

COVER MEMO

Briefing Date: October 13, 2026
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Subject: SEPA Policy Updates
Purpose: ☒ Information Only ☐ Decision Needed

Type of Agenda Item:

- Advisory

Background:

Changes to the SEPA Policy

The Port Commission last adopted a policy regarding how the Port will implement its obligations under the State Environmental Policy Act (SEPA) in 2015 (Resolution 2015-12). That Resolution has provisions that are not required under SEPA, like a self-imposed 10-day deadline to respond to comments and an administrative appeal process for anyone who wants to challenge a Port SEPA determination. These provisions have had unintended consequences that lengthen decision-making processes and cost all parties additional time and money.

In addition, when the SEPA Resolution was drafted, the Port explicitly incorporated the Department of Ecology's then-current (2011) guidance on climate change and greenhouse gas emissions into the SEPA Resolution in an appendix. That guidance has since become outdated. Meanwhile, climate remains an element of the environment that the state SEPA Rules require every SEPA review to consider, making the appendix unnecessary.

Given the above, Port staff and legal counsel went through the 2015 Resolution to identify areas where updates needed to be made. The revisions are intended to align the Port's SEPA practices with the SEPA statute and implementing rules, reduce legal risks, and bring our SEPA Policy into alignment with other Washington ports.

The update changes how the Port administers its SEPA procedures, not what environmental review is required. The Port continues to adopt the state SEPA Rules (WAC 197-11-010 through 197-11-990) in full, and every threshold determination, EIS, and climate-review requirement in state law continues to apply.

Proposed Changes:

- **Eliminate Administrative Appeals.** An administrative appeal is an extra layer of litigation before a SEPA appeal can be heard by Thurston County Superior Court. It

can add time and cost to an appeal process, but does not change the level of scrutiny—both a hearing examiner and a court must give the Responsible Official's decision the same "substantial weight". In addition, under the 2015 Resolution, a person can appeal a Port SEPA determination to a hearings examiner before the Port has made its actual decision on the project or plan. A court, however, can only review a SEPA determination together with the underlying Port decision. *See* RCW 43.21C.075. As a result, a hearings examiner decision can sit in limbo with no path to court until the Port acts. Eliminating the administrative appeal means any challenge is heard once, by the Superior Court, together with the Port's decision.

The Port reviewed five other ports' SEPA policies that were attainable through an online search. Five of the six (Kingston, Port Angeles, Tacoma, Longview, and Everett) do not allow administrative appeals; only Seattle has an administrative appeal/hearing examiner process. The governing rule (WAC 197-11-680(2)) allows for the elimination of administrative appeals by resolution, and staff recommends the Commission approve the removal of the administrative appeals process from the Port's SEPA Resolution.

- **Routes Appeals Directly to Court.** Without an administrative appeal process, appeals of SEPA determinations are routed for judicial review in Superior Court. Accordingly, the new policy directs appeals to Thurston County Superior Court (when that court has jurisdiction) and, where no other statute sets a challenge deadline, directs the Responsible Official to consider publishing a Notice of Action under RCW 43.21C.080 to establish a clear 21-day judicial challenge period. Challengers no longer pay a Port appeal fee (\$750) or need to complete a Port appeal process before going to court.
- **Adds an Informal Reconsideration Option.** This is not required by law and is not a formal appeal, but it gives anyone the chance to ask the Port, during the comment period, to correct errors or revisit a determination. It does not extend any appeal deadline. It reduces the risk that a minor oversight escalates to a formal appeal and litigation.
- **Keeps the 14-Day Public Comment Period Required Under the SEPA Rules.** The comment period on certain DNS/MDNS determinations remains 14 calendar days. *See* WAC 197-11-340(2); WAC 197-11-502(3)(b). The separate 21-day period in the 2015 Resolution was the deadline to file an administrative appeal after the comment period closed; that window is eliminated along with the administrative appeal.

- **Rebuilds the Public-Notice Section Around Determination Type.** The SEPA Rules require specific notifications for issuance of a Determination of Non-Significance (DNS) or a Mitigated Determination of Non-Significance (MDNS). See WAC 197-11-340(2)(b). The SEPA rules have separate requirements for distribution of a Determination of Significance (DS) and an Environmental Impact Statement (EIS). See WAC 197-11-360(3) and WAC 197-11-455/460. In the proposed revisions to the SEPA Policy, we have aligned the public notice requirements to these rules, in Sections 7.1 through 7.4. The revisions also provide a clear guide for staff to follow for each kind of SEPA determination, which reduces the risk of staff-level procedural errors.
- **Provides Flexibility to Tailor Legally Required Notice Methods.** WAC 197-11-510(1) requires agencies to use “reasonable methods” to inform the public of SEPA determinations and provides a list of examples of acceptable methods (newspaper, posting, email, etc.). The ports of Longview, Everett, and Tacoma give the Responsible Official discretion to select the notice method(s) that fit the circumstances. The proposed revisions to the SEPA Policy also provide this kind of discretion to better tailor notice requirements to a particular type of decision.
- **Relaxes the Response-to-Comments Obligation.** State rules only require that SEPA lead agencies (like the Port) “consider and may respond to comments as the agency deems appropriate.” See WAC 197-11-550(8). The 2015 SEPA Resolution had a self-imposed 10-day hard deadline that required the Port to respond to comments and required posting responses to the Port website. A missed deadline or failed posting raised unnecessary litigation risks. The suggested revisions preserve the Port’s discretion to respond to comments while removing the self-imposed deadline.
- **Adds a Full Categorical-Exemptions Section.** The revisions propose a new Section 10 that adopts by reference all exemptions provided in the governing rules in WAC 197-11-800. It also lists specific Port activities that are exempt from SEPA, including:
 - Budget adoption (WAC 197-11-800(14)(c))
 - Planning/research (WAC 197-11-800(17)),
 - Tariffs (WAC 197-11-800(14)(i)),
 - Qualifying leases (subject to WAC 197-11-305 and 197-11-070),
 - Borrowing/bond financing (WAC 197-11-800(14)(d)),
 - Preliminary planning documents that contain no standards controlling use of the environment (not nonproject actions under WAC 197-11-774), and
 - Administrative/fiscal/personnel actions (WAC 197-11-800(14)(a), (g), and (h)).

Listing these reduces case-by-case determinations, provides clear staff guidance, and documents why routine Port actions do not trigger threshold determinations. The list does not expand what is exempt; categorical exemptions are set by the state, and state limits (such as for critical areas) still apply.

- **Simplifies Service on the Port and Removes the Climate Appendix.** The dedicated sepa@portolympia.com inbox was not actively monitored, and the hard-coded street address is subject to change. If service were directed to an unmonitored inbox, the Port could miss a filing—creating legal exposure. Directing service to the Responsible Official at the email identified on the applicable determination ensures filings reach the right person. The standalone climate appendix is also removed because climate is already a required element of the environment under WAC 197-11-444(1)(b)(iii), which is adopted by reference in Section 1 of the Resolution.

Summary and Financial Impact:

The proposed revisions reduce litigation risks for the Port by clarifying and simplifying aspects of the Port's SEPA process. The revisions should not have a negative financial impact, and they may save money over the long term by reducing litigation risks.

Alignment with Vision 2050:

This aligns with the Vision 2050 goal to improve the Port's ability to make decisions, resolve issues and achieve its objective and mission.

Environmental Considerations and Review:

Environmental staff have been involved in the revisions to the SEPA Policy throughout. The goal is to ensure that when it is acting as SEPA lead agency, the Port is conducting the necessary thorough evaluation of environmental impacts in a well-defined and clear process.

Staff Recommendation:

Staff recommend the Commission approve the revisions to the SEPA Resolution when it comes before them for decision on October 26th. Consistent with WAC 197-11-904(3), the Port has provided public notice and an opportunity for public comment on the update. If adopted, the new Resolution will apply only to SEPA determinations issued after adoption.

Document(s) Attached:

- Redline of Resolution 2015-12 with the proposed revisions
- Clean version of Resolution 2015-12 with proposed revisions "accepted."

