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July 7, 2014

Mr. Mike Podowski  
700 Fifth Ave., Ste. 1800  
P.O. Box 34019  
Seattle, WA 98124-4019

Re: ***Washington Dept. of Ecology Conditional Approval of City of Seattle Shoreline Master Program Update***

Dear Mr. Podowski:

The Port appreciates the opportunity to comment on the Conditional Approval of the Seattle Shoreline Master Program. The City Council's response to the Conditional Approval has evolved into more than a formality since 139 edits have been proposed by DPD and the Washington State DOE subsequent to the City Council's adoption of the January 2013 version of the legislation. We have reviewed the documents that were provided by Ecology on June 12, 2014 as well as DPD'S June 25<sup>th</sup> version of the proposed master program and we have the following comments and concerns:

Regarding the changes denoted as "required" in Ecology's materials, the Port appreciates the extensive editing and clarification of numerous sections, and particularly the use tables and regulations which are now much clearer.

However, we are concerned about the language inserted into two sections (e.g. Items 6B, 109C) which have been amended to categorically include shoreline setbacks to be environmentally critical areas regulated under the Critical Areas Ordinance (CAO), Chap. 25.09 SMC. Identifying all shoreline setbacks as environmentally critical areas within the shoreline district is not supported by the citation to WAC 173-26-201(2). The wholesale inclusion of shoreline setbacks as an environmentally critical areas as proposed here would disrupt the careful balancing of the goals of the Shoreline Management Act and the Growth Management Act as intended by the Legislature. RCW 36.70A.480(1); Futurewise v. W. WA Growth Management Hearings Board, 164 Wn. 2d 242 (2008). Shoreline setbacks are subject to the same use conflicts as the rest of the shoreline district, and must maintain the same balance between the three policy directives of the Shoreline Management Act, namely encouragement of water dependent uses, protection of shoreline resources, and promotion of public access. Ecology's SMP handbook includes the following directive to local governments:

"SMP regulations must take into account existing shoreline land uses. CAO buffers often do not. The SMP must accommodate SMA-preferred water-oriented uses, in particular. These uses may be allowed within buffers in appropriate environment designations after mitigation sequencing is applied. For example, water-dependent port facilities may be allowed within a wetland buffer after mitigation sequencing is applied. "



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For these reasons, the Port opposes the specific inclusion of shoreline setbacks as critical areas and requests that these amendments be withdrawn by Ecology as part of the "required" changes. In discussing this matter with Ecology staff at the June 30 Open House, they explained that a number of the edits were intended to work together to sort out the roles of CAO versus the SMP. They also speculated that it may have been a mistake to include this in the table of required changes. One of the DPD-proposed edits actually *improves* clarity on this matter – proposed new section 25.09.016 would read "[E]nvironmentally critical areas, as defined by Section 23.60A.156.C, located within the Shoreline District, as defined by Chapter 23.60A, are regulated pursuant to Section 23.60A.156." However, two of the other changes proposed by DPD need to be revised for consistency with this approach: 1) the words "and shoreline setbacks" and "23.60A.167" need to be omitted from 23.60A.156-D-1-a, 2) the entire clause of 25.09.020-D-6 needs to be omitted.

We also have the following comments on the "recommended" changes:

- *Items 13-C and 14-C:* Changes in references to dredged material disposal from "site" to "location". It is not clear why this is necessary, and the use of "location" is inconsistent with the interagency Dredged Material Management Program's terminology, which is "site."
- *Items 16-C and 17-C:* Changes to requirements for vegetation mitigation and monitoring to require 100% ground cover for five years. This is an unprecedented standard for mitigation monitoring and may not be possible with any level of nurturing. It imposes substantial additional costs on project proponents. We support retaining the previous standard of 80%, which is consistent with permit conditions by state and federal resource agencies.

Thank you for the opportunity to provide input. Please contact Eric Hanson at (206) 787-3879 with any questions.

Sincerely,



Stephanie Jones Stebbins  
Director, Seaport Division Environmental and Planning

c: Linda Styrk, Joe McWilliams, Paul Meyer, Eric Hanson, Joseph Gellings – Port of Seattle