Port of Seattle

March 17, 2005

Diane Sugimura, Director
Department of Planning and Development
P.O. Box 34019
Seattle, WA 98124-4019

Re: *Comments on Draft Environmentally Critical Areas Regulations*

Dear Ms. Sugimura:

The Port of Seattle (the "Port") has substantial experience with the City's Environmentally Critical Areas ("ECA") regulations. Given the difficulties that both City staff and applicants have faced in applying the existing ECA regulations, we welcome the many improvements to those regulations that you have made in the current draft. In many respects, the Code language has been clarified and organized in a manner that will make it easier for the City and applicants to implement the regulations.

This letter focuses on the particular issues involving Port properties. Our comments highlight the additional opportunities to rectify some of the problematic issues we have faced, and to improve the wording in the draft ordinance.

I. OVERALL AREAS OF CONCERN

1. Liquefaction-Prone Areas

As required under the Growth Management Act, liquefaction-prone areas are a type of ECA. As nearly the entire Duwamish area, as well as other Port properties, are designated as liquefaction-prone areas, this means that most Port properties have an ECA designation of liquefaction-prone. Thus, ECA issues routinely arise during the environmental review and permitting process.

The existing and proposed ordinances make liquefaction-prone areas subject to the same general standards as all other ECAs. From a scientific and practical matter, we do not believe this is appropriate. Liquefaction-prone areas are an ECA because of the concern that liquefaction-prone soils may not be adequate to support structures or that special protections are needed in order for adequate support to be provided. This makes them unlike other ECAs where the development itself can have an adverse impact on the ECA (both on and adjoining the property) or on adjacent areas. These types of concerns are not invoked in the case of liquefaction-prone areas, as the impacts in these areas can be avoided or mitigated by specific

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site design solutions[1] and adherence to the International Building Code. Thus, liquefaction-prone issues are already adequately addressed through the established Best Available Science practices incorporated into existing City codes.

Unlike all the other ECAs, there are no specific ECA standards for liquefaction-prone sites. Instead, the existing and proposed ordinances appropriately recognize that liquefaction-prone areas are different. Section 25.09.100 simply states that the specific standards for liquefaction-prone areas are found in other Codes, not the ECA Ordinance. However, since liquefaction-prone areas are a type of ECA, all of the general provisions of Chapter 25.09 apply to sites with liquefaction-prone areas, even though the specific development standards for such areas are governed by other Codes.

The practical reality of this is that Port of Seattle sites are tagged as "ECA" and instead of building stability issues being reviewed by a DPD building code plans examiner and/or such issues being appropriately mitigated by the SEPA process, the plans are subject to months of ECA review, and many correction items are generated that have nothing to do with liquefaction issues. As but one of many possible examples, the Port proposed some minor grading at Terminal 18 on Harbor Island. This site is flat, previously paved and developed industrial land area. It is designated liquefaction-prone because it was created decades ago from fill. Because of the liquefaction-prone designation, DPD treated the site as being subject to all the general ECA regulations, including the need to get special approval to do "wet season" grading. However, given the physical circumstances of the site, there is no difference in liquefaction impacts if grading occurs in the "wet season" as opposed to the "dry season." Nonetheless, the Port was required to obtain a special approval for "wet season" grading due to the liquefaction designation of Terminal 18.[2]

Therefore, our most critical recommendation is that the new ordinance apply to liquefaction-prone areas only to the extent that reference is made to other ordinances that already adequately regulate such areas. Liquefaction areas are simply different in nature from other ECAs and should not be subject on a wholesale basis to the standards that apply to other types of ECAs.

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[1] Experience as shown that liquefaction issues are addressed through defined techniques involving removal of liquefiable soils, preparing subgrade soils, preloading, placing deep piles, and other engineering techniques.

[2] When the Port questioned this requirement, DPD staff expressed surprise that this was a concern. However, it takes staff time and resources to prepare such requests and it took DPD weeks to make a decision on the "wet season" request. This had the effect of delaying issuance of the permit for this relatively minor work. There was also no substantive basis for having to obtain the special approval, so this was an unnecessary expenditure for both government agencies.

2. Fish and Wildlife Habitat Conservation Areas

The draft ordinance has confusing and inconsistent wording with respect to what constitutes a fish and wildlife habitat conservation area. The definition section is relatively clear that such areas are limited to a short list.[3] However, these definitional concepts become very confused in the section on development standards for fish and wildlife habitat conservation areas. (Section 25.09.200). Detailed comments explaining our concerns are included in section II of our letter.

We believe the proper interpretation of Growth Management Act requirements for ECAs is that the development standards for fish and wildlife habitat conservation areas apply only to development activity that occurs within those areas, or that increases impacts to those areas. For example, if a property includes one of the defined types of fish and wildlife habitat conservation areas, but there is no development activity within those areas or increasing impacts to those areas, then the fish and wildlife development standards do not apply to development outside of the defined fish and wildlife habitat conservation area. We are hopeful this is what the draft ordinance intends, and the wording just needs to be clarified. However, if a different interpretation is intended, this is a very serious concern for the Port, and such an interpretation would be contrary to the many discussions we have had with those City staff responsible for formulating the City's aquatic policies. We anticipate that the draft ordinance will be clarified to reflect our understandings about the proper interpretation of the Growth Management Act.

3. Steep Slope Areas

A major substantive concern with the existing ECA Ordinance is its premise that any development on steep slopes has a negative impact. The present draft continues that premise. However, this does not recognize that development on steep slopes can be properly engineered with specific analysis, design and earth retention measures so as to create no adverse impacts, and in fact, the slope can be stabilized by the very act of development.

As you are aware, this update to the ECA regulations is mandated by the Growth Management Act requirement that Best Available Science be used in developing ECA regulations. This is the appropriate time to apply science to the regulations and to eliminate those restrictions that lack a scientific foundation.

We have reviewed the background reports prepared on Best Available Science and do not see any justification for the onerous steep slope restrictions in the present draft. For example, there is no support in the Best Available Science materials mandating that development on steep

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[3] These generally include 1) those areas mapped and designated by the Washington Department of Fish and Wildlife ("WDFW") for certain habitats and species, 2) recreational shellfish areas, kelp and eelgrass beds, 3) riparian corridors, and 4) habitat for species of local importance.

slopes be significantly curtailed as proposed in the draft ordinance, nor is there any support for a 30% limit on disturbance of a steep slope area. We are thus concerned that the draft regulations for steep slopes are not supported by Best Available Science. We urge DPD to address this issue.

4. Exemptions

It is critically important that the draft ordinance be clear about what development activity is exempt from the ECA Chapter, and what the exemption means. This has been an area of significant uncertainty for both the City and applicants for quite some time. We have specific comments in Section II below.

In addition, we have procedural concerns about how exemptions will be handled under the draft ordinance. At present, DPD applies the "application of standards" section in 25.09.040 to determine that projects are exempt, without the need for a written request or an elaborate process to explain that the ECA Ordinance does not apply. Perhaps unintentionally, this would change under the draft ordinance, and it appears that every time a project is exempt from the ECA Chapter, it is necessary to obtain a written exemption. This would add substantially to processing time and development costs. There are many, many circumstances where it ought to be clear from basic project plans that the ECA Chapter does not apply. It should not be necessary to go through an elaborate exemption process to have DPD staff make that determination. More specific comments on this issue appear in Section II below.

II. SPECIFIC SUBSTANTIVE COMMENTS

The following comments are presented in the order in which they appear in the draft ordinance.

A. Steep Slope Definition (25.09.020, pp. 5-6)

Item 4 on page 5 is intended to define "steep slopes" and the term "steep slopes" is used throughout the ordinance. However, item 4 does not ever include the phrase "steep slope." For clarity, we suggest that at the end of item 4, you state that the language there defines a "steep slope."

In addition, item 3 on page 6 also discusses steep slope areas. However, it does not seem correct for this to be labeled as "3." That does not match the prior listing of items in the section. Also, as the text under "3" qualifies what is meant by a "steep slope," it should be included in the definition on page 5 instead.

Finally, the language in item 3 on page 6 incorporates some, but not all, of the existing steep slope exemptions. We notice that an exemption has been retained for downtown and high

rise zones, but the exemptions for midrise and commercial zones have been eliminated. We do not see an adequate Best Available Science justification in the background materials for this change. Areas with all of these zoning designations are likely already developed, and so retaining the steep slope exemption for such areas would seem appropriate. We agree that the phrase "highly developed" should be eliminated as it creates confusion, but DPD could nonetheless acknowledge that sites zoned midrise, commercial, downtown and highrise have those types of designations because, in part, they are in areas that have already been developed.

B. Fish and Wildlife Habitat Conservation Areas (25.09.020, pp. 8-9)

The existing ECA ordinance designates bodies of water that provide fish habitat and migration corridors as "fish and wildlife habitat conservation areas." That means any Port parcel that incorporates that body of water (e.g. Elliott Bay or the Duwamish) has been treated as this type of ECA.

The proposed ordinance deletes the designation of bodies of water and instead defines this ECA as limited to areas with WDFW-designated priority habitats and species and related designations, sites with shellfish, kelp, and eelgrass beds, and riparian corridors. The deletion of bodies of water as *per se* habitat areas, and replacing that with specifically defined (and eventually, mapped) areas, is an important improvement over the current ordinance. The definition of fish and wildlife habitat conservation areas must be read in conjunction with the exemption in section 25.09.045 D (page 12) which exempts development activity that is located outside of and does not increase the impact to an ECA. Putting the definitions and exemptions together, we interpret this to mean that the development standards for fish and wildlife conservation areas apply only if a parcel contains a fish and wildlife habitat conservation area, and there is development activity in that area or increased impacts to that area. It is extremely important that the ordinance be clear on the application of fish and wildlife standards, both for the Port and the City, so that unnecessary ECA review is not required, and so that regulation does not reach into areas without demonstrated impact on the ECA.

By way of further improvement, we suggest that the definition section delete the unnecessary reference to "Shoreline District" in section 25.09.020(D)(4)(recreational shellfish, kelp and eelgrass). The definition of habitat for species of local importance could be improved with a cross-reference to 25.09.200E, where that designation is explained. Although the definition of riparian corridors is somewhat confusing as written, we understand that it is the City's intent that riparian corridors under the proposed ordinance would be coextensive with the areas designated as riparian corridors under the current ordinance.

C. How the Chapter Applies (25.09.040, pp. 10-11)

The sentence in Section 25.09.040 A states what the chapter applies to. We believe it would be clearer if this sentence began with the phrase "Unless exempted by section 25.09.045"

so that it would read as follows: "Unless exempted by Section 25.09.045, this chapter applies to any development, platting and lot boundary adjustment carried out by any person on publicly or privately owned parcels containing an ECA or buffer." This would eliminate confusion about whether the chapter applied to exempt activities.

On a related item, Section 25.09.045 A2 states that listed activities are exempt, "except for section 25.09.040." Why is that phrase included? If you mean that Section B of 25.09.040 applies, the exception should be limited to 25.09.040 B, rather than all of 25.09.040.

D. Exemptions (25.09.045, pp. 11-15)

1. Process Concerns

Section 25.09.045 requires an "application" for all exemptions, which is an extra procedural step compared to current practice where an application is only required for steep slope exemptions. As noted in section I of this letter, we question whether this extra step of an application process is really necessary, and we have concerns about the cost and delay that this step will add to the permit process.

If this extra step is nonetheless going to be required of all ECAs, then, we urge DPD to set up an efficient and timely ECA exemption process so that this extra step produces minimal extra delay in the permit process. At present, there are not adequate resources devoted to shoreline exemptions, and thus, there can be a significant delay in receiving exemption decisions. We urge DPD to establish sufficient staff resources so that shoreline exemptions and ECA exemptions can be handled with a minimum of delay.

In addition, the ordinance needs to make clear when the exemption determination is made. We believe it appropriate to have that determination made prior to permit submittal (as shoreline exemptions currently are), so that the application requirements are clear and an applicant does not have to provide all the required ECA application information, if the activity is exempt from ECA regulation.

Also, the draft ordinance states that the ECA exemption "can be made only as a component of a specific proposed development." The meaning of this phrase is unclear. We assume the exemption decision can precede an application for a specific development, for the reasons stated above. Also, it can be necessary for a property owner or applicant to have an upfront ECA exemption determination before a permit is ready for submittal, as part of due diligence on property acquisition or understanding what would be involved with a permit submittal before a commitment is made to proceed with a specific permit. We suggest DPD delete this language.

We also suggest the deletion of Section 25.09.045(B), that provides that all exempt activities shall be undertaken using best management practices. Best management practices are in turn defined by Section 25.09.520 to include "the practices identified by the Director that are intended to implement this chapter." It is truly illogical to require that exempt activities comply with all the substantive provisions of this chapter. This provision would completely undercut the value of the exemption, as the applicant would now need to exhaustively demonstrate that it has met this vague standard. At a minimum, given the importance of best management practices, the definition of those practices must be clear. We suggest you be specific about how best management practices are identified by the Director.

Finally, we note that DPD is providing itself the authority to impose conditions on exemptions it grants. We are concerned that the conditioning authority not turn into a *de facto* application of the ECA standards, and there is definitely reason for that concern based on past experience. If an activity is not considered significant enough to be subject to the ECA ordinance, it seems questionable that the exemption should be conditioned with substantive standards. Keep in mind that development activity is exempted precisely because the City has made a determination that it does not directly affect or increase the impact to an ECA. That being the case, what justification is there for conditioning a project that lacks an appreciable impact? Furthermore, the draft ordinance states that conditions can be imposed "to protect ECAs or their buffers." The concept of "protect" is extremely broad and lacks definition. Why would an ECA or buffer need protection if there was no increased impact to the ECA?

If the conditioning authority is going to be retained, the conditioning authority needs to be limited to mitigating direct impacts on an ECA, so that the effect is to increase the use of exemptions, *i.e.* if conditions can be imposed to address issues of concern, then DPD should lean toward granting the exemption with conditions, rather than making the project go through ECA review.

2. Substantive Concerns

Exception D on page 12 is of critical importance to all permit applicants, as noted in our introductory comments. We have several comments on the wording of this exception. First, the way this exception reads in the present ECA ordinance (Section 25.09.040 D2) is that an activity is exempt if it "does not occur within the area of the site designated as ECA and any required buffer." For years, DPD interpreted this language as written: if there was no activity in the ECA or buffer, then the activity was exempt from ECA regulations. In recent years, even though the code language did not change, DPD staff would on occasion take a more "expansive" view of this language to require ECA review on any site that had an ECA, even if there was no work in the ECA or buffer. In fact, numerous examples exist (including one at Shilshole Bay Marina) where ECA review was required even if the work was hundreds of feet from any ECA.

Notwithstanding what we see as an occasional aberration in interpretation of the plain language of the current ECA ordinance, the current draft tends to institutionalize this expansive interpretation. In fact, the benefit of the exemption is substantially reduced, as now an applicant not only has to show the work is not within the ECA or buffer, but must also show that the work would not "increase the impact" to the ECA or buffer. How reasonable a process will this turn out to be to receive the benefit of this exemption? For example, every time work is proposed on a site with a liquefaction-prone or steep slope ECA, will it be necessary to submit a geotechnical report that there is not an increase in impact to the ECA? This will add hundreds to thousands of dollars in cost to each exemption request, compared to a correct reading of the current code.

Finally, exemption I on page 15 exempts maintenance and repair of public facilities "when these activities do not result in substantial disturbance of ECAs or buffers." We believe that maintenance and repair of existing facilities ought to be exempt without a special test of "substantial disturbance of ECAs or buffers." Keep in mind that such work within the Shoreline District is already subject to the provisions of the Seattle Shoreline Master Program (even if exempt from the need to obtain a shoreline permit), and multiple federal and state laws, so it seems unnecessary to add this caveat – maintenance and repair activities are already well regulated.

E. General Development Standards (25.09.060, p. 18 & pp. 23-25)

As a threshold matter, the general development standards do not acknowledge that nearly all of the items mentioned are already regulated by federal, state, and other City codes and ordinances, particularly SEPA and the Shoreline Master Program. Rather than duplicating the standards here, we urge the City to examine the standards that already exist and only include in the ECA ordinance those few new standards that are considered essential.

General standard B on page 23 is worded in an extremely broad fashion, giving DPD substantial discretion to control development even if all of the standards for the individual ECA are met. For example, the sentence "Grading activities and impervious surfaces shall be kept to a minimum and limited to areas approved by the Director" is not limited to grading in an ECA or buffer, but could apply anywhere on a site, even if the work would be a substantial distance away from the ECA. That sentence needs to be deleted or at least qualified. Also, we recommend that a qualifier be added to the preceding sentence to make it clear that DPD may restrict development "where necessary to protect an ECA or its buffer" rather than the wide open language included at present.

General standard F on page 24 states that construction activity must adhere to a prepared schedule approved by DPD prior to the start of construction. Again, this is too broad and could cover construction activity that has nothing to do with an ECA or its buffer. We recommend you qualify this by rewording it to read: "Construction activity <u>affecting the ECA or its buffer</u> shall adhere to a prepared schedule. . . ."

General standard G on page 25 states that grading "in ECAs" shall be completed or stabilized by October 31st of each year. We presume this will be applied as written, meaning that grading outside of the ECA does not have that date restriction. If something else is intended, then this would need to be justified.

F. Steep Slope Standards (26.09.180, pp. 46 – 51)

As noted in our comments in Section I, we are concerned that aspects of the steep slope standards are not supported by Best Available Science. The Best Available Science reports address issues related to landslides, erosion, and control of water, but do not seem to support the general prohibition on development of steep slopes, the 30% limited disturbance or the elimination of commercial and midrise exemptions.

Section A states that the section applies to a "steep slope area or buffer." However, subsection 2a refers only to steep slope area, not a buffer. All of Section 25.09.180 should be reviewed so there are consistent references to the ECA itself as opposed to the buffer.

The draft ordinance creates an entirely new land use approval, known as a steep slope variance, in order for DPD to allow development within a steep slope area. The background materials state that the variance process is being used because the existing practice of having staff make that determination was leading to inconsistent results. With all due respect, we suggest that if inconsistency among staff was the problem, the solution is more training of staff, not making applicants go through an onerous variance process. It appears the intent is for this variance to be treated as a Type II Master Use Permit, meaning, realistically speaking, this could add four to six months to the permit process for a building permit that did not otherwise require a Type II Master Use Permit. This is an excessive solution for the limited problem of staff inconsistency.

Also, requiring a variance for disturbance of a steep slope is unnecessary. Those slopes are already regulated as landslide-prone areas, and are subject to further restrictions under the International Building Code as well as SEPA analysis to show mitigation or avoidance of significant environmental impacts. A staff judgment under the ECA Ordinance would seem to be adequate along with these other controls, without requiring an applicant to go through the variance process.

G. Standards for Fish and Wildlife Areas in the Shoreline District (25.09.200, pp. 57 – 60)

In prior portions of our letter, we raise some significant questions regarding fish and wildlife habitat conservation areas. Section B "Development standards for parcels in the Shoreline District" starting on page 57 of the draft ordinance dovetails with those questions.

How the standards in section B will apply is quite unclear. The title refers to "parcels in the Shoreline District." However, B1 refers to "parcels within the Shoreline District that contain fish and wildlife habitat conservation areas." We do not believe there is any Growth Management Act reason why a shoreline parcel would be subject to ECA regulations, unless that parcel met the standards for a fish and wildlife area. In other words, if the priority species and habitat are lacking, or the parcel does not otherwise fall into one of the categories of Section 25.09.020(D), then a parcel located within the Shoreline District would not be regulated as a fish and wildlife ECA. This is the proper interpretation of the scope of ECA regulations required under the Growth Management Act. Therefore, references to "parcels in the Shoreline District" is overly broad. Moreover, it is not clear why it is necessary to refer to the Shoreline District at all. If the parcel has a fish and wildlife habitat area on it, it is regulated under ECA whether or not the parcel is in the Shoreline District.

A related issue is where a parcel may have a priority habitat or species, or shellfish, kelp or eelgrass, but the development activity is not within or increasing the impact to an ECA or its buffer. Under the exemption of 25.09.045 D, the activity would be exempt from the ECA Chapter. This interpretation is consistent with the Growth Management Act.

In terms of the permit process, given the way the pre-site visits are conducted at present, any time there is a permit involving property next to the water, it is tagged as ECA and many different requirements are noted, even though there is no work in or remotely near the ECA area, *i.e.* the water. For example, the Port of Seattle routinely gets pre-site visit notes from the inspectors stating that a site is a fish and wildlife habitat area and certain restrictions may apply, when the proposed development is located far from the water. Prime examples include a new bathroom structure at Shilshole, and a small modular structure at a cargo terminal on the Duwamish. The pre-site visit notes state that ECA regulations apply to the development, simply because the parcel is next to or includes the water. These pre-site visit notes confuse the entire permit process, and we have to spend time getting reasonable judgments made about when ECA applies and does not apply.

The draft ordinance needs to cut down on unnecessary permit requirements that add cost and time and add no substantive benefit to the environment. Under the interpretations of the draft ordinance described above, these goals would be achieved. If a different interpretation is intended, then this would be of significant concern to the Port and substantive discussions between our two agencies would be necessary.

In terms of substantive issues, a proper interpretation of the application of fish and wildlife standards is important because the development standards are extremely restrictive, such as calling for keeping "pavement to a minimum," using permeable surfacing, keeping "increases in surface runoff to a minimum," and keeping "shading to a minimum" for in- and over-water structures. These standards are not easily meshed with the developed industrial properties of the Port. They should only apply to activity within an actual fish and wildlife habitat conservation

area, or activity that increases the impact on that area, and not an entire parcel only a portion of which has such an area. In addition, how has DPD determined that these standards are truly necessary to protect priority habitat and species in a built environment? As has been recognized by other City departments, standards developed in a rural setting are not necessarily applicable or appropriate to a built urban environment.

Lastly, it is entirely unclear why the ECA ordinance needs to have such restrictive standards apply to parcels in the Shoreline District, when the Seattle Shoreline Master Program already stringently regulates use and development within 200 feet of the water. The ECA regulations are duplicative of Shoreline Master Program regulations, and the background materials do not explain why such duplication is essential to meet Growth Management Act requirements.

H. Lot Boundary Adjustments (25.09.240, pp. 62 – 63)

The draft ordinance proposes to make all lot boundary adjustments subject to ECA regulations, whereas they have not been under existing ECA regulations. This is not a small change. We do not think this change is consistent with Best Available Science or the State legislative intent in creating the lot boundary adjustment mechanism. That intent was to have a simplified process for adjusting boundaries, *i.e.* to treat lot boundary adjustments different from other divisions of land. Contrary to that intent, lot boundary adjustments would have the same ECA review as short subdivisions. The background materials do not contain any real explanation of why lot boundary adjustments would need to have ECA review, *i.e.* how adjusting a boundary can have a substantial impact on an ECA. By making lot boundary adjustments subject to the ECA ordinance, DPD will be adding several months to the processing time to what was intended to be a simplified application.

This issue is important to the Port because there are times when the Port needs to do a lot boundary adjustment of its industrial properties, since large terminals are actually made up of many different "lots" that must be adjusted to accommodate tenant needs. These sites are only ECA due to liquefaction, so exempting lot boundary adjustments in liquefaction areas is one way to avoid unnecessary and lengthy permit review. Alternatively, DPD could require lot boundary adjustments to be subject to the ECA Chapter, but exclude lot boundary adjustments on parcels zoned Industrial. We urge you to make such a change.

III. COMMENTS TO CLARIFY AND IMPROVE THE ORDINANCE

Page 9, Section D(6)(2): You may want to clarify the provisions for how to treat a watercourse when a pipe or culvert has been removed so that it relates to permanent removals, not just temporary removals during re-construction or maintenance.

Page 11, Section B2: Reference is made to the Director making a determination "before requiring a complete application." Do you instead mean that the Director's determination must be made before the application is considered complete? The word "requiring" is confusing here.

Page 27, Section 25.09.080 A: This section has a lead in sentence stating what parcels it applies to. This type of prefatory language is not included for other ECAs, and for consistency, we would recommend it be deleted here.

Page 38, Wetland buffer table: With respect to the Category I and II box, reference is made to the "riparian corridor." However, page 7 refers to this concept as the "riparian corridor watercourse." The terminology should be consistent. With respect to Category III wetlands, change "on" to "one." For Category IV wetlands, delete the duplicative phrase "or more." Lastly, the table states that Category IV wetlands under 1,000 square feet in size are not regulated. The same should be noted for Category I wetlands 100 square feet or less in size.

Page 42, Item C at the top: Reference is made to the "process and procedure for notice of decision and appeal" that is in Chapter 23.76. This same type of language also appears on pages 52 and 76. By just referring to the procedure for notice of decision and appeal, it is unclear whether the <u>application process</u> of Chapter 23.76 also applies to the ECA variance and exception referenced in these sections. We believe you mean that these types of special approvals are going to be considered Type II land use decisions governed in all aspects by Chapter 23.76. If this is not intended, then the ordinance needs to clarify what application process applies to an ECA variance and exception.

Page 46, Item J: The introductory clause is missing some words.

Page 52, Section 25.09.200A1: reference is made to the "shoreline district" but this term is not capitalized here. However, on page 9 the term "Shoreline District" is capitalized. The ordinance needs to be consistent in its reference to terms, and a decision made whether terms that are defined in the definitions section of Section 25.09.520 will be capitalized or not. If you decide that terms in the ordinance that are defined in that section must be capitalized, then in particular we point out the importance of capitalizing the words "provisions of this chapter" in the exemptions in 25.09.045A1, so that it is clear that exempt activities are exempt from all sections of the chapter. (*See* definition of the term "Provisions of this chapter" on page 100.)

Pages 101 and 102, definition of "steep slopes": For the other ECAs, the definition sections simply refer back to Section 25.09.020 rather than repeating the definitions in Section 25.09.520. For consistency, we suggest that steep slopes be defined in Section 25.09.520 in the same manner as the other ECAs.

IV. CONCLUSION

Thank you for the opportunity to comment on the draft ECA ordinance. Given the longstanding and close working relationship between our two agencies, we would appreciate the opportunity to meet with you and discuss our comments at your earliest convenience.

Sincerely,

Wayne Grotheer
Director of Health, Environmental and Risk Services,
Port of Seattle

cc: Miles Mayhew