

# “A system cannot fail those it was never designed to protect”

One thing we learned from the recent election is Jordan Cove Energy Partners fears direct democracy. The No campaign that opposed Measure 6-162 to establish a community Bill of Rights spent almost \$50 per NO vote, most of it from the Canadian firm, to convince Coos County to vote against our best interests and in the interests of the company.

Nevertheless, the Yes on 6-162 campaign was an astonishing success. At a fraction of the cost four thousand Coos County residents said yes. They said “yes” to local decision making power over our energy. “Yes” to energy for Coos County, not Coos County being sold to a Canadian fossil fuel company. “Yes” to prohibiting eminent domain for corporate gain and to energy projects that sell-out our future for a thin promise of short-term financial gain.

And thanks, in no small part to Jordan Cove’s unprecedented spending the measure garnered international attention and demonstrated in vivid detail that corporations, even foreign corporations have privileges and governmental protections that American citizens and whole communities do not, not the least of which is the right to be the decision makers where we live.

Most chillingly the campaign illuminated just how inured society has become to the unfairness of our present system. Opponents claimed the measure would prompt expensive lawsuits

costing taxpayers money when in fact it would be the company bringing a lawsuit solely responsible for any costs.



In all the campaign noise generated by the corporate opposition, our community never really got the chance to consider the fundamental question of 6-162, which is should we have the right to stand up for ourselves and protect our air, water and land and private property from clear threats such as the pipeline and Jordan Cove?

We have a system today where obedience to centralized authority is necessary for projects like Jordan Cove to exist. Jordan Cove, the federal government, and even certain activist groups want us to accept that we simply have no control and therefore cannot do anything about changing the course of events. This sense of learned helplessness disguised as democracy is deeply embedded in our society.

“A System Cannot Fail Those It Was Never Designed To Protect”  
~W.E.B. Du Bois

There are some of us out there who have been working hard to get out from under the injustice of the system and exercised the important power of direct democracy. Like direct action, direct democracy is most often a path of last resort taken when all other avenues have been exhausted and our legislators and elected officials fail to protect our fundamental rights. Mayor Joe Benetti and Commissioner Melissa Cribbins didn't speak out for landowners threatened by eminent domain or feign even the slightest interest in what the people of Coos County may really want, instead they rallied to the defense of Jordan Cove hiding behind a system of law that already sides against the average citizen. That's partly why Measure 6-162 came to be.

Measure 6-162 may not be back in front of voters in Coos County again but the question of who decides what happens in our community, what the future of the place we call home looks like, will. That question may very well be about deciding whether Jordan Cove, the pipeline, and the use of eminent domain for corporate gain is something we here in Coos County want and will allow and what we are willing to do about it.

Jordan Cove Energy Cove Energy Partners wasn't just looking to buy a favorable ballot measure result, they were trying to send a clear message to everyone in the county and all the counties along the pipeline route not to bother trying to protect your private property. Thankfully, more challenges will face Jordan Cove not just here but along the entire length of the Pacific Connector Gas Pipeline.

The same corporate campaign group from Portland that was paid

to mislead Coos County voters ran a similar campaign against a similar measure to ban aerial spraying in Lincoln County. They employed the same scare tactics and generically non-specific claims about not being “well written” but despite the rhetoric, as of this writing the Yes campaign is ahead by a paper thin 27 votes. Score one for democracy.

The Yes on 6-162 campaign would have preferred a historic underdog victory like when heavily outnumbered American forces prevailed against the British at the Battle of Sullivan’s Island in 1776 or a miracle like the 1980 US Olympic victory on ice against the highly favored Russian hockey team. Regrettably, this battle, if not fairly, most squarely goes to the Canadians. Canadians, really!

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## **Bob Main opposes giving power to the people**

Commissioner Bob Main perfectly demonstrates some of the difficulties contained within a representative democracy. Main, as reported in The World report [“Ballot tactics target LNG plan”](#) says he will not defend, if necessary, a democratically enacted local ordinance, namely Measure 6-162. The Coos County Right to a Sustainable Energy Future Ordinance

“doesn’t appear like it would pass a legal test” states Main. (Ironic that Main, who actively collected signatures to qualify a local ordinance supposedly to defend the 2nd Amendment and in direct defiance of perceived federal overreach is suddenly concerned about constitutionality.) The ordinance, according to Main, would be hard to defend.

“It may put the county in the position to defend it, which for me, and I can’t speak for the other two commissioners, but I would go ‘O.K. the plaintiff wins’,” said Main. “I mean I can’t defend this thing and I don’t want to spend a lot of money on it.”

Main has my contact information and could have discussed his concerns with me or my fellow petitioner, Pattie Gouveia. For that matter, he might have actually read the initiative before going on the radio or giving interviews. If he had [read it](#) he would have seen that under “Enforcement” any resident may enforce the rights and prohibitions through an action in any court possessing jurisdiction within Coos County with or without the County. In fact, should the County violate the ordinance, residents also called “plaintiffs” could bring suit for each violation against the commissioners or “defendants.” So yeah, I would agree, “plaintiff wins.”

Main also claimed that the language in the ordinance is too broad.

“‘Non-sustainable energy systems,’” he said. “What does that mean? Like it’s wide open; I mean the sun is going to extinguish someday.”

Admittedly, the ordinance is a whopping four and a half pages but if Main had read the section “Definitions” he would see that “non-sustainable energy systems” are very clearly defined.

*“Non-sustainable energy systems” means those systems that are controlled by state and federal energy policies, rather than*

*community controlled energy policies; hydroelectric power and industrial scale wind power when it is not locally or municipally owned and operated; energy systems using fossil fuels, including but not limited to coal, natural gas, petroleum products, nuclear and radioactive materials and other fuel sources that are non-renewable, or which produce toxins and substances that cause injury to humans or natural communities and ecosystems, or that are in violation of resident's right to a sustainable energy future. The phrase shall also include any energy system which violates the rights secured under this Ordinance or under other laws. The term shall not include the combustion of wood or wood products, propane, kerosene, heating oil, coal, or natural gas when those fuels is used solely to generate on-site heat or power and the energy produced is not commercially sold, transmitted, or distributed.*

So between now and when the sun finally swallows our planet in its final death throes when it will not matter anyway, the ordinance secures our right to be decision makers in our own community.

*All residents in Coos County possess a right to a sustainable energy future, and the people of Coos County have the right to adopt laws and policies to secure that right. That right shall include the authority to require the development, production, and use of sustainable energy.*

To be clear, direct democracy is a tool for citizens specifically to work an end run around our elected representatives when legislators cower to corporate privilege and refuse to defend the rights of a community. Main's pet 2nd amendment ordinance was enacted for precisely that purpose as is Measure 6-162. The latter actually empowers our commissioners to standup to state and federal preemption whereas Main's ordinance probably does not.



Natural gas infrastructure

Also worth noting in the article is Jordan Cove spokesman, Michael Hinrichs' confirmation that Veresen views Coos County as just another resource colony.

"We think that it would have negative consequences toward the resource industry in the county," Hinrichs said. "It certainly goes against the spirit and intents of Jordan Cove."

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## **Time to exercise our self-governing authority**

Oregon State Representative Cliff Bentz (R-Ontario) has introduced House Bill 2480 to literally take power away from the people of Oregon.

Introduced on behalf of a corporate lobbying firm and despite President Trump's inaugural promise to give the power back to the people, HB 2480 would use state preemption to strip communities of their fundamental right to protect themselves from non-sustainable energy infrastructure. "A city, county or other local government may not enact any charter provision,

ordinance, resolution or other provision related to regulating the expansion of infrastructure for the primary purpose of transporting or storing fossil fuels.”

This is hardly the first time our legislators have worked to supplant local control on behalf of corporations. Senators Arnie Roblan and Jeff Kruse cosponsored the so-called Monsanto Protection Act that prohibits local communities from banning GMOs. The Farm and Forest Act, forces toxic pesticides on unwilling communities. State preemption prohibits local control over minimum wage, land annexation, housing, and gun control.

In a recent tweet about his contested travel ban, Trump indicated Americans should be guaranteed, “...the security and safety to which we are entitled.” Nevertheless, Trump’s recent executive order limiting already inadequate government protections prove, American citizens should not expect “security” from another Wall Street induced global financial crisis and are not, apparently, entitled to clean air and water.

Coos and Columbia counties have introduced citizen initiatives to do what state and federal legislators will not do, secure our right to a sustainable energy future. Measure 6-162, The Coos County Right to a Sustainable Energy Future Ordinance on the May 2017 ballot in Coos County will prohibit hydraulic and pneumatic fracturing, coal transportation and the proposed Jordan Cove LNG export terminal and the associated Pacific Connector Gas Pipeline.



The bill will preempt Portland's ban on large fossil-fuel storage facilities and seeks to stop democratically enacted ordinances like Measure 6-162.

The natural gas industry contributes to Bentz' campaign and HB 2480 effectively allows the fossil-fuel industry to do what it wants and violates a community's local self-governing authority to protect its citizens. In a so-called representative democracy, it's clear that all too often our legislators represent corporate interests and not the people who elected them.

It's precisely because we live within a system, defended by our own state government, that denies local democratic rights in favor of corporate privilege that communities are turning to direct democracy to change the rules. The Oregon Constitution clearly states "... that all men, when they form a social compact are equal in right... and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.--"

The hotly contested immigrant travel ban demonstrates that states don't like giving up governing authority to the federal government any more than counties and municipalities like being preempted by the state. The 9<sup>th</sup> Circuit Court of Appeals has ruled against reinstating the ban proving that states can govern independently of the federal government. Local communities also have a fundamental right to self-government.

More communities are flexing their self-governing authority. The City of Lafayette, Colorado, is considering an anti-

fracking ordinance which aims to preempt the state's authority in oil and gas development by legalizing non-violent direct action protests that would include sit-ins, strikes, workplace occupations or blockades.

To affirm communities' right to self-government to reject corporate fossil fuel projects or address housing access, the Oregon Community Rights Network introduced a statewide citizen initiative to amend the Oregon Constitution to recognize community responsibility and authority to protect the health, welfare and safety of citizens. The Right of Local Community Self-Government, allows communities to be the decision makers over that of corporate-backed state preemption like HB 2480.

The one-size-fits-all centralized government continues to fail the planet and the working class. In this grand, multi-generations long representative democracy experiment, the poor have gotten poorer and the rich richer. There has been a consistent, widening inequality since the 1970's such that today 20% now own 85% of the wealth. In the four decades since we enacted NEPA and established the EPA our environment has continued to degrade and the doomsday clock has ticked forward to within 2.5 minutes to midnight.

Time to change the rules in our favor and decentralize the current power structure. As Pattie Gouveia, my co-sponsor on the YES on Measure 6-162 campaign in Coos County, stated, "The transportation, storage, and burning of fossil fuels is absolutely a local issue, whereby the local must be able to assert the greatest authority about what happens in the community. HB 2480 is just another example of the Oregon legislature advancing corporate interests by denying local democratic rights."

Vote Yes on Measure 6-162 this May and support our right to be the decision makers about our energy future.

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## [We need energy democracy in Coos County](#)

President-elect Donald Trump and Secretary Hillary Clinton share some common views, not the least of which is their mutual support for the fossil-fuel industry. Emails obtained from the US State Department by [The Intercept](#) revealed how Clinton, who received [twice as much in contributions from oil](#) than Trump, during her tenure as Secretary of State worked to promote hydraulic fracturing, or "fracking", the highly controversial method of horizontal drilling for oil and gas, across the globe.

The whole point of mentioning this is that, in-light of [Jordan](#)

[Cove's recent announcement to reapply](#) with the Federal Energy Regulatory Commission and all the Sturm und Drang about the election results, opponents of the project would be in no better position to protect the environment and landowners even had Clinton won.

Unfortunately, affected landowners and environmental activists are no closer to permanently stopping Jordan Cove today than they were twelve years ago.

Trump and Clinton also agreed on something else. Along with their mutual admiration for fracking both concurred the communities affected should be able to say "no". [Clinton told reporters in Colorado during the campaign](#), "I have long been in favor of states and cities within states making up their own minds whether or not they want to permit fracking."

Trump claimed that ["voters should have a say"](#) on whether they want to prohibit fracking in their communities.

Trump's right. Democratizing local energy decisions, making up our "own minds" is at the heart of community rights efforts like Measure 6-162, the [Coos County Right to a Sustainable Energy Future Ordinance](#) set for the May 2017 ballot. The ordinance will legalize our right to be a sustainable economy. An economy not subject to or dependent upon boards of directors of foreign corporations unable or unwilling to transition beyond 19<sup>th</sup> century energy technology.

Consider that an October 2016 [report](#) produced by global banking executives, the Group of Thirty or G30, notes that the rise of affordable renewable energy along with increasingly stringent climate policies is making the oil industry obsolete. Another reason not to leave our future decision making in the hands of oil and gas executives is that the G30 report also concludes the industry is out of touch and more than half of the \$2 trillion in long term debt incurred by the industry "...will never be repaid because the issuing firms

comprehend neither how dramatically their industry has changed nor how these changes threaten to soon engulf them.”

The late University of San Francisco business professor, Oren Harari once remarked, “The electric light did not come from the continuous improvement of candles.”

The organization [Trade Unions for Energy Democracy \[TUED\]](#) states in a [report entitled \*Resist, Reclaim, Restructure: Unions and the Struggle for Energy Democracy\*](#) that the “business as usual” approach of the fossil-fuel industry does not benefit or protect energy workers and it “opposes the idea that the commodification of nature is key to solving the profound ecological crisis we face as a species. It regards the idea of putting a price on ‘natural resources’ in order to make capitalism green and sustainable as plainly false and deeply perverse.”

The clash in North Dakota between the Dakota Access Pipeline developers and the Standing Rock Sioux has demonstrated one thing very clearly. Our current system of laws make saying NO to harmful, non-sustainable industrial practices that pollute air and water illegal and makes poisoning air and water perfectly legal. Protecting our own communities and homes is a crime.

Militarized police deployed to protect corporate interests from unarmed civilians trying to protect the land and water for future generations. Appalled by the unchecked use of rubber bullets, teargas canisters, percussion grenades and the use of water cannons on the Sioux in subfreezing temperatures, 4,000 US veterans arrived to act as human shields. Combat veterans remarked that even in Iraq and Afghanistan there are “rules of engagement.” Organized in just three weeks, the Veteran Stand, as they called themselves, may be the largest unarmed militia in US history.

It is no coincidence that on December 4, the day of the

veterans arrival to the Standing Rock camp, the Army Corps of Engineers, on a Sunday afternoon, issued a temporary stay blocking the company from drilling under the Missouri River pending further environmental review.

Indifferent to the tribe's concerns, the company behind the pipeline, Energy Transfer Partners, vows to drill anyway confident that the new administration and the law is on its side. In fact the company declares it has played by all the rules. Admirable, unless the rules are already stacked heavily on your side.

Remember, that our history is rife with citizens defying unjust laws, committing acts of civil disobedience and pushing to amend the government or revoke their consent to be governed. Thank goodness they did or there might still be no abolition or suffrage or freedom of speech or due process in this "democracy."

TUED affirms what we in the community rights movement are fighting for across the country and here in Coos County.

*"An energy transition can only occur if there is a decisive shift in power towards workers, communities and the public-energy democracy. A transfer of resources, capital and infrastructure from private hands to a democratically controlled public sector will need to occur in order to ensure that a truly sustainable energy system is developed in the decades ahead."*

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# Coos County Right to a Sustainable Energy Future set for May 2017 ballot

There were some victories November 8, 2016. Two communities, [Highland Township, PA](#) and [Waterville, OH](#) each passed a bill of rights by overwhelming margins banning harmful development in their communities.

With a new president threatening to weaken already marginal environmental safeguards, now more than ever we must exercise our fundamental right to say NO to non-sustainable energy infrastructure. Yet, amidst all the sturm und drang media analysis as to how a racist, serial sexual predator, fascist, climate denier like Trump was elected and how to reinvent the democratic party from its own self-immolation most of it revolves around the same stuck in the box thinking of trying to solve the problem with the very same thinking that created it.

A few voices have stood out from the crowd like this from [John Schwarz of The Intercept](#).

*The people who run America have constructed a political system that's like a glitchy killer robot, one even they can't control anymore.*

*Working as designed it murders [African Americans](#) and [pregnant women](#) and [opioid addicts](#)...*

*If there's anything to learn from history, it's that elites don't dismantle their beloved killer robots on their own. Either regular people – including you reading this right now – will deactivate this one, or it will never happen at all. Not a single person knows exactly how to pull this off. But one thing's for sure: Trump's rise proves that whatever*

*it is we've been doing isn't working.*

The community rights movement began with this same realization, that what environmentalists are doing isn't working. In the 40 odd years since the enactment of NEPA and the formation of the EPA our environment has gotten steadily worse with 40% of our waterways barely sustaining life while emissions have already topped 400PPM.

Social justice advocates are also realizing the same thing. The wealth gap has also grown steadily, even under Obama and corporate privileges are protected by the government while communities rights, the very act of protecting clean air and water are criminalized. Nothing demonstrates this more starkly than the recent protests over the Dakota Access Pipeline.

Clearly, whatever it is we've been doing isn't working.

**Any system of government that becomes destructive of the rights of the people and their communities is not legitimate, lawful, or constitutional.**

Coos Commons Protection Council has qualified a citizen initiative, The Coos County Right to a Sustainable Energy Future Ordinance, for the May 2017 ballot. Coos along with Lincoln County are set to pass countywide bills of rights to protect citizens from industrial harm like aerial pesticide spraying and non-sustainable energy infrastructure.

### **Measure 6-162**

#### **Community Rights vs Corporate Privilege**

**What the Ordinance will do.**

The ordinance will secure the right of the people of Coos



County to be the decision makers about its energy future not corporations. The ordinance will protect the rights of people and ecosystems in Coos County from non-sustainable energy projects, including current corporate and government attempts to push through the pipeline and Jordan Cove LNG export terminal. It would not only prohibit the siting of such projects but also the use of eminent domain – the taking of private property – on behalf of oil and gas corporations.

### **What the Ordinance will NOT do.**

The Ordinance will not affect the transportation of fossil fuels intended for residential, commercial, or industrial use for on-site power, heat consumption and vehicle refueling.

The Ordinance will NOT establish a home rule charter and is NOT affiliated with any charter.

### **Where does the Ordinance get its authority?**

Its central authority is derived from the inherent and inalienable right of the people of Coos County to local, community self-government. It is a well-accepted, fundamental principle that all political power is inherent in the people, is exercised by them for their benefit, and is subject to their control. This right is secured by the American Declaration of Independence, the Oregon constitution, and the United States Constitution. Because the right is inherent and inalienable, no government can define, diminish, or otherwise control it. Therefore, the assertion of the rights, prohibitions, and enforcement provisions in the Coos County Sustainable Energy Future ordinance come from our right exercising such decision making power.

### **Why do we need this Ordinance?**

Coos County has experienced sustained and significant economic decline in recent decades due to ill-advised and non-sustainable development policies. In addition, we have

experienced firsthand the harmful effects of unchecked resource extraction and recognize that investments in non-sustainable energy systems like the LNG pipeline and export terminal will damage Coos County.

We also recognize the importance of healthy and thriving natural communities and ecosystems and that non-sustainable energy system projects would threaten those natural systems.

We must also confront the truth that our current system of municipal governance fails to recognize the self-governing authority of the people of Coos County because corporations may assert their “rights” to override our laws. Our local government also operates on the assumption that corporate rights trump those of the people, can be preempted by state or federal legislators and agencies, and are banned from adopting laws, which have not been authorized by the state.

This means that our current municipal system of governance is illegitimate and that we are adopting this Ordinance to create a new system of municipal governance which recognizes our self-governing authority and which secures and protects our rights to a sustainable energy future.

Already, the pro-gas crowd have started polling county citizens to determine just how much they will have to spend to defeat this measure. Contribute to this campaign by following this [link](#) or you can donate via the Facebook page [here](#)

### **Coos County Sustainable Energy Future Community Bill of Rights**

**Right to a Sustainable Energy Future.** All residents in Coos County possess a right to a sustainable energy future, and the people of Coos County have the right to adopt laws and policies to secure that right. That right shall include the authority to require the development, production, and use of sustainable energy.

**Right to Scenic and Recreational Preservation.** All residents

of Coos County possess a right to the preservation and enhancement of the scenic, historic and aesthetic values of the County, including unspoiled vistas and outdoor recreational opportunities, thereby improving the area's appeal to tourists and future residents.

That right shall include the right of the residents of the County to be free from activities, which threaten scenic, historic, and aesthetic values as related to the construction, siting, or operation of non-sustainable energy systems.

**Rights of Natural Communities and Ecosystems to Thrive.**

Natural communities and ecosystems within Coos County, including but not limited to, forests, rivers, streams, wetlands, aquifers, near shore habitats, and intertidal zones possess the right to exist, flourish, and naturally evolve unaffected by the construction, siting, or operation of non-sustainable energy systems.

**Governmental Legitimacy.** All governments owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

**Right to Local, Community Self-Government.** The people of Coos County possess both a collective and individual right to self-government in their community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

**Right to Assert the Right to Self-Government.** The people of Coos County possess the right to use their local government to make law, and the making and enforcement of law by the people through a municipal corporation or any other institution shall not eliminate, limit, or reduce their sovereign right to

local, community self-government.

**Rights are Self Executing.** All rights delineated and secured by this ordinance are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors.

Read the initiative in full [here](#)

You can contribute to this campaign by following this [link](#) or you can donate via the CCPC Facebook page [here](#)

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## Communities battle state preemption and corporate privilege to legalize sustainability

*“We are going to defend our property rights like any other property owner would. That means defending our rights under the state and federal constitutions.”*

Those following the heroic efforts to stop the proposed Pacific Connector Gas Pipeline might attribute these words to any one of the more than 600 affected landowners along the 234-mile route.

Indeed, almost the identical words have been spoken by Ten Mile resident and second generation Marine, Frank Adams.

After serving in Vietnam, Adams spent decades fighting his government before it would acknowledge his chronic health issues are a direct result of exposure to Agent Orange. Now, that same government wants to allow a pipeline company to bisect his property with a 36" diameter pipeline and spray it regularly with herbicides all to benefit a handful of Canadian shareholders.

Those words could have been uttered by any of us in the course of a lifetime. In fact, those words came from Rob Boulware, a representative of Texas based Seneca Energy Resources. In 2013, the plucky little community of Highland Township, PA asserted its right to local self-government and democratically enacted, by a wide margin, an ordinance to prohibit Seneca from injecting fracking waste under the community. Last year Seneca, a multibillion dollar company, sued the township, population 495, in federal court claiming the ban violates the constitutional rights of the corporation.

This week, Josephine County Circuit Court Judge Pat Wolke struck down a pro-sustainable agriculture law democratically adopted by the people of Josephine County in May 2014 banning GMO crops.



A crop duster applies chemicals to a field of vegetation.

State preemption is a judicial invention dating back more than 60 years, legalizing state control over local communities. In Oregon, preemption laws like SB-863 passed in 2013 and dubbed the Monsanto Protection Act, are written and designed to protect industrial agriculture over sustainable agricultural practices by centralizing power at the state level.

“The state law says that the localities may not legislate in this area; and the voters of Josephine County have attempted to legislate in the exact same area.” Wolke said in the May 16 ruling.

One day after Wolke’s ruling Hood River County voters, again by a wide margin, passed an ordinance effectively banning Nestle Waters from bottling 100 million gallons annually from Oxbow Springs, near Cascade Locks and distributing under its Arrowhead brand.

For the moment, at least, Nestle, unlike Seneca, seems resigned to the outcome. A company spokesman said Nestle is ‘disappointed’ but, “we respect the democratic process.”

Proponents of the measure, however, fully expect Nestle to sue.

It remains to be seen whether Nestle will have a change of heart and sue Hood River County but communities across the nation are discovering that democracy holds little sway when corporations claim their constitutional rights trump the fundamental rights of the community to clean air, water and sustainability.

Therein is the essence of a struggle taking place all over America. Under our current regulatory system, communities cannot say NO to corporate harm and the courts have little judicial discretion except to side with the corporation over the community. The net effect is that corporate boards of directors are making life changing decisions for communities rather than the people who live and work in them.

Tired of being constrained within the regulatory fallacy, more and more communities are nonetheless attempting to use law to defend against non-sustainable industrial practices that threaten their way of life. Hood River and Josephine counties are prime examples. Time and time again these efforts to determine their own fate are preempted by state and federal regulations.

These battles have become so contentious that another feisty community, Grant Township, PA, just made civil disobedience a civic duty. The township passed an ordinance that asserts "the right to participate in nonviolent acts of civil disobedience/direct action in the effort to prevent the

construction of a deep injection well that's inconsistent with the township charter that ostensibly protects its members' right to clean water."

The Oregonians for Community Rights qualified a citizen initiative earlier this year to amend the Oregon Constitution to confirm the right to local self-government. The political arm to the Oregon Community Rights Network, the amendment would secure decision-making authority at the community level so that visions for sustainable agriculture, energy, and economies, can be adopted and protected from state action to overturn such laws. Oregon's Right of Local Community Self-Government amendment is currently involved in a legal challenge with the state regarding broader initiative petition circulation.

Coos County voters will have an opportunity to establish a countywide bill of rights this November that expands upon the existing Bill of Rights. Rather than leaving our fate to regulators, The Coos County Right to a Sustainable Energy Future Ordinance will affirm our right to be self-determining and will elevate the rights of the community over corporate privilege.

Visit [cooscommons.org](http://cooscommons.org)

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## **Maybe it is time to revoke our consent to be governed**

*"Extending standing to the real party at risk of harm – the environment – would preserve "priceless bits of Americana" before they become "forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment."*



*US Supreme Court Justice William Orville Douglas*

During an especially heated primary debate with Senator Bernie Sanders, Secretary Hilary Clinton made an interesting admission. "The Palestinian people," she conceded, "have a right to self-government."

As an advocate for community rights and local self-government my ears perked up. Of course the Palestinians have the right to govern themselves, but I had to wonder if Clinton, or Sanders for that matter, or any of the presidential hopefuls would agree that Coos County, OR or Pittsburgh, PA have the right to say no to harmful projects that violate the fundamental rights of their citizens.

Last October I had a heated albeit brief debate of my own with a lawyer who, like me, opposes the proposed Jordan Cove LNG project here on the Southern Oregon coast. We disagreed on just what are fundamental or unalienable rights. A law professor might define fundamental rights as enumerated rights that have been recognized by the Supreme Court requiring a high degree of protection from government encroachment. Fundamental rights, however, require no validation from a governmental authority.

My granddaughter has an inarguable fundamental right to clean air and water and not to be trespassed upon by toxic chemicals. So too do I have an unalienable right to my blue eyes and the ninth amendment allows for the protection of un-enumerated rights. Yet, when a small rural farming community in Pennsylvania says NO to a fracking waste injection well

because it risks contaminating groundwater and therefore the very health and livelihood of the inhabitants, state and federal regulations preempt these people from protecting themselves and their children.

The lawyer argued that property rights are fundamental rights rather than a privilege granted by government. However, owning property doesn't give you the right to use that property in a way that violates the rights of your neighbors. And, just like gun rights can be taken away from felons, property rights can be taken away from landowners. Fundamental rights such as due process and the right to be healthy cannot.

### **What is regulation and who writes the regulations?**

In short, industry regulation is legalized harm. The regulatory agencies permit industry to violate fundamental rights and in so doing shelter the offenders from civil liability for the environmental damage and health issues they cause.

The industry itself helps write the very regulations it is supposed to comply with. When was the last time you were consulted about how many parts-per-billion of toxins your granddaughter should breathe or drink?

The regulatory agencies effectively set a cap on how clean your air and water can be. It's like setting a maximum wage law limiting how much you can earn. Instead of setting a floor constraining industry to zero harm the regulators set a

ceiling constraining the public. There is a plausible view that the only thing the regulatory agencies regulate are environmentalists.

*Governments are instituted among Men, deriving their just powers from the [consent of the governed](#) – Declaration of Independence*

Recently, The World published a story about a statewide citizen initiative of which I am involved to amend the Oregon Constitution. The amendment will confirm our right to local self-government and prohibit the state from preempting local ordinances protecting the fundamental rights of citizens.

The Coos County Right to a Sustainable Energy Future Ordinance is one such local law that when passed will prohibit non-sustainable energy projects like Jordan Cove and will run up against state and federal preemption. State and federal regulators believe they are more expert about our communities than we are and we have inexplicably empowered them to make decisions for us instead of making them ourselves.

Needless to say the industry doesn't like communities using direct democracy to say NO to corporate harm. The law firm of Davis Wright Tremaine has targeted rights based ordinances filed in Columbia and Douglas Counties. Supposedly filing on behalf of individuals willing to be the qualifying local resident affected by the initiative it is highly unlikely the firm's fees are paid by the signer and very likely they are funded by the industry.

***Section 1. Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right:***

*that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.— Oregon Constitution*

This same firm filed a comment to the statewide initiative, this time using pro-gas booster Keith Tymchuk, Mayor of Reedsport as the qualifying resident. Anyone laboring under the false belief that we operate under a representative democracy take note that an elected official opposes direct democracy allowing communities to be self determining. Tymchuk is representing the industry, not the electorate.

State Senators Arnie Roblan and Jeff Kruse who coauthored a preemptive state law dubbed the Monsanto Protection Act are representing the industry. They are not representing their constituents who want protection from GMO and chemical encroachment on their organic farms.

Justice Douglas supported the rights of nature to thrive and flourish. He believed that an ecosystem is not a slave to mankind existing only to be plundered and exploited to the benefit of corporate shareholders. He believed they are living breathing things independent of man and at the very least deserved standing in a court of law.

Since Douglas' time Ecuador and Bolivia have amended their constitutions giving nature rights. Italy and Ireland are also considering rights of nature as a way to protect "priceless bits" of their environment that will not survive under the regulatory model.

So what are our choices?

We can choose to do nothing which is an ethical choice and leave our children and grandchildren with the consequences. Doing nothing will not stop Jordan Cove or any other industrial harm.

We can continue to abide by and validate the regulatory fallacy. We can submit comments to the regulatory free speech zones and ignore the fact that what is regulated is allowed. Doing so will also not stop Jordan Cove, although hopefully the market has done that for us.

We can declare that a government that does not protect the fundamental rights of its people is illegitimate and revoke our consent to be governed by amending that government.

Community rights is about making corporate privileges subordinate to the rights of a community. In so doing we legalize sustainability and make it possible to protect the health and welfare of our children and our environment.

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# Time to step up our game

There is a [touching story](#) about a dying astronaut who plans to spend his remaining time on earth fighting global warming for his only grandchild. Piers Sellers visited the International Space Station three times and took twice as many spacewalks. His extraterrestrial perspective coupled with his science background helped him recognize how “climate change is the world’s biggest problem.” It got me to thinking what I would do if I had just eighteen months to rescue the planet for my six-year old granddaughter.

In February, famed activist Ken Ward sent an open letter to climate activists around the Pacific Northwest. Ward is one of the heroes of the May 2013 [Lobster Boat Blockade](#) where two men blockaded 40,000 tons of coal.

“These are increasingly desperate times,” he wrote, “and the easy graces of protocol must be weighed against the seriousness of the climate crisis and lateness of the hour.”

He was reacting to support for the Healthy Climate Bill and the Clean Electricity and Coal Transition Plan, two state bills Ward regards as inadequate.

“I have no doubt that you are advancing the strongest possible measures winnable in present political conditions, and doing so meets organizational needs to offer a hopeful public face and demonstrate concrete accomplishments. But haven’t we reached the point where short term winnability should not be our top priority?”

Noting that “we’re in a terrible crisis, about to crash global systems that make civilization possible and we’re going to have to make monumental changes in energy generation, forestry, agriculture, transportation, consumer habits.” Ward scolded the recipients,” Isn’t the implicit promise of these bills, that they are significant steps towards addressing climate change, fraudulent? And, because of this, are we not further demoralizing our strongest supporters?” (Read the full letter here [Climate\\_letter](#))

In the forty years since the formation of the EPA and enacting NEPA our environment has gotten steadily worse. We have already surpassed the 350 ppm CO<sub>2</sub> recommended by 350.org. The regulatory agencies and conventional activism are failing the planet.

Ward heads the [Climate Disobedience Center](#) and recommends stepping up the game with direct action and, near and dear to my heart, initiative campaigns to ban fossil-fuel infrastructure. He recommends withdrawing from standard mainstream efforts.

Earlier I wrote [an op-ed in which I likened environmental regulatory agencies](#) to a Department of Human Trafficking. The way we “protect” the environment today is illegitimate and is the same as if, instead of abolishing slavery, we regulated how many lashes to give a slave. Participating in and validating the regulatory process is the same as wielding the whip and delivering the lashes. We are complicit in the plunder and exploitation of our planet.

Let me confess, I didn’t reach this conclusion overnight.

Recently, I was admonished by someone who sees returning the Port of Coos Bay commission to an elected board as a way to prevent future boondoggles like Jordan Cove LNG. When I suggested this was little more than a BandAid he retorted, "...you ought to have a bit more confidence in what could be achieved by electing a different crowd to the Port."

Admittedly, I don't have confidence in this approach and not just because it is really hard to elect good people to anything. Unless and until we change the current structure of law that makes sustainability illegal, no matter who is in office they will be unable to say NO to projects like Jordan Cove.

FERC is funded by the very industry it regulates and the industry helps write the rules. Thinking we don't need systemic change is just naïve.

FERC denied the Pacific Connector Gas Pipeline based solely on the fact the company had yet to acquire any contracts. FERC did not rule on Jordan Cove, denying it only because it cannot function without a pipe, so any arguments about Veresen having to restart the EIS process are false. Today, Veresen announced it has a preliminary agreement to sell LNG with JERA, a joint venture established on April 30, 2015 by Tokyo Electric Power Company, Incorporated ("TEPCO") and Chubu Electric Power Co., Inc. to sell 1.5 million tons per annum of LNG. As I wrote recently, Jordan Cove LNG is "undead." (See my [OP-ED in The World.](#))



No one wants to admit they have wasted ten years of their life and the lives and resources of those that followed. No one wants to discover that rather than helping they are holding the whip and contributing to the demise of the planet. Personally, I don't care if people want to take credit for the Jordan Cove denial order. But hearing some local anti-gas activists not only take credit for the recent FERC denial but encourage other citizens fighting pipelines to continue doing the same is fraudulent, bound to leave these same people demoralized and considering the state of the planet, essentially criminal.

So how would I most effectively spend my last eighteen months on the planet? Doing everything I can to pass initiatives like the [Coos County Right to a Sustainable Energy Future Ordinance](#) and the [statewide initiative to halt state preemption](#) of local rights based ordinances and engaging in direct action against harmful projects.

In a [recent interview](#) Thomas Linzey, co-founder of the [Community Environmental Legal Defense Fund](#) said:

“While we believe that there may be some judges and courts out there ready to embrace a right of local, community self-government, our communities aren't betting on it. Eventually, they understand that for this type of change to happen, they'll have to drive that change into their constitutions and override the courts. After all, it's the courts that have created many of these doctrines over the past hundred years or so; to turn back to them to undo them would be pretty naive. So, we pursue two tracks—vigorously defending these communities in the courts when they get sued by corporations or their own state; and second, assisting communities to come together to drive local self-government guarantees into

constitutional structures.

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## Oligarchy feeling a bit gassy

Friday was a great day. Not only was my daughter accepted into the University of Oregon but FERC denied the certificate of public convenience and necessity to the Pacific Connector Gas Pipeline. Because I was standing in the middle of McArthur Court on the U of O campus surrounded by anxious parents and giggling young adults I had to slip outside when I received the call from an affected landowner... the order was barely 20 minutes old! Without a pipeline, the commission reasoned, there is no purpose for a LNG terminal either and so they denied Jordan Cove as well.

Naturally, I was so excited that while I waited for the order to come up on one phone I fired off a bunch of texts on the other and then stood in the hallway reading. My joy soon turned to disappointment. Make no mistake, this is a momentous moment and will have the effect of deterring both the terminal and pipeline for the foreseeable future but as one activist put it, this project is "undead." The FERC denial was made without prejudice which means both companies, Veresen and Williams, can reapply and, in fact, both companies have declared their intention to demand a rehearing. That, however, is not what is so disappointing. After all the thousands of comments about the negative impacts upon waterways and forests and oysters and clams and birds and the very air we breathe the denial came down to one thing, the market. Hardly a surprise given the Final EIS but disheartening nonetheless

that the damage caused by fracking and all the methane spewing into the air at both ends of the pipe and the impact on climate meant nothing. Without purchase contracts the company simply failed to meet the minimum standard necessary to justify the use of eminent domain. No pipe, no terminal.

Pro-gas boosters cannot even blame the environmental activists for the denial. The single most effective strategy employed by the opposition was that 90% of landowners refused to negotiate an easement. If the company comes up with a buyer or two, (Veresen, in a fit of face saving, claims it will do just that), then nothing short of a tsunami or a countywide bill of rights for a sustainable energy future will stop it.

Yet, the local gassy oligarchy have once again hitched their pony to the wrong cart and tried to put all the county's eggs into one very unsustainable and rickety basket. Gosh, what will happen to the CEP? One would hope they might finally embrace the concept of sustainability, might encourage the discussions promoted by the SDAT Report but local history tells us this is highly unlikely. We have already heard the [booster bluster from Mark Wall](#). Nevertheless, with the oligarchy effectively neutered, the rest of us can start working toward sustainability before they get their mojo back and start strutting around about another coal terminal or pulp mill, or heaven forbid, Jordan Cove raises its ugly head again.

To that end, [Coos Commons Protection Council](#), [Coos Community Radio](#) along with area students and other local partners are holding what we believe is Coos County's first sustainability fair in April to celebrate Earth Day.

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# Bucking the establishment anti-LNG crowd

The more I engage in community rights work the more sense the right of local self-government makes to me. Whether it is banking regulators, energy regulators or environmental regulators the working class communities are getting the short end of the stick because the industry writes the rules. One of the main rules is that communities don't get to decide whether they want fracking waste injected into their ground water, or sewage sludge spread across their fields, or toxic emissions in the very air they breathe. In short, the rules say communities aren't even allowed to protect their children from chemical assault. The very concept of sustainability, of developing a sustainable economy is illegal because of these rules, because we cannot say NO to non-sustainable practices. Shucks, we must live with the consequences of fracking waste injection wells, or coal and gas emissions, or aerial pesticide and herbicide spraying so we ought to have some say. That is what democracy is all about.

Presently, my efforts are focused upon the environment and sustainability but I see the potential for using the rule of law to the benefit of social and economic justice as well. Centralized decision making, a sort of one size fits all approach to everything from fossil-fuel regulation to banking regulations and environmental regulations just allow bureaucrats appointed by the oligarchy to control the masses. So begging FERC or the governor or LUBA or DOE or DEQ or fill-in-the-blank has never set well with me. Perhaps this is why it was so easy for me to embrace the concept of affirming that communities are self determining, I don't like groveling.

So a group of us formed the [Coos Commons Protection Council](#) and began circulating a citizen initiative to establish a local bill of rights that expands upon the existing Bill of

Rights and will elevate community rights over corporate rights. When it passes, Coos County will make history as the first US county to ban a LNG terminal on the grounds that it violates our right to a sustainable energy future. Naturally, we expected push back from the pro-LNG booster crowd but we were more than a little dismayed when local anti-LNG activists turned out to be the biggest obstructionists.

For the most part Coos Commons has tried to stay out of the weeds and ignore these people although we spend an enormous amount of valuable time correcting the misinformation they put out. After attending the [PIELC](#) (Public Interest Environmental Law Conference) in Eugene we got another taste of how far and wide their efforts to thwart us have gone. Throughout the conference we were approached by fellow activists, most expressed similar dismay and sympathy for our plight and offered to help us. One woman from Portland, however, told us that “we need to get along” as if Coos Commons has any control over the “rift.” The only way to get along, as far as we can tell, is to stop using direct democracy and stop our initiative, something we are unwilling to do.

To provide an example of the kinds of bad information we are regularly having to correct I am including my response to an email thread from a few weeks back. The thread is quite long and I was only brought in on it towards the tail end.

*Thank you [redacted] for including me on this thread. Unfortunately, the Denton, TX example [redacted] is providing below is not a rights based ordinance and has nothing in common with community rights work. The same is true with some of the ordinances in Colorado but unfortunately people not involved in community rights are often confused and mix these ordinances up. Your statement below that these ordinances are always overturned in court is incorrect. Out of the 200 rights based ordinances passed just five are being challenged*

*in court and those cases are yet to be decided. You are correct the ordinance allows for renewable energy used sustainably. The ordinance title is the Coos County Right to a Sustainable Energy Future after all so of course renewable energy is allowed. (it is possible to use renewable energy in a [non-sustainable way](#)).*

*You are also right that we need to decentralize power production. We should have a conversation about that sometime.*

*No one working on community rights expects a miracle fix, we are in it for the long haul and working at the state level not just the local level. Changing decades of bad policy will not happen overnight, think abolition or suffrage. Change will not happen, however, unless and until we actively start defying the rules just like they did in order to free the slaves and give women the right to vote. See my [op-ed](#)*

*As for comments about the fracking fight in Colorado I refer you to an [op-ed penned](#) by Cliff Willmeng from Lafayette, Colorado. Cliff would be happy to correct any misconceptions you may have about the effort there.*

*Not to diminish the efforts of those filing comments but regarding Principal Power, I contacted Kevin Banister a few months ago and the decision to separate from Jordan Cove had nothing to do with public comment but was a business decision influenced by their acquisition by another company.*

*Mary*

One of the [points of contention](#) is that the ordinance will prohibit the non-sustainable use of renewable energy. From the ordinance: "Non-sustainable energy systems means those systems that are controlled by state and federal energy policies,

rather than community controlled energy policies; hydroelectric power and industrial scale wind power when it is not locally or municipally owned and operated...” Flopping a floating wind farm smack dab in the middle of a prime hake fishery and using Coos County as a highway to allow a corporation to sell power to California is not sustainable for Coos County. Without even getting into the enormous footprint these farms require and the toll on the ocean bed beneath them there is really nothing in it for the county to participate in this very costly scheme. In fact the State of Oregon agrees and Principle Power is, pardon the pun, pretty much [dead in the water](#).

It may come as a surprise to many but large scale hydroelectric power is not a clean source of energy. Consider this piece from EcoWatch: [The Hydropower Methane Bomb No One Wants To Talk About](#)

*A few months before visiting Costa Rica I had written a post for [EcoWatch](#), “[Dams Cause Climate Change: They Are Not Clean Energy](#).” Based on research I’d done in fighting dam proposals on my own river, the Cache le Poudre, as well as my work advocating for the already-dammed Colorado River, I’ve come to believe that [hydropower](#) is one of the biggest environmental problems our planet faces. Construction of hydroelectric dams around the world is surging dramatically, guided by the false premise that they produce clean energy, even as study after study refutes this claim.*

Make no mistake, Coos Commons doesn’t claim to have all the answers but we do know that many communities are learning how to become sustainable. Some communities have developed [creative ways to finance](#) their own wind farms, for example, providing local power and keeping energy dollars local. Solar is becoming more and more affordable and the less money we

spend importing power from companies like Pacific Power the more money we have to reinvest right here.

Coos Commons Protection Council along with Coos Community Radio in conjunction with area students will be holding a sustainability fair April 21. More details will come as we get closer to the event.