

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 **Tig** 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. 3028.

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 1209**, 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 I**, 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 my 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.

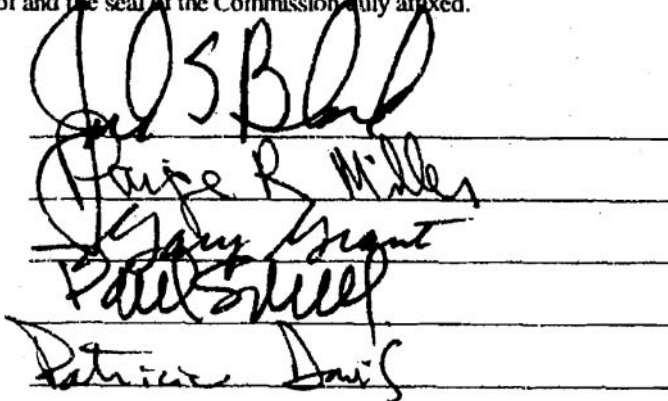
1. **Decisions** of the Examiner under this Section 21 may be appealed to the **King** County Superior Court by **application** for writ of review by an appellant within 21 days of **the** date the decision is issued.
2. Port SEPA decisions not subject to **administrative appeal** under this Section 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 8th 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.



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 my 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 Respondent'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.