



OREGON SHORES
CONSERVATION COALITION

September 27, 2023

TO: COOS COUNTY PLANNING COMMISSION

RE: DECISION-MAKING AUTHORITY REGARDING UPDATES TO COOS BAY
ESTUARY MANAGEMENT PLAN

Thank you for the opportunity to provide supplemental comments on Phase 1 of the Coos Bay Estuary Management Plan (CBEMP) update. We previously submitted a more detailed comment on the Phase 1 update as a whole. This comment seeks to clarify the scope of the Port's authority regarding the ongoing planning process.

Currently, the plan update states that a joint CBEMP advisory committee shall be appointed to facilitate ongoing maintenance to the multi-jurisdictional management plan. The committee comprises nine members including one from the port authority. Oregon Shores maintains concerns over the extent of the Port's decision-making authority/power during the planning process.

Under ORS 285A.600, it is state policy to include "Oregon's ports in planning and implementing economic development and transportation programs." This includes promoting local cooperation in statewide planning and development of the ports. *Id.* Port districts are statute-created public agencies, and therefore the district's powers are limited by statute to actions or activities that are for a "legitimate port purpose." *Harrison v. Port of Cascade Locks*, 37 Ore. App. 391, 393-94 (Ore. App. 1978).

ORS ch 777 provides the port's duties and powers, which either connect to the normal expected activities of managing a port or—where that is not the case—are carefully delineated. *Id.* at 395. ORS 777.112(2) and 777.258 provide examples of port actions that fall within the normal expected activities of managing a port. ORS 777.112(2) allows ports to enter into contracts for the use and control of water to promote "erosion control, pollution control, or otherwise protecting, maintaining and enhancing waters within the boundaries of the port district." ORS 777.258 allows ports to promote the maritime shipping, aviation, and commercial interests of the port. When the action is not part of the port's normal managing activities, those functions are specifically described. For example, ORS 777.113 permits ports to "provide research or technical assistance for the planning, promotion, or implementation of commercial, industrial, or economic development projects upon request by any city, county, or municipal corporation within the boundaries of the port." Further, ORS 777.250(b) states that "a port may develop the site pursuant to a comprehensive plan in manner compatible with other uses in the area...and

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adopt regulations necessary to implement the plan.”

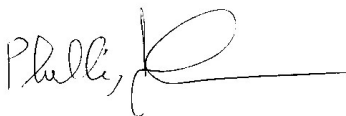
Therefore, the Port of Coos Bay’s authority to make decisions on the CBEMP update must either be connected to the Port’s normal activities or specifically outlined in statute. The Port does not have unfettered discretion or power to make decisions regarding the CBEMP updates. Even if the county had the authority to delegate certain decision-making power to the port, the port’s authority is still limited to the port’s expected management activities that are for a “legitimate port purpose” such as commerce or pollution control and may not extend beyond that unless indicated by statute. State statute specifies and limits the port’s authority in development projects pursuant to a comprehensive plan in ORS 777.113 and ORS 777.250(b).

In short, it would not be appropriate to give the Port a special place at the table when aspects of the estuary management plan are under discussion which do not directly involve Port business.

We kindly ask that the CBEMP specify and clarify the International Port of Coos Bay’s role in “facilitating the ongoing maintenance of the CBEMP” and limit the Port’s authority to influence estuary planning to that which is strictly written in state law. Given the Port’s interest in re-designating natural estuary management units (HB 3382), it is paramount that the Port does not have undue power in influencing estuary management at the expense of other estuary users and stakeholders.

Thank you for your time, consideration, and the opportunity to comment. We look forward to continuing to work together throughout the collaborative process of the CBEMP updates.

Sincerely,

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

Phillip Johnson, Conservation Director
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