

Revised State Environmental Policy Act Policies (SEPA) and Procedures

A RESOLUTION of the Port Commission of the Port of Tacoma, Pierce County, Washington, repealing the Port's prior SEPA Resolution No. 84-55, and adopting the Port's updated policies and procedures under the State Environmental Policy Act and implementing rules, chapter 43.21C RCW and chapter 197-11 WAC.

WHEREAS, the State Environmental Policy Act (SEPA) sets forth an environmental policy for Washington state and requires that the environmental impacts of proposals be analyzed and, where appropriate, mitigated; and

WHEREAS, SEPA applies to state agencies, counties, and municipal and public corporations, including port districts; and

WHEREAS, SEPA has been amended to require the State Department of Ecology to issue new uniform statewide rules for carrying out SEPA; and

WHEREAS, the Port is required to adopt SEPA policies and procedures that are consistent with the new rules adopted by the Department of Ecology (WAC 197-11) and may adopt by reference any or all of these rules; and

WHEREAS, the Port has provided public notice and opportunity for public hearing on this resolution;

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Tacoma, Washington as follows:

The Port of Tacoma adopts the following:

PORT SEPA ENVIRONMENTAL ADMINISTRATIVE REGULATIONS:

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1. Adoption of SEPA rules:

The Port of Tacoma hereby adopts by reference the following sections or subsections of Chapter 197-11 of the Washington Administrative Code (SEPA Rules): WAC 197-11-010 through 197-11-990, except as specifically provided herein. Where conflict exists between a permissive, optional or guidance WAC section adopted by reference herein and the specific local agency SEPA procedures adopted in this Resolution, the language of the Resolution shall apply. The decision on whether to apply an optional state SEPA provision rests with the Responsible Official.

2. Authority:

The following regulations concerning environmental policies and procedures are hereby established and adopted pursuant to Washington State law, Chapter 109, Laws of 1971, Extraordinary Session (Chapter 43.21C RCW) as amended, entitled the "State Environmental Policy Act of 1971," (SEPA), and Washington State Administrative Code (WAC) regulations, Chapter 197-11, entitled "SEPA Rules."

3. Purpose, applicability, and intent:

- 3.1 The purpose of this Resolution is to provide Port policies and regulations implementing Chapter 43.21C RCW, the State Environmental Policy Act of 1971 (SEPA), which are consistent with the SEPA rules.
- 3.2 This Resolution is applicable to all Port of Tacoma departments/divisions, committees, and Port Commission.
- 3.3 The intent of this Resolution is to govern compliance by all Port departments/ divisions, committees, and Port Commission with the procedural and substantive requirements of Chapter 43.21C RCW, the State Environmental Policy Act of 1971.
- 3.4 This Resolution addresses compliance with State Environment Policy processes. Use of National Environmental Policy Act of 1969 (NEPA) documents is governed by WAC 197-11-610.

4. Environmental policy:

The environmental policies of the Port of Tacoma are the policies set forth in the following documents and statutes: the Port's Comprehensive Scheme of Harbor Improvements and the Port's Environmental Compliance Program Manual and all policies contained therein, as these documents are now identified and as they may be renamed and/or amended in the future, including all of its elements, Chapter 197-11 WAC, and Chapter 43.21C RCW.

5. Additional definitions:

In addition to those definitions contained within WAC 197-11-700, the following terms shall have the following meanings, unless the context indicates otherwise:

- 5.1 "Department" means any division or organizational unit of the Port.
- 5.2 "SEPA Rules" means WAC Chapter 197-11 adopted by the Department of Ecology, as it now exists and may be hereafter amended.
- 5.3 "Responsible Official" means the Port's Executive Director or designee. The Responsible Official's duties may be delegated to appropriate staff persons, but Responsible Official or designee shall approve and is responsible for the Determination of Environmental Significance and the adequacy of an Environmental Impact Statement (EIS).

6. Timing of the SEPA process:

- 6.1 The SEPA process shall be integrated with Port activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential environmental issues.
- 6.2 The Responsible Official or designee shall prepare the threshold determination and/or environmental impact statement (EIS), if required, as soon as possible after the principal features of a proposal and its environmental impacts can be reasonably identified.

6.2.1 A proposal exists when the Responsible Official or designee is presented with a project or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated. The fact that proposals may require future Port or other permitting approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.

6.2.2 The environmental process shall commence upon receipt by the Responsible Official or designee of an environmental document. The Responsible Official or designee may also organize environmental review in phases as specified in WAC 197-11-060(5).

6.2.3 Appropriate consideration of environmental information shall be completed before the Responsible Official or designee commits to a particular course of action (WAC 197-11-070).

7. Public notice:

7.1 Reasonable Means: When notice is required pursuant to this Resolution, Chapter 197-11 WAC, and/or Chapter 43.21C.RCW, the Responsible Official or designee must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held.

7.2 Notice Requirements:

7.2.1 Notice of the SEPA threshold environmental determination shall be published in a newspaper of general circulation within the area in which the project is located and sent via electronic mail or regular mail to the Port of Tacoma's Agency and Interested Persons SEPA mailing list. The Port of Tacoma's Agency and Interested Persons SEPA mailing list shall include all parties who express interest in a particular project or in the Port's SEPA determinations, and the record owner of all properties located 2,000 feet from the subject Project's footprint. The electronic or regular mailed notice shall include a copy of the determination. All forms of notice described herein shall also inform recipients of: (a) where the agency SEPA records are located and available, (b) the 14-day public comment period, and (c) the applicable appeal procedures.

7.2.2 If an administrative appeal is filed pursuant to Section 9 of this Resolution, notification of Port action on the appeal and/or the appeal hearing shall be mailed to the Appellants and to all parties who commented in writing to the Environmental Department on the Port's environmental determination for the proposed action.

7.2.3 Notice of determination of significance, scoping, and availability of draft and final EISs shall be published in a newspaper of general circulation within the area in which the project is located and sent to the Port of Tacoma's Agency and Interested Persons SEPA mailing list. Record owner of all properties located within 4,000 feet from the subject Project's footprint shall be included in the Port of Tacoma Agency and Interested Person SEPA mailing list for EIS projects. Parties who comment on a specific project's environmental determination shall receive notice of the draft and final EISs.

8. Comments:

8.1 Any person wishing to preserve the option for challenging a Port SEPA threshold determination and adequacy of final environmental impact statement by filing a Request for Reconsideration with the Responsible Official or designee must first timely submit written comments to the Port's SEPA action within the 14-day comment period for the SEPA determination. Timely submittal of a SEPA comment is a mandatory condition precedent to filing a Request for Reconsideration.

8.2 The Port's Responsible Official or designee may respond in writing to all written comments received on a specific SEPA environmental review or determination. The Port's Comment response may be in the form of individual responses, or responses to all or a portion of the comments addressed cumulatively. If the Port chooses to issue response to comments, the Port's response will generally issue within 7 days of the close of the comment period. Public comments, Port comment responses, and any resulting subsequent amendments or addendums will be part of the Port's SEPA administrative record. The Port's written Response to Comments shall be an addendum pursuant to WAC 197-11-706. An "addendum" means an environmental document used to provide additional information or analysis that does not substantially change the analysis of significant impacts and alternatives in the existing environmental document." WAC 197-11-706.

8.3 The Port is encouraged but is not required to circulate its Response to Comment Addendum to interested persons. WAC 197-11-625 (5): "Agencies are encouraged to circulate addenda to interested persons. Unless otherwise provided in these rules, however, agencies are not required to circulate an addendum." The Port's issuance of the Response to Comments Addendum will not restart the administrative comment or appeal period(s) pursuant to WAC 197-11-706.

9. Appeals of SEPA threshold determination and adequacy of final environmental impact statement:

9.1 Request for Reconsideration: Any challenge to a SEPA threshold determination and adequacy of final environmental impact statement shall be pursued by timely filing a Request for Reconsideration with the Responsible Official or designee no later than close of business 7 calendar days following the end of the 14-day comment period for the SEPA determination. Timely submittal of a SEPA comment is a mandatory condition precedent to filing a Request for Reconsideration. The Request for Reconsideration is a mandatory condition precedent to filing an administrative or judicial appeal.

9.2 Administrative Reconsideration and Appeal Filing Requirements:

9.2.1 Administrative Reconsideration/Appeal Procedures & Fee: To initiate a Request for Reconsideration and/or an administrative appeal, a Requester/ Appellant must timely file a Request for Reconsideration/notice of appeal, and, in the case of an administrative appeal, pay the required administrative appeal filing fee as set forth herein. The Environmental Department shall process the reconsideration/appeal in accordance with the procedures set forth in this Resolution.

9.2.2 Time Requirement: A Request for Reconsideration and an appeal shall be filed within the timeframes set forth in Sections 9.1 or 9.3.1 herein. If the last day for filing a consideration/appeal falls on a weekend or holiday, the last day for filing shall be the next Port working day.

9.2.3 Standing: Only parties who timely file a Request for Reconsideration of the Port's environmental determination have standing to file an administrative appeal.

9.2.4 Content of the Reconsideration/Appeal: The Reconsideration/Appeal shall contain:

- i. The name and mailing address of the Requester/Appellant(s) and the name and address of his/her/their representative, if any;
- ii. The Requesters'/ Appellant(s)' legal residence or principal place of business;
- iii. A copy of the decision, which is the subject of the reconsideration/appeal;
- iv. The grounds upon which the Requester/Appellant(s) rely;
- v. A concise statement of the factual and legal reasons for the reconsideration/ appeal;
- vi. The specific nature and intent of the relief sought;
- vii. A statement that the Requesters/Appellant(s) have read the appeal and believes the contents to be true followed by his/her signature and the signature of his/her/their representative, if any. If any Requesting/Appealing party is unavailable to sign, it may be signed by his/her representative,
- viii. For administrative appeals only: The appropriate fee of \$250.00 for an Administrative appeal, provided however, that the appeal fee shall be refunded in the event the Appellant substantially prevails in the appeal; the Hearing Examiner shall make this determination as part of any final decision on appeal; and
- ix. If Parties intend to file a multi-party reconsideration/appeal, all parties to be included in the request/appeal shall be specifically identified and all information related to the combined request/appeal shall be filed at one time. In all other cases, a separate administrative appeal fee shall be required for administrative appeal filing.

9.2.5 Effect of the Reconsideration/Appeal: The filing of a valid reconsideration request/administrative appeal of a threshold determination or adequacy of a final environmental impact statement (FEIS) shall stay the effect of such determination or adequacy of the FEIS and no action in regard to a proposal may be taken during the pendency of an administrative appeal that would: (a) have an adverse environmental impact; or (b) limit the choice of reasonable alternatives until a Final Decision is issued on the Reconsideration/ administrative appeal. An administrative decision to reverse the determination of the Responsible Official shall further stay any decision, proceedings, or actions in regard to the proposal.

9.2.6 Withdrawal: A Request for Reconsideration/administrative appeal may be withdrawn, only by the requesters/appellant(s), by written statement filed with the Environmental Department. The Environmental Department shall inform the Responsible Official or designee of the withdrawal request. If the withdrawal is requested before any action by the Hearing Examiner on the appeal, the appeal shall be dismissed with prejudice.

9.2.7 Decision on Reconsideration: After due consideration, the Decision on Reconsideration shall state whether the Reconsideration is: (a) denied, in which case the SEPA determination is unchanged, or (b) granted, in which case the SEPA Determination is modified or withdrawn.

9.2.8 Designation of Appeal Pathway/ "Final Decision" Defined: If the Request for Reconsideration is denied, the Decision shall also state whether the Decision is appealable to either: (a) the Hearing Examiner as an administrative appeal pursuant to Section 9.3 herein, or (b) directly to Superior Court as a judicial appeal, pursuant to Section 9.4 herein. If appealable directly to Superior Court, the Decision of the Responsible Official becomes

the Port's Final Decision and only the parties to the Reconsideration Request have standing to appeal to Court. If appealable to the Hearing Examiner, then the decision of the Hearing Examiner becomes the Port's Final Decision. A Final Decision rendered under any of the above two processes is appealable to Superior Court within 21 days of the date the Final Decision issues or as otherwise provided by applicable state law, Chapter 36.70C RCW.

9.2.9 Only One Reconsideration: The decision of the Port shall be subject to reconsideration only one time, even if the Port reverses or modifies the original decision.

9.3 Administrative Hearing Examiner Appeal: If the Decision on Reconsideration states that it is subject to an administrative appeal, the following process applies;

9.3.1 Time: An administrative appeal must be filed no later than close of business (5:00 PM) 7 calendar days from the date the Reconsideration Decision issues. The appeal filing shall comply with the requirements of Section 9.2.4 herein.

9.3.2 Process: An administrative appeal is heard by the Port's designated Hearing Examiner, who would hold a public hearing and issue a Final Decision.

9.3.3 Scheduling: The public hearing on an administrative appeal of the Responsible Official's Final Decision, presided over by the Hearing Examiner shall be expeditiously scheduled upon receipt of a valid appeal. Normally that hearing will be held within 21 calendar days of receipt of a valid appeal. The public hearing shall be conducted in accordance with the procedures described herein.

9.3.4 Appellant Materials: Any written materials or exhibits an Appellant wishes to be considered at the public hearing shall be delivered to the Port offices during normal working hours not less than 10 calendar days prior to the public hearing. These Appellant materials shall be part of the Port's administrative appeal record.

9.3.5 Port Materials: The Port's written materials or exhibits and response to an appeal must be provided to the Hearing Examiner and Appellant, not less than 5 calendar days prior to the public hearing. These Port materials shall be part of the Port's administrative appeal record.

9.3.6 Testimony at Administrative Appeal Hearing: Testimony shall be limited to Appellants' and the Port's Representative and their respective witnesses only.

9.3.7 Standard of Review: The Hearing Examiner may affirm the decision of the Responsible Official or the adequacy of the environmental impact statement, or remand the case for further information; or may reverse the decision. Reversal of the decision shall be based on a Hearing Examiner determination that the administrative findings, inferences, conclusions, or decisions are:

- i. In violation of constitutional provisions as applied; or
- ii. The decision is outside the statutory authority or jurisdiction of the Port; or
- iii. The Responsible Official or designee has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; or
- iv. In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of the Act (SEPA); or
- v. In regard to challenges to the adequacy of an EIS shown to be inadequate employing the "rule of reason."

9.3.8 Evidence – Burden of Proof: On appeal, the Appellant shall have the burden of proof, and the determination of the Responsible Official or designee shall be afforded substantial weight. Judicial appeals shall be limited to the record before the Responsible Official or designee except as otherwise provided by applicable state law, Chapter 36.70C RCW, and/or Chapter 43.21C RCW.

9.3.9 Continuation of Hearing:

- i. **Cause.** A hearing may be continued by the Hearing Examiner for the purpose of obtaining specific pertinent information relating to the project which was previously unavailable at the time of the original hearing.
- ii. **Notification.** The Hearing Examiner shall announce the time and place of a continued hearing at the time of the initial hearing or by written notice to all parties of record.

9.3.10 Conduct of proceedings: All hearings shall be conducted in an orderly manner. The Hearing Examiner shall have the authority to rule on all procedural matters, objections and motions, and power of subpoena.

9.3.11 Final Decision on Administrative Appeal: At the conclusion of the administrative appeal proceeding, the Hearing Examiner shall issue a written Decision. The Hearing Examiner's decision shall be issued no later than 10 days after the closing of the administrative public hearing, unless this timeline is waived in writing by all parties to the appeal. The Hearing Examiner shall include a determination on whether Appellant substantially prevailed in the appeal as part of the final Decision; the appeal fee shall be refunded in the event the Examiner determines that the Appellant substantially prevailed.

9.3.12 Standing for Judicial Appeal: If an administrative appeal was pursued, only the parties to the administrative appeal may initiate a judicial appeal to Court.

9.4 Appeal of Port's Final Decision:

9.4.1 Judicial Appeal. The Port's Final SEPA Decision shall be appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review or otherwise challenge the decision of the Port shall be filed with Superior Court and served on the Port as provided by applicable state law, Chapter 36.70C RCW.

9.4.2 Costs of Preparing Administrative Record on Appeal: The costs of preparing the Port's Administrative Record for any judicial appeal shall be borne equally by the Port and Appellant(s). Appellant(s)' portion of the costs shall be paid to the Port at/or prior to the date set by the Court for filing the record, and shall be a condition precedent to perfecting the appeal.

10. Flexible thresholds for categorical exemptions:

10.1 Adoption: The Port of Tacoma adopts the respective exempt levels for minor new construction as allowed under WAC 197-11-800(1)(c), as established by the City of Tacoma and Pierce County and any other jurisdiction wherein the Port activity is located, as they now exist and/or as amended hereafter.

10.2 Process: The Port's determination of an exemption shall be memorialized by the Responsible Official signature on a SEPA Exemption Memorandum, placed in the Project file. No public notice is required for this determination, and it is not appealable.

11. Emergencies:

Actions which must be undertaken immediately, or within a time too short to allow full compliance with this Resolution, to avoid an imminent threat to public health and safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this Resolution. The Responsible Official or designee shall determine on a case-by-case basis emergency actions, which satisfy the general requirements of this section. The Port's determination of an emergency exemption shall be memorialized by the Responsible Official signature on a SEPA Emergency Exemption Memorandum, placed in the Project file. No public notice is required for this determination, and it is not appealable.

12. SEPA Responsibility of the Port's Environmental Department:

12.1 The Port's SEPA documents are required to be maintained by the Port's Environmental Department for 7 years, and shall be available for public inspection, and copies thereof shall be provided upon request. The Port may charge for copies in the manner provided by Chapter 42.56 RCW (Public Records Act) and for the cost of mailing, consistent with adopted Port fees for such services. It shall be the responsibility of the Responsible Official or designee for responding to requests received from other local, regional, State, or Federal agencies requesting consultation and comment from a specific Port department.

12.2 The Port's Environmental Department shall maintain the Port's SEPA Agency and Interested Persons Mailing List to include a listing of recommended Federal, State, regional, local and private agencies/organizations and their addresses for use by the Port's responsible officials in making scoping requests and circulating draft EISs.

13. Critical areas:

The Port adopts the respective designation of areas which are environmentally sensitive pursuant to WAC 197-11-908 as established by the City of Tacoma and Pierce County or

any other jurisdiction within which the Port activity is located, as those designations now exist and/or as amended hereafter.

14. Port as Lead Agency – Responsibilities:

14.1 Lead Agency Duties: The Port, when acting in the capacity of the lead agency, shall be the only agency responsible for complying with the threshold determination procedures of WAC 197-11-300 through 197-11-390 as adopted by reference and as contained herein, and the Responsible Official of the Port or designee shall be responsible for the supervision, or actual preparation, of draft EISs pursuant to WAC 197-11-400 through 197-11-455 as adopted by reference, including the circulation of such statements and the conduct of any public hearings required by this Resolution. The Responsible Official or designee shall also prepare or supervise preparation of any required final EIS pursuant to WAC 197-11-360 through 197-11-640 as adopted by reference.

14.2 Assistance: Port Staff may assist in or prepare a SEPA checklist for any proposed Project where the Port acts as lead agency. If Port Staff assist in the preparation of the checklist, the staff person preparing the checklist shall be different from the Responsible Official or their designee who reviews and issues the SEPA determination for that Project.

15. SEPA Processing Fee:

For all SEPA Proposals processed by the Port, the Proponent/Applicant shall pay to the Port a SEPA processing fee of \$500.00; provided however, the fee shall not be charged for processing SEPA Proposals for which the Port is the Proponent.

15.1 Fee for Port Services & Potential Legal Costs. Applicant shall pay the Port's customary fee for the Port's SEPA services; provided however that Applicant shall also be responsible for payment of and shall reimburse the Port for any legal attorneys fees and cost incurred by the Port in defense of the SEPA determination in the event of an appeal of the SEPA determination by any party, unless otherwise mutually agreed to pursuant to the lease terms.

15.1.1 Invoice Procedure. The Port will submit its invoices and associated backup materials to the Applicant within thirty (30) days of the Port's receipt of invoices for attorney fees and costs.

15.1.2 Payment Procedure. Payments made by the Applicant pursuant to this Agreement shall be made payable to Port of Tacoma, attention: Accounts Receivable.

16. Severability:

If any provision of this Resolution or its application to any person or circumstance is held invalid, the remainder of this Resolution or the application of the provision to other persons or circumstances shall not be affected.

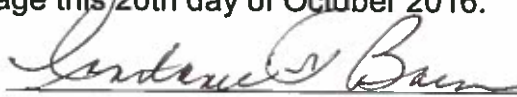
17. Repealer:

All prior Port Resolutions dealing with compliance to the State Environmental Policy Act and particularly WAC 197-11 are hereby repealed by the adoption of this Resolution.

18. Effective Date:

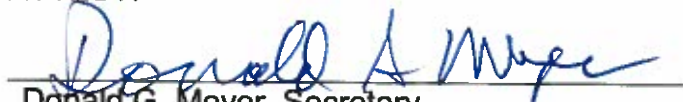
This Resolution shall be effective for all SEPA checklists filed with the Port after Commission adoption of this Resolution.

ADOPTED by a majority of the members of the Port of Tacoma Commission at a regular meeting held on the **20th day of October 2016**, a majority of the members being present and voting on this resolution and signed by its President and attested by its Secretary under the official seal of said Commission in authentication of its passage this 20th day of October 2016.



Constance T. Bacon, President
Port of Tacoma Commission

ATTEST:



Donald G. Meyer, Secretary
Port of Tacoma Commission