

Port of Kingston
Kitsap County, WA

RESOLUTION NO. 2023-03-22-02

A Resolution of the Commission of the Port of Kingston

A RESOLUTION ADOPTING PORT POLICIES, PROCEDURES & IMPLEMENTING RULES IN COMPLIANCE WITH THE PROVISIONS AND REQUIREMENTS OF THE STATE ENVIRONMENTAL POLICY ACT, RCW 43.21C.

A RESOLUTION of the Port Commission of the Port of Kingston, Kitsap County, Washington, adopting the Port's policies and procedures under the State Environmental Policy Act and implementing rules, Chapter 43.21C RCW and Chapter 197-11WAC.

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 updated 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 previously adopted resolutions 07-01-16 and 9-4-84, and desires to change the appeal process language,

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

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Port Commission of the Port of Kingston, Kitsap County, Washington, that the Port SEPA Environmental Administrative Rules and Procedures, as shown in the attached "11Appendix A" shall be adopted and incorporated herein by this reference, and Resolutions 07-01-16 and 9-4-84 are hereby repealed

ADOPTED this 22nd day of February 2023, by the Commission of the Port of Kingston 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 OF KINGSTON

KITSAP COUNTY, WASHINGTON

DocuSigned by:
Mary McClure
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Mary McClure, Commissioner

DocuSigned by:
Laura Gronnvoll
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Laura Gronnvoll, Commissioner

DocuSigned by:
Steve Heacock
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Steve Heacock, Commissioner

Attest: DocuSigned by:
Greg Englin
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Greg Englin, Executive Director

APPENDIX A

The Port SEPA Environmental Administrative Rules and Procedures set forth on pages 1-8 of this Appendix "A" have been adopted by Resolution 07-07-16. Any changes or deletions will require an amendment to the Resolution.

Sections:

1. Adoption of SEPA rules
2. Authority
3. Purpose, applicability, and intent
4. Environmental policy
5. Additional definitions
6. Timing of the SEPA process
7. Public Notice
8. Comments
9. Appeals
10. Flexible thresholds for categorical exemptions
11. Emergencies
12. Responsibility of the Port's SEPA public information center (SEPA PIC)
13. Critical areas
14. Lead-agency- responsibilities
15. Severability
16. Repealer
17. Effective date

Section 1. Adoption of SEPA rules

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

Section 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 regulations, Chapter 197-11, entitled "SEPA Rules."

Section 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 Kingston departments/divisions, committees, and to the Port Commission.

3.3 The intent of this Resolution is to govern compliance by all Port departments/ divisions, committees, and the Port Commission with the procedural and substantive requirements of Chapter 43.21C RCW, the State Environmental Policy Act of 1971.

3.4 This Resolution is not intended to govern compliance by the Port with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations, in which the Port is required by Federal law or regulations to perform some element of compliance with NEPA, such compliance will be governed by the applicable Federal statute and regulations and not by this Resolution.

Section 4. Environmental policies adopted

The environmental policies of the Port of Kingston are the policies set forth in the following documents and statutes: the Port's Master Plan, as it is now identified and as it may be re-named and/or amended in the future, including all of its elements; the Port's Rules, Regulations and Procedures as they are now identified and as they may be renamed and/or amended in the future; and Chapter 43.21C RCW.

Section 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 his/her designee. The Responsible Official's duties may be delegated to appropriate staff persons, but the Responsible Official shall approve and is responsible for the Determination of Environmental Significance (i.e., "threshold determination") and determining the adequacy of an Environmental Impact Statement.

5.4 "SEPA Public Information Center" means the Port's Public Records Officer.

Section 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 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 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 meaningful 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 of an environmental document. The Responsible Official 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 commits to a particular course of action (WAC 197-11-070)

Section 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 must use reasonable methods to inform the public and the 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 Kingston's SEPA mailing list. The electronic or regular mailed notice shall include a copy of the determination and a copy of the SEPA checklist. The Port shall post all technical appendixes to the SEPA Check list on the Port's website. All forms of notice described herein shall also inform recipients where the agency SEPA records are located and available.

7.2.2 If an administrative appeal is filed pursuant to Section 9 of this Resolution, notification of Commission 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 Port's Public Records Officer 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 Kingston's SEPA mailing list. Parties who comment

on a specific project's environmental determination shall receive notice of the draft and final EIS.

Section 8. Comments

The Port's Responsible Official will respond in writing to all written comments received on a specific SEPA environmental review or determination within ten (10) calendar days after the close of the comment period. 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. 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. The Port shall ensure that its Response to Comments Addendum is publicly available, by posting the Addendum on the Port's website, and by mailing a copy to each person who submitted written comments to the Port for that specific SEPA determination. The Port's issuance of the Response to Comments Addendum will not re-start the administrative comment or appeal period(s) pursuant to WAC 197-11- 706.

Section 9. Appeals

9.1 There shall be no administrative appeals of Port SEPA determinations (including appeals of any conditions or denial by Port staff under RCW 43.21C.060)

9.2 Informal Reconsideration - Any person may formally request the Responsible Official to reconsider a SEPA determination orally or in writing. The Responsible Official shall reconsider the determination and provide a written response. However, this is not to be considered a formal appeal within the meaning of RCW 43.21C.075 and WAC 197-11- 680, the Responsible Official is not required to make a record or furnish reasons for the decision.

9.3 No Exhaustion of Remedies - Because there are no administrative appeals, a person is not required to request informal reconsideration prior to filing a lawsuit under the SEPA.

9.4 Judicial Review – When the Land Use Petition Act, Chapter 36.70C RCW. (LUPA) applies to a Port proposal, all judicial appeals must be brought under the applicable LUPA statute of limitations. If LUPA does not apply, the Port may commence the SEPA statute of limitations for its proposals by filing a Notice of Action under RCW 43.21C.080. The Port may decide in a particular situation to use any other procedure allowed by RCW 43.21C.075 and WAC 197-11-680.

Section 10. Flexible Thresholds for categorical exemptions

The Port of Kingston adopts the respective exempt levels for minor new construction as allowed under WAC 197-11-800(1)(c), as established by the Kitsap County and wherein the Port activity is located as they now exist and or as amended hereafter except when undertaken wholly or partly on lands covered by water or in critical areas.

Section 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 shall determine on a case-by-case basis emergency actions, which satisfy the general requirements of this section.

Section 12. Responsibility of the Port's SEPA Public Information Center (SEPA PIC)

12.1 The SEPA PIC shall maintain a DNS register.

12.2 The SEPA PIC shall maintain an EIS register including for each proposal the location, a brief description of the nature of the proposal, the date first listed on the register, and a contact person or the office from which further information may be obtained.

12.3 The documents are required to be maintained at the information center for seven 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 42.17 RCW (Public Disclosure and Public Records Law) and for the cost of mailing, consistent with adopted Port fees for such service. It shall be the responsibility of the Responsible Official for responding to requests received from the other local, regional, State, or Federal agencies requesting consultation and comment from a specific Port department/division.

12.4 The SEPA Public Information Center shall maintain a listing of recommended Federal, State, regional, local, and private agencies/organizations and their addresses for use by the Port's Responsible Official in making scoping requests and circulating draft EIS's.

Section 13. Critical areas

The Port adopts the respective designation of areas which are environmentally sensitive pursuant to WAC 197-11-908 as established by Kitsap County within which the Port activity is located, as those designations now exist and/or as amended hereafter.

Section 14. Lead agency Responsibilities

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 the Responsible Official of the Port 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 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.

Section 15. 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.

Section 16. 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.

Section 17. Effective Date

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