

**RESOLUTION NO. 3211**

**A RESOLUTION** of the Port Commission of the Port of Seattle, King County, Washington, repealing sections 15.4 and 21 and subsections 21.1, 21.2, 21.3, 21.4 and 21.5 of Port Resolution 3028, State Environmental Policy Act (SEPA) procedures under ch. 43.21C RCW, and adopting new Port SEPA appeal procedures.

**WHEREAS**, the State Environmental Policy Act (SEPA), ch. 43.21C Revised Code of Washington (RCW), and implementing rules in chapter 197-11 Washington Administrative Code (WAC) require the Port to enact a resolution integrating SEPA into the Port's procedures, and

**WHEREAS**, on December 17, 1987, the Port adopted Resolution 3028 in accordance with chapter 43.21C RCW and chapter 197-11 WAC, containing sections 15.4 and 21 and subsections 21.1, 21.2, 21.3, 21.4 and 21.5 providing for optional SEPA reconsideration procedures, and

**WHEREAS**, it is necessary to amend Resolution 3028 to repeal the reconsideration procedures in sections 15.4 and 21 and subsections 21.1, 21.2, 21.3, 21.4 and 21.5 and to establish a new SEPA administrative appeal process to provide the public and interested parties with a consistent, predictable and timely administrative review process for certain determinations it makes under SEPA, consistent with the intent of regulatory reform legislation enacted by the State Legislature in 1995 (ch. 347, Laws of 1995), and

**WHEREAS**, under WAC 197-11-800 (20), the adoption of SEPA procedures by local governments are categorically exempt from SEPA review, and

**WHEREAS**, the Port has provided public notice regarding this resolution and an opportunity for public comment on the resolution,

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

**Section 1. Appeals.** Port SEPA decisions may be appealed as provided in this section.

**Section 1.1 SEPA Decisions Subject to Appeal.** The following SEPA decisions of a Port responsible official are appealable under this section: (a) adequacy of an environmental impact statement (EIS), and (b) issuance of a mitigated determination of nonsignificance (MDNS). Other Port SEPA decisions and documents are not subject to administrative appeal.

**Section 1.2 Who May Appeal.** A party wishing to file an administrative appeal of a Port SEPA determination under this section (Petitioner) must demonstrate that his or her interests are arguably within the zone of interests protected by SEPA and that the SEPA determination under appeal will cause the Petitioner injury-in-fact.

Section 1.3 Timing of Appeals.

1. Appeals may not be filed before the Port's final decision on the underlying proposal for which the EIS or MDNS was prepared.
2. Appeals must be filed by 5 p.m. of the 15th calendar day following the date the Port has made a final decision on the underlying proposal for which the EIS or MDNS was prepared. When the last day of the appeal period is a Saturday, Sunday, or a national, state, or Port holiday, the appeal period runs until 5 p.m. on the next business day.

Section 1.4 Notice of Decisions on Underlying Proposals. The Port shall provide public notice of a final decision on an underlying proposal for which an EIS or MDNS was prepared, in accordance with this subsection. Failure to provide such notice does not waive the appeal deadline or otherwise affect the timing within which the appeal must be filed, if the Port has substantially complied with such notice requirements. The Port must:

1. Publish notice in a newspaper of general circulation in the county, city, or general area where the proposal is located (if there is more than one newspaper, the responsible official may select one newspaper for publication);
2. Furnish notice to anyone or any group who has specifically requested in writing to be notified about the particular proposal.
3. At its discretion, use any of the optional notice methods set forth in Section 15.2 of Port Resolution No. 3078.

Section 1.5 Filing Appeals. Appeals must:

1. Be in writing;
2. Contain a statement that sets forth:
  - a. the basis for the Petitioner's standing, including:
    - i. how the Petitioner's interests are arguably within the zone of interests protected by SEPA; and
    - ii. how the SEPA decision being appealed will cause the Petitioner injury-in-fact. If the alleged injury-in-fact has not already occurred, Petitioner must set forth facts establishing the immediate, concrete, and specific future injury-in-fact that will occur to that Petitioner as a result of the SEPA determination under appeal;
  - b. the specific alleged errors in the SEPA decision appealed;
  - c. the relief requested; and
  - d. the signature, address, and phone number of the Petitioner and the name and address of Petitioner's designated representative, if any;
3. be accompanied by an appeal fee of \$300;

4. list as respondents all necessary parties set forth herein. In any administrative appeal brought under this section, the following are necessary parties to any appeal under this section and must be served by Petitioner within 7 days after the filing of an appeal with a copy of the appeal document: the applicant of the underlying action that is the subject of SEPA review and the Port's responsible official. Intervention during the course of an administrative appeal under this section shall not be permitted; and
5. be mailed or delivered to the General Counsel, Port of Seattle, Pier 69, P.O. Box 1200, Seattle, WA 98111.

Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

**Section 1.6 Hearing Notice.** Notice of the appeal hearing must be mailed to parties of record at least 15 days before the scheduled hearing date.

**Section 1.7 Hearing Examiner.** The Port Commission will appoint an individual familiar with SEPA and hearing procedures as Hearing Examiner (Examiner) for the Port. The Examiner will hear and decide SEPA appeals in accordance with this Section 1.

**Section 1.8 Appeal Procedures.**

1. **Rules and procedures.** The Examiner shall follow the procedures set forth in this Section 1, including Attachment A to this resolution, unless the Examiner and parties agree to modify them in any particular case. Attachment A to this resolution contains the basic procedural framework that shall govern any appeals brought under this section. Port staff will prepare a more detailed set of rules and procedures, consistent with the basic procedures set forth herein and in Attachment A.
2. **Consolidation of appeals.** All procedural SEPA appeal challenges will be heard by the Examiner in one single simultaneous appeal hearing.
3. **Burden of proof.** The burden of proof is on the Petitioner to show that the Port responsible official's decision does not comply with SEPA.
4. **Standard of review.** The determination of the Port responsible official shall be accorded substantial weight by the Examiner in accordance with RCW 43.21C.075(3)(d). An MDNS shall be overturned only if found to be clearly erroneous. An EIS shall be overturned only if found to not be adequate under the rule of reason.
5. **Scope of review.** Review by the Examiner is limited to the validity of the challenged MDNS (i.e., whether an EIS is required) or the adequacy of the challenged EIS. The issues shall also be limited to those set forth in the Petitioner's notice of appeal.
6. **Examiner's decision.** The appeal decision shall be issued within 30 days of the conclusion of the hearing and closing argument. The appeal decision shall be in writing and shall contain findings and conclusions that support the decision. The Examiner may affirm, reverse, remand, or modify the responsible official's decision.

7. Notice of decision. Copies of the Examiner's decision shall be mailed to parties of record and those requesting notice.

Section 1.9 Exhaustion of Administrative Appeal Procedures. A party seeking judicial review of a Port SEPA decision subject to appeal under this Section 1 must, before seeking any judicial review, exhaust the appeal procedure of this Section 1.

Section 1.10 Judicial Review.

1. Decisions of the Examiner under this Section 21 may be appealed to the King County Superior Court by application for writ of review by an appellant within 21 days of the date the decision is issued.
2. Port SEPA decisions not subject to administrative appeal under this Section 1 may be appealed to the King County Superior Court by application for writ of review by an appellant within 21 days of the date the decision is issued.

Section 1.11 Transition to SEPA Appeal Procedures. Port SEPA decisions issued by the responsible official after the effective date of this resolution shall be subject to the SEPA appeal provisions of this resolution and any hearing rules of practice and procedure adopted by the Port.

Section 1.12 Authority of Executive Director to Adopt Hearing Examiner Rules of Practice & Procedure. The Executive Director shall have the authority to adopt rules of practice and procedure for the Hearing Examiner to utilize in implementing this Resolution and may delegate this authority to appropriate Port staff. Adoption or amendment to these rules of practice and procedure by Port staff does not require legislative action by the Commission

Section 2. Severability. If any provision of this resolution is held invalid, the remainder of this resolution remains in effect.

Section 3. Adoption. This resolution is adopted by the Port Commission of the Port of Seattle this 8<sup>th</sup> day of February, 1996, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission duly affixed.

JACK BLOCK

PAIGE MILLER

GARY GRANT

PAUL SCHELI

PATRICIA DAVIS

Port Commission

ATTACHMENT A TO PORT RESOLUTION NO. 3211

**BASIC PROCEDURAL FRAMEWORK GOVERNING  
SEPA ADMINISTRATIVE APPEAL RULES AND PROCEDURES.**

1. Prehearing Conference. Once an appeal has been filed, the Examiner shall schedule a Prehearing Conference within 21 days. Each party shall bring to the Prehearing Conference a written list preliminarily designating witnesses (both expert and lay) and exhibits they intend to use in the appeal. For each witness identified, a short written summary of the witness' testimony and, in the case of expert witnesses, opinions, shall be provided. At the Prehearing Conference, the Examiner shall include discussion of the following, in addition to other items he or she deems appropriate:

- a. Review of the Petitioner's legal issues to, if possible, simplify them for the hearing; and
- b. Procedures for the appeal, hearing date, and schedules for prehearing submissions.

2. Administrative Record. Within one week after the Prehearing Conference, the Port shall issue the index to the administrative record of the SEPA determination under appeal. The Petitioner may file proposed supplementation of the record within seven days after the Port's index has been filed. The Examiner shall expeditiously rule on any objections relevant to the record.

3. Final Witness and Exhibit Lists.

3.1 Within five weeks after the Prehearing Conference, the Petitioner shall file its final witness and exhibit list. The witness list must include a summary of each witness' testimony.

3.2 Within seven weeks after the Prehearing Conference, the Respondent shall file its final witness and exhibit list. The witness list must include a summary of each witness' testimony.

4. Hearing Memorandum/Expert Testimony.

4.1 Within eight weeks after the Prehearing Conference, the Petitioner shall file its hearing memorandum. The Petitioner shall also file at the same time any direct expert testimony in writing, along with copies of any exhibits introduced through or relied upon by the expert witnesses.

4.2 Within 10 weeks after the Prehearing Conference, the Respondent shall file its hearing memorandum. The Respondent shall also file at the same time any direct expert testimony in writing, along with copies of any exhibits introduced through or relied upon by the expert witnesses.

5. Production of Exhibits. Ten weeks after the Prehearing Conference, the parties shall file with the Examiner and exchange a complete set of the exhibits they intend to use at the hearing. Absent a showing of good cause, no further exhibits shall be permitted at the hearing.

6. Prehearing Evidentiary Motion. These motions must be filed seven business days before the hearing date. Reply memoranda to any motions may be submitted, but they must be filed four business days before the hearing date. The Examiner will issue a decision on any prehearing evidentiary motions one day before the hearing date.

7. Appeal Hearing. The appeal hearing shall be conducted 12 weeks after the Prehearing Conference. The hearing shall consist of the following:

7.1 Opening Statements.

7.2 Petitioner's Case. The Petitioner's case at the hearing shall be limited to the presentation of lay testimony, the Respondent's cross-examination of any expert testimony offered in writing by the Petitioner before the hearing, and the Petitioner's redirect of any such expert witness.

7.3 Respondent's Case. The Respondent's case at the hearing shall be limited to lay testimony, the Petitioner's cross-examination of any expert testimony offered in writing by the Respondent before the hearing, and the Respondent's redirect of any such expert witness.

8. Closing Argument. The Examiner shall determine whether closing argument will be delivered orally or in writing. The parties will have the option of submitting proposed findings and conclusions along with their closing argument.