November 12, 2026

Washington State Department of Ecology
ATTN: Rebecca Rothwell
PO Box 47600
Olympia, WA 98504-7600

RE: Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC, Shoreline Management Act Rulemaking Comment Period

Dear Ms. Rothwell,

The Port of Longview has reviewed the proposed changes by the Washington State Department of Ecology to the Washington Administrative Code associated with the Shoreline Management Act. We respectfully request that the Department of Ecology retain text that is consistent with statutory requirement that water dependent uses, ports, remain a priority.

The Port of Longview is a deep water marine terminal located on the Columbia River in Southwest Washington. We maintain eight deep water berths and have a greenfield site that is situated on the Columbia River that is proposed for terminal development. The proposed language limits our ability to maintain infrastructure or to plan for future deep draft terminal development. The proposed new rules are significantly different than what was proposed during early comment in 2025 and problematic for public ports. The following bullet list summarizes our concerns with a detailed analysis, and proposed language change, include in the attachment. However, with the limited time to review the expansive changes of the proposed language, there may be other impacts that the Port was not able to identify.

- Categorical prohibition on in-water structures in critical freshwater habitat will restrict and/or prohibit new terminals or terminal reconstruction for Public Ports. (Proposed WAC 173-26-221(2)(e)(iii)(F)(IV))
    - The current rule permits such structures when the public need is clearly demonstrated, avoidance is not feasible or would impose unreasonable and disproportionate cost, the project achieves no net loss, and the project is consistent with resource protection and species recovery. The proposed rule deletes that exception.

- Stablization, Fill, Wetlands, and Dredging are tools which Ports use to construct, protect, repair, and maintain infrastructure. The proposed rule contains significant changes.
    - Repair of existing stabilization would be exempt only for minor actions taken before substantial decay, with no waterward, lateral, or vertical expansion (proposed WAC 173-27-040(3)(b)(ii)).
    - If any portion of the existing stabilization is beyond repair, the entire project would be reviewed as a replacement (proposed WAC 173-26-231(4)(c)(vii)(A)).
    - A replacement would require a geotechnical report, an alternatives analysis that prioritizes nonstructural and nature-based measures, and an ecological impact analysis, and replacement

hard stabilization would have to be located landward of the current OHWM (proposed WAC 173-26-231(4)(c)(vii)(D), (d)–(f)).

- Language on non-conforming uses may restrict use of existing, non-conforming structures in the future.
    - Any allowance for a nonconforming structure or use "must first demonstrate that conformance with the current standards is not feasible, then apply the mitigation sequence" (proposed WAC 173-26-221(3)(c)(iii)).
    - The option to classify existing structures as conforming, which implements RCW 90.58.620, is limited to "[r]esidential structures and appurtenant structures" (proposed WAC 173-26-221(3)(d)(vi)).

- Repair, maintenance, and replacement will become more difficult as exemptions become more demanding, requiring full geotechnical, alternatives, and ecological analysis for replacement of shoreline stablization, and limiting emergency work to temporary measures.
    - The current exemption covers restoring a development to a state comparable to its original condition within a reasonable period after decay or partial destruction.
    - The proposed rule limits "normal repair" to "minor actions necessary to fix damage to lawfully established structures or development" that occur "prior to substantial decay or destruction," or within a reasonable period after a fire, storm, or similar event, and requires that exempt actions "demonstrate no net loss" (proposed WAC 173-27-040(3)(a)).
    - Inclusion of the term 'minor' injects substantial confusion into what would or could be classified as a repair or maintenance activity.

- Permitting processes limit applicants, expand review timelines, requires the land owner to be the applicant, which puts the Port in a situation to be an applicant for a lease tenant, and does not require local governments to coordiante with ports in periodic shoreline planning updates.

The Port of Longview asks the Department of Ecology to review RCW 90.58.020.[1] As the proposed rule implements the statutory priority for single-family residences through specific tools, such as the stabilization exemption and the conforming-structure option, there are no comparable tools for ports which share the same statutory priority. Ports exist to provide economic opportunities, while being publicly owned and managed. It is in everyone's interest to see them thrive.

Sincerely,

Amy Boyd
Environmental Manager

Encl

[1] "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state."

Exhibit A

I. Critical Freshwater Habitat language establishes a Categorical Prohibitation on New In-Water Structures

Proposed WAC 173-26-221(2)(e)(iii)(F)(IV) provides:

> New docks, piers, hard shoreline stabilization, bridges, fill, floats, jetties, utility crossings, other human-made structures, and shoreline modifications shall not intrude into or over critical saltwater or critical freshwater habitats.

The current rule permits such structures when the public need is clearly demonstrated, avoidance is not feasible or would impose unreasonable and disproportionate cost, the project achieves no net loss, and the project is consistent with resource protection and species recovery. The proposed rule deletes that exception.

The definition of "critical freshwater habitats" is broad. It includes native aquatic vegetation beds, steep riverbanks of clay or loose sand, side channels, and "areas where endangered, threatened, and sensitive species have a primary association" (proposed WAC 173-26-221(2)(e)(iii)(A)(III)).

Such a prohibition is inconsistent with the SMA without any pathway for water-dependent development. The SMA which gives ports and water-dependent industry priority when shoreline alterations are authorized (RCW 90.58.020) and calls for an economic development element addressing port facilities (RCW 90.58.100(2)(a)).

Further, the proposed rule is internally inconsistent on the strength or durability of such a prohibition:

- Proposed WAC 173-26-221(2)(c)(viii) provides that master programs "shall allow the replacement of existing water-dependent development and new water-dependent development necessary to maintain preferred water-dependent uses located within critical areas where the development cannot be relocated," subject to hazard mitigation and no net loss.
- Proposed WAC 173-26-221(2)(c)(v) permits "minor intrusions" into critical areas as necessary to accommodate water-dependent development.
- Proposed WAC 173-26-241(2)(c)(iii)(C) considers CUPs for "developments and uses in critical saltwater habitats," which presumes such development can be approved.
- Proposed WAC 173-26-231(3)(b)(i)(C) retains the current rule allowing a port's needs analysis or master plan to justify pier and dock size, and proposed WAC 173-26-231(3)(b)(ii)(B) continues to allow fill waterward of the OHWM to support water-dependent uses.

The language in these sections does not establish which section will control application.

The Port requests the following revisions (underlined):

A. Water-dependent pathway in critical habitat

WAC 173-26-221(2)(e)(iii)(F)(IV)

> (IV) New docks, piers, hard shoreline stabilization, bridges, fill, floats, jetties, utility crossings, other human-made structures, and shoreline modifications shall not intrude into or over critical saltwater or critical freshwater habitats, <u>except for water-dependent development, including port and marine terminal facilities, authorized consistent with (c)(v) and (viii) of this subsection where the applicant</u>

demonstrates that: avoidance of impacts by an alternative alignment or location is not feasible; the project, including any required mitigation, will result in no net loss of ecological functions; and the project is consistent with the state's interest in resource protection and species recovery.

Rationale: Reconciles the prohibition with proposed WAC 173-26-221(2)(c)(v) and (viii) and with the statutory priority for ports in RCW 90.58.020, and restores the core elements of the current exception.

B. New water-dependent development in critical areas

WAC 173-26-221(2)(c)(viii)

(viii) Master programs shall allow the replacement of existing water-dependent development and new water-dependent development necessary to maintain or accommodate preferred water-dependent uses, including the expansion of existing port facilities and new port facilities in shoreline areas designated for high-intensity or port use, located within critical areas where the development cannot be relocated, provided any associated hazards can be mitigated and the project can demonstrate no net loss of shoreline ecological function.

Rationale: Confirms that the provision covers new and expanded port facilities, not only development needed to maintain existing uses.

II. Stablization, Fill, Wetlands, and Dredging

The following items are often required for new terminal establishment and construction in appropriately designated industrial shorelines.

Stabilization waterward of the OHWM. New or expanded hard stabilization could be authorized only "at or landward of the existing ordinary high water mark," and stabilization "cannot result in additional dryland" (proposed WAC 173-26-231(4)(c)(iv)(E), (c)(ii)).

New stabilization remains available to protect existing and new water-dependent development and essential public facilities (proposed WAC 173-26-231(4)(c)(iv)(C)).

Fill versus stabilization. Fill is defined to include an "earth-retaining structure" and upland fill that "raises the elevation or creates dry land," and fill waterward of the OHWM remains allowable for water-dependent uses with a CUP (proposed WAC 173-26-231(3)(b)(ii)). A bulkhead, sheet pile wall, or wharf retaining structure built for a new or expanded berth could be characterized either as fill, which is allowable with a CUP, or as hard stabilization, which would be prohibited waterward of the OHWM.

The proposed rule does not resolve which characterization controls, and the answer could determine whether a terminal design is permittable.

Wetland fill. The proposed rule provides that "[f]ill in wetlands shall not be allowed" (proposed WAC 173-26-231(3)(b)(ii)(D)), and it separately prohibits reasonable use allowances, waivers, and administrative approvals that vary critical area protections (proposed WAC 173-26-221(2)(c)(vi)). Read together, these provisions appear to prohibit wetland fill within shoreline jurisdiction even with compensatory mitigation.

This would affect any terminal site with wetlands within shoreline jurisdiction. Applications would also need to delineate all wetlands within 300 feet of the project area (proposed WAC 173-27-180(9)(d)).

Dredging. Maintenance dredging would be limited to the existing authorized location, depth, and width, and new or expanded navigation channels and basins would be allowed where necessary to accommodate existing navigational uses, with impacts minimized and mitigated (proposed WAC 173-26-231(3)(b)(v)(B), (C)). The exception from local shoreline permits for Columbia River navigation channel work applies only to U.S. Army Corps of Engineers channel projects, not to Port berth dredging (proposed WAC 173-27-044(5)). Disposal at approved Department of Natural Resources (DNR) sites remains exempt from shoreline permits (proposed WAC 173-27-044(7)).

The effect of these combined changes is that many of the tools' Ports use to maintain infrastructure would be prohibited, or very challenging, to obtain permission to construct.

The Port requests the following revisions (underlined):

C. Terminal retaining structures

WAC 173-26-231(4)(a)(i)

> (i) "Shoreline stabilization" means actions taken to reduce or control erosion resulting from natural processes, including currents, tides, wave action, stream flow or velocity, and wind, which act over time to wear down and transport shoreline materials. … Shoreline stabilization does not include nonstructural erosion control measures or bulkheads, sheet pile walls, wharf retaining structures, and similar structures constructed to create, expand, or maintain water-dependent terminal or berthing area, which are reviewed as fill or over-water structures under subsection (3)(b) of this section;

Rationale: Clarifies that marine terminal structures are reviewed under the fill and over-water structure standards, which already allow such work for water-dependent uses, rather than under the stabilization standards.

D. Replacement of water-dependent infrastructure

WAC 173-26-231(4)(c)(vii)(D)

> (D) Hard stabilization may be replaced with another hard stabilization when needed to protect an existing legally established primary structure, road, essential public facility or water-dependent development provided: …
>
> (III) For replacement of hard stabilization or retaining structures supporting existing water-dependent development within the existing footprint, the alternatives analysis required by (e) of this subsection may be scaled to the scope of the project where nonstructural and nature-based alternatives are not feasible because of load-bearing, navigation, or operational safety requirements.

Rationale: Keeps the alternatives analysis proportional for in-kind replacement of working-waterfront infrastructure.

III. Nonconformance of Existing Port Facilities

The proposed rule would require each SMP to adopt locally tailored nonconforming provisions under new WAC 173-26-221(3). Under those provisions:

- Any allowance for a nonconforming structure or use "must first demonstrate that conformance with the current standards is not feasible, then apply the mitigation sequence" (proposed WAC 173-26-221(3)(c)(iii)).

- Expansion of nonconforming development "may be allowed only when necessary to support a conforming use" (proposed WAC 173-26-221(3)(d)(i)(H)).

- Replacement structures must be brought into conformance with master program provisions, such as buffers, "to the maximum extent feasible" (proposed WAC 173-26-221(3)(d)(i)(I)), and modifications should require on-site ecological improvements (proposed WAC 173-26-221(3)(d)(iv)).

- The option to classify existing structures as conforming, which implements RCW 90.58.620, is limited to "[r]esidential structures and appurtenant structures" (proposed WAC 173-26-221(3)(d)(vi)).

Two related provisions add to this burden. On sites with degraded buffers, new development, redevelopment, or expansion would require either restoration of buffer functions or expansion of the buffer (proposed WAC 173-26-221(5)(c)(iii)). And only water-oriented components of a project could be located in shoreline buffers, and only water-dependent components waterward of the OHWM (proposed WAC 173-26-241(2)(b)(ii), (iii)).

The Port requests the following revisions (underlined/strikeline):

E. Expansion of nonconforming water-dependent development

WAC 173-26-221(3)(d)(i)(F) and (H)

> (F) Master programs ~~may~~ shall contain provisions for expansion of nonconforming development supporting water-dependent uses, including port facilities, and may contain provisions for expansion of other nonconforming development, subject to mitigation sequencing, no net loss requirements, avoidance of critical areas, and a cumulative impacts analysis;
>
> (H) Expansion of nonconforming development may be allowed only when necessary to support a conforming use or a water-dependent use;

Rationale: Ensures that water-dependent facilities, which the SMA prefers, can be modernized and expanded under the nonconforming provisions.

F. Conforming-status option for water-dependent facilities

New WAC 173-26-221(3)(d)(vii)

> (vii) Option for addressing legal status of existing water-dependent structures. Master programs may classify legally established water-dependent structures and developments, including port facilities, as conforming even if they do not meet the bulk, dimensional, or buffer standards of the

applicable master program, provided the local government can demonstrate that this classification will not create a risk of degrading shoreline natural resources or ecological functions.

Rationale: Provides parity with the residential option in proposed WAC 173-26-221(3)(d)(vi).

IV. Repair, Maintenance, Replacement & Exemptions

Ports are currently legally authorized to maintain and repair infrastructure. The proposed changes would reduce this ability.

Normal maintenance and repair. The current exemption covers restoring a development to a state comparable to its original condition within a reasonable period after decay or partial destruction. The proposed rule limits "normal repair" to "minor actions necessary to fix damage to lawfully established structures or development" that occur "prior to substantial decay or destruction," or within a reasonable period after a fire, storm, or similar event, and requires that exempt actions "demonstrate no net loss" (proposed WAC 173-27-040(3)(a)). Replacement of components remains exempt where it is the common method of repair, and total replacement is exempt only in limited circumstances, such as pilings (proposed WAC 173-27-040(3)(a)(i), (ii); proposed WAC 173-26-020(41)).

Repairing wharves and other infrastructure after substantial deterioration would likely require a substantial development permit.

Letters of exemption. Exemption applications would require site plans showing the OHWM, buffers, all critical areas and their buffers, and existing and proposed vegetation; documentation of the mitigation sequence; and any special reports required by the SMP (proposed WAC 173-27-040(2)). The local agency would have to verify consistency with use regulations and with bulk, dimensional, and performance standards, including buffers, and transmit each decision to Ecology (proposed WAC 173-27-050).

In practice, a letter of exemption would require much of the work of a permit application.

Shoreline stabilization. Repair of existing stabilization would be exempt only for minor actions taken before substantial decay, with no waterward, lateral, or vertical expansion (proposed WAC 173-27-040(3)(b)(ii)). If any portion of the existing stabilization is beyond repair, the entire project would be reviewed as a replacement (proposed WAC 173-26-231(4)(c)(vii)(A)). A replacement would require a geotechnical report, an alternatives analysis that prioritizes nonstructural and nature-based measures, and an ecological impact analysis, and replacement hard stabilization would have to be located landward of the current OHWM (proposed WAC 173-26-231(4)(c)(vii)(D), (d)–(f)).

In practice, this will limit the ability of ports to maintain infrastrucre.

Emergencies. Emergency stabilization would be limited to temporary measures, and permanent stabilization could not be authorized as an emergency action or through after-the-fact permitting (proposed WAC 173-27-040(3)(b)(iii); proposed WAC 173-26-231(4)(c)(viii)). For other emergency construction, "flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency" (proposed WAC 173-27-040(3)(c)(iii)). After a failure, Port infrastructure may need to remain protected only by temporary measures while a permanent solution is permitted.

This will put port infrastructure at risk and may limit, or suspend, ship loading operations due to safety reasons at berths for a minimum of least 2-years as permits are submitted and processed.

Small projects. One change is favorable: development below the statutory cost threshold that does not materially interfere with normal public use of the water would not be "substantial development" and would need neither a

substantial development permit nor a letter of exemption, although it must still comply with the SMP (proposed WAC 173-27-035(3)).

The Port requests the following revisions (underlined):

G. Replacement of water-dependent infrastructure

WAC 173-26-231(4)(c)(vii)(D)

> (D) Hard stabilization may be replaced with another hard stabilization when needed to protect an existing legally established primary structure, road, essential public facility or water-dependent development provided: …
>
> (III) For replacement of hard stabilization or retaining structures supporting existing water-dependent development within the existing footprint, the alternatives analysis required by (e) of this subsection may be scaled to the scope of the project where nonstructural and nature-based alternatives are not feasible because of load-bearing, navigation, or operational safety requirements.

Rationale: Keeps the alternatives analysis proportional for in-kind replacement of working-waterfront infrastructure.

V. Permit Process and Schedule

Loss of critical area buffer flexibility. The proposed rule states that "[c]ritical area buffer reduction and common-line setbacks are not appropriate critical area protection provisions for a master program," and bars reasonable use allowances and administrative approvals; a variance would be the only means of relief (proposed WAC 173-26-221(2)(c)(iv), (vi)). A variance for development waterward of the OHWM would require a showing that strict application of the SMP "precludes all reasonable use of the property" (proposed WAC 173-27-170(3)(a)).

This is a heavy burden to prove, long approval process, and restricts shoreline development within areas identified for high intensity development and port activities.

The Port requests the following revisions (underlined/strikelined):

H. Ecology review of CUPs and variances.

Ecology would have 30 days to determine whether a submittal is complete and 90 days after that to decide, compared with 30 days to decide under the current rule (proposed WAC 173-27-200(2), (4)). The current 30-day period is set by rule, not by statute, so the change does not raise a statutory conflict.

WAC 173-27-200(4)

> (4) The department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or denying the permit within ~~90~~ 30 days of the date of its determination that the submittal is complete.

Rationale: Limits the added delay to the new 30-day completeness review.

I. Integrated Project Review

Applications to undertake use or development on shorelines of the state should review the full, unified, and integrated physical project including components or proposed development or structures located partly within shoreline jurisdiction would be treated as entirely within it, and the local jurisdiction could condition or deny a project based on the intended use of adjacent uplands outside shoreline jurisdiction (proposed WAC 173-27-140(3)(a), (b), (c)).

WAC 173-27-140(3)(b)

> (b) Where applications include project components both within and outside the shorelines of the state, the local government should consider the intended use of lands outside of, but adjacent to, shoreline jurisdiction, ~~and may deny or condition the project based on this consideration in order to achieve consistency with the act for consistency with the act~~, provided that conditions or denial of the project may only be applied to the use within the designated shoreline.

Rationale: Project components within the shoreline should only be regulated by the SMA and local agency SMP. Land uses adjacent to the shoreline jurisdiction are regulated through local zoning and comprehensive plans and should be consistent with the shoreline use designation.

J. Applicant eligibility

The primary applicant "must be the owner of the property" (proposed WAC 173-27-180(1)), which will complicate tenant-led projects on Port property and projects on state-owned aquatic lands managed by DNR.

WAC 173-27-180(1)

> (1) Owner contact information. The name, address, email, and phone number of the property owner. The primary applicant must be the owner of the property, or a lessee, port district, or holder of an aquatic lands authorization with the written consent of the owner.

Rationale: Accommodates tenant-led projects on port property and projects on state-owned aquatic lands.

VI. Other Provisions

Public access. Public access required as a condition of water-related, water-enjoyment, or non-water-oriented development would have to remain available for the life of the development and include signage and parking (proposed WAC 173-26-221(4)(d)(iv)).

Requirements of signage and parking may limit shoreline access and impact viability of creating and preserving shoreline access.

Vegetation conservation. SMPs would have to conserve native vegetation throughout shoreline jurisdiction, not only in buffers, and require tree replacement at a ratio of at least 3:1 (proposed WAC 173-26-221(6)(d)).

It is unclear if this applies to developed terminal areas, Port property, or currently vegetated, undeveloped areas only.

Port coordination. The current requirement that local governments "work with … port authorities … to address port plans" remains in WAC 173-26-201, but the proposed rule limits that section to comprehensive SMP updates.

The proposed rule does not add a port consultation requirement to the periodic review process in WAC 173-26-090.

The Port requests the following revisions (underlined):

K. Port consultation during periodic review

WAC 173-26-090 (new provision; placement to be determined)

> If the jurisdiction includes a port district, a designated harbor area, or an urban waterfront with intensive uses, the local government shall consult with the port district and the department of natural resources during the periodic review to address port plans and ensure consistency with harbor area statutes and regulations.

Rationale: Carries the existing coordination requirement in WAC 173-26-201 into the periodic review process, which will govern the local agencies' next update.