



To: Joint Committee of Transportation

Re: HB 3382-4 Amendment

The undersigned organizations and individuals, representing tens of thousands of Oregonians, wrote in April to ask you to block the original version of House Bill 3382 from moving any further in the legislature. We write again to oppose the latest version of the bill (-4). The amended version may be narrowed in scope, but introduces new potential harms. The bill will damage, not only critical estuarine habitat, but the fundamental integrity of the land use planning system. We urge the committee to oppose HB 3382 and its amendments.

The bill was introduced at the behest of the Oregon Public Ports Association. The amended version reduces its geographical scope to the state's three most important estuaries. These are "deep draft ports," but also harbor essential natural and cultural resources. In such areas, careful land use review is especially important. As ODFW stated in the work session last week, estuaries are some of the most sensitive and important ecosystems in our state.

As everyone is aware, the immediate impetus for the bill is the desire of the Port of Coos Bay to develop an "intermodal" port for containerized cargo on the estuary's North Spit. But this should not be relevant to the discussion. Whatever the merits of such a proposal, the critical point is that land use regulations would be preemptively altered at the behest of a special interest, establishing a terrible precedent that could lead to continual challenges to the land use planning system throughout the state.

It is for this reason that conservation and community groups around the state oppose the bill, even with the proposed -4 amendment. The process by which it has been introduced and considered is irredeemably flawed. It is categorically inappropriate to bypass the land use planning system, which is designed to provide balanced consideration of proposed development against a range of ecological values and community interests.

The bill undermines the stated intention of [Oregon's Statewide Planning Goal 16: Estuarine Resources](#), first adopted in 1977. The Goal states that its purpose is "*to recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity, and benefits of Oregon's estuaries.*"

The land use planning system is designed to balance important and potentially competing public interests—in this case, the desire for development against the value of ecological functions and resources, including the role they play in sustaining existing economic interests, such as fishing, aquaculture, recreation, and tourism. The Comprehensive Plans with which port development proposals must comply are crafted by local governments. As it happens, local governments in the Coos Bay and Yaquina Bay watersheds are currently engaged in processes to revise and update their Estuary Management Plans, a major investment of time and energy by these governments and their residents. Any development application needs to be considered by those local governments, and not be preempted at the state level.

Furthermore, the bill seeks to override local land use plans related not only to dredging, but also to shoreside docks and berths. Section 2(1) of the -4 amendment identifies "Deep draft navigational improvements" to be a reason for a Goal 16 exception. Additionally, the list under (2)(a) opens the door to upland development, and other shoreline and nearshore development that is undefined. **This language is dangerously vague and "improvements" could include a wide range of modifications such as construction for new structures—ports, wharfs, docks, dolphins, etc.—and establishment of new navigational channel access points.**

In effect this language could open the door to unrestrained estuarine and shoreland modifications that are not subject to Goal 16 requirements, which would have consequences for public access, natural resources, and hydrologic processes (sediment and water movement). Rather than

allowing discussion of the necessity (or appropriateness) of these “improvements” at the local level through the estuary management planning process, this exception language could simply allow courts to assume permission is granted for these modifications. Additionally, the geographic extent is undefined in the bill, and potentially enables broad development that could affect public health and safety as well as neighboring private property without land use review.

Another deeply problematic aspect of the bill as amended is the stated list of potential applicants for an exception. Given the expansive definition of “industry in the traded sector,” and the fact that a port—or even the operator of a single fishing boat— could apply on behalf of any special interest, there is virtually 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, continually challenging the locally adopted Comprehensive Plans and Estuary Management Plans on which the land use system is based. **If this is about ports, there is no reason to allow any but public entities to apply; the obvious intention here is to smuggle in special interests of many types.**

A method already exists for amending the land use program, that allows all parties and stakeholders to participate in these decisions to assure the outcome is genuinely in the best interest of coastal communities. **We do not believe that regulations under Goal 16 need amending, but if amendments are to be considered, they should go through a careful process of study by affected agencies, public input overseen by a rule advisory committee, and eventually, if warranted, a proposed change to be considered by the Land Conservation and Development Commission.**

Oregon is hoping to see the delisting of Oregon’s Coast Coho. One of the key factors NOAA Fisheries considers for delisting decisions is the adequacy of existing regulatory mechanisms to prevent future destruction of habitat. Concern about regulatory sufficiency has been one of the key reasons NOAA Fisheries has not previously delisted Oregon Coast Coho, even though they are biologically viable. **This bill would reduce the regulatory adequacy of the statewide planning program, local land use plans and implementation of the Oregon Coastal Management Program to provide reasonable protections for salmonid habitat.** This could further have fiscal implications for ODFW and the Watershed Enhancement Board, as many millions are spent annually on salmon recovery efforts. NOAA grants also fund much of Oregon’s coastal planning program at DLCD.

The current amendment does not sufficiently address mitigation to these critical estuarine habitats and other environmental assets that should be required when new dredging would occur in these sensitive areas as required in ORS 196.800 (9). As an example, deepening and widening a navigation channel would result in a permanent loss of critical habitat that cannot be easily replaced or mitigated.

How much this bill would impact Oregon’s overall CZMA authority and funding is not known, but the impacts could be far-reaching, affecting all state authority in the coastal zone, and depriving Oregon of eligibility for various federal grant programs, such as the \$2.6 billion available from the Inflation Reduction Act.

HB 3382, even with the -4 amendment, is an attempt to evade and weaken our statewide goals and local plans on behalf of a development interest, thereby removing the balance provided by the land use planning process, which measures proposed changes against the range of values reflected in local jurisdictions' comprehensive plans. **If land use regulations are altered whenever they pose a potential challenge to development proposals, then the land use laws and statewide planning goals will be meaningless.**

We respectfully urge you to not move HB 3382 and -4 amendment forward and keep our statewide and local planning process intact.

Sincerely,

Phillip Johnson, Oregon Shores Conservation Coalition
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Julia DeGraw, Oregon Conservation Network
Mary Kyle McCurdy, 1000 Friends of Oregon
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Mary Garrett, Shoreline Education for Awareness
Monica Kirk, 15 Neighborhoods of Lincoln County
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Bethany Cotton, Cascadia Wildlands
Elizabeth Dix, Oregon Sierra Club
Susan Jane Brown, Western Environmental Law Center
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Penny Suess, 100 Friends of Port Orford
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David Harrison, Salem Audubon Society
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Laurie Caplan, Indivisible North Coast Oregon
Sally Keely, Cascadia Climate Action Now
Alice Carlson, League of Women Voters of Coos County
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Diana Wales, Umpqua Valley Audubon Society
Fran Recht, active Depoe Bay resident
Steve L Miller, active Coos Bay resident
Michael Graybill, former manager of South Slough National Estuarine Reserve
Clarence L. Adams, concerned land-owner
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