



OREGON SHORES
CONSERVATION COALITION

TO: CHAIRS GORSEK AND MCLAIN, AND MEMBERS OF THE COMMITTEE

FROM: OREGON SHORES CONSERVATION COALITION

SUPPLEMENTAL TESTIMONY RE: HOUSE BILL 3382

Please accept these addition comments concerning H.B. 3382, responding to the hearing held on March 14. The Oregon Shores Conservation Coalition has already expressed opposition to HB 3382, on the grounds of the damage it would do to Oregon’s land use planning system. However, much of the hearing focused inappropriately on special pleading for a particular project.

There was an imbalance to the hearing, because opponents discussed the integrity of Oregon’s land use planning system, while proponents made claims for the container port that the Port of Coos Bay wants to develop. Opponents were playing by the rules, and not making premature statements about the “multimodal terminal.” The purpose of the land use planning system is to carefully vet proposed projects like this, and determine whether they are compatible with other key human uses and natural resource values. Since this has not been done, opponents aren’t in a position to argue the details of the project—that should take place through the appropriate process, which is precisely what this bill seeks to abrogate.

Proponents of the bill assume that which it is their responsibility to prove—that the proposal container port facility will have a net public benefit, when impacts to natural resources, other economic interests such as fisheries and aquaculture, and recreational uses are fully taken into account. Based on this unsubstantiated assumption, they wish to preclude land use review, on the grounds that it might contradict their assumption.

Since we don’t have a formal proposal for the container port to consider, we can’t take a formal position on it. We can say this: Oregon Shores has worked with Oregon’s land use planning system since it was created, we have been involved in hundreds of issues, and we can state firmly that the system is not stacked against development. It is called the Department of Land Conservation and *Development* for reason. The planning system is all too porous. The Land Use Board of Appeals, to our frequent frustration, defers insistently to local jurisdictions—if there is any leeway at all, local decisions will stand. Appellants only win at LUBA if their case is absolutely incontrovertible. To put it another way, proposed projects only fail at LUBA if they are open-and-shut violations of land use regulations, and those regulations are no more than reasonable standards to protect the public interest.

While it would be premature for Oregon Shores or other opponents to make definitive claims

In Oregon, the beaches belong to the people

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about the proposed container port, the proponents, in attempting to evade the land use process, are in effect announcing to us that they are attempting to do something they know to be unacceptable. They are attempting to game the system.

We would suggest, prematurely, that one reason the project proponents might wish to avoid scrutiny is the potential impact on the actual residents of Coos Bay. Dredging the bay beyond the current channel will presumably result in the destruction of eelgrass beds, mudflats, and marshes, perhaps destroying habitat for salmon and Dungeness crabs, the staples of the local fishing industry, and other species of interest, including some that are listed under the Endangered Species Act. A large port on the North Spit could adversely impact various recreational uses. Loss of water quality could affect aquaculture. We can't say that fishing, aquaculture and recreation provide as many jobs as the promoters claim for the proposed container port. But these are the interests of current members of the community, whose lives could be disrupted or diminished in order to bring in hundreds or thousands of workers from elsewhere in service to an out-of-state corporation. We don't claim to know for sure what the effects will be; that's why we need careful study under the land use planning laws.

Again, at this point we should not be discussing the ultimate acceptability of whatever the Port of Coos Bay is going to propose. The only issue should be whether we eviscerate land use regulations that require that impacts to the estuarine environment be weighed in the balance when development is proposed. The answer is no—to do so would be reckless.

It was claimed during the hearing that we would still have the Coastal Zone Management Act in effect even should this bill pass. This is not true; federal consistency would no longer apply to port activities. There is a worst-case scenario in which by unraveling our land use laws we lose certification of our Coastal Management Program and with it federal consistency more broadly. That may well be overly alarmist, but we had better be absolutely sure that won't be the case before considering this legislation. Yes, the U.S. Army Corps of Engineers would still review dredging plans, but it is grimly amusing to hear conservatives assure us that state authority isn't needed because we can count on the federal government to take care of us.

This bill would open the way to a project that would massively affect the Coos Bay estuary with results we might come to deeply regret, and over time could lead to ill-considered development in all of our major estuaries. Land use planning sets up stop signs that require us to first consider the landscape carefully before we plunge ahead. That is nowhere more important than where estuaries are concerned. This misbegotten bill should go no further.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Johnson", with a long horizontal flourish extending to the right.

Phillip Johnson, Conservation Director
(503) 754-9303
phillip@oregonshores.org

Note: The mailing address on this stationery is correct. The testimony on this bill we submitted previously had an outdated address.