



To: Joint Committee on Transportation

Re: HB 3382

The undersigned organizations and individuals, representing many tens of thousands of Oregonians, write to ask you to block House Bill 3382 from moving any further in the legislature.

The integrity of Oregon's land use planning system is threatened by HB 3382, introduced at the behest of the Oregon Public Ports Association. The bill would eliminate land use review of dredging and development proposals in the state's five deepwater ports: Coos Bay, Newport, Astoria, St. Helens, and Portland. Even if the bill were narrowed to the three coastal ports, the deleterious effects of the bill remain the same.

The range of local and state regulations that could be waived should the bill pass is staggering and includes public involvement requirements; environmental zoning to protect in-water, riparian and upland habitat; protections for floodplains and wetlands; zoning restrictions to protect adjacent communities; dredging and dredge disposal regulations; and other protections for Oregon's coastal zone. The bill's passage would pose a serious threat to Oregon's largest estuaries, ecologically vital habitat areas where careful land use review is especially important. 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. Whatever the merits of such a proposal, **the critical point is that land use regulations would be preemptively eliminated 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.**

The bill poses an additional threat. Land use regulations as applied to coastal areas are part of Oregon's integrated Coastal Management Program, recognized by the federal government under the Coastal Zone Management Act (CZMA). This bill would weaken the state program, triggering review by NOAA for compliance with the CZMA. Under this law, Oregon's Coastal Management Program is acknowledged as the governing management program within the state's coastal zone; all federal policies and actions must be consistent with mandatory provisions of the state's program. This provides the state leverage and review when faced with federal projects (including, for example, dredging in a federal navigation channel), as well as funding through CZMA grant programs. The bill would eliminate this "federal consistency" review under the CZMA, at least where land use decisions regarding these estuaries are concerned. **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.** Putting the full panoply of local and state regulations that protect our coastal environments at risk would be reckless in the extreme.

(We are aware that there has been discussion of amendments to the bill, such as by making dredging a conditional use instead of an exception in all cases rather than entirely eliminating land use review. Such amendments would not alter the harms done by the bill: preemptively altering land use laws at the behest of a would-be developer; overriding local land use authority as reflected in estuary management plans; and putting Oregon's CZMA approval at risk.)

Proponents of the bill attempt to make a case for development of a container port and contend that the current land use laws and local comprehensive plans would block it. This is inappropriate on both counts. Land use applications have not yet been made for the Port of Coos Bay's plan, so it would be premature to discuss its merits. It is also premature to make assumptions about the results, should such applications be made. What we can say, though, is that **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 citizens. HB 3382 would make these carefully developed plans moot for major portions of these estuaries.

The bill seeks to override local land use plans related not only to dredging, but also to shoreside docks and berths. **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.**

Also, 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.**

Oregon's land use laws don't block all development—far from it. The Land Use Board of Appeals (LUBA) defers to local jurisdictions if there is any possible leeway within the statewide goals and local comprehensive plan. Opponents of a project win appeals to LUBA only when the project egregiously violates sound land use planning. In claiming that they will definitely be prohibited from pursuing their development project by the land use planning regulations, the Port of Coos Bay and its advocates are telling us that they know they are attempting to do something that violates the fundamental public interest as reflected in local comprehensive plans.

The essential point is that HB 3382 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 this is allowed, then development interests throughout the state could plead for similar special treatment when they find themselves subjected to land use review. If land use regulations are suspended whenever they provide a challenge to development proposals, then the land use laws and statewide planning goals will be meaningless. The bill is a blatant attempt by the Port of Coos Bay and its adherents to evade legitimate public scrutiny and assume that which it is their burden to prove—that their proposed container port and its associated dredging would truly be in the public interest when weighed against their ecological, economic, and social impacts.

The damage this bill would do would extend beyond certain estuaries to the coastal zone as a whole, and the precedent of preempting land use review at the behest of a special interest would constitute a disastrous precedent that would undermine the land use planning system for the entire state.

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

Sincerely,

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Joe Liebezeit & Paul Engelmeyer, Portland Audubon
Julia DeGraw, Oregon Conservation Network
Mary Kyle McCurdy, 1000 Friends of Oregon
Cameron La Follette, Oregon Coast Alliance

Ann Vileisis, Kalmiopsis Audubon Society
Katie Ryan, Wetlands Conservancy
Mary Garrett, Shoreline Education for Awareness
Monica Kirk, 15 Neighborhoods of Lincoln County
Emily Bowes, Rogue Riverkeeper

Lauren Goldberg, Columbia Riverkeeper
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Fran Recht, active Depoe Bay resident
Steve L Miller, active Coos Bay resident
Michael Graybill, former manager of South
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