

## Crystal Orr

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**From:** Meriel Darzen [meriel@crag.org]  
**Sent:** Tuesday, September 24, 2019 10:01 AM  
**To:** Jill Rolfe; Planning Department  
**Cc:** Phillip Johnson, Oregon Shores/CoastWatch; Staley Prom  
**Subject:** REM 19-001  
**Attachments:** Ltr. Oregon Shores Comments on Omnibus Remand application 9.23.19.pdf

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Jill,

Please see attached letter submitted on behalf of Oregon Shores and Surfrider Foundation. Please confirm receipt.

Thank you,

Meriel

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Exhibit: 71  
Date: 9/24/19



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September 24, 2019

Via Email to: [planning@co.coos.or.us](mailto:planning@co.coos.or.us)

Coos County Planning Department  
c/o Planning Director Jill Rolfe  
Coos County Courthouse  
250 N. Baxter  
Coquille, Oregon 97423

**Re: County Remand File No. REM-19-001/LUBA Case No. 2016-095 – Response to Hearing Officer letter dated September 19, 2019**

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Dear Hearings Officer Stamp:

This office represents Oregon Shores Conservation Coalition (“Oregon Shores”) and Surfrider Foundation (“Surfrider”) in connection with the above-referenced proceeding. Oregon Shores, which is a party to the original LUBA appeal in this matter, and Surfrider, have previously submitted testimony in this remand proceeding and submit this letter in response to your letter dated September 19, 2019, in which you invited further comment on the issue of public trust and/or the case you cited, *Anderson v. Columbia Co.*, 94 Or 171, 184 P 240 (1919). Before entering our comments on the above, we note that it is highly unusual and likely prejudicial for the County to continue to provide opportunities for an applicant, on remand from LUBA, to attempt to meet applicable criteria that it has continuously failed to meet in ordinary course of the remand proceeding. The applicant has the burden of meeting all of the applicable criteria. The Hearing Officer has acknowledged that such criteria is not met. *See* Letter from Hearing Officer dated August 23, 2019 (noting that the Hearing Officer needs more information from the applicant on several different issues). At this point, the Hearing Officer must recommend denial of the permit, not drag the process on, forcing members of the public to expend energy and resources reiterating *ad infinitum* that the applications should fail.

With respect to *Anderson v. Columbia Co.*, Oregon Shores and Surfrider respectfully disagree with the Hearing Officer’s interpretation of this case and its application to the case at hand. In the *Anderson* case, the conflict was between fishing *traps and gillnets* and navigational vessels, not fishing vessels *vis a vis* other types of vessels. In other words, the Court was not engaging in a balancing between the rights of fishing boats and other vessels, but rather discussing the interplay between the public’s right to the fishery (and to engage in static fishing



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uses) in a navigational waterway and the navigational uses in that waterway.

Despite the Hearing Officer's inference to the contrary, in the instant case there is no hierarchy of public rights favoring the applicant. Fishing and crabbing boats, along with other commercial vessels, as they are in transit to their usual and customary fishing locations, are entitled to the right of navigation as identified in *Anderson*. Thus, the fishing fleet that uses Jordan Cove are on equal footing with any other vessel in the waterway. The LNG tankers and the security zones will obstruct those fishing vessels (and all other vessels) from the "free, uninterrupted, and unobstructed use" of the waterway, which is a substantial interference, as demonstrated by the testimony of both opposition and the applicant. Applicant admits that the tankers will require at least 90 minutes in each direction to access the terminal and this will occur only at daytime high tide for 120 trips per year. In many cases there will be only one daytime high tide per day, meaning the trips will require two days, resulting in interference for 90 minutes at high tide on 240 days of the year, or over half of the daytime high tides per year. The significance of this interference, where there is testimony that many commercial fishing vessels also travel during that timeframe in order to access usual and customary fishing locations, is undeniable. Further, there is no new testimony in the record from the Coast Guard indicating that the security zone will not result in delays or complete loss of travel ability for vessels. The applicant's submissions represent speculation, not factual information, as to how the security zone will operate. Finally, the applicant has yet to establish that the proposed use is in the public interest.

In conclusion, the Hearing Officer's reference to a hierarchy between fishing and navigation is misplaced because the fishing and crabbing fleets using Coos Bay are entitled to the same navigational rights as the applicant's tankers. Further, the applicant has failed to demonstrate that the proposed uses will not substantially interfere with either the fishing rights, the navigational rights, or recreational rights of other users of the channel. Because the applicant has failed to meet its burden, the Hearing Officer should recommend denial.

Sincerely,

/s/ Meriel L. Darzen

Meriel Darzen

Attorney for Oregon Shores Conservation Coalition  
and Surfrider Foundation

Cc: Phillip Johnson, Oregon Shores  
Staley Prom, Surfrider Foundation