



## Kilchis Porter Project-Specific Collaborative Process: Mediator Summary

**Date:** June 15<sup>th</sup>, 2021

**Goals and Scope:** The intent of this Project-Specific Collaborative Process was to develop collaborative recommendations for conditional use review regarding the Conditional Use Permit for the Kilchis Porter Tidal Wetland Restoration Project. The goals for this process are described in [Senate Bill 1517](#) as follows:

Section 2: The Legislative Assembly finds and declares that Tillamook County experiences unique challenges related to the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, including regularly occurring and devastating flood events and landowner conflicts. It is therefore in the public interest to establish a pilot program in Tillamook County that applies conditional use review for the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, and that incorporates a means for stakeholders to engage in a collaborative process for ensuring the protection and enhancement of agricultural land uses and wetlands.

The scope of the collaborative process is described in Tillamook County Land Use Ordinance [Article 6: Section 6.060](#): (1) Notwithstanding 6.040 or ORS 215.296(10), a CONDITIONAL USE for a WETLAND RESTORATION, ENHANCEMENT OR CREATION located on land zoned Farm (F-1) and authorized according to this Article shall only be subject to the following criteria:

- a. The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- b. The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

**Participants:** Invited participants were defined as follows:

- (a) The applicant;
- (b) Any person whose use of the person's property may be adversely affected by the proposed use;
- (c) Any person who is entitled to notice under ORS 215.416 (11)(c);
- (d) Representatives of any state or federal agency that is involved in the project for which the application for the use was submitted or that has expertise related to issues raised by the application or by comments received by the governing body; and
- (e) For the purpose of assisting in the project-specific collaborative process, any person with technical expertise in:
  - (A) Creating, restoring or enhancing wetlands in Tillamook County;
  - (B) Creating, restoring or enhancing wetlands in areas with site characteristics similar to those identified in the application for the use; or
  - (C) The impacts of wetlands on agricultural operations.



Based on this definition, the following individuals agreed to participate in the collaborative process. Two individuals did not participate in any of the mediation meetings; the other participants attended at least one or more of the mediation meetings.

Ben Hathaway (Property Owner), Robert Kabacy and Thomas Rask (attorney representatives)  
Michael Prince (Property Owner)  
Jon Cummings (Tillamook Bay Flood Improvement District - TBFID)  
Tilda Jones (Tillamook Bay Flood Improvement District - TBFID)  
Leo Kuntz (TBFID Consultant)  
Don Best (TBDID Consultant)  
Ray Monroe (Tillamook County Soil and Water Conservation District)  
Chris Knutsen (Oregon Department of Fish and Wildlife)  
Lisa Phipps (Department of Land Conservation and Development)  
Hilary Foote (Department of Land Conservation and Development)  
Curtis Loeb (Wolf Water Resources)  
Dick Vanderschaaf (The Nature Conservancy)  
Jena Carter (The Nature Conservancy)  
Sarah Absher (Tillamook County Department of Community Development)  
Paul Snyder (Tillamook County Creamery Association)  
Mary Anne Cooper (Oregon Farm Bureau)

**Kilchis Porter Project Area Definition:** The Kilchis Wetlands site, now known as the Kilchis Estuary Preserve, is located on the lower Kilchis River near Tillamook Bay in Tillamook County, T1S, R10W, Section 12. The site is located between the cities of Bay City and Tillamook, west of Highway 101 and occupies 126.69 acres in two parcels of 66.43 acres referred to as the Dooher tract and 60.26 acres referred to as the Porter tract (Kilchis Estuary Preserve Management Plan, The Nature Conservancy). This summary also references the Dooher Project. The Dooher project is a separate project which has already gone through the land use review and permitting process.

**Outcome:** Mediation activities occurred between October 2020 and April 2021. Following the initial mediation session, The Nature Conservancy opted to continue the collaborative process. There have been substantial one-on-one mediation efforts to broker a settlement and five subsequent Zoom mediations. Several participating parties who agreed to represent all participating party interests drafted a mini-agreement to contract with a third-party hydraulic engineer, Vaughn Collins, for the purpose of reviewing both the Dooher Project and Porter Project hydrology. These parties, listed below, agreed to discuss the report when it is completed, as well as any mitigation or responsive actions it may indicate or imply. The full language of this mini-agreement is included in this summary. Parties were unable to reach full agreement on recommended project modifications or considerations within the 90-day extension provided for this Project-Specific Collaboration Process. The mediators determined that, due to the time constraints imposed by the land use review process and impasse between the parties, reaching meaningful agreement on proposed project modifications would not be possible prior to the completion of the third-party hydraulic review (as outlined in the mini-agreement).

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## Collaborative Process Summary:

An initial mediation session was held on October 30, 2020 to solicit and integrate input from parties related to the following criteria:

- a) The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- b) the use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

During the initial mediation session, Tillamook County Development Director provided a brief overview of the collaborative process guidelines. The Nature Conservancy then provided a summary of the proposed Kilchis Porter Project. Don Best (TBFID consultant), shared several slides including aerial photographs and historical maps of the region.

All participants were given an opportunity to share their comments or questions regarding the Project and conditional use criteria. Comments, questions, and suggestions that were brought forth in mediation are summarized in greater detail below.

For criteria A, *that the use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use*, the main dispute involved anticipated impacts to drainage and the water table on properties adjacent to the Kilchis Porter Project area. In 2015, The Nature Conservancy conducted a restoration project on an adjacent tract of land – the Dooher Project. Adjacent landowners and TBFID representatives described observations of economic and ecological impacts after the Dooher Project implementation. According to those voicing concern, these observations of impact from the Dooher Project had not been predicted by hydrological modeling and have not been confirmed by The Nature Conservancy staff. Representatives from The Nature Conservancy, ODFW and Wolf Water Resources (W2R) stated that for both the previous and current Project, hydrological modeling was relied upon in the design. For the current Project, the model predicts little to no increase in flooding in the Project Area. Landowners expressed concerns that modeling is insufficient and requested analysis that takes local observations and previous project outcomes into account.

To resolve criteria A, participants agreed to contract with a third-party hydraulic engineer to review The Nature Conservancy models and answer specific questions. The outline of that agreement is included in this summary.

For criteria B, *that the use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use*, participants expressed concern that decreased drainage, or increased water table levels, would limit availability acreage to farm as well as limit the season for using farmland. Participants also reflected that other factors, such as regional climate change, might affect the cost of farm practices.

To resolve criteria B, several suggestions were made and are briefly described below. Future project modifications or actions may be explored based upon the third-party hydraulic review.

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The summary below captures the comments, concerns, and questions shared during mediation. Where specific property is mentioned, the property owner is noted. Otherwise, individuals associated with each comment are not named. The information in this summary is has been categorized thematically. The information is not prioritized and statements were not captured verbatim. Six Rivers Dispute Resolution Center makes no representation, warranty or claim that the information provided during mediation is current or accurate.

## Participant Comments

### Modelling

- Request for site-specific analysis needs to be conducted and incorporated into Project Plan. Previous project (Dooher Project) resulted in local impacts not predicted by modeling. The same model is used to plan Kilchis Porter Project.
- There are obstacles to groundwater monitoring. Need to explore opportunities and limitations related to groundwater monitoring, and pathways to make the permitting process easier for groundwater monitoring wells for restoration purposes.

### Drainage and Water Flow

- Little to no elevation change across the Project site results in reduced drainage of tidewater and increased groundwater in adjacent properties.
- Gravel and silt accumulation in previous project area (Dooher Project) reduce drainage. The gravel accumulation results in water level changes not predicted in modeling.
- Historically, the Kilchis River had more drainage options to the Tillamook Bay, now limited due to regional infrastructure. Restoring the Kilchis to historic patterns could inhibit drainage.
- Frequent logjams inhibit drainage. Request to remove logjams regularly.
- Previous project (Dooher Project) increased subsurface water levels and reduced ability to farm in adjacent properties. In other, unrelated project areas were verified by the transfer of bacteria from formerly inaccessible drainage areas.
- During winter, adjacent fields have standing water and property owner cannot access the fields to plant. Tax lots 2600 and 2700 mentioned specifically by Michael Prince.
- Tidal flows in the Hathaway and Squeedunk sloughs were impacted by Dooher Project, such that one is unnaturally high and the other is unnaturally low, rather than balancing out.
- Flood conditions from recent years should be taken into consideration rather than 100 year flood model.
- TNC requests information about the specific timing and location of flooding.
- Explore the possibility of lowering the west side river bank on the Gienger property.

### Maintenance and Monitoring

- Army Corps Flood Control Project infrastructure, within Project area, requires maintenance.
- Request for the Project Management Plan to include measuring and monitoring of Project effects on adjacent properties, both positive and negative.

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- Request for management Plan to include actions that will be taken by TNC if Project results in unintended consequences, especially increased flooding to adjacent landowners.
- Previous Project area currently monitored by 8 loggers within the project site and in three other sloughs.

## Comments not related to ordinance criteria

- Project area and tidal region is essential for salmon recovery, both commercially and ecologically
- Observation that previous project (Dooher Project) disrupted salmon access; salmon are taking a different route to reach upstream Kilchis.
- Observation that gravel accumulations create pools where salmon are trapped and easy prey for predatory birds. Some gravel creates shallow, warm pools, near the property of Ben Hathaway. It was noted that sediment accumulation in this location has been a chronic problem for decades.
- Gravel and silt accumulation in previous project area (Dooher Project) impacts salmonid access.
- Salmon continue to thrive in the drainage and restored areas needed for salmon recovery.
- Region contains historic uses not explicitly noted in the permit application
- Initial Project application was resubmitted after Covid-19 and cyber security issues at Tillamook County caused project review delays; therefore previously submitted public comments are not currently on website. To submit comment, public must re-send their comments related to the Kilchis Porter Project during upcoming comment period.

## **Participant Suggestions**

The following suggestions were made by one or more participants. None of the following suggestions had full consensus or agreement by all participants.

- Measure slough water levels and/or groundwater levels on adjacent landowners' property as well as Project site. Install water beacons to document changes. Monitor for loss of agricultural land due to rising groundwater levels.
- Establish direct communication pathways between The Nature Conservancy project staff and adjacent landowners. Regularly schedule information exchange along with site visits to both Project area and adjacent land. Prior to permit approval, conduct a Project site area tour with all stakeholders.
- Establish communication connection between The Nature Conservancy and The Tillamook County Creamery Association
- Re-install key dikes to protect adjacent land during seasons of use (especially where agricultural land has become inaccessible due to rising subsurface water levels).
- Enhance connection to Stasek Slough to increase drainage
- Update Porter project hydrological analysis to include:
  - o Current gravel deposition and impact on drainage
  - o Inadvertent effects of different types of flooding events, taking climate change impacts into consideration
  - o Past use of site by Army Corps of Engineers
  - o Groundwater monitoring

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- Reference both hydrological modeling and community observations to predict project outcomes and management.
- Negotiate a land swap with adjacent farmers, in which arable land is exchanged for wetlands
- The Nature Conservancy may buy out a portion of adjacent lands; adjacent farmer may then use the funds to buy a higher elevation piece of land
- Create a detour channel from project area across Hwy 101
- Explore current funding opportunity for installing a tide gate on agricultural lands
- Explore possibility of land raising by transporting earth to low elevation arable land
- Contract with Vaughn Collins, hydraulic engineer, to review the Dooher and Kilchis Porter project hydrological modelling using data inputs from TBFID and TNC.

## **Mini-Agreement: Vaughn Collins Scope of Work**

Participants: Tilda Jones (Tillamook Bay Flood Improvement District - TBFID); Dick Vanderschaaf (The Nature Conservancy); Jena Carter (The Nature Conservancy); Paul Snyder (Tillamook County Creamery Association)

The parties involved in the Kilchis Porter Collaborative Process reached a mini-agreement to contract with Vaughn Collins, hydraulic engineer with NHC. Collins will review the Dooher and Kilchis Porter project hydrological modelling. This work will be paid for by The Nature Conservancy and The Tillamook County Creamery Association. TCCA and TNC will each cover 50% of the cost of this review.

Participating parties agree that the purpose of this review is to inform the following questions:

### **Dooher Project impacts analysis:**

- 1) How did the Dooher project impact water levels in Hathaway Slough, Stasek Slough, and the Kilchis River (adjacent to the project site)?
- 2) What were the hydrological impacts of the Dooher Project regarding both drainage and flooding on farm properties adjacent the Dooher property and Stasek slough?

### **Kilchis Porter Project impacts analysis:**

- 3) What are the anticipated impacts of the Kilchis Porter Project to neighboring farm properties regarding both drainage and flooding? How do the impacts of the initial Dooher and proposed Porter projects combine?
- 4) Review and, if needed, propose updates to the model, report and findings associated with Kilchis Porter permit.
- 5) If anticipated impacts are identified, what proposed actions could be considered to remediate or mitigate impacts to neighboring farm properties?

In addition, parties agree to request that Vaughn Collins evaluate the following:

- 6) Review the "staircase" theory per L. Kuntz 2017 NM memo, and the Kilchis River gradient from Highway 101

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- 7) Review the flow control function of the existing box culvert on the Porter property and potential effects on drainage and flooding on farm properties adjacent to Hathaway Slough.
- 8) Review of Stasek Slough water levels versus Hathaway Slough levels and timing with tides
- 9) Analyze effects of proposed Hathaway Slough levee removal
- 10) Review flow control function of existing box culvert and potential effects on neighboring farm properties along Hathaway Slough
- 11) Analyze Dooher levee removal effects on the Kilchis River east of Highway 101
- 12) Review land accretion on former Dooher lands post-2015 TNC project and potential changes.
- 14) Analyze flooding and changes to subsurface water levels in adjacent farming properties, as well as the attributions of identified changes. Specifically, does the information currently available allow site specific subsurface water analysis? If yes, how was this analysis conducted? If no, what data is needed to conduct such an analysis?

Parties agree to provide the following information for Vaughn Collins to use in review:

1. Previously completed hydrological modelling of the Dooher and Kilchis Porter Projects, developed by ESA, Wolf Water Resources and Northwest Hydraulic Consultants Ltd, provided by the Nature Conservancy. This modelling includes the changes resulting from the Dooher project.
2. Water level logger data from TNC as needed by Collins to complete a full and accurate assessment.
3. Full Kilchis Porter permit application
4. Wolf Water Resources and D. Vander Schaaf as resource
5. Staircase theory memo from L. Kuntz
6. Other data inputs as requested by Collins to complete a full and accurate assessment

Agreements:

1. Collins will regard all data inputs as confidential and will not share any inputs with other parties
2. Collins' report, analysis and findings will initially be released to mediation parties only. The report and findings will be made fully public by 120 days following receipt of the analysis from Vaughn, or by mutual agreement by the parties, whichever occurs first.
3. The parties may not contact Vaughn Collins to expand the workload or add additional questions. The above agreed upon questions/requests comprise the full and final scope of work.
4. All clarifying questions or other inquiries from Collins during the analysis period will be shared with the entire group, even if the questions are only directed at one particular party.
5. Vaughn Collins will personally complete this review and assessment. Attempts to contact, discuss, or influence Vaughn's work will result in the immediate termination of this project.

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