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June 24, 2010

Roger Horn, Chair
Olympia Planning Commission
City of Olympia
900 Plum Street, SE
Olympia, WA 98501

Re: **June 2009 Final Proposed Shoreline Master Program**

Dear Chair and Planning Commission:

This letter is sent on behalf of the Port of Olympia, to comment on the City's June 2009 Final Proposed Shoreline Master Program. The Port appreciates the Commission's work to date on this important update and appreciate the opportunity to comment on issues important to the Port. This letter is the Port's first formal comment on the Shoreline Update process. We intend it as an introduction, and look forward to many more opportunities for interaction.

By this letter, we briefly review the mission of the Port, including its strong dependence on shoreline use, we point out the many state laws, policies and regulations which recognize and protect beneficial water dependant uses of the shoreline, and finally we comment on broad shoreline planning update themes which are of particular interest to the Port.

Your Port of Olympia

The mission of the Port of Olympia is to vigorously manage its assets to provide maximum benefits to the citizens of Thurston County. The Port's 60-acre terminal consists of three modern, deepwater berths, on-dock rail, a US Customs bonded warehouse, and a complete container yard. With a strategic Pacific Northwest location and a productive workforce with a reputation for innovation in handling freight, the Port of Olympia maintains a competitive edge for specialty cargoes.

The Port has an important role in articulating and preserving policies and regulations protecting the public navigation, economic development, and water-dependent transportation. These concerns should be acknowledged and included in the new City update.

We anticipate that this shoreline update process will require a discussion about tradeoffs. In this update process, the City will hear that there has been a progressive loss of many types of shoreline habitat under existing Shoreline Management Plan (SMP). At the same time, however, SMP goals and policies must allow and accommodate all reasonable and appropriate shoreline uses as mandated by the Shoreline Management Act (SMA). Sustained economic viability and other factors also mean that there are ever increasing pressures on shoreline areas for human uses.

We look forward to the planning process as an opportunity for dialogue about the Port's unique shoreline management relationship, and how the Port's requirements of operations, security, and navigation are intertwined with port environmental stewardship, mitigation, and restoration within the Port's working commercial and recreational facilities.

Ports are a *preferred use* of the shorelines within the SMA. Ports are not the same as private waterfront property owners or other typical project proponents. Under state law, we point out that ports have a special status for many of our facilities and properties. This is because:

- We are publicly owned and operated municipal corporations authorized by state law to construct, operate, and maintain harbor improvements within their districts.
- We have comprehensive planning powers for their facilities and improvements under RCW 53.20, and directly manage state aquatic lands under port management agreements under RCW 79.90
- The Port of Olympia, as a public port, is a substantial provider of economic renewal, development opportunity, and family wage jobs. *Public shorelines with navigational access are a limited public commodity whose unique economic role cannot be replaced.*
- Increasingly in recent years, ports have been leaders in implementing important environmental restoration, cleanup, and habitat restoration efforts in local harbors. Ports are well suited for environmental restoration. Many ports operate at the bottom of river basins, in the estuaries and along the shorelines. Consequently, as sources of pollution move downstream they often collect in the sediments of Port harbors. Sediments have also been contaminated by the industrial land uses that historically exist around cities. The Port of Olympia, like many Washington ports has taken a leadership in cleaning up these contaminated sediments. When ports dredge up sediment for shoreline development or to improve harbor navigation, they follow strict cleanup requirements. Contaminated sediments are disposed of in special containment areas either along the shoreline or in landfills - resulting in a cleaner harbor.

State Law Protections for Port/Water-Dependant Uses

The 1971 Shoreline Management Act enunciates a state policy of "...management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." (RCW 90.58.020) It's important to remember that when the Shoreline Management Act was passed in the early 1970's, ports were included as a "preferred use" on the shorelines. This means that water-dependent port facilities and activities are allowed, and even encouraged, under the law.

The Act establishes three broad state policies for shorelines:

- Encouragement of water-dependent uses;
- Protection of shoreline resources;
- Promotion of public access

The SMA establishes a policy that preference be given to uses that are dependent on a shoreline location, with priority given to single family residences, ports, recreational uses, and water dependent commercial and industrial uses.

We understand the state mandated update places increased emphasis on preservation and restoration of shoreline ecological resources in the new guidelines which can intensify the conflict in accommodating shoreline uses and allowed uses, such as port maritime activities.

However, the state law also grants to *Local government significant discretion under the guidelines to tailor local SMPs to fit local conditions, policies, and government procedures.* The Port encourages the City to include recognition of the Port as a valuable community partner, economic asset and environmental steward throughout the SMP update process.

Port Points of Interest in Shoreline Planning Update

The Port offers its comments below on the following broad themes of particular interest to the Port in this review process.

Discourage redundancy. Numerous State and federal permit programs apply to port projects and shoreline areas. We caution the City to resist the tendency to try to duplicate specific requirements from other programs, such as dredged material testing or salmonid habitat impact analysis.

Critical Area Issues. As a part of this update, revised SMPs are to provide areas designated as critical areas under the Growth Management Act with a level of protection at least equal to that provided by the Growth Management Act. This level of protection is no net- loss of resource functions. The Port discourages any attempt to address this criterion with no-build buffers, within shorelines where Ports must be able to build to carry out Port functions.

Saltwater habitats. Within saltwater critical habitats, human-made structures (docks, bulkheads, bridges, fill, floats, jetties, utility crossings) are prohibited except where a public need is clearly demonstrated, avoidance of impacts is not feasible, and the project is consistent with resource protection and species recovery. For freshwater critical habitats, new development may not cause a net loss of ecological function. We point out that the City is required to incorporate state resource agencies, port districts, and tribes' resource management and management plans as part of this analysis. We look forward to coordinating the

Port's infrastructure planning with the City. See WAC 173-26-221(2)(c)(iii) and (iv).

Public access. Providing and enhancing public access to the shorelines of the state is a major policy mandate of the SMA. The new guidelines raise standards for protection and enhancement of public access. The Port is proud of its history of leading the way for public access to Olympia's waterfront. Examples include: preserving 6900 lineal feet and nearly 15 acres of property on the Port Peninsula for public enjoyment in the form of plazas, pocket parks, shoreline trails, landscaping activities and practices and features that enhance the environment along our waterfront.

We encourage the Port's existing public access resources to be incorporated as a portion of the City's public access plan with the SMP. We also acknowledge that shoreline developments by public entities are to include public access measures "...as a part of each development unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline environment." We look forward to working with the City so that any future public access is directed to appropriate locations in and around the Port. See WAC 173-26-221(4).

Water quality, stormwater and nonpoint pollution. Shoreline master programs are required to address water quality, stormwater and nonpoint source pollution and ensure mutual consistency with other regulations that address water quality and stormwater. The Port looks forward to working with the city to minimize any possible confusing cross linkages to other programs, including the pending requirement for compliance with phase II of the National Pollutant Discharge Elimination System (NPDES) municipal stormwater program. It is also our goal to avoid duplication within the SMP of other more specialized regulatory programs focused on stormwater.

Shoreline modifications. The Port's in-water and shoreline stabilization structures need regular maintenance, and we are concerned that some approach to these rules could make maintenance more difficult. Even though maintenance of existing structures is still exempt, the new guidelines set conditions for replacing an existing shoreline stabilization structure, including a demonstration of need, and a geotechnical report to prove such).

The Port urges that the City avoid prescriptive standards (e.g. specification of design or construction materials, dimensions of bulkheads, etc.) in its policies and regulations affecting shoreline modifications, so that these structures can be designed and constructed appropriately for the individual project setting, including minimizing environmental impacts. Here also the Port seeks to avoid duplication of all or part of other regulatory programs such the regional dredged material characterization protocols.

Shoreline Uses. As with the shoreline modifications sections, the Port urges that the City avoid prescriptive standards (setbacks, building and dock dimensions, over-water coverage, and so on). We also caution against language within the utilities section that could unintentionally prohibit normal operations of utilities supporting commercial, industrial, and fuel docks and over-water structures. See: WAC 173-26-241.

Administrative procedures. We understand that as part of this update, local governments are to update the administrative procedures in their SMPs. Conditional uses and variances are to be provided for. Master programs must include mechanisms for documenting all project review and periodically evaluating the cumulative effects of authorized projects.

The Port is concerned that although normal maintenance or existing structures and developments continues to be exempt under the SMA, there may be attempts to impose reviews and or pre-requisites for undertaking this exempt activity. This creates a de facto permitting and enforcement program for routine maintenance activities that are specifically exempted from SMA and State Environmental Policy Act (SEPA), and would be a costly and burdensome requirement of both applicants and the City. The Port urges the City to provide for a "shoreline general exemption" for routine maintenance activities, and a "general permit" to allow for many individual small projects within a discrete area, or for routine construction activities.

We thank you again for the opportunity to comment on issues important to the Port. This letter is the Port's first formal comment on the Shoreline Update process. We look forward to more opportunities for interaction.

Respectfully yours,



E. B. Gulligan
Executive Director

cc: Port of Olympia Commissioners
Kari Qvigstad, Port of Olympia
Carolyn Lake, Port General Counsel