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September 5, 2013

Ms. Fran Sant
SEPA Rulemaking Coordinator
Washington State Department of Ecology
300 Desmond Drive
Lacey, WA 98503-1274

Sent electronically to: fran.sant@ecy.wa.gov

Dear Ms. Sant:

Re: Draft *Status Report: 2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules, July 19, 2013*

The Port of Seattle wishes to express our concern regarding changes to SEPA rules proposed in the Ecology document *Draft Status Report: 2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules, July 19, 2013 (Draft report)*. We share and support the concerns expressed in the August 16, 2013 letter sent to you by Washington Public Ports Association (WPPA).

We are opposed to proposed changes that would substantially and arbitrarily narrow SEPA categorical exemptions for shoreline structures, industrial uses, and routine maintenance and repair. These proposed changes appear to conflict with the legislative direction in SB 6406 to update *and not decrease* categorical exemptions. The proposed changes are inconsistent with proposed expansion of exemptions for other lead agencies and project proponents, are inconsistent with the SEPA statute and portions of the Shoreline Management Act, and are out of alignment with current approaches to regulatory oversight of such routine and currently exempt activities.

The proposal to add bulkheads to the list of shoreline protection measures that would not be exempt under WAC 197-11-800(3)(b) appears to be due to a fundamental misunderstanding that the groins and bulkheads are "similar" structures with equivalent potential environmental impacts. This is incorrect, and this topic was well covered in the WPPA comment letter. Other regulatory programs, including Ecology's regulations under the Shoreline Management Act, recognize these are different structures with entirely different potential impacts. In the case of the shoreline master program regulations, Chapter 173-26 WAC, these different classes of shoreline structures are addressed in completely separate sections (see WAC 173-26-231(3)(d) for regulation of breakwaters, jetties, and weirs; see WAC 173-26-231(3)(a) for regulation of bulkheads and other shoreline stabilization).

Normal maintenance and repair of existing structures located in the shoreline environment is critical to our operation and environmental stewardship of our marine facilities. The Shoreline Management Act (SMA) recognizes this practical reality by exempting from substantial development permit requirements the "[n]ormal maintenance or repair of existing structures or developments." RCW 90.58.030(3)(e)(i) and WAC 197-27-040(2)9b). Repair and maintenance of "bulkheads" are among the structures that



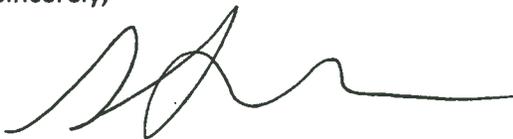
benefit from this statutory exemption in the SMA. Placing limitations on the SEPA categorical exemption for bulkheads would be inconsistent with the legislature's intent in reducing the regulatory requirements for these routine activities that are frequently necessary to protect the shoreline environment and worker safety.

We likewise object to the arbitrary assumption in the draft report that minor new construction within industrial zones somehow might have a greater potential impact than minor new construction located outside industrial zones. There appears to be an assumption that the scale or intensity of minor new construction or normal maintenance and repair activities somehow differs in industrial zoned lands. These exempt activities are the same regardless of the underlying land use, and in many cases, such as construction of stormwater containment, utility repairs or replacement of older equipment with more environmentally friendly materials, produce an environmental benefit. The impact of dock repair, utility repair, and stormwater maintenance is the exact same minor construction with minimal potential associated impacts that are proposed and considered exempt in commercial or residential zones.

Contrary to the approach being taken in the draft report, the regulatory trend in other state and federal programs is to permit maintenance and repair activities within a streamlined review. The WPPA letter provides background on the streamlining of these activities under the state Hydraulic Code. Similarly, maintenance and repair is regulated under the federal US Army Corps of Engineers programs under nationwide permits with programmatic consultations regarding potential impacts to endangered species. The federal permitting programs recognize that these are routine activities that do not require an individual project review and that the potential environmental impacts are most often *minor and temporary*. The tendency for permit review is towards streamlining of regulatory oversight of these routine and essential activities rather than the addition of new and unnecessary procedural requirements.

We strongly urge Ecology to reconsider these proposed unnecessary and arbitrary expansions of categorical exemptions. In light of the increased environmental protections in place at state, local and federal levels, decreasing the type and number of developments currently categorically exempt is not aligned with Sec. 301 of SB-6406, which directed the Department of Ecology to conduct rulemaking to increase the threshold for categorical exemptions, not limit exemptions.

Sincerely,



Stephanie Jones Stebbins
Director, Seaport Environment & Planning

cc (via email):

- Tom Clingman, Department of Ecology (TCL1461@ECY.WA.GOV)
- Brenden McFarland, Department of Ecology (brenden.mcfarland@ecy.wa.gov)
- Senator Jim Hargrove, Washington State Senate (jim.hargrove@leg.wa.gov)
- Senator Doug Ericksen, Washington State Senate (doug.ericksen@leg.wa.gov)
- Senator Kevin Ranker, Washington State Senate (kevin.ranker@leg.wa.gov)

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