

Oregon Shores Conservation Coalition
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TO: Chair Fahey, and members of the House Committee on Rules

FROM: Oregon Shores Conservation Coalition

RE: HB 3382

The Oregon Shores Conservation Coalition opposed House Bill 3382 in its original form. We continue to oppose the amended version now under consideration before your committee. The bill would undermine our land use planning system at the behest of a special interest. We urge that there be no further action on this legislation.

Our fundamental objection is to the process itself, or rather lack thereof. While there can be changes to the land use planning system, this is categorically not the way to do it. Oregon's land use planning laws and regulations are a *system*, designed for the careful balancing of critical resource needs and values with proposed development. These regulations should not be tinkered with in haste for the convenience of a would-be developer (completely regardless of the presumed value of the proposed development).

Any changes to the land use regulations should be the result of careful study, thorough review, and full public vetting of any proposed change. This should take place through the Department of Land Conservation and Development and the Land Conservation and Development Commission, the proper procedure as set forth in our land use laws. The legislature delegated that job to LCDC: ORS 197.732(3)(b): "The Commission shall adopt rules establishing ... under what circumstances particular reasons may or may not be used to justify an exception...." The approach taken by this legislation is contrary to the existing statute and regulatory framework. The bill is an attempt to step over DLCD/LCDC's already delegated authority to address changes in land use regulations.

The bill is unnecessary for any legitimate functioning of Oregon's ports. Goal 16 has allowed for all kinds of development over many decades. We have checked with several land use attorneys and with DLCD, and it is flatly untrue that land use regulations pose any threat to maintenance dredging, or to port development in properly zoned areas of estuaries, such as the NOAA terminal in Newport. Land use laws currently on the books exist to create and verify an accounting of the likely impacts of proposed development. Existing development passed muster; it is by no means true that comprehensive plans complying with Goal 16 block all development. HB 3382 is the product of a special interest seeking to game the system by evading a balanced

review of its potential impacts. The legislature should not sully itself by allowing itself to be manipulated by this kind of insider scheme.

We strongly object to the list of potential applicants for an exception under the bill. Given the looseness of the phrase “industry in the traded sector,” and the fact that a port—or even the operator of a fishing vessel—could apply on behalf of a special interest not otherwise listed, there is no real limit on who could utilize the proposed exception to evade land use review. With this door left open, estuaries could face numerous impacts large and small from development interests seeking to deepen main channels or develop side channels, leading to continual challenges to the locally adopted comprehensive plans and estuary management plans on which the land use system is based.

The potential applications of the bill are both vague and overly broad. While the deepening of the federal navigation channel may be limited to ill-defined water dependent uses, it is not at all clear what could be allowed for dredging new access channels or modifying existing ones. Terms like “navigation support structure” or “necessary structural support for docks, wharfs or similar ship berthing facilities or navigation aids” are not defined and could lead to all kinds of consequences, intended or otherwise. Any industry along the bay could use this exception to dredge a new access channel out to the navigation channel, and a new turning basin, regardless of how much dredging that might entail, and then install all the docks and berths it desired, and possibly all kinds of other facilities labeled “support structures.”

Another new and dangerously unspecific component is Section 2 sub (2)(a)(D) - "enabling the construction or maintenance of necessary structural support for docks, wharfs or similar ship berthing facilities or navigation aids." This could be construed to allow all manner of activities if the applicant argues they are necessary to "enable" construction of support structures. Things that come to mind include dredging pipelines, riprap, rock blasting, exclusion of public access to areas of the estuary, etc.

Not only that, but these changes to the estuary could be made in advance of, or separately from, any actual changes to the federal navigation channel itself, which require U.S. Army Corps of Engineers review (including economic and environmental review). In other words, it would appear that a development interest could blast a new access channel to the navigation channel without any "expansion" or "improvement" to the federal navigation channel itself. Moreover, only (2)(a)(A), deepening the navigation channel, mentions water dependent uses. All others do not tie back to a proposed water-dependent use. The overarching requirement - Section 2 (1)(b) - just refers to necessity for "the use" --no water dependency stated. All of this belies the pretense that the bill's potential effects are strictly limited to removing obstacles to deep draft dredging.

Despite the new, amended language, which limits the geographic scope somewhat, the bill is not narrowly tailored. It eliminates the question of whether development actions would interfere with public access to public trust resources. A fundamental duty of the state is to preserve public access to public waters.

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The mitigation language in the bill is meaningless. Dredging would already remain subject to DSL and Army Corps of Engineers rules that would impose the "mitigation" requirements, so it does not add anything. However, the intention of permitting special exceptions to estuary management units threatens sensitive areas that were previously zoned for protection and conservation due to the high cultural and ecological value those resources offer. Expanding navigational channels to the depth necessary to accommodate modern container ships is no small alteration. This type of modification would result in a complete loss of shallow water resources, which cannot be mitigated or replaced biologically. The potential consequences of changes to estuary hydrology (water and sediment movement) cannot be mitigated. Additionally, the proposed exception would also undermine the restoration and mitigation goals set by the community in local estuary management plans. As it happens, the area where the proposed container terminal would be located is a mitigation/restoration site, according to the maps that are the basis of the Coos Bay Estuary Management Plan. Although this amendment includes claims that damage will be mitigated, it hinders the mitigation plans already set by the county.

No amount of amending can change the basic principle that revising the land use laws to enable a special interest to avoid balanced consideration of public values through the land use planning process is a betrayal of Oregon's 50-year record of sound land use planning. By engaging in piecemeal alteration of the land use planning system whenever a would-be developer anticipates a potential conflict with comprehensive plans, the legislature would be taking a running leap down a slippery slope. We urge that the committee decline to advance this deeply inappropriate bill.

Thank you for the opportunity to offer this testimony.

Phillip Johnson, Conservation Director
Oregon Shores Conservation Coalition
on behalf of the board and staff of Oregon Shores