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Via email to: [casaria.taylor@dlcd.oregon.gov](mailto:casaria.taylor@dlcd.oregon.gov)

RE: Comment on Proposed Rulemaking Amending OAR 660-004-0022  
Adding a reasons exception to Goal 2 rules related to navigational improvements in Coos Bay

Rogue Climate appreciates the opportunity to participate in the proposed rulemaking process to amend OAR 660-004-0022 in regards to creating a goal exception for specific navigational improvements in the Coos Bay estuary.

Rogue Climate is a climate justice organization based in Southern Oregon with an office in downtown Coos Bay. Our organization worked alongside community members during last year's legislative session to advocate in opposition to HB3382. Our concerns included that HB 3382 undermines Oregon's robust land use system, impacts a critical ecosystem essential for climate adaptation for Oregon's largest coastal community population, and threatens existing industries in the area, including tourism, fishing, and conservation.

Despite the 300+ testimonies that were against this legislation, the bill moved forward with help from attorney Steve Pfeiffer who represented the formerly proposed Jordan Cove LNG Export Terminal, and former Salem elected official Brian Clem, a North Point Development Representative who is active in promoting the Pacific Intermodal Container Terminal project with the Port of Coos Bay - the intended beneficiary of HB 3382. We have concerns with how a private corporation played such an active role in drafting legislation specifically for their own benefit, and the detriment to our land use system and local communities. We hope that community members who participated in last year's hearings can be heard during this local hearing process. Several of these community members have long careers in conserving and managing the Coos Bay estuary to benefit the natural and human systems that depend on the estuary.

This rulemaking process also comes at a time when community members and local jurisdictions are working to update the Coos Bay Estuary Management Plan. Earlier this month, on January 10, the "Phase 1" process for this critical management plan was adopted. This phase 1 update does not address the more profound comprehensive update needed in phase two to manage the estuary and regulate



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large projects with the breadth of estuary users in mind. The passage of HB 3382 has undermined the integrity of the estuary management update process.

We request that the Commission prioritize supporting the “Phase 2” Coos Bay Estuary Management Plan process so that upcoming applications for this goal exception can be properly evaluated with an updated plan. The passage of HB 3382 disrupted the opportunity that our community and local jurisdictions had to fully engage in a holistic opportunity to get the Coos Bay Estuary Management Plan updated earlier in the year. Community members have had deep concerns about other opportunities to undermine this plan.

Regarding the reasons exception being considered, we would like to echo the comments provided by Dr. Jan Hodder, requesting that the Commission consider language for OAR 660-004-0022 regarding Section 2. (1)(a) and Section 2. (1)(B) to ensure additional clarity for local governments as they enact this land use exception to Statewide Planning Goal 16. This includes that:

- DLCD should clarify through rulemaking **how no net loss mitigation will be ensured.**
- DLCD should clarify through rulemaking that the funding for any proposed modifications should identify that applications **have been successful** in garnering funds for the action.
- DLCD should include an expectation that applicants provide **evidence** of the type, number, duration, and skill level of the jobs that a project is proposing.

Furthermore, we have concerns regarding the following aspects of the proposed reasons exception:

### **The Reasons Exception Misstates the Statutory Authority and/or is Misleading**

The legislation is specific in limiting Goal 16 exceptions for navigation channel improvements in natural and conservation management units that are “**within the jurisdiction of the Oregon International Port of Coos Bay.**” In the proposed amendment it states:

8. An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water-dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) or (g), of this section:

\* \* \*

g) For deep draft navigational channel improvements, an exception to Goal 16 may be taken as provided in section 2, chapter 544, Oregon Laws 2023.

We feel this is not clear enough to ensure that these exceptions are limited to management units within the jurisdiction of the Oregon International Port of Coos Bay. In addition, the legislation requires that the



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improvements are carried out to ensure “no net loss” of estuary resources, affected aquatic, and shore areas and habitats. The rule states that the exception - the improvement - is “not required to limit degradation to natural values.” No net loss should be clarified and defined to ensure the intention of the legislation.

We are concerned that the rule as currently written exceeds the agency's authority to authorize exceptions for improvements that may degrade natural values.

**Conclusion**

We ask for DLCDC staff and the commission to prioritize the deeper comprehensive update for the Coos Bay Estuary Management Plan so it can be an effective tool for evaluating this proposed reasons exception. We also ask for strengthening language and clarification around the criteria for mitigation and jobs clauses associated with this reasons exception to help out local government properly evaluate when future applications are submitted.