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August 15, 2025

Rebecca Rothwell
Rulemaking Lead
Washington Department of Ecology

Re: Shoreline Management Act Preliminary Draft Rulemaking Public Comment Period (Informal) – Port of Seattle Comments

Dear Ms. Rothwell,

The Port of Seattle (Port) appreciates the opportunity to provide comments on the preliminary draft rule language for Chapters 173-18, -20, -22, -26, and -27 of the Shoreline Management Act (SMA). The proposed amendments to the Shoreline Management Act implementing rules have the potential to substantively affect our operations and long-term management of our properties.

The Port is one of the largest public landowners of shoreline along the Seattle waterfront. In 1911, the Port of Seattle was authorized by the citizens of King County under Chapter 53 of the Revised Code of Washington to serve as a public port authority, charged with ensuring that Seattle's deep-water harbor is protected to serve as an economic engine for the region. In 2015, the Ports of Seattle and Tacoma formed a marine cargo operating partnership, The Northwest Seaport Alliance (NWSA). NWSA is the fourth-largest container gateway in North America.

The Port and NWSA operate and maintain more than $1 billion in investments made into maritime and industrial operations, and work to protect the more than 62,000 family-wage jobs and $1.7 billion in payroll that the container shipping, cruise, and commercial fishing sectors generate for the region and state. In addition, the Port of Seattle has a mitigation banking line of business that is on track to meet the Port's goal of restoring 40 acres of additional habitat in the Duwamish estuary. This program has secured over $40 million in revenue from habitat credit sales in 2024 to reinvest in future habitat projects. Our comments emphasize the importance of the SMA as a regulatory tool to promote and facilitate the use of the shoreline for habitat restoration purposes.

The Port and NWSA's shoreline properties are assets of statewide significance, serving as critical gateways for agricultural producers and manufacturers across Washington; promoting clean energy, economic development, and growth in green and blue economies; and providing critical Duwamish estuary habitat. These functions cannot be replicated elsewhere and play a crucial role in the resilience of our state's economy.

We recognize and respect Ecology's intent to develop regulations that account for present and future realities under climate change, including sea level rise. As one of the largest waterfront landowners in the Seattle area, we share Ecology's goal of environmental stewardship and protection of the region's waterbodies. Unfortunately, the proposed regulations do not fully consider existing and critical public infrastructure and could cause unnecessary and significant obstacles to operations and maintenance of facilities.

The SMA provides "[i]t is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." RCW 90.58.020. Correspondingly, RCW 90.58.100 provides that local shoreline master programs shall include elements including economic development, circulation, and use alongside elements related to conservation and public access. See RCW 90.58.100(2). While the SMA establishes this balanced approach to activities in the shoreline, the preliminary draft regulations focus predominantly on limiting and restricting existing and future development in the shoreline. The Port agrees that preservation of shoreline ecological function is essential. As Ecology continues its work revising the State's shoreline regulations, however, the Port urges Ecology to consider ways to better recognize and integrate developed shoreline environments and the need for continuing shoreline development to support the goals and objectives of the state and local communities. Local shoreline master programs need to clearly acknowledge and plan for economic development and corresponding infrastructure, including Port facilities, within the shoreline environment.

The Port supports the comment letter drafted by the Washington Public Ports Association and, in addition, offers the following specific comments regarding the preliminary draft rule language. We look forward to meeting with you to discuss ways that the proposed regulations could be modified to address the Port's concerns regarding how these regulations could impact Port facilities and other water-dependent uses.

Sincerely,

Laura Wolfe
Sr. Environmental Program Manager
(on behalf of Jon Sloan, Sr. Manager, Maritime Environment and Sustainability)
Port of Seattle

Port of Seattle Comments on the Shoreline Management Act Preliminary Draft Rulemaking

1. General Comments on Changes

The Shoreline Management Act calls for a balance between Ecology and local governments on regulating the shoreline jurisdiction. RCW 90.58.050. The proposed amendments shift the balance further toward Ecology. Ecology is attempting to be prescriptive for what are complex, local decisions. Ecology could offer some of these provisions as draft model language for local jurisdictions but should not be dictating some of the broad restrictions contained in the draft without better understanding of each jurisdiction's individual circumstances/ environments.

Most Port and waterfront projects in the shoreline are already subject to multiple layers of permitting. The Port requests that Ecology not add to that burden by creating what appears to be a new approval process for activities that are expressly exempt from permit requirements. The proposed new process seems to potentially create an undue amount of administrative burden for actions that are exempt.

2. Sea Level Rise

Ports and other waterfront businesses will be highly impacted by the new requirements to address sea level rise. We recognize the need to develop regulations that account for future realities under climate change, including sea level rise. However, adaptation should not be completed on a project-by-project basis.

WAC 173-26-246(6)(b)(vi) encourages local governments to coordinate with neighboring jurisdictions when conducting sea level rise vulnerability assessments. Local governments must also coordinate with other local governments within and subject to their jurisdiction. This is particularly relevant for public ports which by their nature tend to own and manage significant public assets within shoreline jurisdiction. Coordinated sea level rise planning should be a requirement of local governments that have jurisdiction over public ports. Local governments should also be encouraged to coordinate with water-dependent and water-related businesses when establishing adaptation pathways for sea level rise. Without coordination and consideration of the existing and critical public infrastructure, the requirements could have severe consequences to maritime operations.

3. Archaeological and Cultural Resources

Draft regulations in WAC 173-26-221(1)(d)(ii)(A) include the requirement to provide a cultural resource site assessment conducted by a professional archaeologist or historic

preservation professional to determine the presence of historic or archaeological resources for shoreline permit applications and exemption requests on properties within 500 feet of a site known to contain a historic, cultural, or archaeological resource.

First, the general public does not have access to the Department of Archaeology and Historic Preservation's (DAHP) database to identify a site's distance from a known historic, cultural, or archaeological resource. This means that a jurisdiction or a project proponent would need to hire a consultant with access to DAHP's database to determine if an assessment is required. The Port recommends that Ecology clarify the thresholds for this requirement.

Second, the 500-foot standard is excessive for many activities, such as repair and maintenance of a building or other structure that does not result in ground disturbance or for a project that only disturbs fill material. The minimum requirement or standard should be commensurate with the potential effects of the action to cultural resources and should include clear objectives that will guide the standard. The 500-foot standard and requirement to obtain a cultural resources assessment from a professional creates a regulatory burden for minor actions with no potential of disturbance. It introduces substantial risk of precluding necessary maintenance actions and could lead to increased unpermitted activity in the shoreline as the cost of compliance could exceed the perceived risk of enforcement action.

4. Critical Areas Protection

WAC 173-26-226(1)(b)(vi) states that master programs "shall preclude uses and developments that are incompatible with critical areas" and in (x), states that master programs "cannot include critical areas impact allowances and reasonable use exceptions" and "shall include only protective standards and allowances for restoration or enhancement". However, the last sentence states that deviations from the standards may be authorized through a variance. The Port understands that the preference is to avoid impacting critical areas, and that there should be no by-right provisions for incompatible uses in an SMP; any relief from protective restrictions in an SMP for critical areas must be authorized through the public variance process and undergo Ecology's review. If this is Ecology's intention, we suggest adding explicit language to that effect to eliminate any confusion over potentially contradictory language.

WAC 173-26-226(1)(d)(ii) provides a list of development activities that are "not allowed" within wetlands or their protective buffers unless proposed as a part of a restoration or enhancement project. The list includes activities that are often necessary to maintain legally existing preferred uses such as dredging, driving of piling, and reconstruction. WAC 173-26-226(1)(f)(iv)(C) includes standards for critical saltwater habitat that do not allow for shoreline modifications that intrude into or over critical saltwater habitat. Repair and maintenance can include activities that are designated as shoreline modifications.

Ports and water-dependent facilities are located in estuaries and along shorelines that contain critical saltwater habitat and other types of critical areas. In the City of Seattle, the entire

shoreline of Elliott Bay and the mouth of the Duwamish River is classified as a critical area due to its association with federally and state listed species. The standards appear to be written with new development in mind and with the anticipation that only some portions of the shoreline, rather than the entire shoreline, would be designated as a critical area.

Please consider repair and maintenance, reconstruction, and development necessary to maintain preferred water-dependent uses located in critical areas where the development cannot be relocated. Though located in a critical area, work is typically occurring in a highly modified and developed area and construction methods are highly regulated through federal, state, and local approvals and designed to avoid impacts.

The Port is concerned that the draft regulations will result in variances being necessary to maintain legally existing preferred uses. The standards should distinguish development and shoreline modifications necessary to maintain existing preferred uses from development and shoreline modifications resulting from new development of a non-preferred use.

5. Geologically Hazardous Areas

WAC 173-26-226(1)(e) encourages restoration in geologically hazardous areas. Geologically hazardous areas standards should distinguish engineered and constructed slopes from naturally occurring slopes as these constructed features often do not provide ecosystem functions and shoreline functions that naturally occurring slopes provide. Some of these slopes also are underneath piers and wharves and would have limited restoration benefits and/or need to stay hardened to protect water-dependent infrastructure. Also note that liquefiable soils are considered geologically hazardous areas, which would include most of the Seattle waterfront (shoreline and uplands). The Port assumes it is not Ecology's intent to for this restriction to apply so broadly.

6. Frequently Flooded Areas

WAC 173-26-226(1)(g)(i)(G)(II) requires the establishment of buffer zones in aquatic and upland areas to separate incompatible uses from frequently flooded areas to protect shoreline functions, human health, and safety.

The Port understands that development in frequently flooded areas must address ecological impacts, but where land is separated from the frequently flooded area by legally existing and maintained infrastructure ("artificial constraints") and where a buffer to protect ecological functions would provide no benefit, it should not be required. For example, much of the Seattle waterfront is mapped within the floodplain, even overwater structures that are above flood elevations. The Port recommends the application of setbacks and buffers based on site conditions. Required setbacks and buffers should consider whether the site requires protection against a flood hazard or whether protection of ecological function is appropriate. We also would like to see revisions to the sections below:

- WAC 173-26-226(1)(g)(i)(G)(III) allows for flood hazard reduction structures for new development in frequently flooded areas necessary to protect allowed uses when no alternative locations are available, and no net loss of ecological functions will result. According to WAC 173-26-226(g), frequently flooded areas include floodways.

- WAC 173-26-226(1)(g)(i)(I) does not allow for new development or uses when it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the Coastal Management Zone (CMZ) or floodway. The restriction does not recognize the allowance listed above which applies to the floodway.

- WAC 173-26-226(1)(g)(i)(K)(VIII) lists uses and developments that may be appropriate or necessary in the CMZ or floodway and the list includes measures needed to reduce shoreline erosion when the erosion rate exceeds the rate of erosion that would occur in a natural condition and the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions. Appropriate mitigation of impacts to ecological functions is required. This appears to contradict the restriction above.

The multiple provisions listed above are confusing and, in some instances, appear to be contradictory. Please clarify if the allowances vary depending on location (e.g. in a frequently flooded area but outside of the floodway or in areas elevated such that flood waters will not affect the infrastructure) or are dependent on the type of measure such as structural flood hazard reduction measures versus nature-based solutions.

The Port is also concerned that no standard or guidance is provided for determining the normal rate of erosion that would occur in a natural condition under WAC 173-26-226(1)(g)(i)(K)(VIII). The term “natural condition” is ambiguous. Alterations to many river systems, including the Duwamish River, include alterations of the natural flow regime in addition to measures that reduce erosion and confine the channel. Changes in flow regimes change the rate of erosion. Dams and diversions, such as the diversion of the White River from the Green River to the Puyallup River, have greatly altered the flow regime in the Duwamish River. Would the “natural condition” account for all alterations that have contributed to changes in the rate of erosion?

It is also not clear what type of measures would not interfere with fluvial hydrological and geomorphological processes. While constructed nature-based solutions should result in less impact to ecological processes, any measure to reduce shoreline erosion in the CMZ or floodway, including nature-based solutions, inherently alters the fluvial and geomorphological processes. This standard needs to be more specific and clearly describe the intent behind it and the means to meet it.

7. Channel Migration Zones

WAC 173-26-226(1)(h)(ii)(B)(III) allows for measures to reduce shoreline erosion in the CMZ. This language mirrors the allowance in WAC 173-26-226(1)(g)(i)(K)(VIII) above and the Port has the same concerns with the term "natural condition" and method of determining the erosion rate.

8. Protection of Shoreline Ecological Functions

WAC 173-26-226(2)(b)(iii) requires the restoration of functions when new development, redevelopment, or expansion of existing development and uses are proposed on sites with degraded buffers and impaired existing functions. The Port understands that the buffer may require enhancement or expansion of the standard buffer width depending on impacts of the new development or use and the condition of the buffer, but would like clarification that the "restoration of functions" required under WAC 173-26-226(2)(b)(iii) is limited to the established buffer consistent with WAC 173-26-226(2)(c)(iii). Please clarify that this does not apply to the entire development site.

WAC 173-26-226(2)(d)(ii) allows shoreline buffer impacts to accommodate water-oriented uses, water access, water-dependent recreation facilities, or as approved through a shoreline variance. Impacts of the development and use within the shoreline buffer shall be mitigated using mitigation sequencing to assess functional impacts and compensate as necessary to achieve no net loss. Please clarify whether the provision allows for buffer impacts without mitigation to accommodate water-oriented uses where no functional buffer exists, such as a paved buffer. This scenario may occur with redevelopment of a terminal, where the terminal and wharf span the entire shoreline and there is no functional buffer. The Port believes that mitigation should not be required for the redevelopment of the portions of the terminal that are located in an existing paved buffer.

WAC 173-26-226(2)(c)(iv) requires mitigation in the immediate vicinity of the impact. The Port asks that language be added to acknowledge the use of mitigation banks as an appropriate form of mitigation. Federal agencies give preference to mitigation banks because they can provide more effective mitigation by consolidating resources and compensating for adverse impacts in advance. The federal rule requires compensatory mitigation to be commensurate with the type of impact with preference for mitigation to be within the same watershed and located where it is most likely to replace lost functions. For impacts to the marine environment, the mitigation site should replace lost functions and services within the same marine ecological system.

These standards are consistent with the watershed approach for selecting mitigation sites, which acknowledges that past practices over-emphasized the need to replace lost functions at or near the impacted area without consideration of whether the site has the appropriate scale, connectivity, and ecological processes necessary for successful mitigation and whether the permittee would be the most effective developer of that mitigation. This is common in industrial areas where past development has so greatly altered the on-site and surrounding conditions that the ecological processes necessary to support a mitigation site are no longer

present and cannot be effectively restored. In this case, a mitigation bank would offer improved and sustained ecological benefits.

Mitigation banks are established in areas where ecological processes can be restored to support the mitigation goals. They compensate for impacts in advance which reduces temporal loss and provides larger continuous areas with multiple habitat types. They receive more oversight and management by individuals with scientific expertise compared to smaller permittee-responsible mitigation which reduces risks and uncertainty.

9. Shoreline Vegetation Conservation

WAC 173-26-226(2)(e)(iii)(E) does not allow landscaping to be used to meet the vegetation conservation, restoration, enhancement requirements. Please provide a clear distinction between landscaping and vegetation and confirm whether landscaping consisting of native vegetation may be allowed to meet the requirements.

10. Dredging

WAC 173-26-231(3)(e)(vii) includes provisions for the requirement to obtain an aquatic vegetation survey for dredge material disposal. Consider limiting the requirement to those areas that are within the euphotic zone.

11. Fill

WAC 173-26-231(3)(g)(ii) allows for fill waterward of the Ordinary High Water Mark (OHWM) under certain scenarios, including fill in support of a water dependent use and disposal of dredged material considered suitable under and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources.

The language is consistent with WAC 173-26-231(3)(e)(iv) and WAC 173-27-044 which allow for disposal of dredge material when authorized through the dredge material management program office without review.

However, WAC 173-26-231(3)(g)(iii) says that fill waterward of the OHWM for any use except ecological restoration should require a conditional use permit. Please clarify that these provisions do not include those that are allowed under WAC 173-26-231(3)(g)(ii), for example, fill in support of water dependent use and disposal of dredged material considered suitable.

WAC 173-26-231(3)(g)(iv) does not allow for fill in wetlands and (v) does not allow for fill on shorelands that creates dry land. , Please consider that restoration or enhancement projects may require fill as part of the project. Wetlands or shorelands that have been excavated or

graded through prior development may require regrading and fill to restore conditions and functions. An example is a wetland that has been excavated to remove hydric soils, requiring fill to re-establish wetland hydrologic and ecological functions. Clarify the interrelation of the sections under WAC 173-26-231(3)(g).

12. Mooring Buoys

WAC 173-26-231(3)(i)(v) does not allow for mooring buoys in critical saltwater habitats. Please consider that critical saltwater habitats include areas where priority species have a primary association which may include the entire marine shoreline in Puget Sound and Elliott Bay. This could have the effect of leaving no allowable location for mooring buoys.

13. Piers and Docks

WAC 173-26-231(3)(l)(vii) requires confirmation of the Department of Natural Resources' (DNR) authorization through a license, lease, or registration as a condition of approval.

Please clarify that approval from DNR can be provided after issuance of a permit or exemption under the local SMP. DNR requires demonstration that an applicant has received all other state and local approvals before they will issue a license or lease. If the local government requires an applicant to confirm they have approval from DNR prior to issuance of a permit or exemption, this creates a circular approval where both agencies' approvals are contingent on the other agency. Please consider this a request for state agencies to coordinate directly with one another regarding permit issuance and other entitlements.

14. Scientific Data-collection or Monitoring Devices

WAC 173-26-231(3)(m)(ii) states that scientific data-collection or monitoring devices require review by the local government and may meet the definition of development and require a shoreline substantial development permit. To meet the intent of promoting scientific measurement devices in the shoreline, Ecology should consider including an exemption for scientific data-collection or monitoring devices (much like site exploration and investigation activities). Also, clarify that data-collection or monitoring devices that do not meet the definition of development would not require review.

15. Vegetation Modifications

WAC 173-26-231(3)(r)(iii) states that vegetation removal occurring landward of buffers or setbacks and outside of critical areas may be authorized as part of a development proposal in support of an authorized use, provided the ecological functional impact of the vegetation

modification is considered in application of mitigation sequencing and all vegetation-related impacts are fully minimized and compensated for. The following section (iv) rewords but essentially repeats much of what is included in (iii) and provides exceptions when necessary for water-oriented use or development, shoreline access, or as part of a shoreline restoration or enhancement project.

Please confirm whether "part of a development proposal" means as part of an application for a substantial development permit. Clarify whether this provides for vegetation removal that is conducted to maintain an existing development.

Subsections (vi) and (vii) addressing noxious and non-native weeds do not address removal done as a maintenance action. Subsection (vii) states that removal of non-native or invasive species should be authorized as part of a restoration or habitat enhancement project or as part of the associated construction permit. Maintenance to remove weeds by hand would not require a construction permit.

Vegetational removal is a broad term and can include pulling weeds by hand. It is not clear if the provisions allow for minor vegetation removal without review. Please confirm that the intent is to require review for "significant vegetation removal' as defined in WAC 173-27-030.

16. Shoreline Stabilization

WAC 173-26-231(3)(c)(x) states that walls or bulkheads being replaced shall not encroach waterward of the ordinary high-water mark or waterward of the existing stabilization structure and the existing wall or bulkhead shall be removed.

Placement of a bulkhead or wall landward of the existing bulkhead or wall and removal of the existing bulkhead or wall is not always feasible due to complications that arise when these structures are located under a pier or wharf. The structure may need to be placed immediately in front of the existing wall or bulkhead but still landward of the apron or waterward extent of the wharf or pier. We suggest including a provision to allow for waterward placement of bulkheads in this limited circumstance.

WAC 173-26-231(3)(d) requires a geotechnical report to demonstrate need for all shoreline stabilization projects. If the geotechnical report identifies an erosion problem that needs management, an analysis of potential alternatives is required per WAC 173-26-231(3)(e). Further, WAC 173-26-231(3)(g)(iv) states that if the geotechnical report identifies an erosion problem that needs management, additional analysis of the efficacy of the proposed solution is required. The analysis must demonstrate that the proposed solution fully considers the site characteristics, including elevations of the ground, primary structure, and proposed stabilization; projected sea level rise inundation under daily high tides and selected storm scenarios over a logical timeframe for the life of the development being protected; and other attributes including roadway access, utilities, and on-site sewage systems, if applicable.

The Port requests consideration of relief from the requirement to provide a geotechnical report and alternatives analysis where the stabilization is in place to protect existing utilities or infrastructure and the type of water-dependent use and water access require engineered shoreline stabilization that can support loads and meet other structural requirements for water-dependent industrial use such as cargo terminals. The need to maintain the shoreline stabilization is inherent with this type of development and cannot be addressed with nature-based solutions.

17. Washington's Coastal Zone Management Program and Applicability of Chapter 90.58 to Federal Lands and Federal Agency Actions

WAC 173-27-060(2)(c) requires nonfederal applicants subject to the Coastal Zone Management Consistency determination to provide local review, authorization, and/or permit to Ecology to demonstrate consistency with the policy of the Shoreline Management Act through consistency with the applicable master program.

Making the consistency dependent on local review and authorization can delay the issuance of federal permits. Typically, state and federal permits are applied for at a more conceptual design level than local permits. As such, it is not typical to receive local approval prior to federal and state approvals. The Port understands that having local approval would aid Ecology in Coastal Zone Management Consistency, but it should not be the only avenue to prove Coastal Zone Management Consistency.

18. Regulatory Relief Requests Resulting from Restoration Projects

The provisions in WAC 173-27-215 grant regulatory relief when restoration projects result in changes to the OHWM and shoreline jurisdictional boundaries. The process and documentation required to obtain relief from the local government is onerous and complex and does not provide sufficient assurance for property owners to advance restoration projects, which often carry substantial financial risk. For example, the relief requested must have a direct nexus to the regulatory hardship; it does not provide relief from all shoreline regulatory requirements introduced by the landward movement of the OWHM. When applied to a property with no precise plans for redevelopment, this can be impossible to articulate and can introduce sufficient risk of property value loss due to changes in buffers and setbacks that restoration projects do not advance. We recommend revisiting these provisions to ensure that restoration projects are effectively prioritized and promoted through regulatory relief due to landward shifts in OHWM and shoreline jurisdiction.