES JULY 02 2000

EXHIBIT "A"

Lot 118, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision Plat recorded June 14 1995, in Plat Cabinet B Slide 440, Tillamook County Records. TOGETHER WITH an undivided interest in Common Areas of NESTUCCA RIDGE

SUBJECT TO a building setback line more particularly described as follows: Beginning at the most Southerly Southwest corner of Lot 118, Nestucca Ridge 3, in Tillamook County, Oregon thence South 57° 54'39" East 74.72 feet to a point; thence South 61° 34'00" East 13.75 feet to a point which is the point of beginning of the setback line to be described thence North 29°34'50" East 56.00 feet to the

intersection of the North line of said Lot 118, Nestucca Ridge 3 and the terminus of said setback line. No portion of the structure or improvements situated on Lot 118 will be located Easterly of the above described building setback line with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 18.3 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.

Subject to the following:

1. Regulations, including levies, liens, assessments, rights of way and easements of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY.
2. The rights of the public in and to that portion of the premises herein described lying within the limits of roads, streets or highways.
3. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of BIG NESTUCCA RIVER and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
4. Any adverse claim based on the assertion that some portion of said land is now or at any time has been within the boundaries of BIG NESTUCCA RIVER, or the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created. Any adverse claim based on the assertion that BIG NESTUCCA RIVER has moved.
5. Such rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the waters of BIG NESTUCCA RIVER.
6. Easements and setback requirements, including the terms and provisions thereof, as shown on the recorded Plat of NESTUCCA RIDGE 3.
7. Declaration of Protective Covenants, Conditions and Restrictions and Easements of Nestucca Ridge including the terms and provisions thereof, dated March 3 1993 recorded March 3 1993, in Book 348 Page 985 Tillamook County Records  
As amended by First Amendment to Declaration of Protective Covenants,

**Conditions, Restrictions and Easements** recorded May 10, 1993 in Book 350 Page 701, Tillamook County Records.

As amended by Supplemental Declaration of Protective Covenants, conditions and restrictions but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms and provisions thereof, Recorded : May 26, 1994, in Book 360, Page 989, Records of Tillamook County, Oregon.

Second Supplemental Declaration of Protective Covenants, Conditions Restrictions and Easements for Nestucca Ridge, including the terms and provisions thereof, as disclosed by instrument Recorded : July 24, 1996, Book 371 Page 47 Records of Tillamook County, Oregon

8. Regulations and Assessments of Nestucca Ridge Homeowners Association as set forth in Declaration recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.

9. An easement created by instrument, including the terms and provisions thereof, Recorded : March 26, 1993, Book 349, Page 544 Records of Tillamook County, Oregon. In favor of : Tillamook People's Utility District, a municipal corporation (covers additional land)

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I hereby certify that the within instrument was received for record and recorded in the

County of Tillamook, State of Oregon.

witness ay hard and sea1 affixed. JOSEPHINE VOTREQUARY Clerk

OF OREGON

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STATUTORY WARRANTY DEED

NESTUCCA RIDGE DEVELOPMENT, INC, an Oregon Corporation

conveys and warrants to JEFFREY W. HUNTER AND MARGIE E. DOGOTCH, as tenants by the entirety, Grantor, the following described real property free of liens and encumbrances, except as specifically set forth herein: Grantee,

Lot 117, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision Plat recorded JUNE 14, 1995, in Plat Cabinet B, Slide 440, Tillamook County Records. TOGETHER WITH an undivided interest in Common Areas of NESTUCCA RIDGE.

This property is free of liens and encumbrances, EXCEPT: see attached Exhibit "A" attached hereto and mad a part hereof.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$ 65,000.00 (Here comply with the requirements of ORS 93.030)

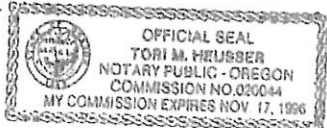
Dated this 11 day of April, 19 99.

Mary J. Jones  
MARY J. JONES, PRESIDENT

STATE OF OREGON  
County of TILLAMOOK } ss.

On this 17 day of AUGUST, 19 95, before me appeared MARY J. JONES and both to me personally known, who being duly sworn, did say that he, the said MARY J. JONES is the PRESIDENT President, and he, the said MARY J. JONES is the Secretary Secretary of NESTUCCA RIDGE DEVELOPMENT, INC. the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and MARY J. JONES and MARY J. JONES acknowledge said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Tori M. Heusser  
Notary Public for Oregon.  
My Commission expires 11/17/96

Title Order No. 652610  
Escrow No. DEBORAS99150252

THIS SPACE RESERVED FOR RECORDER'S USE

After recording return to:  
Jeffrey Hunter  
104 5th St.  
Hood River, OR 97031  
Name, Address, Zip

Until a change is requested all tax statement shall be sent to the following address.  
SAME AS ABOVE

Name, Address, Zip

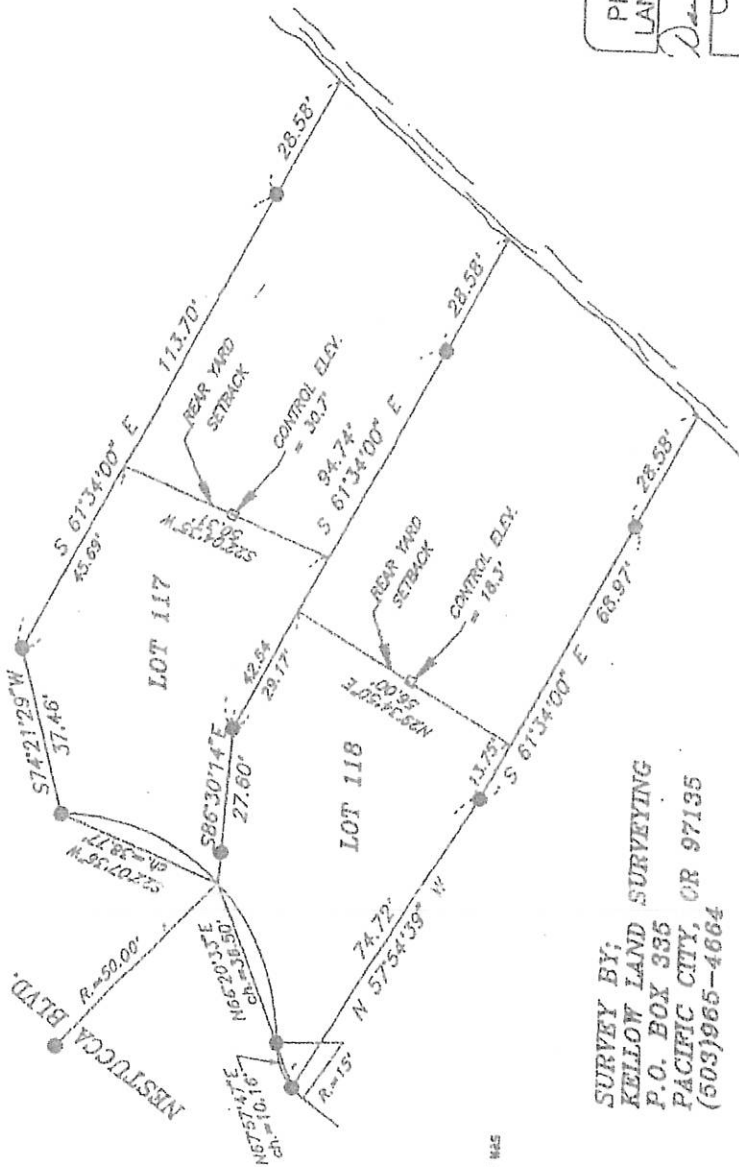
Exhibit "A"

1. Regulations, including levies, liens, assessments, rights of way, and easements of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY.
2. The rights of the public in and to that portion of the premises herein described lying within the limits of roads, streets or highways.
3. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of BIG NESTUCCA RIVER and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
4. Any adverse claim based on the assertion that some portion of said land is now or at any time has been within the boundaries of BIG NESTUCCA RIVER, or the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.  
Any adverse claim based on the assertion that BIG NESTUCCA RIVER has moved.
5. Such rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the waters of BIG NESTUCCA RIVER.
6. Easements and setback requirements, including the terms and provisions thereof, as shown on the recorded Plat of NESTUCCA RIDGE 3.
7. Declaration of Protective Covenants, Conditions and Restrictions and Easements of Nestucca Ridge, including the terms and provisions thereof, dated March 3, 1993, recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.  
As amended by First Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements recorded May 10, 1993, in Book 350, Page 701, Tillamook County Records.  
As amended by Supplemental Declaration of Protective Covenants, conditions and restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms and provisions thereof.  
Recorded: May 26, 1994, in Book 360, Page 989, Records of Tillamook County, Oregon.  
Second Supplemental Declaration of Protective Covenants, Conditions, Restrictions and Easements for Nestucca Ridge, including the terms and provisions thereof, as disclosed by instrument  
Recorded: July 24, 1996, Book 371, Page 47, Records of Tillamook County, Oregon.
8. Regulations and Assessments of Nestucca Ridge Homeowners Association as set forth in Declaration recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.
9. An easement created by instrument, including the terms and provisions thereof,  
Dated: February 25, 1993  
Recorded: March 26, 1993, Book 349, Page 544, Records of Tillamook County, Oregon.  
In favor of: Tillamook People's Utility District, a municipal corporation  
(covers additional land)

Further subject to a building setback line as shown on the attached exhibit "B" and more particularly described as follows: Beginning at the most westerly Northwest corner of Lot 117, Nestucca Ridge 3, in Tillamook County, Oregon, thence North 74° 21' 29" East 37.29 feet to a point; thence South 61° 34' 00" East 45.69 feet to a point; which is the point of beginning of the setback line to be described; thence South 22° 04' 35" West 50.31 feet to the intersection with the South line of said Lot 117, Nestucca Ridge 3, and the terminus of said setback line. No portion of the structure or improvements situated on Lot 117 will be located Easterly of the above described building setback line, with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 30.7 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.



EXHIBIT "B"



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas H. Kellow*

OREGON  
FEBRUARY 3, 1983  
DOUGLAS H. KELLOW  
2027  
RENEWAL DATE: 8/30/97

**SURVEY FOR**  
**NESTUCCA RIDGE DEVELOPMENT, INC.**  
LOTS 117 & 118, NESTUCCA RIDGE 3, IN  
SEC. 19, T. 4 S., R. 10 W.W.M., TILLAMOOK  
COUNTY OREGON

SURVEY BY;  
KELLOW LAND SURVEYING  
P.O. BOX 386  
PACIFIC CITY, OR 97135  
(503)965-4664

SCALE: 1" = 30'  
DATE: JUNE 10, 1997

99379676

I hereby certify that the within instrument was  
received for record and recorded in the  
County of Tillamook, State of Oregon.

APR. 13 10 56 AM '99

BOOK 486 PAGE 351

Witness by *Josephine V. Clark* Clerk  
JOSEPHINE V. CLARK, CLERK



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ADMIN  
PLCP

FOR KETTER  
BY FRONTSIDE

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*Exhibit page 2 of 2*

SETBACK RESTRICTION (TO BE INCLUDED AS A DEED RESTRICTION) ON SALE OF LOT 118, NESTUCCA RIDGE 3

SUBJECT TO a building setback line as shown on the attached exhibit "A" and more particularly described as follows: Beginning at the most Southerly Southwest corner of Lot 118, Nestucca Ridge 3, in Tillamook County, Oregon; thence South 57° 54' 39" East 74.72 feet to a point; thence South 61° 34' 00" East 13.75 feet to a point which is the point of beginning of the setback line to be described; thence North 29° 34' 50" East 56.00 feet to the intersection with the North line of said Lot 118, Nestucca Ridge 3, and the terminus of said setback line. No portion of the structure or improvements situated on Lot 118 will be located Easterly of the above described building setback line, with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 18.3 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.

Exhibit A page 1 of 2

SURVEY BY:  
KELLOW LAND SURVEYING  
P.O. BOX 336  
PACIFIC CITY, OR 97135  
(503)965-4664

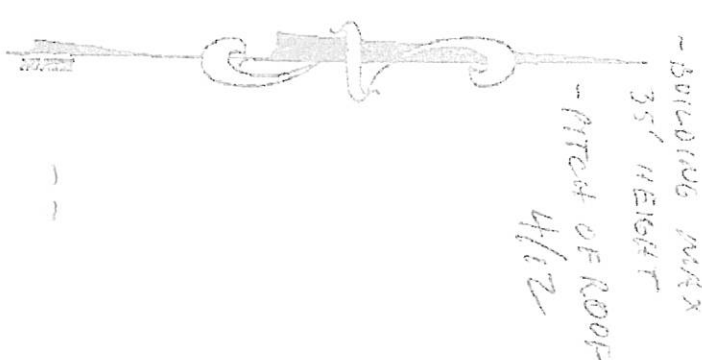
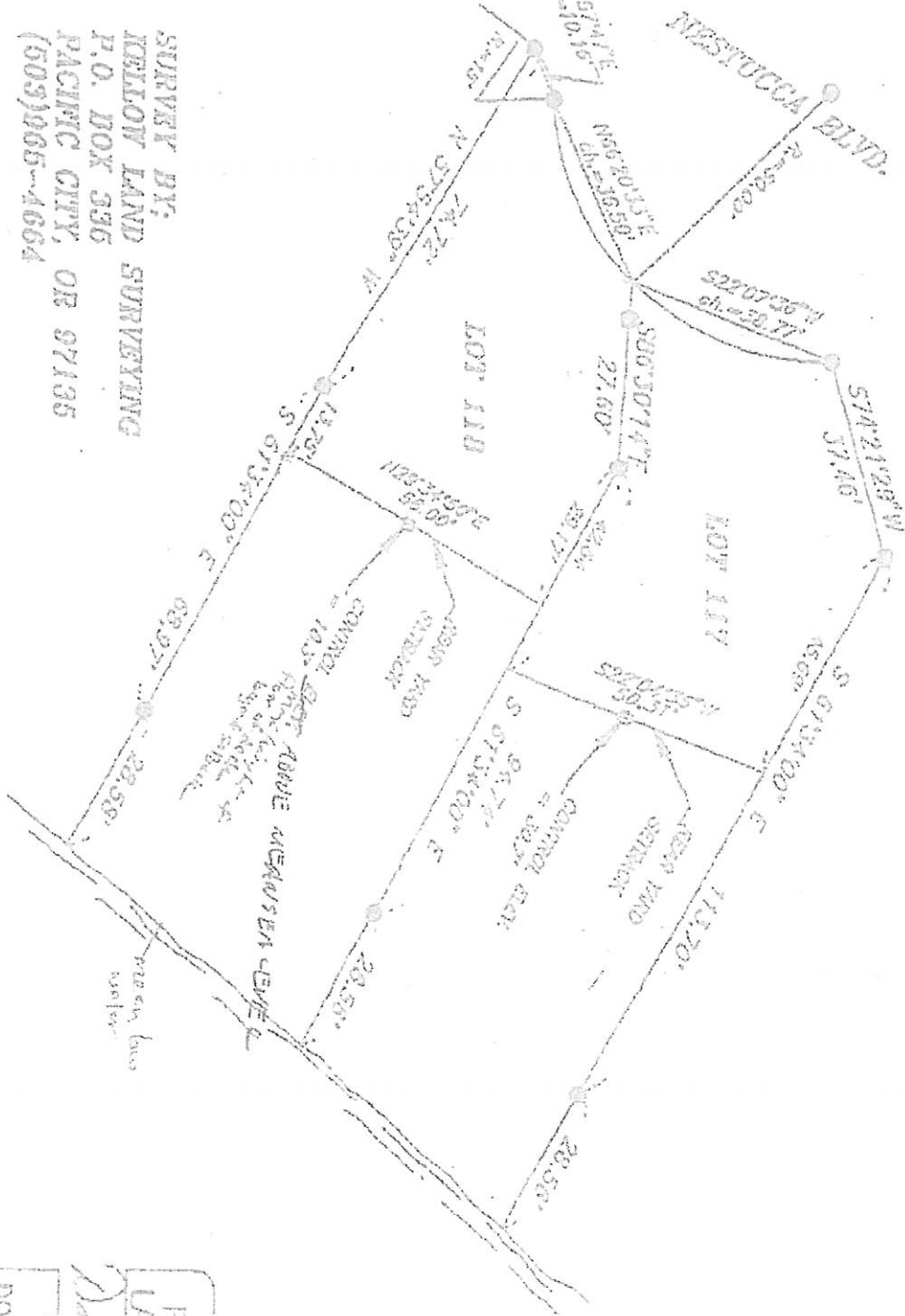
# NESTUCCA RIDGE DEVELOPMENT, INC.

## SURVEY FOR

SCALE: 1" = 30'  
DATE: JUNE 10, 1997

LOTS 117 & 119, NESTUCCA RIDGE 3, IN  
SEC. 19, T. 4 S., R. 10 W.M., TILLAMOOK

CITY OF TILLAMOOK



DEERS - DRIVEN AWAY MAX  
2.2' WIDTH AT  
ROAD - PAVED 10' RD  
SURFACE.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas H. Kellow*

OREGON  
JEROME S. BOB  
DOUGLAS H. KELLOW  
2027

RENEWAL DATE: 07/30/97

**Allison Hinderer**

---

**From:** Sarah Absher  
**Sent:** Tuesday, June 29, 2021 10:50 AM  
**To:** Allison Hinderer  
**Subject:** FW: EXTERNAL: Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF  
**Attachments:** Dept of Comm. Dev-Tillamook 001.jpg

**From:** Jeff Hunter <jeffhunter1859@gmail.com>  
**Sent:** Tuesday, June 22, 2021 6:16 AM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Subject:** EXTERNAL: Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF

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

Ms Absner,  
Please see the attached letter re the riparian exception request noted above. Our letter will also be sent via regular mail today.  
Sincerely,  
Jeff Hunter

**Attention: Sarah Abher, CFM, Director**

Department of Community Development

1510-B Third Street

Tillamook, Oregon 97141

June 22, 2021

Re: Riparian Exception Request #851-21-000076-PLING; Lydengraf

Dear Ms. Absher,

We are neighbors to the north of the property subject to this request for variance to the existing riparian building setback. [Lot 12100, Section 19CB of Township 4 South, Range 10 West]. We and the other two river front lots of Nestucca Ridge Development accessed off of Nestucca Blvd. abided by the Riparian setbacks mapped by Tillamook County. We could have argued it was an inconvenience to our building plans as well. And it needs to be noted that we are all high bank lots further separated from the river by elevation than this subject lot. Siting a home on such small lots and staying in compliance was a challenge for each of us. In fact, your own maps show the flood zone dips into this subject lot more than it does to any of the other three lots to the North thus having more impact on Riparian values than ours.

Having three lots, all built since 2002, in compliance with the County riparian setbacks and then granting a large variance (30 ft.) to the fourth, which is much closer to the highwater elevation and thus more impactful to riparian values, seems unfair and unjustified. Additionally, from the aerial photo provided with the application, it appears that all the homes downstream from the applicant adhere to or exceed the 50 ft riparian setback requirement. We fail to see a justification for granting a variance to this property.

Sincerely,

Jeffrey Hunter and Margery Dogoteh

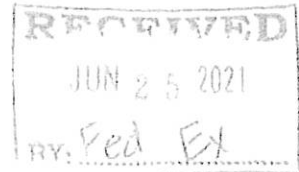
34535 Nestucca Blvd, Pacific City, Oregon

*Jeffrey Hunter*  
*Margery Dogoteh*

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12704 NW 39th Ave

Vancouver WA 98685

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

Dear Tillamook County, Department of Community Planning:

We request that you do not approve the waiver for Lot 11B Nestucca Ridge 3, Map Number 451019CB12300.

We are the owners of the property adjacent to the property for which the waiver is requested. The home has been owned by the family for over 50 years.

The homes along the west side of the river have been built according to the codes at the time they were built. The owner of the property was aware of the challenging terrain and the existing codes at the time he bought the property and now is attempting to mitigate those challenges by requesting waivers which could impact the river, the views and property values of their neighbors.

Many of the houses along the river are older and dated. There is a reasonable possibility the any future buyers would demolish the existing house and request similar waivers for new homes. The county, at that point, would have little ability to justify denial to any requests for waivers. This would change the nature of the river bank which is enjoyed by residents, tourists, fishermen, and boaters. While granting one waiver may seem inconsequential, the impact of the future of the riverbank and the town of Pacific City is not.

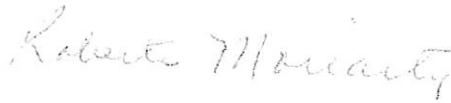
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We sincerely hope you will consider the impact on the neighbors, the history and ambience of the river and the community in making your decision

While doing a search to find out about the owner, we found the enclosed, which is of concern to us because the site has a substantial slope upward to the property to the north and will probably require grading and/or fill.

Thank you.

Sincerely,



Gary and Roberts Moriarty

encl: 2 pages



NEWS

## Salem contractor fined \$84,623 for water quality violations

Tracy Loew Salem Statesman Journal

Published 6:00 a.m. PT Apr. 17, 2020

Oregon environmental regulators have fined a prominent Salem contractor \$84,623 for water quality violations at a Dallas subdivision under construction.

Dale Van Lydegraf, president of Dale's Remodeling and Dale's Homes, was cited for illegally placing fill material in wetlands and a tributary to Rickreall Creek, the state Department of Environmental Quality said in its penalty order.

His company cleared, graded and paved a road in an area designated as a wetland buffer zone. And it failed to comply with permit requirements.

Regulators said Van Lydegraf "acted flagrantly."

"The respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation," they wrote.

The company has appealed the penalty, Joe Fennimore, company vice president and general manager, said.

"This DEQ claim is disputed, and although some DEQ requirements were not known about to be addressed earlier in the process, we are actively working with DEQ to resolve those, and we believe it will be resolved," Fennimore said.

Van Lydegraf has operated Dale's Remodeling in Salem since 1978. He has been on the advisory committee for the Salem-Keizer Public Schools' Career Technical Education Center, and is a past chairman of the SEDCOR Construction Alliance.

He is a past president, vice-president and board director of the Oregon Remodelers Association; and has been president and vice-president of the Oregon Remodelers Association Greater Salem Area.

In July 2017, Dale's Homes, using a limited liability company called Creekside DKV, began building a 56-lot housing development on Applegate Trail Drive and SW Oregon Trail Drive, off Ellendale Road.

The development, called Creekside Estates, sits on a 12-acre site. Rickreall Creek, a tributary of the Willamette River, flows from west to east across the southern border of the site.

**Coronavirus closures:** Marion County adds \$800,000 in grants for small businesses

An unnamed intermittent stream, which discharges to Rickreall Creek, flows from northwest to southeast across the western part of the site. There also are two wetlands on the site.

DEQ inspected the site on June 4, 2019, and found multiple violations. They include:

- Failing to implement required stormwater and sediment control measures.
- Failing to conduct required visual monitoring by a designated erosion and sediment control inspector on at least 65 occasions between January 2019 and January 2020.
- Failing to install adequate sediment fencing, catch basin drain inlets, erosion and sediment controls required for bare, exposed soils, and failing to install an adequate construction entrance.

The company's actions increased pollution from sediment and turbidity, blocking light from submerged vegetation, reducing photosynthesis and dissolved oxygen, decreasing water clarity and causing detrimental effects on aquatic organisms, DEQ wrote.

**COVID-19:** Layoffs push Oregon unemployment claims to nearly 300,000 in four weeks

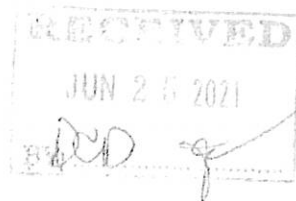
That can impact fish species in the tributary or downstream in Rickreall Creek by smothering fish eggs and invertebrate organisms that serve as a food source for fish.

Dale's Homes also is building houses in Silverton, Keizer and West Salem, according to its web site.

Contact the reporter at [tloew@statesmanjournal.com](mailto:tloew@statesmanjournal.com), 503-399-6779 or follow at [Twitter.com/Tracy\\_Loew](https://twitter.com/Tracy_Loew)

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) )

Denise Pray  
7495 SW Dellrose Ln.  
Portland OR 97223  
503-780-6698



Sarah Absher  
CFM, Director  
Dept. of Community Development  
Willamette County

Re: Repairman Exception Request  
# P51-21-00074  
Plw: Lydegraf

Dear Mrs. Absher:

I am writing in response to the above-referenced matter regarding a repairman exception request by Lali Van Lydegraf.

My house is located just two houses north of the applicant on Destuosa Blvd (34515). We chose that site over 30 years ago and built our house there because of the beautiful views we had up and down the Destuosa. We adhered to the setback requirements by the County as did our neighbors on either side.

I am very disturbed that Willamette County would consider allowing an exception to the regulation that we all followed. Allowing such

an exception will seriously impact  
our view and that of our neighbors -

I respectfully submit that you  
do not allow this exception!

Thank you for your consideration.

Denise Bracy

Nestucca River Riparian Zone Background Report

**Contents**

Abstract.....2

Nestucca River Riparian Zone Background Report.....3

History .....4

Location .....6

Waterway .....7

Project Description.....7

Geology.....7

Riparian Landscape .....8

Affected Species:.....9

References.....11

This report provides a brief history of the Pacific City, Nestucca River flood mitigation and habitat impacts when riparian zones are reduced or destroyed.

### **History**

In 1854, settlers began to arrive due to the rich fishing opportunities in the region. In 1893, Thomas Malaney platted the town of Ocean Park (now Pacific City). Unfortunately, in 1894 the original lots were wiped out due to flooding and the town was relocated to higher ground. In 1925, overfishing from gillnetting depleted the bay and fisherman switched to surf-launched dories that still exists today. Beginning in the 1920's tourism became the mainstay of the economy lasting until the Great Depression of 1930's. After WWII, Pacific City experienced a boom from area logging, improved fishing, and tourism. Unfortunately, routine and consistent flooding adversely impacted the cities growth and routinely flooded the community to include the original parker through truss bridge constructed in 1940. Around 1950, Pacific City in cooperation with Tillamook County, advocated to the State of Oregon for improved vehicle access and bank stabilization to allow for community development and growth. As a result, new and improved roads were installed in the community and the USACE began installation of extensive rip-rap bank stabilization to the Nestucca river to reduce flooding and to allow development along the riverbank. Bank stabilization was ongoing throughout the 1960's and into the 1970's with the west bank of the Nestucca River being completed in 1960. Construction of the original homes along the original Nestucca Blvd was completed in 1971, and shortly after the Rip-Rap stabilization project was completed. In 1973, the original bridge was replaced above the projected flood zone to support larger commercial traffic in the region. The plot of land requesting a riparian exemption is located on the west bank at the first northern termination point of the construction project which was completed in 1960. This end point is approximately 0.70

miles upstream of where the rip-rap bank stabilization began, an area now known as the “Tillamook County parking and boat landing” off Sunset Drive. Inspection of the Rip-rap bank stabilization indicates that the bank stabilization was completed using shore-based methods as opposed to barge or water-based operations. No available USACE records indicated any barge-based bank stabilization occurred on the Nestucca River. This is important because natural topography in the region prohibited shore-based soil stabilization beyond the current termination point. Beginning after 34555 Nestucca Blvd property, the original river bank was un-modified until Parker Street and the Ferry St Bridge where rip-rap bank stabilization continued. This appears to be due to the sloping hillside topography that would not be impacted by seasonal flooding. As a result, approximately 0.50 miles of the west bank of the Nestucca river is the original relatively un-disturbed riparian zone. In 1965, the west bank of the Nestucca River began to experience significant erosion beyond the rip-rap soil stabilization just north of 34555 Nestucca Blvd; the erosion was so significant, that it threatening the newly constructed homes and undermining the river bank. As result, the USACE placed and anchored a large 100 year plus cedar tree that was approximately 10’ in diameter and over 200’ long along the edge of the bank to prevent the undercutting of the bank. Remints of this large log still remain today and are cabled to the shoreline along 34555 Nestucca Blvd. This was and remains a recommended and approved river bank erosion control system for river banks. In addition to the large tree, the root ball and tree base were also placed approximately 50’ from the bank and cabled to catch to the larger log for additional tidal sediment collection to prevent additional erosion. We know today that it also improves fish habitat and support aquatic and plant life in the riparian zone of flowing bodies of water. Unfortunately, during the flood of Dec 10, 2015 this root ball broke free and

now resides approximately 500 yards downstream. (Google image below from showing remaining root ball in front of 34685 Nestucca Blvd)



*Figure 1 Remaining Root Ball*

Interviews conducted with local residents indicate the proposed construction location requesting the riparian variance has not been altered or developed at any point in history. All evidence indicates that the riparian zone at the end of Nestucca Blvd has not been altered by existing or past development activities in the area since at least 1961.

#### **Location**

The proposed project is located 1,500 feet upstream from the northwest corner of the bridge that crosses the Little Nestucca River (River Mile 4.0), at Pacific Ave, 0.1 miles west of Pacific City, (Latitude 45°12'20.69"N, Longitude 123°57'47.43"W) in Tillamook Co., Oregon.





Figure 2 Proposed Project Site

**Waterway**

Little Nestucca River (River Mile 4.12).

**Project Description**

Obtain Riparian Variance for the purpose of constructing a new single-family home on an existing residential lot.

**Geology**

Medium stiff to stiff, clayey silt underlain with basalt and mudstone is typical in this area resting under a typical Oregon dune from the Coast Mountain range. (Based off HG. Schlicker & Associates Geotech report for the Seawatch development in Mar 18, 2005. And USDA, Forest Service geology report.)



### Riparian Landscape

The riparian area between the estuary and the 50-foot setback is comprised on native grasses and plants endemic to the area and has the presence of some invasive species that are consistent with other protected riparian areas of the Nestucca River.

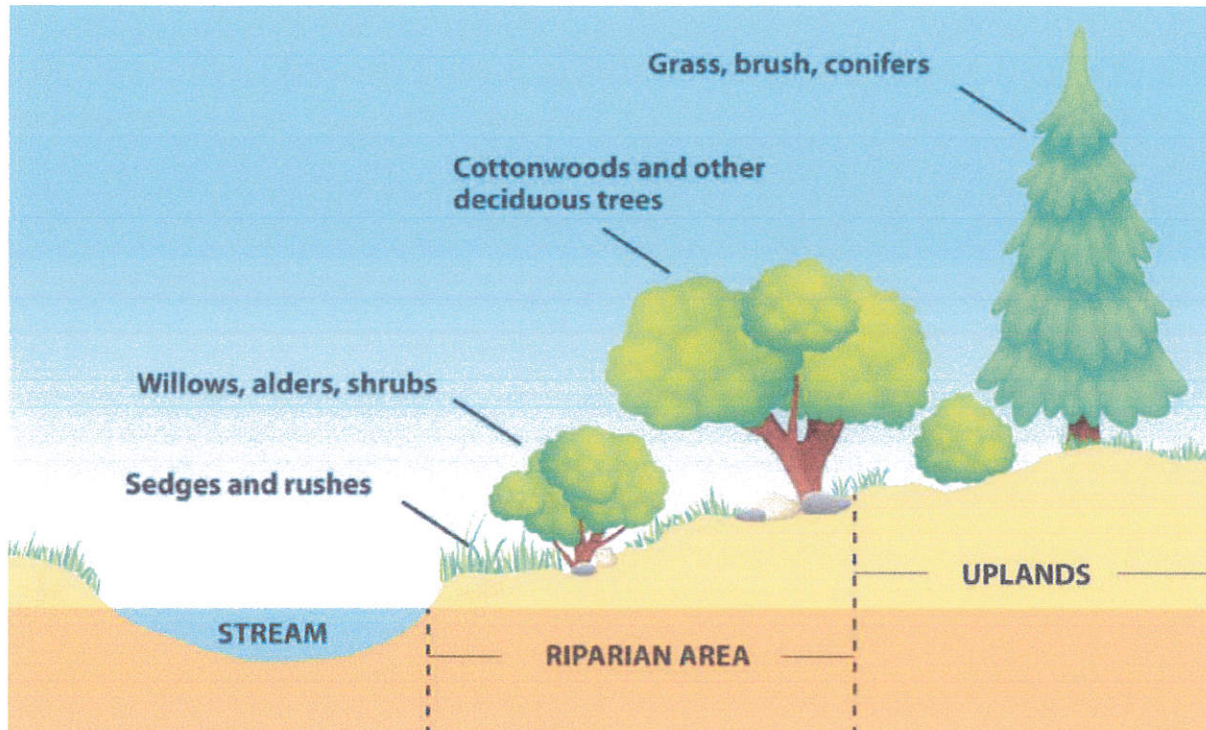


Figure 3 Typical Riparian Ecosystem (Project Watershed)

Images of the area do not show that the invasive species have “taken over” the riparian area as indicated by ODFW, only that they are present and consistent with adjacent riparian areas along the river. It is important to note, that the degradation of fresh/salt water habitat through the reduction of riparian areas adversely impacts stream substrate, stream flow, water quality and the cumulative impacts have shown to impact fish passage and limit areas to spawning and rearing habitats. Tidal exchanges in this area support and provide tidal wetland that support ESA listed species as well as other native wildlife. The riparian area immediately adjacent to the proposed variance has a well-established tidal wetland with an active and abundant ecosystem. The Little Nestucca River is listed on the Oregon Department of Environmental Quality 303(d) list for

water quality limited streams for fecal coliform (ODEQ 2010), largely associated with the floodplain use by dairy cows. The removal of the riparian vegetation to within 30' of the high-water mark could result in the collapse of the remaining riparian zone or and adversely impact adjacent property owners and their existing riparian zone through increase erosion. The 50' set-back is a science-based requirement that has shown historically to provide a minimum level of protection for the riparian zone and allow the maximum use of the ecosystem for residential and commercial development. This standard has been applied in the proposed project area and across the state with documented success in protection and preserving riparian zones. There are no other homes located in Pacific City have been constructed with a riparian reduction since its establishment became law in 1981 in Oregon. The most prevalent structures in the area that are constructed within the riparian zone are the old Pacific City Hardware store that has been converted to a residence adjacent to the bridge, Nestucca Adventures building with their boat launch and dock system and the River House Restaurant that was a fish processing site in the 1920's. All are were constructed prior to the set-back requirements of 1981 and all were in support of commercial businesses in the community. In addition, all experience some level of flooding in 2015 as well as previous floods in the area.

#### **Affected Species:**

Below is a summary of affected species in proposed project area that are supported by the riparian zone. This information is provided from the NMFS Consolation Number: 2011/05745 that was utilized for a culvert replacement project just a few miles from the Nestucca Blvd proposed project site. Based on historical information, the loss or reduction of the riparian zone has the potential to adversely impact critical habitat for ESA listed species.

Affected Species and Determinations:

ESA-Listed Species	ESA Status	Is the action likely to adversely affect this species or its critical habitat?	Is the Action likely to jeopardize this species?	Is the action likely to destroy or adversely modify critical habitat for this species?
Oregon Coast coho salmon	T	Yes		
North American green sturgeon	T	Yes		
Pacific eulachon	T	Yes		

Fishery Management Plan that Describes EFH in the Action Area	Would the action adversely affect EFH?	Are EFH conservation recommendations provided?
Pacific Coast Salmon	Yes	
Pacific Coast Groundfish	Yes	
Coastal Pelagic Species	Yes	

## References

- Moynahan, Kevin, Sep 21, 2012, USACE Biological Option for Higdon Tide Gate Replacement Little Nestucca River (Corps No.: NWP-2011-447)
- Pacific City Orgon (information page) wikipedia.org
- Luke, NFN (Mar 9, 2018), Pacific City Bridge, Tillamook County, Oregon. Source: Bridgehunter.com
- USDA website, [Siuslaw National Forest - Nature & Science \(usda.gov\)](https://www.usda.gov/land-man/land-tenure/riparian-lands)
- Geotechnical Investigation, Proposed Seawatch Development, Mar 18, 2005. [GeotechReport.pdf \(shorepineproperties.com\)](#)
- Ways to Control River Bank Erosion, Sep 20, 2019. [Ways to Control River Bank Erosion - SoilErosion.com](#)
- Riparian Lands Incentive Program, Manual for Landowners, ODFW Oct 2019. [RLTIP\\_Manual for Landowners.pdf \(state.or.us\)](#)
- Pacific City Flooding, Dec 10, 2015 Video. [Pacific City, OR Flooding - December 10th, 2015 - YouTube](#)



NOTICE OF APPEAL TO THE TILLAMOOK COUNTY



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#851-21-000366-PLNG  
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OFFICE USE ONLY

Hearing Scheduled \_\_\_\_\_  
Public Notice Completed \_\_\_\_\_  
Property Owner Notice Completed \_\_\_\_\_  
Fee Paid \_\_\_\_\_

APPELLANT:

1. Name Jeff W. Hunter and Margie E. Dogotch

Only personal names. If you are also representing an organization, place its name on line number 4.

2. Address 999 Montana Court, Hood River, OR. 97031

3. Telephone (Daytime) 541 490 6006 JH, 541 490 7529 MD

4. Representing \_\_\_\_\_  
*Place your organizations name here IF you are an official representative of an organization that has authorized this appeal. Proof of such authorization must be shown by the time of the public hearing. (You need not represent an organization in order to file an appeal.)*

5. Date of  Planning Department  Planning Commission Decision (circle one)  
SEPT. 8TH 2021

6. Action Appealed (e.g. Variance, Condition Use Permit, etc.)  
variance to Riparian Set-Back #851-21-000076-PLNG: lydegraf

7. Decision Appealed (Denied, Granted) riparian exception request granted

8. Name of Applicant Dale Van Lydegraf

9. Additional Comments riparian area is in good functioning condition and contiguous to 200 yards of good functioning habitat  
more comments to follow

You will be notified by mail of the date and time set for the public hearing before the Planning Commission.

Date Sept. 15th 2021 Signature Jeff W. Hunter  
Margie Dogotch

To Tillamook County Planning Commission:  
Honorable Commissioners: Chairman Mr. Heckenroth  
Members: Roberts, Dusele, Gillas, LeFrance, Allen, Sievert,  
1510 B Third Street  
Tillamook, Or. 97141

October 16, 2021

Appeal of Riparian Variance # 851-21-000076-PLING: Lydegraf approval.

Dear Commissioners,

My wife and I and our neighbors to the south have appealed the above referenced approval based on several points. The pertinent language in Tillamook County's ordinances states that a minimum of 50 ft. of ALL riparian areas along Tillamook streams of 15 ft. channels or greater are to be protected from development unless [2]. d. A minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values. The ordinance is clear that the planners must rely on Oregon Dept. of Fish and Wildlife and no one else to determine "habitat values".

What happens when the ODFW letter used to allow this encroachment is demonstrably in error on its description and omits addressing other factors that are used by professional fisheries and forest biologists to determine the functionality of riparian areas?

We ask you to take a look at Mr. Bradley of ODFW's letter in your packet. Yes, the adjoining area is highly developed. This is one of only three possible lots left undeveloped along the west bank of the Nestucca from Woods to the Nestucca bridge. The letter states, "The [riparian area] is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties [especially the north side]."

Four reasons are given by Mr. Bradley as to why this encroachment should be allowed. Only one has any basis on simple 'observable' fact. This property, which is completely visible from ours and the other adjacent property, has one small blackberry and approximately two scotch broom plants [which were left by the recent previous owner to be grazed by the deer]. Yes, there is reed canary grass which now is ubiquitous up and down the Nestucca. The letter goes on to say granting this variance would be "similar to adjacent properties (especially the north side)". Again, this is simply not true. And this is easily visibly verifiable.

Granting this variance will make this property the only development encroachment into the 50ft riparian area to the North all the way to the second house on the west side of the river encountered in Woods. Our home and deck, adjacent to the north, is just over the 50 ft. mark measured vertically and horizontally from the high water mark as required by the ordinance. Because of topography to the north and restraint exercised by other lot owners, the rest of the Nestucca Ridge development as described to the north is considerably further removed from the river. That protection is contiguous and uninterrupted all the way to and including the lot in question, lot 118 phase 3, Nestucca Ridge. Three out of four points of evidence that are demonstrably false does not lead to the conclusion that this encroachment will lead to "minimal additional biological consequences".

Nearly all of the lots to the south were rip-rapped in the 60s and early 70s with their riparian areas severely degraded if not obliterated. Yet even these homes on similar sized 50 ft. wide lots were



generally constructed at least 50 ft. from their high water marks, particularly the adjacent Morarity home to the south of the lot requesting the variance.

Additionally, the language of the ordinance is specific in that it gives ODFW the charge of determining "Habitat Values". But your ordinance does not grant ODFW the right to determine whether "a minimal amount of riparian vegetation is present, AND (2) dense development in the general vicinity significantly degrades riparian values". Mr. Bradley dismissed both with inaccurate statements.

The area in question is described in the background reports for creating the Tillamook County Comprehensive Plan. Your own plan clearly calls for preservation of riparian areas particularly along the estuarine stretches of Tillamook's rivers. A whole section is devoted to the river running from Woods to Pacific City. This includes lot 118 in question. Please note the areas underlined.

#### TABLE OF CONTENTS ESTUARINE RESOURCES GOAL 16

5 MANAGEMENT UNIT: 6 ZONING: Estuary conservation 1 (EC1) CATEGORY: Area needed for maintenance and enhancement of biological productivity. Estuarine area adjacent to existing development of moderate intensity not otherwise needed for preservation or development.

DISCUSSION: Habitat Type Acres % Habitat Type by Class intertidal marsh (2.5.11) 1.10 .5 6 EC1 is a fringing marsh adjacent to developed shorelands in Pacific City. Adjacent shorelands are included within a Neighborhood Commercial (C-1) and a High Density Urban Residential (R-3) zone.

MANAGEMENT UNIT: 7 ZONING: Estuary Natural (EN) CATEGORY: Major tract of salt marsh and tideflat. DISCUSSION: Habitat Type Acres % Habitat Type by Class intertidal marsh (2.5.12, 2.5.11) 9.6 4.6 intertidal flat (2.2.1) 7.0 1.7

7 EN contains the largest tracts of intertidal marsh and intertidal flat between Pacific City and Woods. Although 7 EN is adjacent to developed shorelands zoned Neighborhood Commercial (C-1), High Density Urban Residential (R-3) and Medium Density Urban Residential (R-2), the adjacent development has not impacted this management unit. The large size of the intertidal marsh and intertidal flat habitats within 7 EN (compared to other intertidal marsh and intertidal flat habitats between Pacific City and Woods) justifies the □major tract□ designation.

Lands mapped as 'Major tract' were meant to be preserved to protect riparian values.

Additionally the ordinance says: "Exemptions from the riparian setback shall be the minimum necessary to accommodate the proposed use after the yard opposite the riparian area has been reduced to a width of no less than ten feet". Where is the 'Need'? This lot is 5 ft wider than our lot. We built to the 50ft set back and still managed a 2100 sq. ft. home. How is the need for a larger home established? Who decides? Is it county policy that the owner's self determined 'need' for a larger home trumps the Tillamook County's own designation of this area as a major tract which the plan states clearly is to be preserved?

There is one other low elevation river lot left towards the middle of Nestucca Ridge's long undeveloped shoreline. Will this variance be used later to allow a home there built down to 30 ft. from the water? According to your comprehensive plan's back ground report riparian areas in Tillamook County comprise less than 1% of the land mass yet are critical to 75% of terrestrial wildlife and 100% of our fish populations. They should be preserved unless there is some overriding need. Mr. Lydegraf bought

this lot knowing of the 50 ft. riparian set back and other even more restrictive building limitations. His request does not meet the standards.

We ask you to deny this application. It doesn't meet your own standards. IF not denied, please at least grant a postponement to provide an honest assessment of this riparian area by someone more qualified than the evidence shows in the case of the ODFW letter you have before you.

Thank you for your time and consideration,

Jeff Hunter and Margie Dogotch

**Attention: Sarah Abher, CFM, Director**

Department of Community Development

1510-B Third Street

Tillamook, Oregon 97141

June 22, 2021

Re: Riparian Exception Request #851-21-000076-PLING: Lydengraf

Dear Ms. Absher,

We are neighbors to the north of the property subject to this request for variance to the existing riparian building setback. [Lot 12100, Section 19CB of Township 4 South, Range 10 West]. We and the other two river front lots of Nestucca Ridge Development accessed off of Nestucca Blvd. abided by the Riparian setbacks mapped by Tillamook County. We could have argued it was an inconvenience to our building plans as well. And it needs to be noted that we are all high bank lots further separated from the river by elevation than this subject lot. Siting a home on such small lots and staying in compliance was a challenge for each of us. In fact, your own maps show the flood zone dips into this subject lot more than it does to any of the other three lots to the North thus having more impact on Riparian values than ours.

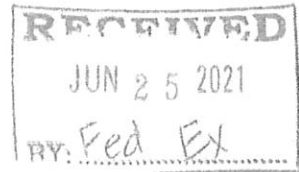
Having three lots, all built since 2002, in compliance with the County riparian setbacks and then granting a large variance [30 ft.] to the fourth, which is much closer to the highwater elevation and thus more impactful to riparian values, seems unfair and unjustified. Additionally, from the aerial photo provided with the application, it appears that all the homes downstream from the applicant adhere to or exceed the 50 ft riparian setback requirement. We fail to see a justification for granting a variance to this property.

Sincerely,

Jeffrey Hunter and Margery Dogotch

34535 Nestucca Blvd, Pacific City, Oregon

*Jeffrey Hunter*  
*Margery Dogotch*



12704 NW 39th Ave  
Vancouver WA 98685

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

Dear Tillamook County, Department of Community Planning:

We request that you do not approve the waiver for Lot 11B Nestucca Ridge 3, Map Number 451019CB12300.

We are the owners of the property adjacent to the property for which the waiver is requested. The home has been owned by the family for over 50 years.

The homes along the west side of the river have been built according to the codes at the time they were built. The owner of the property was aware of the challenging terrain and the existing codes at the time he bought the property and now is attempting to mitigate those challenges by requesting waivers which could impact the river, the views and property values of their neighbors.

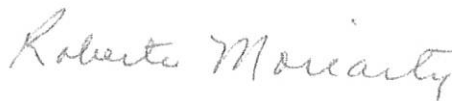
Many of the houses along the river are older and dated. There is a reasonable possibility the any future buyers would demolish the existing house and request similar waivers for new homes. The county, at that point, would have little ability to justify denial to any requests for waivers. This would change the nature of the river bank which is enjoyed by residents, tourists, fishermen, and boaters. While granting one waiver may seem inconsequential, the impact of the future of the riverbank and the town of Pacific City is not.

We sincerely hope you will consider the impact on the neighbors, the history and ambience of the river and the community in making your decision

While doing a search to find out about the owner, we found the enclosed, which is of concern to us because the site has a substantial slope upward to the property to the north and will probably require grading and/or fill.

Thank you.

Sincerely,



Gary and Roberta Moriarty

encl: 2 pages

## NEWS

# Salem contractor fined \$84,623 for water quality violations

**Tracy Loew** Salem Statesman Journal

Published 6:00 a.m. PT Apr. 17, 2020

Oregon environmental regulators have fined a prominent Salem contractor \$84,623 for water quality violations at a Dallas subdivision under construction.

Dale Van Lydegraf, president of Dale's Remodeling and Dale's Homes, was cited for illegally placing fill material in wetlands and a tributary to Rickreall Creek, the state Department of Environmental Quality said in its penalty order.

His company cleared, graded and paved a road in an area designated as a wetland buffer zone. And it failed to comply with permit requirements.

Regulators said Van Lydegraf "acted flagrantly."

"The respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation," they wrote.

The company has appealed the penalty, Joe Fennimore, company vice president and general manager, said.

"This DEQ claim is disputed, and although some DEQ requirements were not known about to be addressed earlier in the process, we are actively working with DEQ to resolve those, and we believe it will be resolved," Fennimore said.

Van Lydegraf has operated Dale's Remodeling in Salem since 1978. He has been on the advisory committee for the Salem-Keizer Public Schools' Career Technical Education Center, and is a past chairman of the SEDCOR Construction Alliance.

He is a past president, vice-president and board director of the Oregon Remodelers Association; and has been president and vice-president of the Oregon Remodelers Association Greater Salem Area.

In July 2017, Dale's Homes, using a limited liability company called Creekside DKV, began building a 56-lot housing development on Applegate Trail Drive and SW Oregon Trail Drive, off Ellendale Road.

The development, called Creekside Estates, sits on a 12-acre site. Rickreall Creek, a tributary of the Willamette River, flows from west to east across the southern border of the site.

**Coronavirus closures:** Marion County adds \$800,000 in grants for small businesses

An unnamed intermittent stream, which discharges to Rickreall Creek, flows from northwest to southeast across the western part of the site. There also are two wetlands on the site.

DEQ inspected the site on June 4, 2019, and found multiple violations. They include:

Failing to implement required stormwater and sediment control measures.

Failing to conduct required visual monitoring by a designated erosion and sediment control inspector on at least 65 occasions between January 2019 and January 2020.

Failing to install adequate sediment fencing, catch basin drain inlets, erosion and sediment controls required for bare, exposed soils, and failing to install an adequate construction entrance.

The company's actions increased pollution from sediment and turbidity, blocking light from submerged vegetation, reducing photosynthesis and dissolved oxygen, decreasing water clarity and causing detrimental effects on aquatic organisms, DEQ wrote.

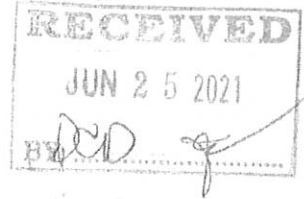
**COVID-19:** Layoffs push Oregon unemployment claims to nearly 300,000 in four weeks

That can impact fish species in the tributary or downstream in Rickreall Creek by smothering fish eggs and invertebrate organisms that serve as a food source for fish.

Dale's Homes also is building houses in Silverton, Keizer and West Salem, according to its web site.

Contact the reporter at [tloew@statesmanjournal.com](mailto:tloew@statesmanjournal.com), 503-399-6779 or follow at [Twitter.com/Tracy\\_Loew](https://twitter.com/Tracy_Loew)

Denise Bray  
7495 SW Dellbrook Ln.  
Portland OR 97223  
503-780-6698



Sarah Abshe  
CFM, Director  
Dept. of Community Development  
Willamette County

re: Reparian Exception Request  
# 851-21-00076  
PING: Lydegraf

Dear Mrs. Abshe:

I am writing in response to the above-referenced matter regarding a reparian exception request by Dale Van Lydegraf.

My house is located just two houses north of the applicant on Westusca Blvd (34515). We chose that site over 20 years ago and built our house there because of the beautiful views we had up and down the Westusca. We adhered to the set back requirements by the County as did our neighbors on either side.

I am very disturb that Willamette County would consider allowing an exception to the regulation that we all followed. Allowing such



an exception will seriously impact  
our view and that of our neighbors.

I respectfully submit that you  
do not allow this exception!

Thank you for your consideration.

Denise Bray

## Angela Rimoldi

---

**From:** Barbara Beattie <beattieb55@gmail.com>  
**Sent:** Tuesday, June 15, 2021 8:52 AM  
**To:** Angela Rimoldi  
**Subject:** Re: EXTERNAL: PC set back variance request 851-21-000076-PLNG

Thank you. I see I get the red flag warning on my emails because I am not local. My family purchased a lot on Sunset Drive in 1962. My dad and grandfather built our small cabin that year. My sister and I jointly own the family home that we both enjoy. Though I don't reside in PC I definitely feel part of the community and our tax record would agree!

Thanks for considering my comments.

On Tue, Jun 15, 2021 at 8:33 AM Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)> wrote:

Good Morning,

Thank you for your comment on the Riparian Exception Request made. At this time, no decision has been made by staff as we are still within the public comment period. We will document your comments into the file for staff to review during their review for decision.

Best Regards,



Angela Rimoldi / Permit Technician

Tillamook County / Community Development

1510-B Third Street

Tillamook, OR 97141

Phone (503) 842-3408 x3315

[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)

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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.co.tillamook.or.us/gov/ComDev/> to access the appointment scheduler portal.*

**From:** Barbara Beattie <[beattieb55@gmail.com](mailto:beattieb55@gmail.com)>  
**Sent:** Sunday, June 13, 2021 8:01 PM  
**To:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** L Mahar <[burnerlaurie6080@gmail.com](mailto:burnerlaurie6080@gmail.com)>  
**Subject:** EXTERNAL: PC set back variance request 851-21-000076-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.]

RE 851-21-000076-PLNG

Dale Van Lydegraf

We urge you to deny this request for reduction in setback from the river. This is a bad idea. The lot in question can be developed without this change in river setback. The property owners can build with out hardship if this is denied. Strong regulations protect property rights, property values and protect riparian areas. You must consider future consequences by weakening the setback regulation. These consequences are dire for the existing community.

We strongly disagree with Robert Bradley's short ODFW addressing 4.140 (2). He states that expansion into this riparian area would have minimal consequence. We have kayaked frequently in this area and have observed many migratory birds, hawks, eagles, otters, fish and seen signs of beavers at or near this area. The adjacent properties up river also house many animal species. The invasive plants on the property is not a determining factor in deciding the worthiness for preservation. This is simply destruction of a riparian area. Just because a piece of property has been poorly maintained should not be a reason to change the setback as described in Section 4.140 (1). Blackberries and scotch broom do provide cover for many species. It may not be native species but this lot is directly connected to a lush riparian area just upstream. The creatures are there, observed by users of the river and neighbors. Encroaching in this area will significantly impact wildlife. There is no need to change this setback to a minimal amount. The property is not impacted by other setbacks that would prohibit building a home. Allowing this reduction in setback will impact the river shoreline, species that use it, and the views and property values of existing homes.

Simply because the setback area contains blackberries and scotch broom is not reason enough to allow this variance. Are we to assume if we let these plant species grow on our property we can push our home closer than

current set backs allow? This request would create a precedent to ignore the riparian setbacks designed to protect our shorelines if we just let these bad boy plants grow.

In addition it will create loss of views and property value for the neighbors. It will set a dangerous precedent for other developments in Pacific City. We feel compassion for the neighbors of this lot and the community that they will suffer the losses. This request must be denied to maintain regulations that prevent a "Taking" of neighbors property values and property enjoyment and to protect riparian areas, even if they contain blackberries and scotch broom.

We urge you to deny this request. There is no apparent demonstrated need other than to possibly create a superior view home at the expense of the riparian area and riparian corridor just upstream. Every neighbor's views and property values will be impacted. Keep regulations strong to protect existing property values, protect shorelines and maintain community character by denying this variance.

Barbara Beattie and Laurel Mahar

Home Owners @

35545 Sunset Drive

Pacific City

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Barbara Beattie

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Barbara Beattie

## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Tuesday, June 29, 2021 10:45 AM  
**To:** Allison Hinderer  
**Subject:** Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF  
**Attachments:** Dept Comm. Dev letter 6-24-20021.docx; Original deed for lot 118 Nestucca Ridge Development.pdf; Original lot 117 Deed to Jeff and Margie.pdf; 1998\_99 \_advertizing\_from\_nestucca\_ridge\_development\_001.jpg; Setback Restriction Lot # 118.pdf

Hello Allison,

Additional testimony below and attached.

Sincerely,  
Sarah

**From:** Jeff Hunter <jeffhunter1859@gmail.com>  
**Sent:** Thursday, June 24, 2021 4:23 PM  
**To:** Sarah Absher <sabshe@co.tillamook.or.us>  
**Cc:** Archangeli@tucsonartisanbuilders.com  
**Subject:** EXTERNAL: Re Riparian Exception Request #851-21-000076-PLNG:LYDEGRAF

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

Ms Absher,

This is a follow-up to our objections to granting the above-referenced riparian exception for development. Additionally, we are providing evidence of our view protection easement across the subject lot in form of deeds to our property and that of Mr. Lydergraf. Also the separate legal and map references to this easement and a sales flyer from when we purchased the property with easement included.

We have other points to make as well why this variance is a bad idea.

We apologize that this makes more work for you and your staff. But correcting this now may save a great deal of time later.

Cordially,

Jeffrey Hunter 541 490 6006  
Margie Dogotch 541 490 7529

Sarah Absher, CFM, Director  
Department of Community Development  
1510-B Third  
Tillamook, Oregon 97141

Reference: Riparian Exception Request #851-21-000076-PLING: Lydengraf.

Dear Ms. Absher,

Two days ago we sent via registered mail and also by email an objection to approval of this 20 ft. construction set back variance to the designated Riparian area. This objection was made based on fairness to the other Nestucca Ridge homeowners with Nestucca River frontage who abided by the rules. Simple observation shows the low shore areas along the tidewater portion of this lot are part of the best preserved section left within the urban portion of Pacific City.

That should settle the matter. But there are other objections in addition:

1. We own lot R4S10E 19CB 12200 directly to the north and have a view easement over the subject lot. This provides an additional no-build area of approximately 12 to 14 ft west of the designated riparian area. Evidence of said easement is found in the two attached recorded Warranty Deeds for our lot 12200 and adjacent lot 12300 plus attached map and legal description. This precludes development in the Riparian area.
2. Speaking with the former owner, Charles Gehling and the Realtors involved from Shorepine realty, we understand Dale Van Lydengraf was presented with all this information in writing prior to purchase and was well aware of this limitation to his building envelope.
3. We understand there is a fairly recent precedent granting a variance to a property nearby the subject to construct a shed in the 50 ft setback from the mean high water mark. That is a different situation. There were no riparian values there because the lot was rip rapped long ago leaving a level, dry back yard, --unless irrigated-- ending in the rip-rap.
4. It has been difficult for us small river frontage owners to fit houses on these smaller lots. But the 50 ft riparian setback is a good rule for the long term health of our struggling Nestucca River. Upon more careful reading of Mr. Robert Bradley's ODFW biologist's report, we strongly object to his characterization of this riparian area as being in poor condition. His description that it is covered primarily with introduced grasses and invasive blackberries and scotch broom is simply not true. First, much of this area is low elevation and as witnessed by us, regularly floods in the winter time. The former owner who sold this property this past March regularly kept the blackberries and scotch broom cut out. He left a few scotch broom plants that are favorites of the deer that regularly, almost daily, use that area. The deer eat the tender shoots and these plants look like manicured shrubs from an English garden. The grasses may not be native but they provide good riparian cover. There are several old snags as well that provide cover and hunting perches for the blue herons, king fishers and river-otter. Salmon smolt and many other varieties of small fish feed regularly in those grasses at high tide. We've observed this for twenty-two years. Mr. Bradley is correct that much of the riparian zone has been abused. But that's not true for the long Riparian area bordering the Nestucca Ridge Development. And in fact, though quite small in size, this habitat subject to the variance proposal is among the best habitat still left.

Cordially,

Jeffrey Hunter – 541 490 6006  
Margie Dogotch-541 490 7529

BOOK 415 PAGE

148

AMER

CAN W

FIRST

THIS SPACE RESERVED FOR RECORDER'S USE

653781

After recording return to: Roger M. Duncan 15627 Broadway Snohomish, WA 98296

Until a change is requested all tax statements shall be sent to the following address:

Roger M. Duncan 15627 Broadway Snohomish, WA 98296

Escrow No. 00150021 Title No. 653755

### **STATUTORY WARRANTY DEED**

NESTUCCA RIDGE DEVELOPMENT, INC., an Oregon Corporation as an estate in fee simple, Grantor, conveys and warrants to ROGER . DUNCAN and JANET F. DUNCAN, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Exhibit "A" attached hereto and made a part hereof

*Lot 118. Nestucca Ridge 3*

**This property is free of liens and encumbrances, EXCEPT:**

See Exhibit "A" attached hereto and made a part hereof

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS, BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

The true consideration for this conveyance is \$79,900.00 (Here comply with the requirements of ORS 93.030)

Dated this

/'\_ day of February, 2000 .

Nestucca Ridge Development, Inc. .

**By: m**

Mary J. Jones, President

STATE OF OREGON County of Tillamook

\$ ss.

This instrument was acknowledged before me on this M day of Belaruary by Mary J. Jones as president of Nestucca Ridge Development 2000

uce Money

No:ary Public for Oregon

**DENICE TONEY**

× My commission expires: 07/02/2000

OFFICIAL SEAL

DENICE TONEY NOTARY PUBLIC-OREGON .  
COMMISSION NO. 055509 Vir COMMISSION EXPIRES JULY 02 2000

EXHIBIT "A"

Lot 118, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision Plat recorded June 14 1995, in Plat Cabinet B. Slide 440, Tillamook County Records. TOGETHER WITH an undivided interest in Common Areas of NESTUCCA RIDGE

SUBJECT TO a building setback line more particularly described as follows: Beginning at the most Southerly Southwest corner of Lot 118, Nestucca Ridge 3, in Tillamook County, Oregon; thence South 57° 54'39" East 74.72 feet to a point; thence South 61° 34'00" East 13.75 feet to a point which is the point of beginning of the setback line to be described; thence North 29°34'50" East 56.00 feet to the



intersection of the North line of said Lot 118, Nestucca Ridge 3 and the terminus of said setback line. No portion of the structure or improvements situated on Lot 118 will be located Easterly of the above described building setback line with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 18.3 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.

Subject to the following:

1. Regulations, including levies, liens, assessments, rights of way and easements of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY.
2. The rights of the public in and to that portion of the premises herein described lying within the limits of roads, streets or highways.
3. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of BIG NESTUCCA RIVER and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
4. Any adverse claim based on the assertion that some portion of said land is now or at any time has been within the boundaries of BIG NESTUCCA RIVER, or the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created. Any adverse claim based on the assertion that BIG NESTUCCA RIVER has moved.
5. Such rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the waters of BIG NESTUCCA RIVER.
6. Easements and setback requirements, including the terms and provisions thereof, as shown on the recorded Plat of NESTUCCA RIDGE 3.
7. Declaration of Protective Covenants, Conditions and Restrictions and Easements of Nestucca Ridge including the terms and provisions thereof, dated March 3, 1993 recorded March 3, 1993, in Book 348, Page 985 Tillamook County Records  
**As amended by First Amendment to Declaration of Protective Covenants,**

**Conditions, Restrictions and Easements** recorded May 10, 1993, in Book 350, Page 701, Tillamook County Records.

**As amended by Supplemental Declaration of Protective Covenants**, conditions and restrictions, but omitting restrictions, if any, **based on race**, color, religion or national origin, imposed by instrument, including the terms and provisions thereof, Recorded : May 26, 1994, in Book 360, Page 989, Records of Tillamook County, Oregon.

Second Supplemental Declaration of Protective Covenants, Conditions Restrictions and Easements for Nestucca Ridge, including the terms and provisions thereof, as disclosed by instrument Recorded : July 24, 1996, Book 371 Page 47, Records of Tillamook County, Oregon.

8. Regulations and Assessments of Nestucca Ridge Homeowners Association as set forth in Declaration recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.

**9. An easement** created by instrument, including the terms and provisions thereof, Recorded : March 26, 1993, Book 349, Page 544 Records of Tillamook County, Oregon. In favor of : Tillamook People's Utility District, a municipal corporation (covers additional land)

**10.00**

1.00 **DEPUTY**

**10.**

991

**9.00**

148

09 PM 900

**D0387917**

I hereby certify that the within instrument was received for record and recorded in the

**County of Tillamook, State of Oregon.**

**witness my hand and seal affixed. JOSEPHINE VOTREQUARY Clerk**

OF OREGON

**415 PAGE**

SIATE

FEB. 253

**Alma E WARR**

**A&T**

KUUK  
NTWO  
OLISE



STATUTORY WARRANTY DEED

NESTUCCA RIDGE DEVELOPMENT, INC, an Oregon Corporation

conveys and warrants to JEFFREY W. HUNTER AND MARGIE E. DOGOTCH, as tenants by the Grantor,  
entirety Grantee,  
the following described real property free of liens and encumbrances, except as specifically set forth herein:  
Lot 117, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision  
Plat recorded JUNE 14, 1995, in Plat Cabinet B, Slide 440, Tillamook County Records.  
TOGETHER WITH an undivided interest in Common Areas of NESTUCCA RIDGE.

This property is free of liens and encumbrances, EXCEPT: see attached Exhibit "A" attached hereto and mad a part hereof.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$ 65,000.00 (Here comply with the requirements of ORS 93.030)

Dated this 11 day of April, 19 99.

Mary J. Jones  
MARY J. JONES, PRESIDENT

STATE OF OREGON  
County of TILLAMOOK } ss.

On this 17 day of August, 19 95, before me appeared MARY J. JONES  
and \_\_\_\_\_ both to me personally  
known, who being duly sworn, did say that he, the said MARY J. JONES  
is the PRESIDENT President, and he, the said \_\_\_\_\_  
is the \_\_\_\_\_ Secretary of NESTUCCA RIDGE DEVELOPMENT, INC.  
the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and  
that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and  
MARY J. JONES and \_\_\_\_\_ acknowledge  
said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Tori M. Heusser  
Notary Public for Oregon.  
My Commission expires 11/17/96

Title Order No. 652610  
Escrow No. 99150252

THIS SPACE RESERVED FOR RECORDER'S USE

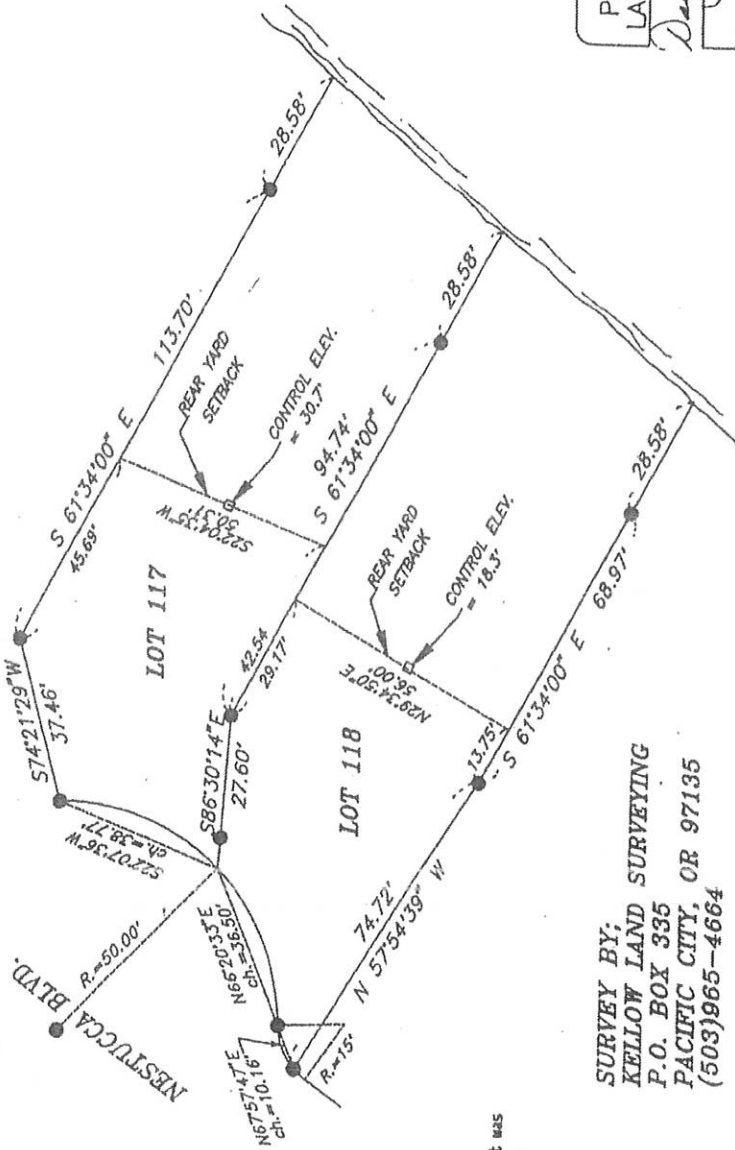
After recording return to:  
Jeffrey Hunter  
104 5th St.  
Hood River, OR 97031  
Name, Address, Zip  
Until a change is requested all tax statement shall be sent to the following address.  
SAME AS ABOVE  
Name, Address, Zip

Exhibit "A"

1. Regulations, including levies, liens, assessments, rights of way, and easements of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY.
2. The rights of the public in and to that portion of the premises herein described lying within the limits of roads, streets or highways.
3. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of BIG NESTUCCA RIVER and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
4. Any adverse claim based on the assertion that some portion of said land is now or at any time has been within the boundaries of BIG NESTUCCA RIVER, or the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.  
Any adverse claim based on the assertion that BIG NESTUCCA RIVER has moved.
5. Such rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the waters of BIG NESTUCCA RIVER.
6. Easements and setback requirements, including the terms and provisions thereof, as shown on the recorded Plat of NESTUCCA RIDGE 3.
7. Declaration of Protective Covenants, Conditions and Restrictions and Easements of Nestucca Ridge, including the terms and provisions thereof, dated March 3, 1993, recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.  
As amended by First Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements recorded May 10, 1993, in Book 350, Page 701, Tillamook County Records.  
As amended by Supplemental Declaration of Protective Covenants, conditions and restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms and provisions thereof,  
Recorded: May 26, 1994, in Book 360, Page 989, Records of Tillamook County, Oregon.  
Second Supplemental Declaration of Protective Covenants, Conditions, Restrictions and Easements for Nestucca Ridge, including the terms and provisions thereof, as disclosed by instrument  
Recorded: July 24, 1996, Book 371, Page 47, Records of Tillamook County, Oregon.
8. Regulations and Assessments of Nestucca Ridge Homeowners Association as set forth in Declaration recorded March 3, 1993, in Book 348, Page 985, Tillamook County Records.
9. An easement created by instrument, including the terms and provisions thereof,  
Dated: February 25, 1993  
Recorded: March 26, 1993, Book 349, Page 544, Records of Tillamook County, Oregon.  
In favor of: Tillamook People's Utility District, a municipal corporation  
(covers additional land)

Further subject to a building setback line as shown on the attached exhibit "B" and more particularly described as follows: Beginning at the most westerly Northwest corner of Lot 117, Nestucca Ridge 3, in Tillamook County, Oregon, thence North 74° 21' 29" East 37.29 feet to a point; thence South 61° 34' 00" East 45.69 feet to a point; which is the point of beginning of the setback line to be described; thence South 22° 04' 35" West 50.31 feet to the intersection with the South line of said Lot 117, Nestucca Ridge 3, and the terminus of said setback line. No portion of the structure or improvements situated on Lot 117 will be located Easterly of the above described building setback line, with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 30.7 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.

EXHIBIT "B"



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Douglas H. Kellow*  
OREGON  
FEBRUARY 3, 1983  
DOUGLAS H. KELLOW  
2027  
RENEWAL DATE: 6/30/97

**SURVEY FOR**  
**NESTUCCA RIDGE DEVELOPMENT, INC.**  
LOTS 117 & 118, NESTUCCA RIDGE 3, IN  
SEC. 19, T. 4 S., R. 10 W.W.M., TILLAMOOK  
COUNTY OREGON

SURVEY BY:  
KELLOW LAND SURVEYING  
P.O. BOX 335  
PACIFIC CITY, OR 97135  
(503)965-4664

SCALE: 1" = 30'  
DATE: JUNE 10, 1997

99379078

I hereby certify that the within instrument was received for record and recorded in the County of Tillamook, State of Oregon.

APR. 13 10 56 AM '99

BOOK 406 PAGE 351

Witness my hand and seal affixed.  
JOSEPHINE  
COUNTY CLERK



DEPUTY  
SWARR 15.00  
R&T 20.00  
ADMIN 1.00  
PLCP 3.00

2012 JEFFERSON  
BIBER FRONT LOTS

THE JEFFERSON BIBER FRONT LOTS are located in the heart of the city of Jefferson, Missouri. The lots are situated on the east side of the city, between the city limits and the Missouri River. The lots are currently owned by the Jefferson Biber Front Lots Trust, which was established in 1998. The trust was created to preserve the historic character of the city and to provide a source of revenue for the city of Jefferson. The lots are currently being offered for sale to the highest bidder. The lots are located on the east side of the city, between the city limits and the Missouri River. The lots are currently owned by the Jefferson Biber Front Lots Trust, which was established in 1998. The trust was created to preserve the historic character of the city and to provide a source of revenue for the city of Jefferson. The lots are currently being offered for sale to the highest bidder.

1814 4th St. N.E.  
JEFFERSON, MISSOURI 64501

Exhibit ~~A~~ page 2 of 2SETBACK RESTRICTION (TO BE INCLUDED AS A DEED  
RESTRICTION) ON SALE OF LOT 118, NESTUCCA RIDGE 3

SUBJECT TO a building setback line as shown on the attached exhibit "A" and more particularly described as follows: Beginning at the most Southerly Southwest corner of Lot 118, Nestucca Ridge 3, in Tillamook County, Oregon; thence South 57° 54' 39" East 74.72 feet to a point; thence South 61° 34' 00" East 13.75 feet to a point which is the point of beginning of the setback line to be described; thence North 29° 34' 50" East 56.00 feet to the intersection with the North line of said Lot 118, Nestucca Ridge 3, and the terminus of said setback line. No portion of the structure or improvements situated on Lot 118 will be located Easterly of the above described building setback line, with the exception of a deck structure, which will be allowed to extend beyond said setback line but said deck structure must have a deck top elevation of 18.3 feet above mean sea level or lower. Any deck railing can extend a maximum of 42 inches above the deck top.



Exhibit A page 1 of 2

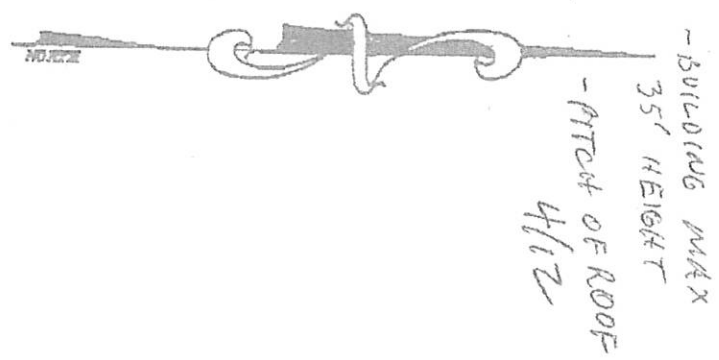
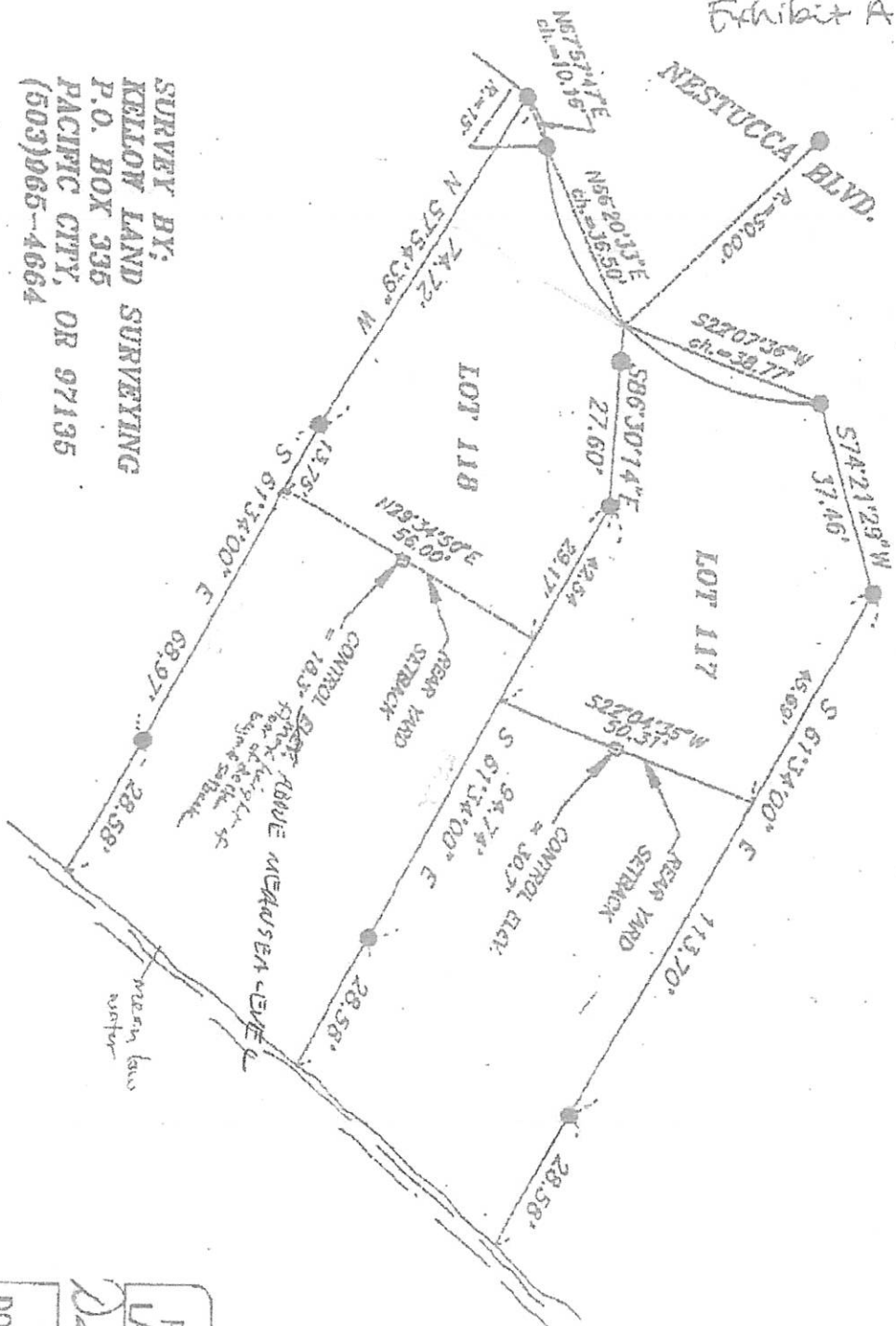
SURVEY BY:  
 KELLOW LAND SURVEYING  
 P.O. BOX 335  
 PACIFIC CITY, OR 97135  
 (503)965-4664

**SURVEY FOR**

**NESTUCCA RIDGE DEVELOPMENT, INC.**

SCALE: 1" = 30'  
 DATE: JUNE 10, 1997

LOTS 117 & 118, NESTUCCA RIDGE 3, IN  
 SEC. 19, T. 4 S., R. 10 W.M., TILLAMOOK  
 COUNTY, OREGON



DRIVEWAYS MAX  
 22' WIDTH AT  
 ROAD PAVED ROAD  
 SURFACE.

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Douglas H. Kellow*

OREGON  
 FEBRUARY 3, 1993  
 DOUGLAS H. KELLOW  
 2027

RENEWAL DATE: 9/30/97



1510 - B Third Street  
Tillamook, Oregon 97141  
www.tillamook.or.us

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280



*Land of Cheese, Trees and Ocean Breeze*

**RIPARIAN EXCEPTION REQUEST #851-21-000076-PLNG: LYDEGRAF**  
*NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:*  
*ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,*  
*IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER*

September 8, 2021

Dear Property Owner:

This is to confirm that the Tillamook County Department of Community Development **APPROVED WITH CONDITIONS** the above-cited Riparian Exception Request on September 8, 2021.

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.co.tillamook.or.us/commdev/landuseapps> and is also available for inspection at the 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 **4:00 PM** on **September 20, 2021**.

**Request:** An exception request to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling.

**Location:** Located within the Pacific City/Woods Unincorporated Community and accessed from Nestucca Boulevard, a County road, the subject property is designated as Tax Lot 12300 in Section 19CB of Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

**Zone:** Pacific City/Woods Medium Density Residential (PCW-R2)

**Applicant & Property Owner:** Dale Van Lydegraf, 5514 Commercial Street SE, Salem, OR 97306

### CONDITIONS OF APPROVAL

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

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 Federal, State, and Local permits, as applicable.
2. All applicable permits, including a consolidated Zoning and Building Permit from the Tillamook County Department of Community Development shall be obtained prior to construction the proposed dwelling.
3. A minimum 30-foot riparian setback from the Nestucca River, determined by the Oregon Department of Fish and Wildlife (ODFW) and measured in accordance with TCLUO Section 4.140, shall be maintained on the subject property. Future development on the subject property shall also maintain the required riparian setback and comply with the requirements of TCLUO 4.140: Development Requirements for Water Quality and Streambank Stabilization.
4. The applicant/property owner shall develop in coordination with ODFW a riparian vegetation enhancement (planting) plan and a copy of the plan shall be submitted to the Department at the time of consolidated Zoning and Building Permit application submittal. The plan submittal shall include written confirmation from ODFW that the plan is acceptable. No trees within the 30-foot riparian corridor shall be removed without written consent from ODFW. Any trees to be removed and any mitigation action for each tree shall also be indicated on the riparian vegetation enhancement plan.
5. Within two years of issuance of this exception approval, the applicant/property owner shall provide written documentation to this Department from ODFW that the accepted planting plan for the 30-foot riparian corridor has been satisfactorily implemented on the subject property to mitigate any increase to the threat of erosion resulting from the proposed development.
6. The applicant/property owner shall submit a site plan drawn to scale that confirms all required setbacks, including the 30-foot riparian setback, are met. The site plan shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
7. The applicant/property owner shall obtain an approved Road Approach permit from the Tillamook County Public Works Department.
8. The applicant/property owner shall obtain a water and sewer availability letter from the Pacific City Joint Water-Sewer Authority and a fire letter from the Nestucca Rural Fire Protection District. Letters shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
9. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.333: Pacific City/Woods Medium Density Residential (PCW-R2) Zone and all other applicable ordinance sections including TCLUO Section 3.530: Beach and Dune Overlay Zone.
10. A Floodplain Development Permit is required for development within the Area of Special Flood Hazard. Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 prior to or at the time of consolidated Zoning and Building Permit application submittal.

11. This approval expires if a Building Permit is not applied for within two (2) years of issuance of this approval.

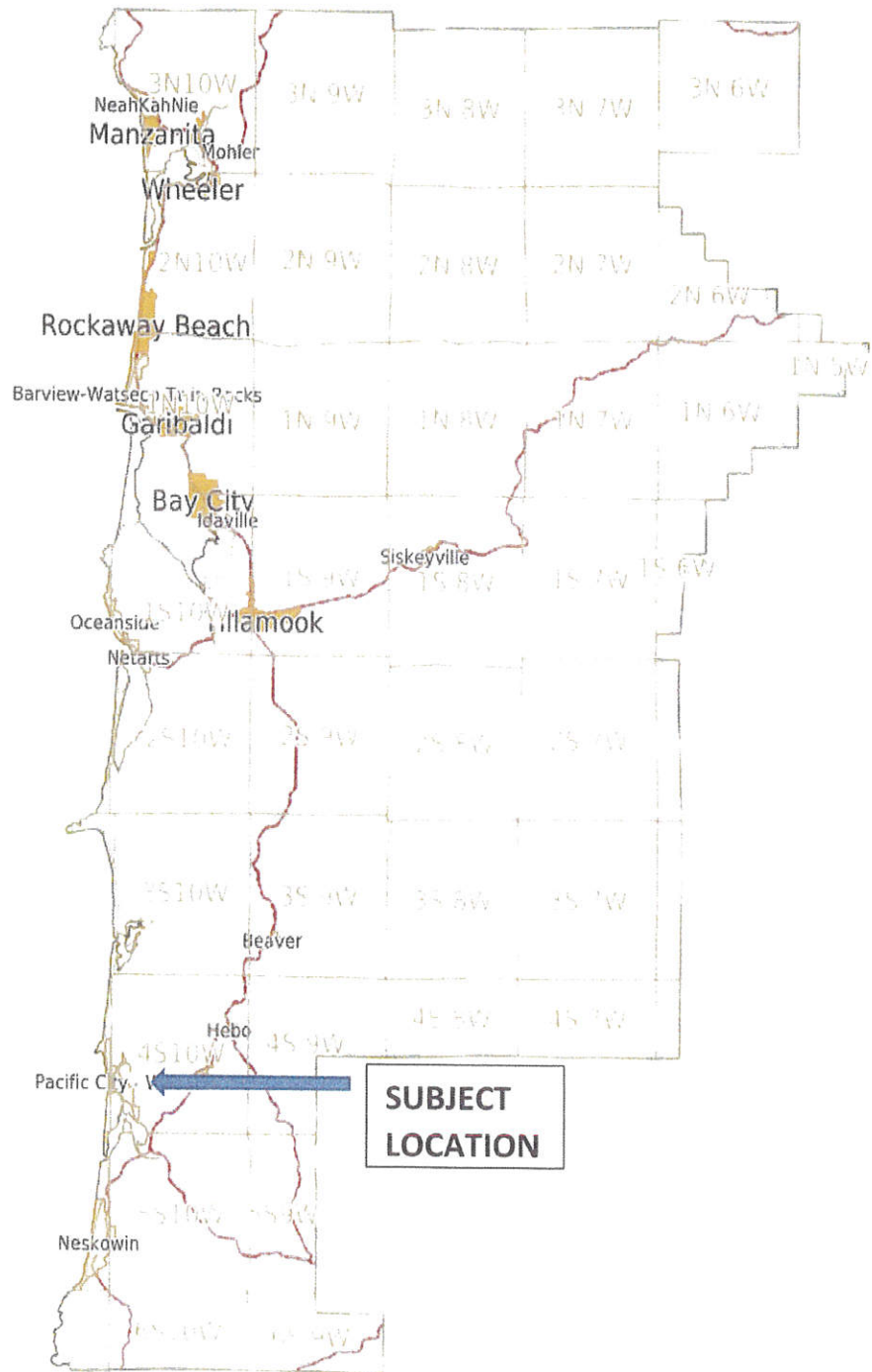
Sincerely,  
Tillamook County Department of Community Development



Sarah Absher, CFM, Director

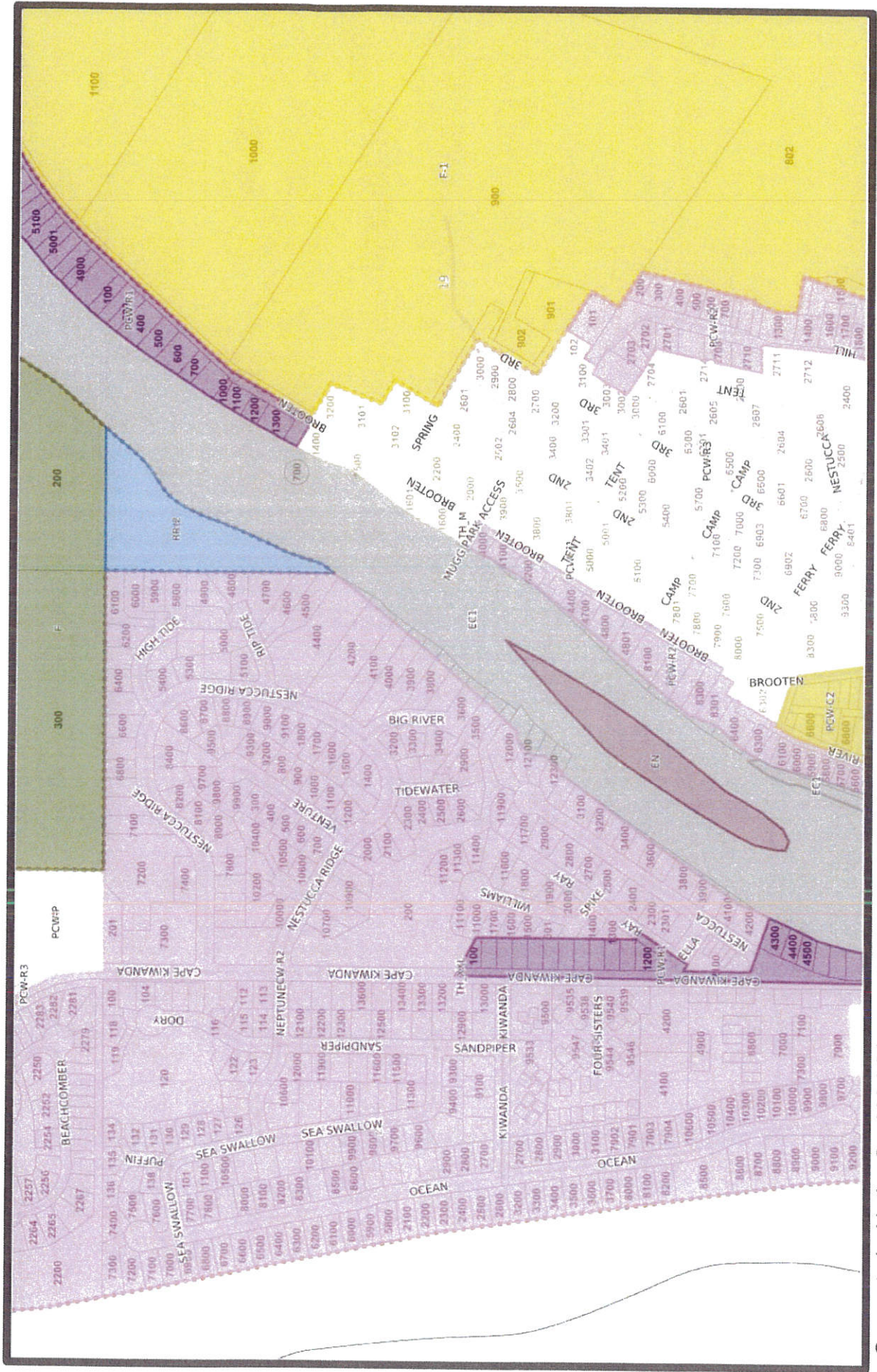
Enc.: Vicinity, Assessor's and Zoning maps

# VICINITY MAP



**#851-21-000076-PLNG: LYDEGRAPH  
RIPARIAN EXCEPTION**

# Map



1510 – B Third Street  
Tillamook, Oregon 97141  
www.tillamook.or.us

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280



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*Land of Cheese, Trees and Ocean Breeze*

**RIPARIAN EXCEPTION #851-21-000076-PLNG: LYDEGRAF**

**ADMINISTRATIVE DECISION AND STAFF REPORT**

**DECISION: Approved with Conditions**

**DECISION DATE:** September 8, 2021

**REPORT PREPARED BY:** Sarah Absher, CFM, Director

A handwritten signature in blue ink, appearing to be 'SA', enclosed in a blue oval.

---

**I. GENERAL INFORMATION:**

**Request:** An exception request to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling (Exhibit B).

**Location:** Located within the Pacific City/Woods Unincorporated Community and accessed from Nestucca Boulevard, a County road, the subject property is designated as Tax Lot 12300 in Section 19CB of Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon (Exhibit A).

**Zone:** Pacific City/Woods Medium Density Residential (PCW-R2)

**Applicant &**

**Property Owner:** Dale Van Lydegraf, 5514 Commercial Street SE, Salem, OR 97306

**Description of Site and Vicinity:** The subject property encompasses 0.21 acres (9,147 square feet) and is located within Phase 3 of the Nestucca Ridge Development west of the Nestucca River (Exhibit A). The topography at the location proposed for development consists of a moderately flat bench and then slopes down to the Nestucca River (Exhibits A and B). The subject property extends into the river and includes an estuarine area zoned Estuary Conservation 1 (EC1) where no development is proposed (Exhibits A & B). While much of the bench



has been cleared of vegetation, some of the bank slope is vegetated (Exhibits A and B). Riparian habitat values are discussed further in this report. No wetland or natural features are mapped on the subject property outside of the Nestucca River boundary (Exhibit A).

'Exhibit B' contains a site plan and an aerial image of the vicinity which depicts the location of the proposed riparian setback and surrounding development (Exhibit B). Portions of the property are within the AE Area of Special Flood Hazard and Regulatory Floodway as depicted on FEMA FIRM 41057C0855F dated September 28, 2018 (Exhibit A). The subject property is located within the Younger Stabilized Dune and Wet Surge Plain dune classifications within the Beach and Dune Overlay Zone and development is subject to TCLUO Section 3.530 (Exhibit A).

Applicant is proposing to construct a single-family dwelling on the subject property and is requesting to establish a 30-foot riparian setback, a 20-foot reduction to the required 50-foot riparian area from the Nestucca River (Exhibit B).

## 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 3.333 Pacific City/Woods Medium Density Residential (PCW-R2) zone
- B. TCLUO Section 3.510 Flood Hazard Overlay (FH) zone
- C. TCLUO Section 4.140 Requirements for Protection of Water Quality and Streambank Stabilization

## III. ANALYSIS:

Notice of the request was mailed to property owners within 250 feet of the subject property and other agencies on June 11, 2021. Comments received from neighboring property owners, the Oregon Department of Fish and Wildlife and the Oregon Department of State Lands. Primary comments are included in "Exhibit C" of this report and are summarized below:

- Protection of riparian corridor in relation to the proposed reduced setback
- Challenge to ODFW's determination of riparian habitat values
- Alignment of proposed dwelling with structures to the north and south
- Issues raised with actual need for exception to reduce riparian setback when reduction was not necessary for development of adjacent properties
- CC&Rs imposed on property and development

**Findings:** Analysis of the request in relation to the criteria that are the basis for the decision to grant or deny an exception request, including the requirement for a riparian habitat value assessment by ODFW, are discussed in Section C below. Concerns related to protection of the riparian corridor are also addressed below and reflected in the Conditions of Approval.

The subject property is located within the Nestucca Ridge Development, specifically Phase 3. The Covenants, Conditions and Restrictions (CCRs) for this development are outside the scope of the land use review process and the criteria for granting an exception to the riparian setback requirement. Any applicable CC&R is applied through the Nestucca Ridge Development and is a civil matter between the Applicant and Nestucca Ridge.

**A. Section 3.333: Pacific City/Woods Medium Residential (PCW-R2) Zone**

*The purpose of the PCW-R2 zone is to designate areas for medium density single-family and duplex residential development, and other, compatible, uses. Land that is suitable for the R-2 zone has public sewer service available, and has relatively few limitations to development.*

1. **Section 3.333 (4) Standards:** *Land divisions and development in the PCW-R2 zone shall conform to the following standards, unless more restrictive supplemental regulations apply:*

...

*(d) The minimum front yard shall be 20 feet.*

*(e) The minimum side yard shall be 5 feet; on the street side of a corner lot, it shall be no less than 15 feet.*

*(f) The minimum rear yard shall be 20 feet; on a corner lot, it shall be no less than 5 feet.*

*(g) The maximum building height shall be 35 feet, except that the maximum building height shall be 24 feet on ocean or bay frontage lots. Bay frontage lots are defined as those bay/river frontage lots located downstream from the Beachy Bridge (Pacific Avenue).*

...

**Findings:** Applicant's submittal confirms the setbacks of the PCW-R2 zone can be met. Staff finds a Condition of Approval has been made to require demonstration that the applicable development standards of the PCW-R2 zone are met at the time of consolidated Zoning and Building Permit application submittal.

**B. Findings for TCLUO Section 3.510 Flood Hazard Overlay (FH) zone**

Portions of the subject property are within an AE Area of Special Flood Hazard and within the Regulatory Floodway as depicted on FEMA FIRM 41057C0855F dated September 28, 2018 (Exhibit A). Applicant has provided a site plan which indicates portions of the proposed dwelling may be located within the AE flood zone boundary of the Flood Hazard Overlay Zone (Exhibit B). Staff finds that as a Condition of Approval, Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 or certification from a registered private land surveyor confirming the proposed development is outside of the Area of Special Flood Hazard and Flood Hazard Overlay Zone. Confirmation shall be demonstrated at the time of consolidated Zoning/Building Permit application submittal.

**C. Findings for TCLUO Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization**

TCLUO Section 4.140 identifies as areas of riparian vegetation that area within 50 feet of the Nestucca River measured from the more landward of the line of non-aquatic vegetation or the mean high water line. TCLUO Section 4.140 also limits removal of vegetation and development within those areas of riparian vegetation.

TCLUO 4.140(2) requires all development to be located outside of riparia areas with some exceptions. Exceptions include the following:

...

*(c) Because of natural features such as topography, a narrower riparian area protects equivalent habitat values; or*

*(d) A minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values.*

TCLUO 4.140(2) also provides for an Exception process for certain types of development based on a determination to be made by ODFW that a narrow riparian area provides equivalent protection value or minimal vegetation is present and existing development degrades riparian values.

Applicant's Site Plan anticipates that the closest point of the proposed development will be thirty (30) feet from the line of non-aquatic vegetation and that the yard opposite the riparian area – the front yard – will maintain the required 20-foot front yard setback (Exhibit B).

Comments from Robert Bradley, ODFW District Fish Biologist, were included in the Applicant's submittal and are also included in "Exhibit C". Staff finds that ODFW has provided a determination that a minimal amount of riparian vegetation is present and dense development in the general vicinity significantly degrades riparian habitat values as required by TCLUO 4.140(2)(d). Staff finds that the determination by Mr. Bradley meets the criterion of TCLUO Section 4.140(2)(d). To ensure that the threat of erosion will not increase as a result of the proposed activities, a Condition of Approval has been made to require the Applicant to incorporate a vegetation plan for the riparian area to promote bank stabilization. Staff finds that an exception to allow the reduction of the riparian setback from 50 feet to 30 feet can be granted subject to Conditions of Approval requiring that the applicant/property owner provide documentation from ODFW that an acceptable planting plan has been developed and will be implemented within the 30-foot riparian corridor within two years of issuance of this exception approval.

#### **IV. DECISION: APPROVED WITH CONDITIONS AS MODIFIED**

Staff concludes that the applicant has satisfied the review criteria and can meet all applicable ordinance. Therefore, Staff approves this request for an exception to the riparian setback subject to the Conditions of Approval in Section V of this report. No further development shall occur on the subject property without prior land use approval. This approval does not address any additional development of the subject property.

By accepting this approval, the applicant and property owner agrees to indemnify, defend, save and hold harmless Tillamook County, and its officers, agents, and employees from any claim, suit, action or activity undertaken under this approval, including construction under a Building Permit approved subject to this approval. The applicant/property owner shall obtain all the necessary local, state, and federal permits and comply with all applicable regulations for the proposed construction.

**Appeal of this decision.** This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. In such cases, forms and fees must be filed in the office of this Department before **4:00 PM on September 20, 2021.**

#### **V. CONDITIONS OF APPROVAL:**

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 Federal, State, and Local permits, as applicable.
2. All applicable permits, including a consolidated Zoning and Building Permit from the Tillamook County Department of Community Development shall be obtained prior to construction the proposed dwelling.
3. A minimum 30-foot riparian setback from the Nestucca River, determined by the Oregon Department of Fish and Wildlife (ODFW) and measured in accordance with TCLUO Section 4.140, shall be maintained on the subject property. Future development on the subject property shall also maintain the required riparian setback and comply with the requirements of TCLUO 4.140: Development Requirements for Water Quality and Streambank Stabilization.
4. The applicant/property owner shall develop in coordination with ODFW a riparian vegetation enhancement (planting) plan and a copy of the plan shall be submitted to the Department at the time of consolidated Zoning and Building Permit application submittal. The plan submittal shall include written confirmation from ODFW that the plan is acceptable. No trees within the 30-foot riparian corridor shall be removed without written consent from ODFW. Any

trees to be removed and any mitigation action for each tree shall also be indicated on the riparian vegetation enhancement plan.

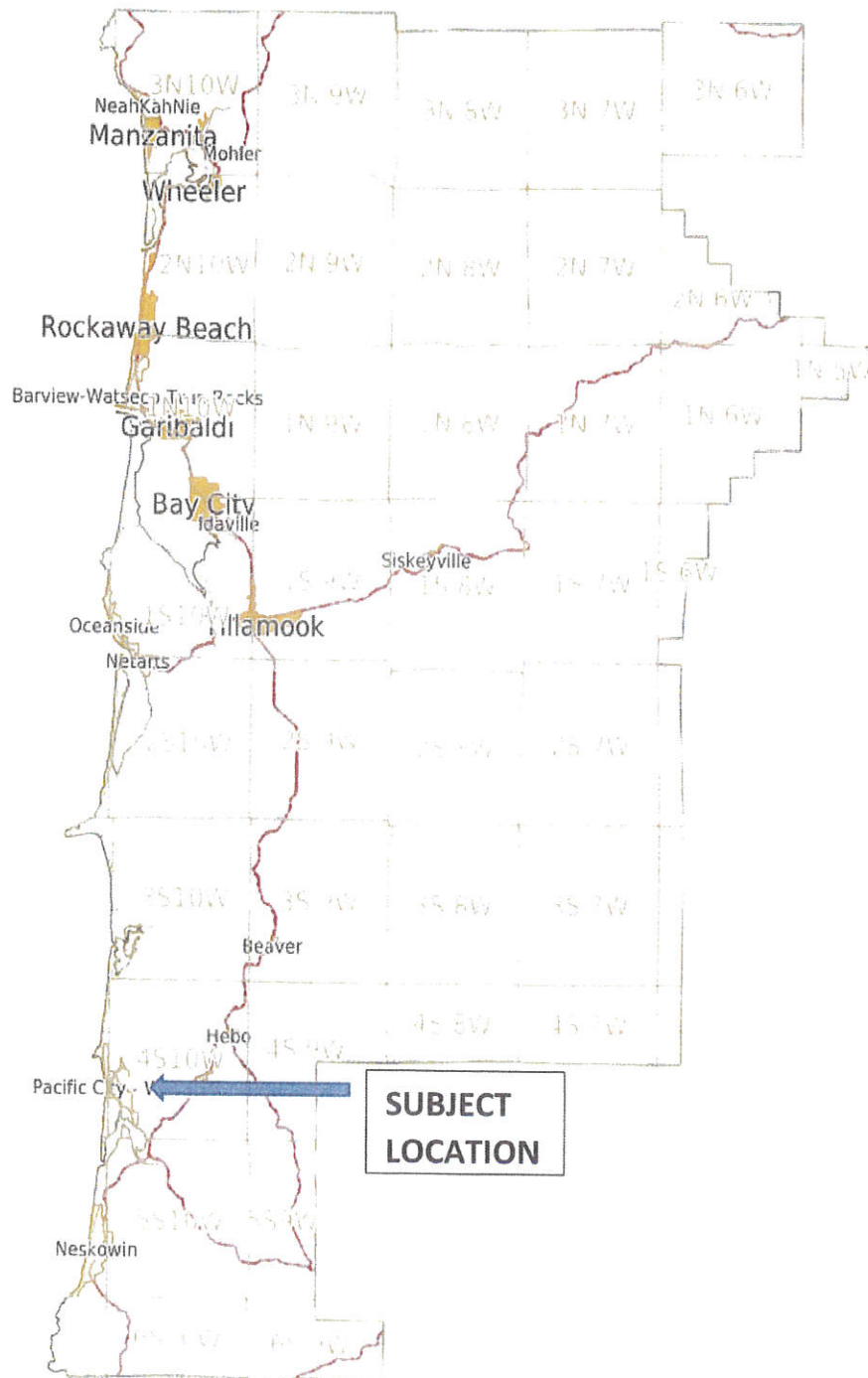
5. Within two years of issuance of this exception approval, the applicant/property owner shall provide written documentation to this Department from ODFW that the accepted planting plan for the 30-foot riparian corridor has been satisfactorily implemented on the subject property to mitigate any increase to the threat of erosion resulting from the proposed development.
6. The applicant/property owner shall submit a site plan drawn to scale that confirms all required setbacks, including the 30-foot riparian setback, are met. The site plan shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
7. The applicant/property owner shall obtain an approved Road Approach permit from the Tillamook County Public Works Department.
8. The applicant/property owner shall obtain a water and sewer availability letter from the Pacific City Joint Water-Sewer Authority and a fire letter from the Nestucca Rural Fire Protection District. Letters shall be submitted to the Department of Community Development at the time of consolidated Zoning and Building Permit application submittal.
9. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.333: Pacific City/Woods Medium Density Residential (PCW-R2) Zone and all other applicable ordinance sections including TCLUO Section 3.530: Beach and Dune Overlay Zone.
10. A Floodplain Development Permit is required for development within the Area of Special Flood Hazard. Applicant shall obtain an approved Floodplain Development Permit demonstrating compliance with the requirements of TCLUO Section 3.510 prior to or at the time of consolidated Zoning and Building Permit application submittal.
11. This approval expires if a Building Permit is not applied for within two (2) years of issuance of this approval.

## VI. EXHIBITS

- A. Vicinity map, Assessor's map, Zoning map, Tax Assessor's Summary Report
- B. Applicant's Submittal
- C. Comments

# EXHIBIT A

# VICINITY MAP

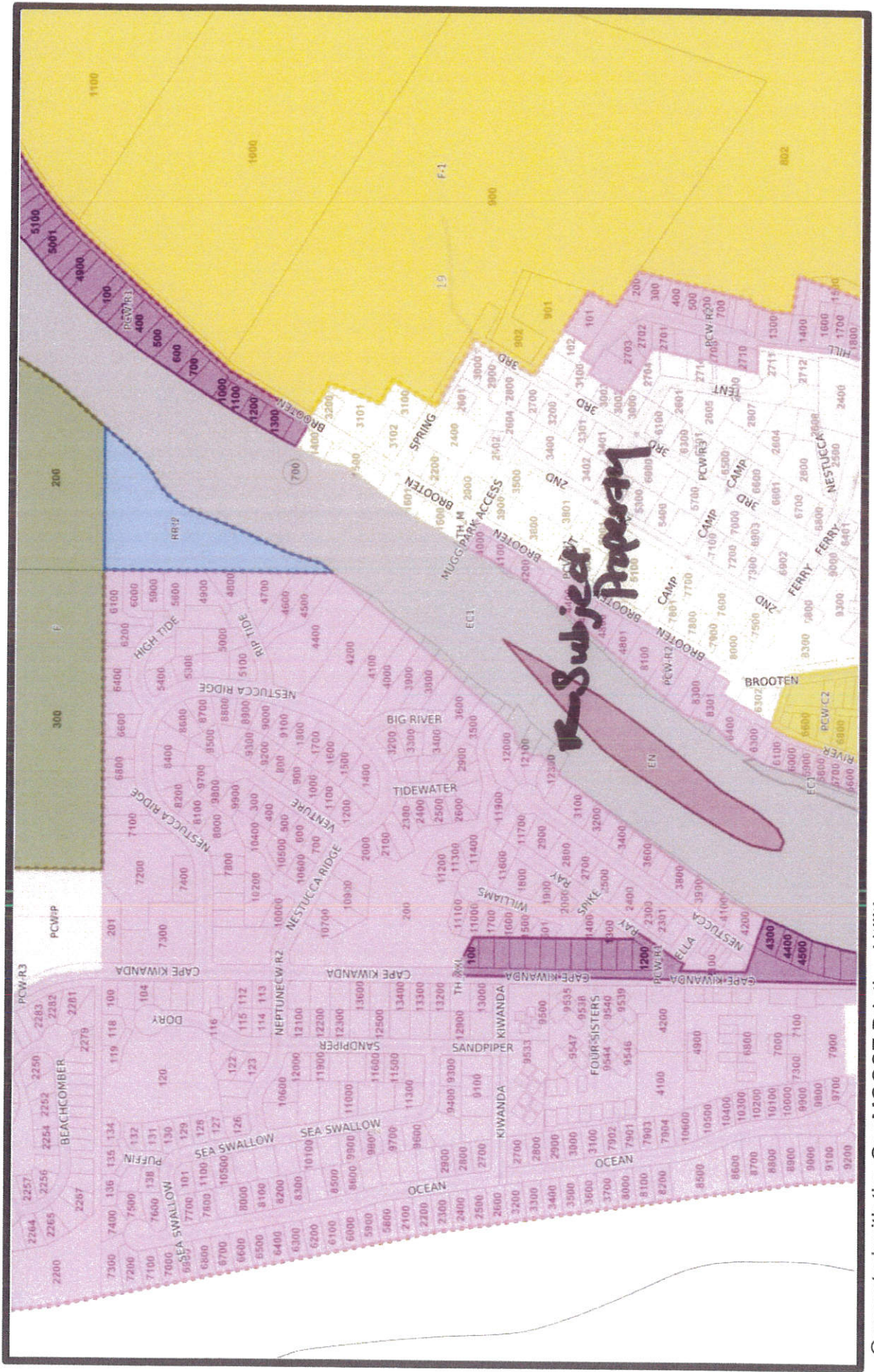


**#851-21-000076-PLNG: LYDEGRAPH  
RIPARIAN EXCEPTION**



#851-21-000076-PLNG: LYDEGRAF AERIAL IMAGE

# Map

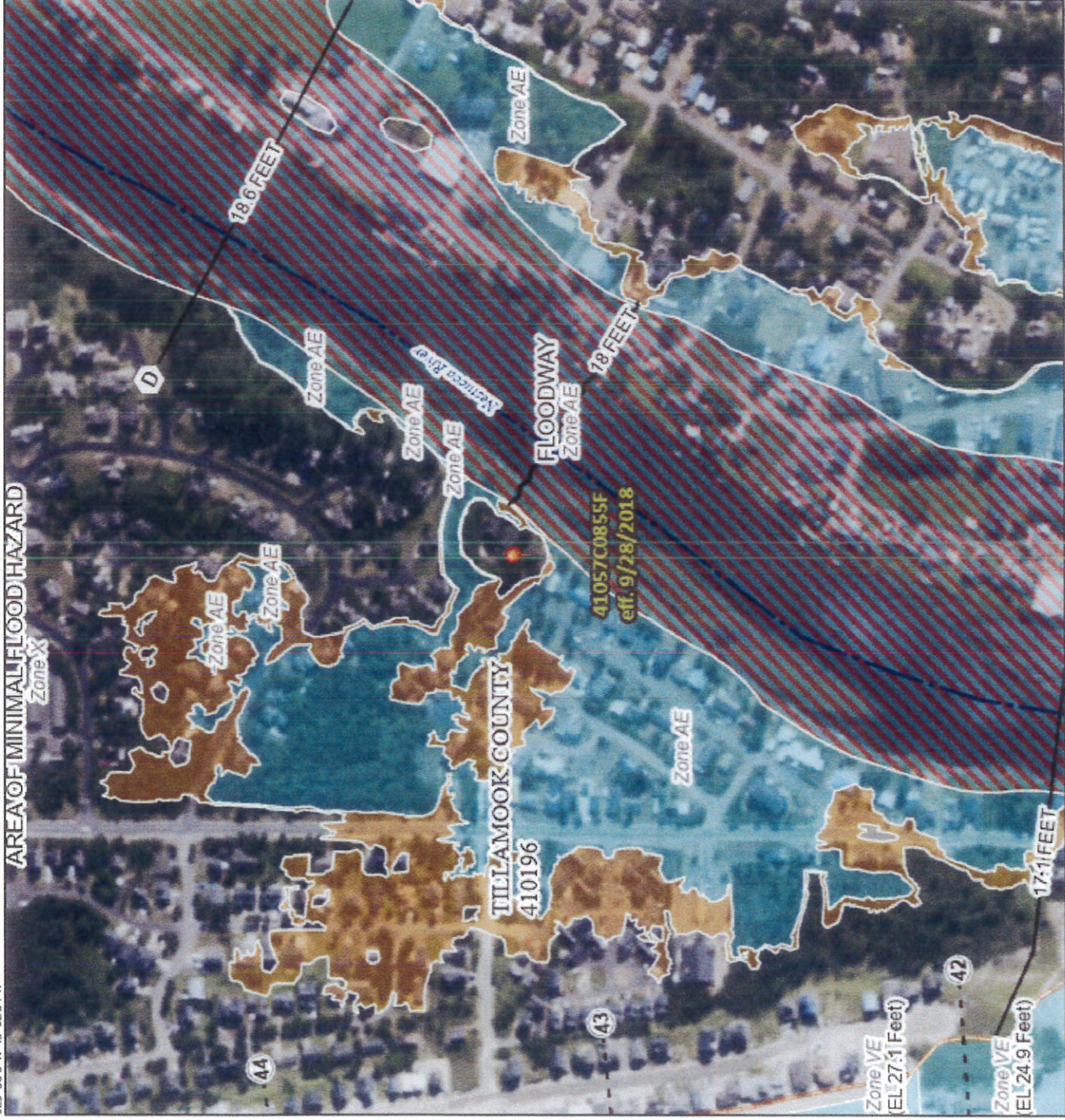




# National Flood Hazard Layer FIRMette



123°58'6"W, 45°12'34"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

 SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i>
	With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i>
	Regulatory Floodway
	0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i>
	Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i>
	Area with Reduced Flood Risk due to Levee. See Notes. <i>Zone K</i>
	Area with Flood Risk due to Levee. <i>Zone D</i>
	NO SCREEN Area of Minimal Flood Hazard <i>Zone X</i>
	Effective LOMRS
	Area of Undetermined Flood Hazard <i>Zone</i>
	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall
	Cross Sections with 1% Annual Chance Water Surface Elevation
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
	Digital Data Available
	No Digital Data Available
	Unmapped

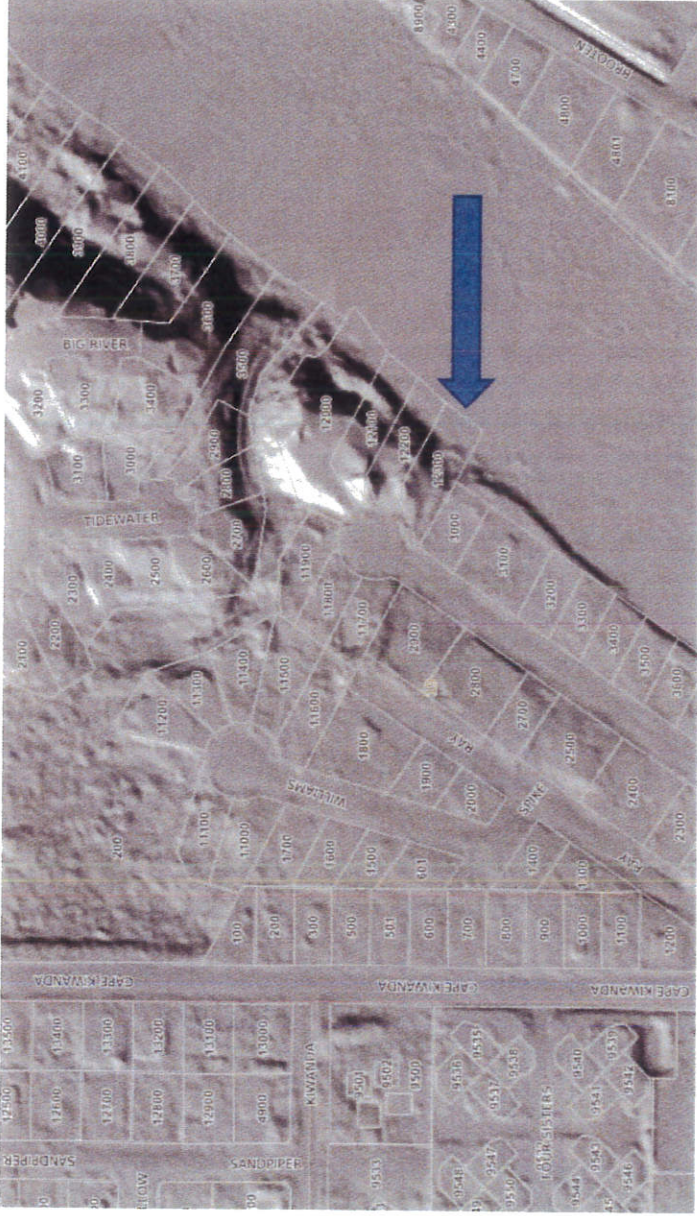
MAP PANELS

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 9/6/2021 at 6:47 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



**#851-21-000076-PLNG: LYDEGRAF LIDAR IMAGE**

# EXHIBIT B



Tillamook County Department of Community Development  
 1510-B Third Street, Tillamook, OR 97141 | Tel: 503-842-3408 Fax: 503-842-1819  
 www.co.tillamook.or.us

## PLANNING APPLICATION

<b>RECEIVED</b>	
<b>OFFICE USE ONLY</b>	
Date Stamp	<b>MAR 15 2020</b>
BY	<i>[Signature]</i>
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by: <i>SS</i>	
Receipt #:	
Fees: <i>615.00</i>	
Permit No: 851-21-00074-PLNG	

**Applicant**  (Check Box if Same as Property Owner)

Name: *Dale Van Lydyraf* Phone: *503-937-2296*

Address: *5514 Communal St SE*

City: *Salem* State: *OR* Zip: *97306*

Email: *DaleVan@dalesremodeling.com*

**Property Owner**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Request: *Would like to set property line at 30ft not 50ft from the riparian.*

- | Type II  | Type III   | Type IV  |
|--|--|--|
| <input type="checkbox"/> Farm/Forest Review<br><input type="checkbox"/> Conditional Use Review<br><input type="checkbox"/> Variance<br><input checked="" type="checkbox"/> Exception to Resource or Riparian Setback<br><input type="checkbox"/> Nonconforming Review (Major or Minor)<br><input type="checkbox"/> Development Permit Review for Estuary Development<br><input type="checkbox"/> Non-farm dwelling in Farm Zone<br><input type="checkbox"/> Foredune Grading Permit Review<br><input type="checkbox"/> Neskowin Coastal Hazards Area | <input type="checkbox"/> Appeal of Director's Decision<br><input type="checkbox"/> Extension of Time<br><input type="checkbox"/> Detailed Hazard Report<br><input type="checkbox"/> Conditional Use (As deemed by Director)<br><input type="checkbox"/> Ordinance Amendment<br><input type="checkbox"/> Map Amendment<br><input type="checkbox"/> Goal Exception | <input type="checkbox"/> Appeal of Planning Commission Decision<br><input type="checkbox"/> Ordinance Amendment<br><input type="checkbox"/> Large-Scale Zoning Map Amendment<br><input type="checkbox"/> Plan and/or Code Text Amendment |

**Location:**

Site Address: *Lot 118, Nestucca Ridge 3*

Map Number: *451019CB12300*

Township                      Range                      Section                      Tax Lot(s)

Clerk's Instrument #: \_\_\_\_\_

### Authorization

This permit application does not assure permit approval. The applicant and/or property owner shall be responsible for obtaining any other necessary federal, state, and local permits. The applicant verifies that the information submitted is complete, accurate, and consistent with other information submitted with this application.

*[Signature]* \_\_\_\_\_ Date: *3-8-2021*

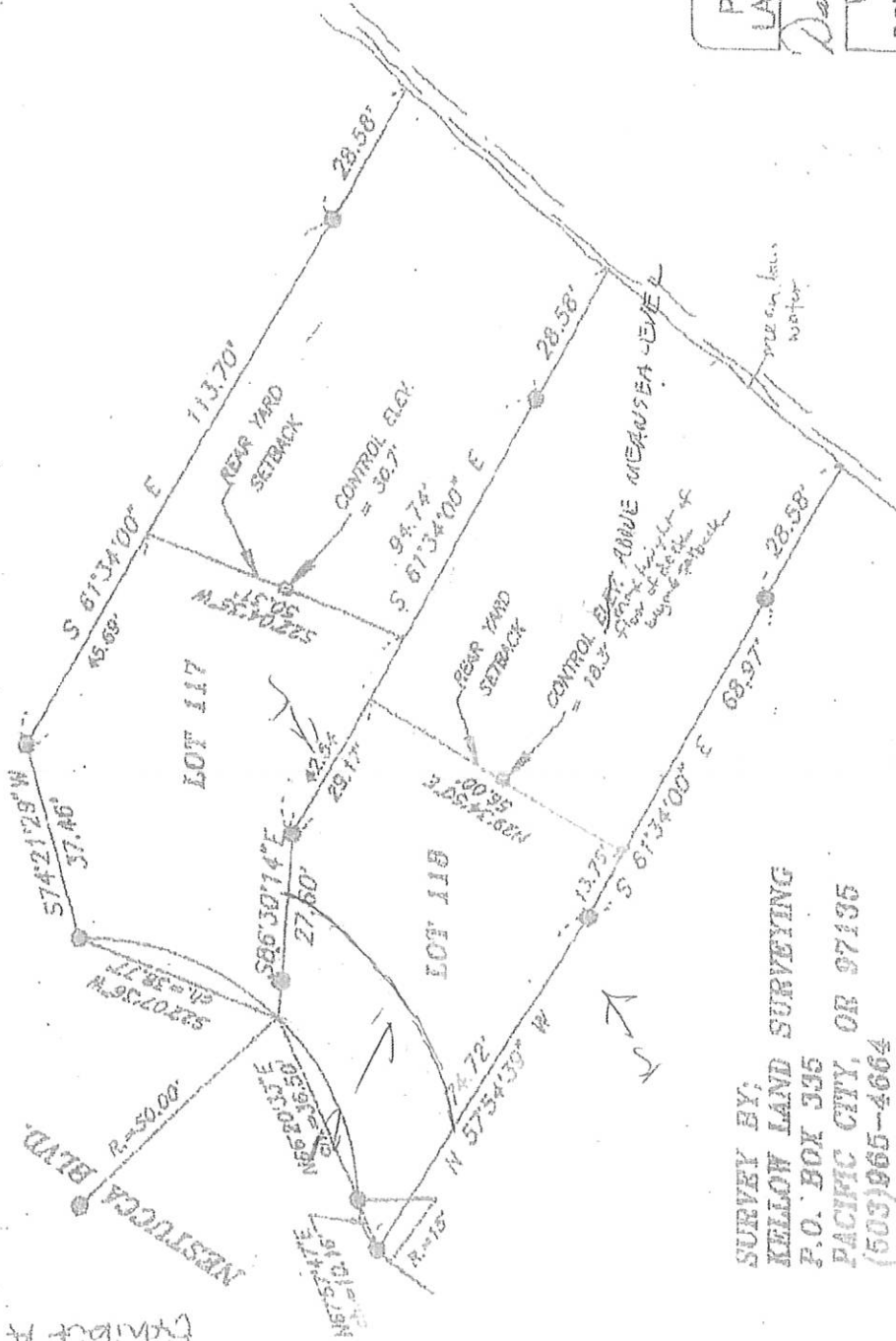
Property Owner Signature (Required)                      Date

*[Signature]* \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Signature                      Date

CCR'S - DRIVEWAYS MAX  
 22' WIDTH AT  
 ROAD PAVED HARD  
 SURFACE.

- BUILDING MAX  
 35' HEIGHT  
 - PITCH OF ROOF  
 4/12



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Douglas H. Kellow*

OREGON  
 FEBRUARY 3, 1985  
 DOUGLAS H. KELLOW  
 2027

RENEWAL DATE: 9/30/97

**SURVEY FOR**

**NESTUCCA RIDGE DEVELOPMENT, INC.**

LOTS 117 & 118, NESTUCCA RIDGE 3, IN  
 SEC. 19, T. 4 S., R. 10 W.W.M., TILLAMOOK  
 COUNTY OREGON

SURVEY BY:  
 KELLOW LAND SURVEYING  
 P.O. BOX 335  
 PACIFIC CITY, OR 97135  
 (503)965-4664

SCALE: 1" = 30'  
 DATE: JUNE 10, 1997

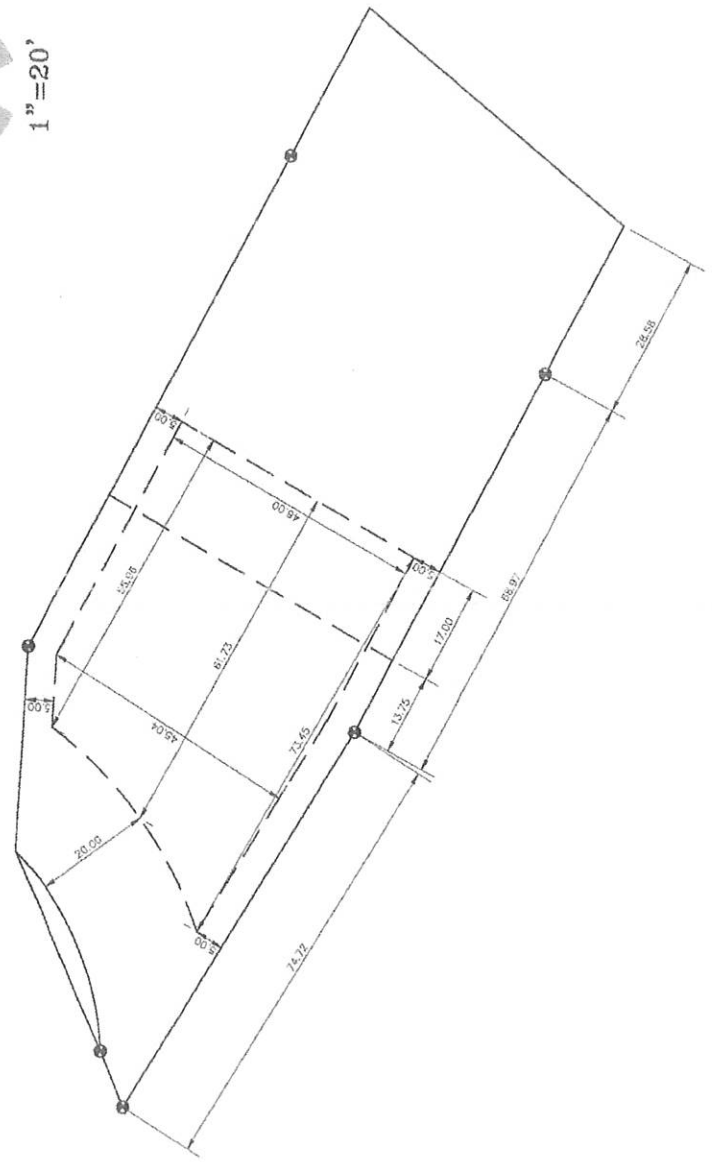
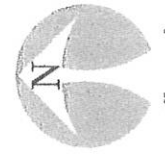
Exhibit A page 1 of 2

SUBDIVISION: CREEKSIDE LOT: 14 BLK: \_\_\_\_\_  
 NAME: DALES HOMES, LLC PH. # \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ CDA: \_\_\_\_\_  
 ASBUILT # \_\_\_\_\_ MAP # \_\_\_\_\_  
 STORM DRAINAGE: \_\_\_\_\_  
 WATER SERVICE LEVEL: \_\_\_\_\_ CODE: \_\_\_\_\_ PS: \_\_\_\_\_  
 SIDEWALK: \_\_\_\_\_

APPROVAL STAMPS

# SITE PLAN

CONTRACTOR:  
 DALES HOMES, LLC



From: Robert Bradley Robert.Bradley@state.or.us  
Subject: 4S1019CB12300  
Date: Feb 16, 2021 at 4:25:31 PM  
To: Melissa Jenck mjenck@co.tillamook.or.us, Sheila  
Shoemaker sshoemak@co.tillamook.or.us  
Cc: Angela Rimoldi arimoldi@co.tillamook.or.us, Sarah  
Absher sabsher@co.tillamook.or.us,  
iredo4u@me.com

I looked at this lot today at the end of Nestucca Blvd. in Pacific City. Attached you will find an aerial photo with lines approximating the following setback measurements:

Red line is the 50 foot estuary setback.

Blue line is a 40 foot setback, roughly equivalent to the rear of the house on the lot to the north.

Green line is a 30 foot setback, roughly equivalent to the rear of the deck off the back of the house to the north.

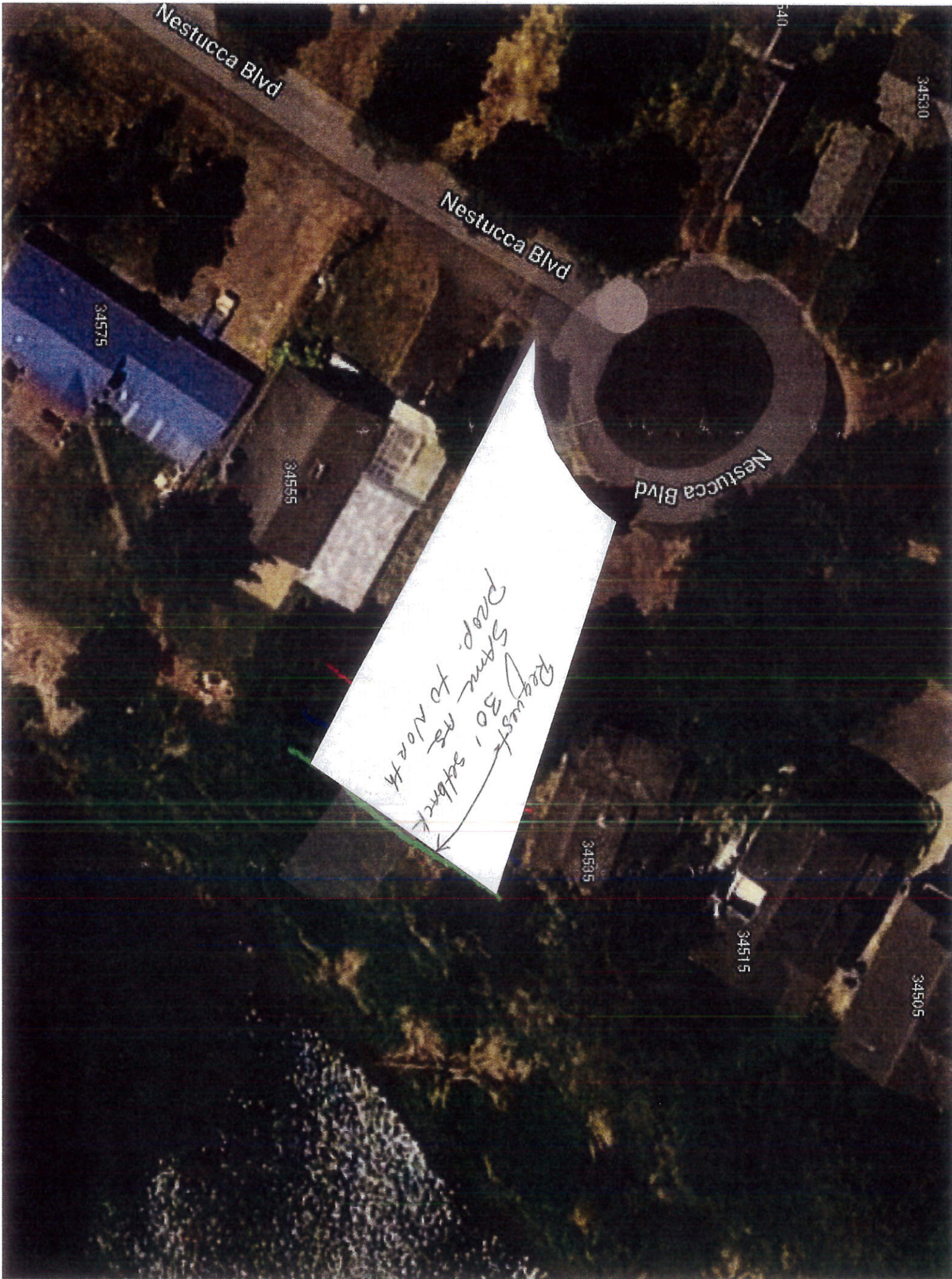
The adjoining area is highly developed with residential houses. The lot between the estuary and the 50 foot setback is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties (especially the north side).

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)







Nestucca Blvd

Nestucca Blvd

Nestucca Blvd

34530

34575

34555

34535

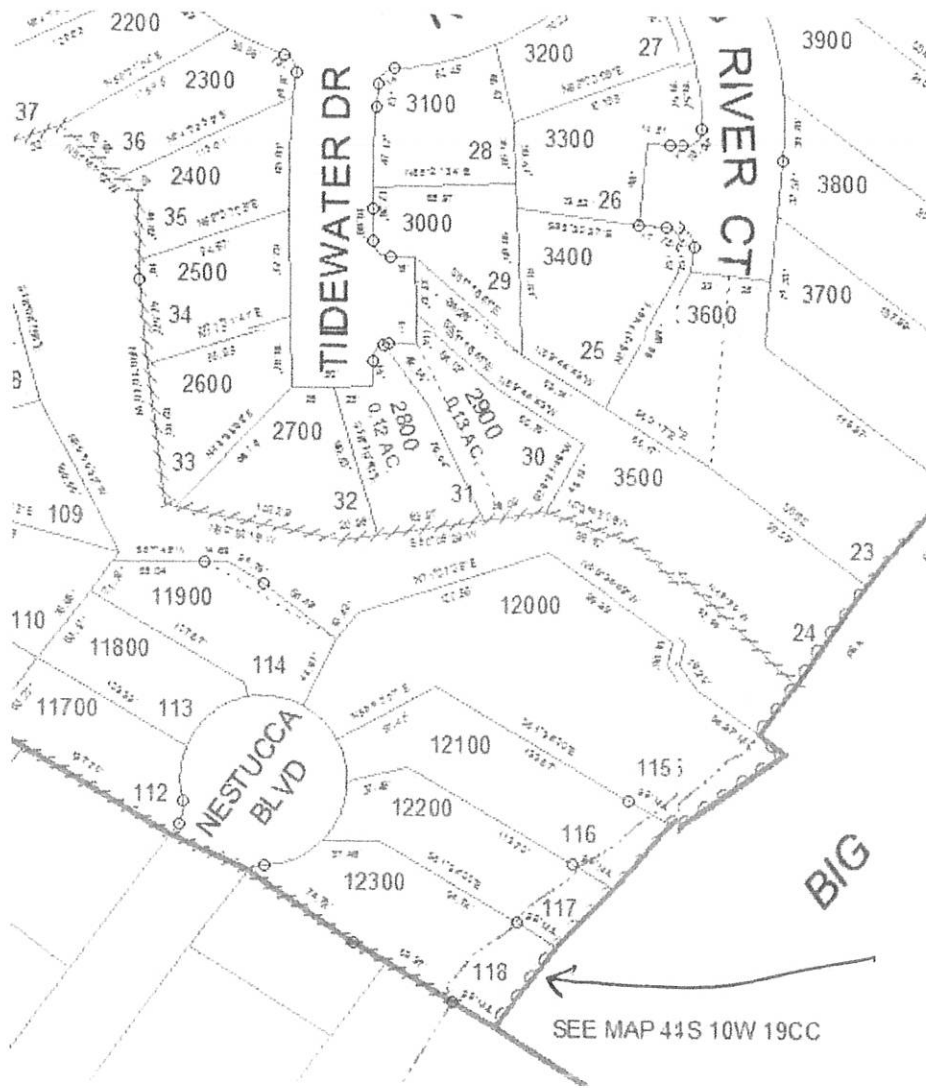
34515

34505

Request 30' setback prop. to North

Back

4 Messages  
Lot 118



See More



GPS



After recording return to:  
Dale Van Lydegraf  
5514 Commercial St SE  
Salem, OR 97306

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Dale Van Lydegraf  
5514 Commercial St SE  
Salem, OR 97306

File No.: 7081-3676218 (TJ)  
Date: February 08, 2021

THIS SPACE RESERVED FOR RECORDER'S USE

Tillamook County, Oregon  
03/08/2021 02:28:00 PM **2021-02030**  
DEED-DWARR  
\$10.00 \$11.00 \$10.00 \$61.00 - Total = \$92.00  
I hereby certify that the within instrument was received  
for record and recorded in the County of Tillamook,  
State of Oregon.  
Tassi O'Neil, Tillamook County Clerk

FIRST AMERICAN 3676218

**STATUTORY WARRANTY DEED**

**Charles M. Gehling**, Grantor, conveys and warrants to **Dale Van Lydegraf**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Tillamook, State of Oregon, described as follows:

**Lot 118, NESTUCCA RIDGE 3, in Tillamook County, Oregon, as disclosed by Subdivision Plat recorded June 14, 1995 in Plat Cabinet B-400, Tillamook County Records.**

**TOGETHER WITH an undivided interest in common areas of Nestucca Ridge.**

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$175,000.00**. (Here comply with requirements of ORS 93.030)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 4 day of MARCH, 2021.

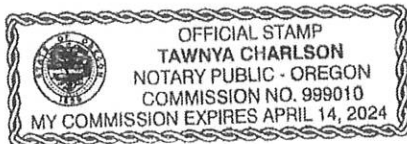
Charles M. Gehling  
Charles M. Gehling

STATE OF Oregon )  
County of Hood River )ss.  
Fillameek )

This instrument was acknowledged before me on this 4 day of March, 2021 by **Charles M. Gehling**.

Tawny Charlson

Notary Public for Oregon  
My commission expires: April 14, 2024



# EXHIBIT C

## Sarah Absher

---

**From:** BRADLEY Robert \* ODFW <Robert.BRADLEY@odfw.oregon.gov>  
**Sent:** Thursday, July 8, 2021 8:19 AM  
**To:** Melissa Jenck; Sheila Shoemaker  
**Cc:** Angela Rimoldi; Sarah Absher; iredo4u@me.com  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Yes, you should include this as this is a better representation of the setback distances than the previous version.

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)

**Note new email address as of 4/26/21: Robert.Bradley@odfw.oregon.gov**

---

**From:** Melissa Jenck <mjenck@co.tillamook.or.us>  
**Sent:** Wednesday, July 07, 2021 5:03 PM  
**To:** BRADLEY Robert \* ODFW <Robert.BRADLEY@odfw.oregon.gov>; Sheila Shoemaker <sshoemak@co.tillamook.or.us>  
**Cc:** Angela Rimoldi <arimoldi@co.tillamook.or.us>; Sarah Absher <sabsher@co.tillamook.or.us>; iredo4u@me.com  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good afternoon Robert,

Thank you for this information. Shall I included it on the record for the Lydagraf request? I know they have a Riparian Exception request currently in our office.

Thank you,



**Melissa Jenck** (she/her) | CFM, Land Use Planner II  
TILLAMOOK COUNTY | Community Development  
1510-B Third Street  
Tillamook, OR 97141  
Phone (503) 842-3408 x3301  
[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)

ended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

*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.co.tillamook.or.us/gov/ComDev/> to access the appointment scheduler portal.*

**From:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>  
**Sent:** Wednesday, July 7, 2021 4:49 PM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Sorry about that! Here you go.

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)

**Note new email address as of 4/26/21:** [Robert.Bradley@odfw.oregon.gov](mailto:Robert.Bradley@odfw.oregon.gov)

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**From:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>  
**Sent:** Wednesday, July 07, 2021 4:38 PM  
**To:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good afternoon Robert,

I'm not see that there was a new attachment included on your email. Can you please re-send with the referenced attachment?

Thank you,



**Melissa Jenck** (she/her) | CFM, Land Use Planner II  
TILLAMOOK COUNTY | Community Development  
1510-B Third Street  
Tillamook, OR 97141  
Phone (503) 842-3408 x3301  
[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)

ended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

*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.co.tillamook.or.us/qov/ComDev/> to access the appointment scheduler portal.*

**From:** BRADLEY Robert \* ODFW <[Robert.BRADLEY@odfw.oregon.gov](mailto:Robert.BRADLEY@odfw.oregon.gov)>  
**Sent:** Wednesday, July 7, 2021 11:04 AM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>

**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Melissa,

I re-visited this site again to re-mark the setback. Based on my field observations, I am providing you a revised version of the estuary setback marks for this site with some slight adjustments. The pink line represents the 30 foot setback, green line is 40 foot, and blue line is 50 foot. All lines are approximate on this photo.

Biologically speaking, there is not much, if any, difference in impact for building at any of these lines as I stated earlier. The green line is roughly equivalent to the extent of development on either side of this lot.

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)

**Note new email address as of 4/26/21:** [Robert.Bradley@odfw.oregon.gov](mailto:Robert.Bradley@odfw.oregon.gov)

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**From:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>  
**Sent:** Thursday, February 18, 2021 8:10 AM  
**To:** Robert Bradley <[Robert.Bradley@state.or.us](mailto:Robert.Bradley@state.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>  
**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** RE: EXTERNAL: 4S1019CB12300

Good morning Robert,

Thank you for providing this information. Staff will place this with the property file for future proposals.

Thank you!

Due to compliance measures regarding social distancing related to the COVID-19 pandemic the Department of Community Development is open to the Public by appointment only. Staff continue to work during this time. Applications and documentation may be submitted via email or USPS.

**Melissa Jenck** | CFM, Land Use Planner II  
Phone (503) 842-3408 x3301

*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.co.tillamook.or.us/gov/ComDev/> to access the appointment scheduler portal.*

---

**From:** Robert Bradley <[Robert.Bradley@state.or.us](mailto:Robert.Bradley@state.or.us)>  
**Sent:** Tuesday, February 16, 2021 4:25 PM  
**To:** Melissa Jenck <[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)>; Sheila Shoemaker <[sshoemak@co.tillamook.or.us](mailto:sshoemak@co.tillamook.or.us)>



**Cc:** Angela Rimoldi <[arimoldi@co.tillamook.or.us](mailto:arimoldi@co.tillamook.or.us)>; Sarah Absher <[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)>; [iredo4u@me.com](mailto:iredo4u@me.com)  
**Subject:** EXTERNAL: 4S1019CB12300

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

I looked at this lot today at the end of Nestucca Blvd. in Pacific City. Attached you will find an aerial photo with lines approximating the following setback measurements:

Red line is the 50 foot estuary setback.

Blue line is a 40 foot setback, roughly equivalent to the rear of the house on the lot to the north.

Green line is a 30 foot setback, roughly equivalent to the rear of the deck off the back of the house to the north.

The adjoining area is highly developed with residential houses. The lot between the estuary and the 50 foot setback is primarily introduced grasses and invasive blackberry and scotch broom. Given these conditions, encroaching within the estuary setback between the 50 and 30 foot lines would be expected to have minimal additional biological consequences and be similar to adjacent properties (especially the north side).

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)





# Wetland Land Use Notice Response

## Response Page

Department of State Lands (DSL) WN# \*

WN2021-0671

### Responsible Jurisdiction

**Staff Contact**

Sarah Absher

**Jurisdiction Type**

County

**Municipality**

Tillamook

**Local case file #**

851-21-000076-PLNG

**County**

Tillamook

### Activity Location

**Township**

04S

**Range**

10W

**Section**

19

**QQ section**

CB

**Tax Lot(s)**

12300

Street Address

Nestucca Rd

Address Line 2

City

State Province Region

Postal / Zip Code

Country

Tillamook

**Latitude**

45.205834

**Longitude**

-123.963377

### 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 property includes or is adjacent to designated Essential Salmonid Habitat.
- The property includes or is adjacent to state-owned waters.

### Your Activity

- A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways, or other waters.

## Closing Information

### Additional Comments

Best Management Practices for erosion and sediment control are recommended during construction due to site proximity to the ESH Nestucca River.

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.

### 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

7/8/2021

### Response by:

Daniel Evans

### Response Phone:

503-986-5271

## For Official Use Only

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### For Official Use Only



This section will be hidden on the forms sent out with the response.

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#### Maps

WN20210669 NwiNhdEshLidar50%Exceedance.tif

2.47MB

WN20210669 SoilsAerial.tif

2.47MB

#### Request Received

6/15/2021

#### There was an Onsite Visit \*

Yes  No

#### Has Wetlands \*

Yes

#### Permit Required \*

No

#### Delineation Required \*

No

#### ESH \*

Yes

#### Wild and Scenic \*

No

#### State Scenic \*

No

#### State-owned Water

Yes

#### Coast Zone \*

Yes

#### Adjacent Waterbody

Nestucca River

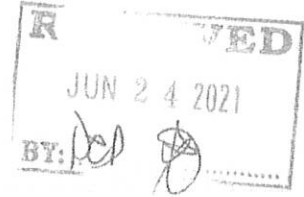
# WN20210671 NwiNhdEshLidar50%Exceedance



# WN20210671 SoilsAerial



Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141



To whom it may concern,

I am writing this letter in opposition to the Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF and request that it not be granted.

I have multiple concerns regarding this request.

1. The study, as listed in the request, states only minimal additional biological consequences, so clearly there would be negative consequences.
2. This would be the first exception granted on this side of the river and on the last undeveloped river front property.
3. This would be the first exception granted in the HOA, an HOA build with a requirement of preserving the natural beauty of the area.
4. There would be significant negative economic impact to the property values of the adject properties without even an offer of compensation.
5. The aesthetic beauty of the riverbank would be significantly affected by allowing a single home to encroach much further than any other building on the bank.
6. The new property owner recently purchased the land in full knowledge of the building requirements. It appears now they did not purchase in good faith of the requirements but to ask for changes in an attempt to add additional value above the original requirements intent.
7. There would be a significant negative impact to the views of the adject property owners as well as reducing the privacy of the current property owners.

I am not opposed to the property being developed. I am just requesting that the recent purchaser be held to the same standards of building that the property was purchased under. To purchase a property with the intent to de-value surrounding property owners, encroach on already fragile ecosystems and corrupt the aesthetics of the river they intend to capitalize on is a truly not a neighbor any one wants. My family has been enjoying Pacific City for 4 generations in the same home. We have watched it grow, change and mature. We want to pass down the traditions and magic that Pacific City has provided us for the last 60 years to the next generation. Please do not grant any building exception on this property.

Sincerely,

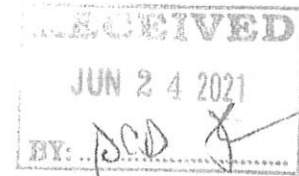
Sean Moriarty



# LAURIE SCHEER

11411 NE 2<sup>nd</sup> Ave, Vancouver, WA 98685

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June 21, 2021

To Tillamook Community Development,

As a family member of a Pacific City resident and homeowner, grandma has asked me to contact you to oppose a Riparian Exception set-back request, the reference number is 851-21-000076-PLNG. This request is not consistent with existing community standards or in compliance with the local building and environmental laws codes. Why would your board grant any exception that would adversely impact the Nestucca river and its riparian zone? The application tries to make it look like there is no "real" impact, but that's not really true. There is an impact, the exemption will result in a reduced habitat, could increase riverbed erosion in the area and is just bad for the community. When this new owner purchased the lot, they knew what they were buying, where they were buying it and the codes and standards that applied to their purchase. Its like buying a residential lot and then putting a business on it, that's not what the land was zoned for. I and my family oppose granting this exception and request that you deny this application. There are multiple reports that document the impacts of reducing riparian zones along rivers in Oregon and all of them recommend against it. Please don't allow this land owner to mess up a part of the Nestucca River for everyone for the next 50 – 80 years, have them comply with the same standards the rest of us built our homes to. Also, it seems like the application should have a lot more information in it to justify the impact, an email from a state biologist without any testing, data collection, or other justification/data seems like the application is incomplete and needs more information to be considered. Also, the biologist short email

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Street Address, City, ST ZIP Code

Office: Telephone | Website

even says granting this exemption will result in an impact, how many small impacts need to happen before a big impact destroys the community we love.

In conclusion, I strongly request and recommend the board not approve this exception.

Thank you,



Laurie

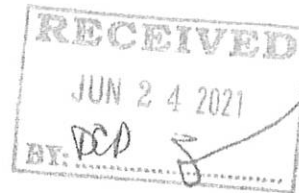
Street Address, City, ST ZIP Code

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Office: Telephone | Website

# Robert Moriarty

1926 NW 112<sup>th</sup> Circle, Vancouver, WA 98685



23 Jun 2021

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

## Dear Department of Community Development:

I opposed the Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF to allow for an exemption to reduce the required 50-foot riparian setback from the Nestucca River to 30-feet at the closest point to allow the construction of a single-family dwelling. I request that the exemption not be granted for the following reasons:

- 1) Only 39 homes reside on the North shore of the Nestucca River in Pacific City. All of the existing homes are in compliance with the county approved riparian setbacks that were in effect when they were constructed. A records review of these homes indicates there were several exemptions requested and none were approved. This denotes that the Tillamook County Department of Community Development determined that a 50-foot riparian setback was required along the Nestucca River in this area for the protection of water quality and streambed stabilization.
- 2) In the exception request there is an included letter from Mr. Robert Bradley, the Oregon Department of Fish and Wildlife's District Fish Biologist stated that the "adjoining area is highly developed with residential houses" but failed to note that all of the existing home are in compliance with the approved set-back requirements. His assessment that the setback exemption would have "only minimal additional biological consequences" is a violation of federal, state and local laws and associated land development codes. In the Nestucca River basin and the Nestucca Bay Estuary it is prohibited to allow ANY construction that will adversely impact the riparian zone. From the letter is clear that there would be SOME biological consequences. These consequences would be avoided if the proposed development was constructed in accordance with (IAW) the applicable planning codes.
- 3) The proposed lot is part of the development for Nestucca Ridge. The development company "Nestucca Ridge Family of Companies" owned by Jeff Schones and Mary Jones promoted responsible development for all sites developed as part of the project. They committed to protect the resource as well as property rights when applying to develop the sites. Adjoining land owners were told this would be complied with for all development within

the proposed property. Under the Environment Impact Statement and the associated Record of Decision posted in 1991, all construction within the development would comply with applicable federal, state and local laws and codes. This property would be the first exception requested by any property owner within the development to deviate from the riparian setback requirements. If an exemption is granted, a review by the Tillamook County and Oregon Department of Ecology should occur to ensure a deviation from the approved environmental "record of decision" is not incurred.

- 4) As indicated on the exception application the land owner was fully aware of the applicable land use laws and regulations when they purchased the lot. Their proposed construction should comply with the same standards enforced on all the adjacent property owners. All adjacent land owners were required to meet the 50-foot riparian setback in order to obtain approval to construct the residential structures, even back in the 1950's up to today. The exemption should not be approved.
- 5) It should be noted that the proposed development is not part of the 1950's -1960's development along Nestucca Blvd. These older homes have development restrictions placed on them by the USACE. The assumptions by ODFW biologist lacks an understanding of the history and phases of development in the area. The proposed lot's property lines where the exemption is being requested extends well beyond the existing residential homes located on Nestucca Blvd. This is an important distinction between the proposed lot which is part of the Nestucca Ridge Development in the 1990's and the adjoining residential houses. This further supports the need for the proposed development to comply with existing setback requirements. The ODFW biologist opinion of homes constructed in the 1950's to different codes and standards should not confuse their impact with proposed new construction that should be required to meet all current codes and set-backs.
- 6) As Pacific City, Oregon grew from its 1893 birth, the need for development brought the USACE to Pacific City in the 1950's. Under a request from the State of Oregon for federal assistance, the USACE developed and dredged the Nestucca river and was tasked to operate and maintain the first 7.0 miles of navigable waterways. As a result, all property owners along the riverbank within the developed city had conservation and land use access easements which required construction outside the riparian zones associated with the river. Just because the proposed development is just outside the USACE original dredging and river bank stabilization project, that is even more reason to protect and preserve the riparian zone.
- 7) The Nestucca River has been identified and is protected under the Oregon Scenic Waterways Program. All activities within the Oregon Scenic Waterways must be undertaken according to the Oregon Scenic Waterways Act and its rules. The provided application (Riparian Exception Request #851-21-000076-PLNG: LYDEGRAF) does not include the required Oregon Parks and Recreation Department (OPRD) consultation and record of decision required in the act. The act provides protection for private property rights but discourages unsightly structures or inappropriate developments that could be a nuisance to neighboring landowners or even depreciate property values. IAW the act, the riparian zone is special and distinct. It occupies a small area and possesses a climate, water temperature, soil makeup and plant arrangement very different from the land surrounding it. The

simplest and most effective technique for protecting the riparian zone is to leave natural vegetation, soil, and debris such as leaves and fallen trees undisturbed. The area will be less vulnerable to damage, and a home will be protected from flooding, storms and sun glare. An undisturbed riparian zone also provides privacy from the public using the river. The plan requires private building construction along the riverbank to prevent erosion which decreases the chance of personal property loss during a flood. In addition, to protect and preserve the natural character of the view from the river. All new developments must be completely screened from the river, usually by topography. In approval of all other residences located along the river that are part of the Nestucca Ridge development they were required to utilize topography to screen them from the river, this proposed development should also comply with this requirement which would require compliance with the 50-foot setback. Adjacent property owners to the northeast have topographical and geographical features installed that preserve the natural appear of visitors using the river for public use such as fishing and recreation. The proposed development should also be required to utilize this same approach as part of their development. This approach requires compliance with the 50-foot riparian setback requirements.

- 8) From the application it can not be determined if there are covenants or deed restrictions from the HOA that would influence what the new owner can/cannot build. This information should have been provided with the application, request the application be rejected for lack of the required supporting information.
- 9) The application lacks historical and archaeological clearances to determine the impact of the project. Prior to the 1980's development of Nestucca Ridge development the hillside including this home site was a treasure trove of Native American artifacts and was well documented hunting and fishing area for the Confederated Tribes of the Coos, Siuslaw and Lower Umpqua Indians. Since the proposed building site is the last remaining undeveloped lot in an area known to have support Native Americans prior to the exemption application, the land owner should consult with the Oregon State Historic Preservation Office and the local tribes. The areas closest to the river are the most likely locations for many of these artifacts. This is another reason to not approve the exemption.
- 10) The construction of the proposed residence that close to the river will adversely impact the existing river views of adjacent property owners and though property values are currently increasing, the development of an obstructed view of the river will result in a reduced value to adjacent property owners. Approval of the exception also provides an unfair advantage to the developer that existing property owners were not provided when their residences were constructed.
- 11) All new structures visible from a scenic waterway are subject to specific design criteria. For example, structures cannot be taller than 30 feet on sides facing the river. Large exterior surfaces, like roofs, must be non-reflective, and finished in muted colors that blend in with the surroundings. Construction disturbance should be minimal, and re-vegetation is always an important postconstruction measure. The exemption should not be approved because it lacks a complete picture of the proposed development to ensure not only does the proposed structure meet the required set-back, but that it also complies with scenic waterway requirements.

The Nestucca Bay Watershed Report prepared by the Oregon Department of Environmental Quality dates Apr 2002 highlights the impacts of riparian zone disturbances.

From the Nestucca Neskowin Watershed Council Action Plan, the Nestucca Neskowin Watershed Council has been very active both in assessing the environmental quality in the Nestucca Bay Watershed and developing and prioritizing an Action Plan for future projects. The actions in the plan range from enhancement of riparian vegetation to long-term monitoring of water quality in the watershed. They have determined that as a result of disturbed riparian habitat the cumulative effects on the ecosystem include increased water temperatures, increase sediment have adversely impacted fish and wildlife in the Nestucca River basin.

The proposed exemption is within the rearing habitat and migratory habitat of Spring Chinook, Fall Chinook, Coho, Chum, as well as winter and summer steelhead. The report highlights the temperature standard applicable in the Nestucca Bay Watershed requires that "no measurable surface water temperature increase resulting from anthropogenic (human induced) activities is allowed". Reduction of the riparian zone has been documented to directly impact water temperature in rivers and lakes. Temperatures Monitoring has shown that water temperatures in the Nestucca Bay Watershed often exceed recommended standards as a result of development. The required set-back was established to promote and protect the delicate ecosystem of the Nestucca River basin which is why no other riparian zone reduction has been approved in the past. The science supports a 50-foot riparian setback because it provides the minimum level of protection required by federal, state and local laws. Therefore, since the proposed development will have an impact, though small, on the riparian zone for the Nestucca River the exception should not be granted.

Riparian vegetation, stream morphology, hydrology, climate, and geographic location all influence stream temperature. While climate and geographic location are outside of human control, riparian condition, channel morphology and hydrology are affected by land use activities. Human activities that contribute to degraded thermal water quality conditions in the Nestucca and Little Nestucca Watersheds are associated with agriculture, forestry, roads, urban development and rural residential related riparian disturbance. Since the proposed development will disturb and possibly eliminate a portion of the riparian zone, the exception request should not be approved.

The approved 2016 Cape Kiwanda Master Plan highlights the requirement for protecting the beauty and natural resource values within the surrounding community; minimizing and mitigating the adverse effects of visitors. The Riparian Exception Request: #851-21-000076-PLNG falls within the identified focus area of the approved Master Plan. A riparian setback reduction is not consistent with the approved 2016 Cape Kiwanda Master Plan.

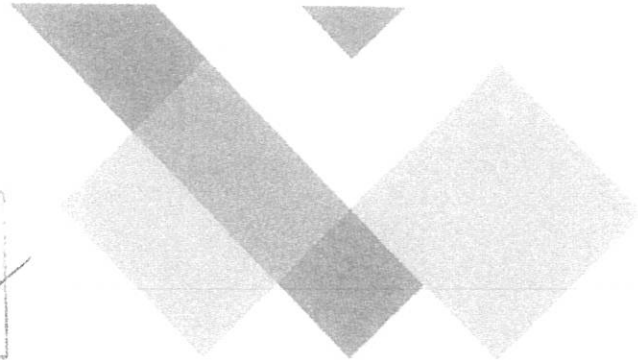
The Riparian Area adjacent to the river is the area of transition from an aquatic ecosystem to terrestrial ecosystem. Tillamook county has a requirement to comply with the Land Conservation and Development Department Chapter 660 "Goal 5". The Oregon Department of Ecology has identified the Nestucca river and its estuary as a conservation area, destruction and or removal of the ecosystem by development is strictly prohibited, the new owner of the property should comply with existing community development standards, the exception should not be permitted/granted.

The Nestucca Bay estuary is designated as a Conservation estuary under the Oregon Estuary Classification system. The proposed housing unit is adjacent to the Nestucca Bay estuary that has special mitigation sites and mandatory shoreline management units the proposed development also falls within the Nestucca Bay salmon habitat. The proposed exception does not meet the

2. Nestucca Bay Watershed Total Maximum Daily Load (TMDL) Prepared by Oregon Department of Environmental Quality Apr 2002.
3. National Assessment of Shoreline Change: Historical Shoreline Change Along the Pacific Northwest Coast, published by the US Department of the Interior, US Geological Survey, Open-File Report 2012-2017.
4. The Oregon Scenic Waterways Program, Oregon Parks and Recreation.
5. Nestucca Bay Watershed WQMP Report 4-02, 2002.
6. Tracking Prehistoric Cascadia Tsunami Deposits at Nestucca Bay, Oregon, Robert C. Witter, USGS and Eileen Hemphill-Haley, Humboldt State University.
7. Climate Change Preparedness Strategy Nestucca Estuaries Partnership.
8. FEMA, 2016 Multi-hazard Risk Report for Tillamook County Including the Cities of Bay City, Garibaldi, Manzanita, Nahalem, Rockaway Beach, Tillamook, Wheeler, and Unincorporated
9. Communities of Neskowin, Oceanside, Netarts, and Pacific City.
10. Estuary Technical Group reports on tidal wetland restoration in Tillamook, December 2020 by Laura Brophy.

Collette Delphin  
1618 Maesumi Ct.  
San Jose, CA 95124

RF  
JUN 24 2021  
BY: *DD*



# Tillamook County

## Department of Community Development

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510 B Third Street  
Tillamook, Oregon 97141

Dear Department of Community Development,

The Riparian Exception Request #851-21-000076-PLNG to reduce riparian set-backs should not be approved.

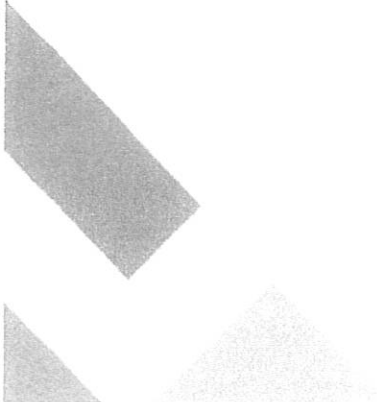
The land owner was fully aware of the land use restrictions when they purchased the lot, their proposed construction should comply with the current land use restrictions that were enforced on all other property owners in the area. It is unfair to existing neighbors, landowners, and the community if this new land owner is allowed to deviate from the established standards. This exemption also would allow for a significant increase in land value if approved at the expense of existing land owners/neighbors.

If approved the exemption would have a biological consequence to the Nestucca River and the Nestucca Bay Estuary where the property is located. As I understand the current laws in Oregon this is prohibited unless a documented mitigation was provided with the application and none were presented in the application available on the Tillamook County Department of Community Development. The application should be denied based on a lack of information and transparency and the applicant's failure to fully disclose the impacts of the proposed construction.

Sincerely,

*Collette Delphin*

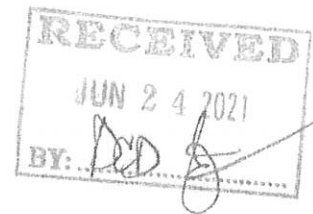
Collette Delphin





**Ned Golden**

11411 NE 2<sup>nd</sup> Ave  
Vancouver, WA 98685



22 Jun 2021

Tillamook County  
Department of Community Development  
Attn Request #851-21-000076-PLNG  
1510-B Third Street  
Tillamook, Oregon 97141

Dear Planning Department,

As a visitor that often explores Pacific City and stays with friends who live in the area, on my recent trip we saw the notice requesting an exception to reduce the 50-foot riparian setback from the Nestucca River to 30-foot. It appears as request 851-21-000076-PLNG on your website. I would like to voice my concern regarding the approval of this request and ask the development board to not approve requests that have an adverse impact to our environment and the community. Pacific City is a beautiful and vibrant community, the natural environment, the ocean, the river, the dunes, the wildlife, etc. are part of what make this community unique and a popular place to visit. Construction that adversely impact the river, estuary and wildlife destroys what makes Pacific City unique. Though the impact in the exemption is small, it is still an impact and if everyone of the 200+ homes on the river were allowed to be built on the river the cumulative impacts would be significant, I would request the board not set a precedent that homes or any structure can be constructed less than 50 feet from the river, the long-term impacts of this decision would have significant impacts to the ecosystem and could change the face of Pacific City forever. Pacific City is not Lincoln city where condos are built right up to the ocean or people can open their back door right up to Devils Lake. Please don't allow construction like the homes on the Siletz River where homes are so close to the river their foundations are built into the bank. Everyone loves kayaking and fishing on the Nestucca river, allowing this exemption would take away a small part of the beauty of the river for thousands of visitors. In addition, the new home would be more prone to flooding and the wildlife that live, nest, and play in the proposed area would be forced out. This would have an impact on the

ecosystem that you are charged with protecting along with private owners' interests. Please do not grant this exemption.

Sincerely,

*Ned Golden*

**Ned Golden**