

AGENDA

***Port of Kennewick
Regular Commission Business Meeting
Port of Kennewick Commission Chambers
350 Clover Island Drive, Suite 200, Kennewick, Washington***

Tuesday, September 25, 2012
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IV. CONSENT AGENDA**
 - A. Approval of Direct Deposit and Warrants Dated September 14, 2012
 - B. Approval of Warrant Registers Dated September 26, 2012
 - C. Approval of Letter of Appreciation for Lechelt Road Property Clean Up Project
- V. PRESENTATIONS**
 - West Richland Update, Jason Robertson
- VI. NEW BUSINESS**
 - A. State Environmental Policy Act (SEPA) Lead Agency; Resolution 2012-44
 - B. Clover Island Inn Lease
 - C. Strategic Construction Management; Resolution 2012-45
- VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Media Interview Requests
 - B. Cancel November 27, 2012 Commission Meeting
 - C. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - D. Non-Scheduled Items
- VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IX. EXECUTIVE SESSION, if necessary** *(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*
 - A. Real Estate (selection of site/acquisition), per RCW 42.30.110(1)(b)
- X. ADJOURNMENT**

PLEASE SILENCE CELL PHONES

PORT OF KENNEWICK
RESOLUTION 2012-44

**A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS
REVISING AND ADOPTING THE PORT'S POLICIES AND PROCEDURES UNDER
THE STATE ENVIRONMENTAL POLICY ACT (SEPA), AND REPEALING ANY
PRIOR RESOLUTION PERTAINING TO THE SAME SUBJECT MATTER**

WHEREAS, the State Environmental Policy Act, Chapter 43.21C RCW and its implementing rules, Chapter 197-11 WAC (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 and its implementing rules require the Port to formally designate policies that may be used as a basis for conditioning or denying an action using SEPA's substantive authority per RCW 43.21C.060 and WAC 197-11-902; and

WHEREAS, the SEPA rules require agencies to consider a proposal's environmental impact when rendering a threshold determination as to whether an environmental impact statement is required; and

WHEREAS, when acting as a SEPA Lead Agency, the Port is in a unique position to consider and mitigate impacts when considering project and non-project actions undergoing Port review; and

WHEREAS, the Port Commission from time to time finds it necessary to amend and revise such policies and procedures due to changes in law and/or operations of the Port and in order to improve the effectiveness of such policies and procedures; and

WHEREAS, under WAC 197-11-800(19), 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 that the Board of Commissioners of the Port of Kennewick adopts "Exhibit A" and "Attachment 1" to this resolution as its SEPA policies and procedures.

BE IT FURTHER RESOLVED, any resolution or enactment of the Port that is in conflict or inconsistent with this Resolution is repealed.

RESOLUTION 2012-44

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ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of September 2012.

***PORT OF KENNEWICK
BOARD OF COMMISSIONERS***

By: _____
SKIP NOVAKOVICH, *President*

By: _____
DON BARNES, *Vice President*

By: _____
GENE WAGNER, *Secretary*

**EXHIBIT A
SEPA ENVIRONMENTAL POLICIES**

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**PART ONE
AUTHORITY AND PURPOSE**

Section 1. Authority and Purpose

Section 1.1 Authority

This resolution is adopted under Chapter 197-11 Washington Administrative Code (WAC) to implement the State Environmental Policy Act and the State Environmental Policy Act Rules (Chapter 197-11 WAC). This resolution may be cited as the “SEPA Rules”, and “these rules” as used herein refers to this resolution. As required in RCW 43.21C.095, the SEPA Rules shall be given substantial deference in the interpretation of SEPA.

Section 1.2 Purpose

The purpose of this resolution is to adopt the uniform requirements of Chapter 197-11 WAC for compliance with SEPA, with some modifications and additions relevant to Port operations. Many sections of Chapter 197-11 WAC are adopted verbatim or nearly so. Each provision adopted by reference in this resolution is found in the statewide rules, Chapter 197-11 WAC, and should therefore be used in conjunction with this resolution. Additionally, this resolution provides guidance to Port staff when the Port is acting as a project proponent and to the Port responsible official when evaluating proposals under the State Environmental Policy Act, Chapter 43.21C RCW.

Section 1.3 Relationship to SEPA and Rules

The provisions of this resolution, Chapter 197-11 WAC and the SEPA must be read together as a whole in order to comply with the spirit and letter of the law. The Port adopts by reference the purposes and policies of SEPA as set forth in RCW 43.21C.010 and 43.21C.020.

Section 2. Application of SEPA

Section 2.1 Application to Port Activities

SEPA provides the framework for agencies like the Port to consider the environmental consequences of a proposal before taking action. SEPA review is required for any proposal that involves a governmental “action” as defined in the SEPA Rules (WAC 197-11-704), and is not categorically exempt (WAC 197-11-800 through 890, or otherwise exempt under Chapter 43.21C RCW). Project actions involve an agency decision on a specific project, such as a construction project. Nonproject actions involve decisions on policies, plans, or programs such as the adoption of a comprehensive plan.

Section 2.2 Substantive SEPA Authority

SEPA grants agencies the ability to condition or deny a proposal due to likely significant adverse impacts identified in a SEPA document. To use SEPA substantive authority, the Port must have adopted SEPA policies. There are other federal, state and local environmental laws besides SEPA, which apply to specific resources, such as land, air, water, historic areas, wildlife, and health. These other laws may require studies or serve as the basis for mitigating or denying a proposal.

Section 2.3 Timing of SEPA Review

SEPA supplements the Port's regular planning and decision-making. The exact nature and timing of the SEPA process can vary for each type of governmental action and or each individual proposal.

Section 3. Policy for Carrying out SEPA

Section 3.1 Adoption by Reference

The state rule containing policies and goals for implementing SEPA as intended by the legislature, WAC 197-11-030, is adopted by reference.

**PART TWO
GENERAL REQUIREMENTS**

Section 4. General Requirements

Section 4.1 Adoption by Reference

This part covers the basic requirements that apply to the Port's SEPA process. The state rules in WAC 197-11-040 through 100 are adopted by reference. These rules cover the following areas:

1. Where to find the meaning of words and terminology used in this resolution and the SEPA process (definitions, WAC 197-11-040 and Part 8, Definitions, WAC 197-11-700 through 799);
2. Who is responsible for SEPA compliance (lead agency, WAC 197-11-050);
3. When the SEPA process occurs (timing, WAC 197-11-055);
4. What impacts are to be analyzed in the review process (content of environmental review, WAC 197-11-060);
5. What can or cannot be done while the environmental review is occurring (limitations on actions during the SEPA process, WAC 197-11-070);
6. What to do in the face of uncertainty or lack of information (incomplete or unavailable information, WAC 197-11-080);
7. What is considered part of the SEPA record (supporting documents, WAC 197-11-090); and
8. What information applicants can be required to provide (information required of applicants, WAC 197-11-100).

Section 5. SEPA Process at the Port

Section 5.1 Lead Agency

The agency in charge of carrying out SEPA's procedural requirements for a proposal is the lead agency. A lead agency is selected for each particular proposal. The Port will typically be the

lead agency for its proposals and public projects, including projects proposed by private parties or tenant on Port properties.

Section 5.2 Responsible Official

The person or office at the lead agency in charge of SEPA compliance is called the responsible official. The Port's responsible official is the:

Director of Planning and Development, 350 Clover Island Drive, Suite 200,
Kennewick WA 99336

The Chief Executive Officer is authorized to designate a different responsible official upon the unavailability of the above-named officer.

Section 5.3 Delegation

The responsible official may delegate his or her responsibilities under SEPA in writing to another Port official with the concurrence of the Chief Executive Officer.

Section 5.4 SEPA Public Information

The office that routinely handles SEPA matters at the Port is:

Planning and Development Department

Section 5.5 Retention of Documents and Copying Charges

SEPA documents required by these rules shall be retained by the lead agency and made available in accordance with Chapter 42.56 RCW. The Port shall make copies of any environmental document available in accordance with Chapter 42.56 RCW, charging only those costs allowed by Section 44-14-07001 of the Washington Administrative Code. However, no charge shall be levied for circulation of documents to other agencies as required by these rules.

Section 5.6 Other Agencies

When acting as the lead agency on a project, the Port may consult with other agencies as authorized by Chapter 197-11 WAC and Chapter 43.21C RCW. An agency that has authority to approve, veto, or finance all or part of a nonexempt proposal is referred to under SEPA as an "agency with jurisdiction." An agency with a special expertise on the environmental impacts involved in a proposal is called an "agency with environmental expertise." "Consulted agency" means any agency with jurisdiction or expertise that is requested by the lead agency to provide information during the SEPA process. The Port's Responsible Official shall be responsible for coordinating and preparing environmental documents with these other agencies (also see Section 13 below).

Section 5.7 Federal Coordination

When acting as the Lead Agency on a project with a federal nexus, the Port will work with federal agencies to the fullest extent possible to reduce duplication between the National Environmental Policy Act (NEPA) and state and local requirements. The responsible official shall make an effort to coordinate environmental review requirements with applicable Federal agencies, including combining documents and holding joint scoping, public meetings and

hearings, as directed and encouraged by this resolution and the Federal provision for eliminating duplication (40 CFR 1506.2).

Section 6. Timing of the SEPA Process

Section 6.1 Timing of Review

Consistent with WAC 197-11-055(2)(b), the responsible official will decide on a case-by-case basis the appropriate time for reviewing the environmental impacts of Port proposals.

Section 6.2 Compliance

SEPA compliance is required for all Port projects and activities that meet the definition of “action” in WAC 197-11-704. Except for those actions that are categorically exempt under Part Nine of these SEPA Rules and WAC 197-11-305, a “final threshold determination” or “final environmental impact statement”, if required, shall be completed prior to final Port approval of actions subject to SEPA.

Section 6.3 Advisory Bodies

To the extent the Port establishes a citizen or other advisory committee on specific proposals or sites, the responsible official shall inform that committee of the availability of environmental checklists or Environmental Impact Statements (EISs) on any proposals which that committee is known to be reviewing and shall provide copies upon request. To the extent the Port establishes any advisory body similar to a planning commission (i.e., an advisory body which is required by Commission resolution or other law to review and make recommendations on a proposal prior to Commission action), the responsible official shall provide that committee with any required final threshold determination or final environmental impact statement prior to that committee’s final recommendation to the Commission on whether to approve the proposal.

Section 6.4 Applicant Early Review

If the Port’s only action on a proposal is a decision on a permit, lease or license that requires detailed project plans and specifications, the applicant may request in writing that the Port conduct environmental review prior to the submission of detailed plans and specifications. The Port shall initiate review of the proposal at the conceptual stage, if requested. The Port may require additional environmental review on detailed plans and specifications at a later date.

Section 6.5 Preferred Alternatives

The Commission, its committees, or staff may identify a preferred alternative at any time in the SEPA process – scoping, draft EIS, or final EIS. The identification of a preferred alternative shall not be construed as an improper commitment to, or as a final decision on, a particular proposal or course of action.

Section 6.6 Industrial Revenue Financing

In as much as the borrowing of funds, issuance of bonds, and related financing agreements and approvals are categorically exempt under WAC 197-11-800(14)(d), the adoption of a bond resolution by a public corporation providing for the issuance of revenue bonds under state law and subsequent Commission approval of such resolution may occur prior to environmental review of a project. Environmental review under SEPA, if required, must be completed prior to final project approval by the Port and/or other state or local agencies with jurisdiction.

Section 7. Document Information

Section 7.1 Supporting Documents

If the Port prepares or cites background or supporting analyses, studies, or technical reports, such material shall be considered part of the Port's record of compliance with SEPA, as long as the preparation and circulation of such material complies with the requirements in these rules for incorporation by reference and the use of supporting documents.

**PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS**

Section 8. Adoption by Reference

This part contains the rules for: (a) administering categorical exemptions for proposals that would not have "probable significant adverse impacts"; (b) deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared (threshold determination); and (c) providing a way to review and mitigate nonexempt proposals through the threshold determination process. The state SEPA rules in WAC 197-11-300 through 390 are hereby adopted by reference. They include:

1. Not requiring review for proposals that are categorically exempt, as defined in Section 9;
2. The requirement to make a threshold determination for any "action" that is not categorically exempt (WAC 137-11-310);
3. Use of an environmental checklist to assist in making threshold determinations for project and non-project proposals (WAC 197-11-315);
4. The process and criteria for making a threshold determination (WAC 197-11-330);
5. How to address a proposal that lacks sufficient information to make a threshold determination (WAC 197-11-335);
6. Issuing a "determination of non-significance" (DNS) (WAC 197-11-340);
7. Including mitigation measures in a DNS (WAC 197-11-350);
8. Determining that an EIS is required and issuing a determination of significance (DS)/scoping notice (WAC 197-11-360); and
9. The effect of a threshold determination (WAC 197-11-390).

Section 9. Categorical Exemptions

In deciding whether a proposed action is categorically exempt, the SEPA rules identify certain circumstances when potentially exempt actions would not be exempt. See WAC 197-11-305. In determining whether a proposal is exempt, the Port shall make certain the proposal is properly defined (WAC 197-11-060), and apply categorical exemptions as provided by law, including such SEPA Rules as are promulgated consistent with Chapter 1, Laws of 2012.

Section 9.1 City Thresholds

For minor new construction, the SEPA procedures of the City of Kennewick (or Benton County in unincorporated areas) should be reviewed to determine the exempt levels that apply to the proposal (see WAC 191-11-800(1)). Local SEPA procedures should also be reviewed to determine if the proposal is located in an area that has been designated as a “critical area” under WAC 197-11-908, as this may impact whether the proposal is exempt.

Section 9.2 Proposals with Exempt and Nonexempt Parts

If a proposal includes exempt and nonexempt actions, the proposal is not exempt and requires environmental review; however, the exempt aspects of the proposal may nonetheless proceed, before or during the environmental review of the proposal, if the requirements of WAC 197-11-070 are met (WAC 197-11-305(l)(b)). A common example would be the acquisition of a property right or approval of bond financing, which would not have an adverse environmental impact or limit the choice of reasonable alternatives (it might even preserve or increase the availability of alternatives).

Section 9.3 Categorically Exempt Projects

The Port is not required to document that a proposal is categorically exempt. The Port may note on an application that a proposal is categorically exempt or place such a determination in Port files.

Section 10. Mitigated DNS

Mitigation measures may be included in, or added to, a proposal prior to making the threshold determination so that environmental impacts are reduced or eliminated (WAC 197-11-350). Changes or clarifications to a proposal do not require a new environmental checklist if the clarifications or changes are stated in writing in documents that are attachments to, or incorporate by reference, the documents previously submitted. Instead, an addendum may be used (WAC 197-11-350(4)). A DNS containing mitigation measures may simply be labeled a “DNS” (as in the form in WAC 197-11-970), and is not required to be formally titled or referred to as a “Mitigated DNS.”

Mitigation measures that are included in a decision must be documented (see Section 19 below). Although public notice is not required by state law when the Port clarifies or changes features of its own proposals in a mitigated DNS (WAC 197-11-350(5)), public and agency notice and a 14-day waiting period are required for mitigated DNSs on proposals by applicants (WAC 197-11-340(2)(a)(iv) and Section 15 below). If the Commission changes the proposal or mitigation measures, the description of the proposal or mitigation measures stated in the decision document (Section 19) shall supersede those in the mitigated DNS.

PART FOUR
PART FOUR ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 11. Purpose/Adoption by Reference

This part contains the rules for preparing environmental impact statements. The state rules in WAC 197-11-400 to 460 are hereby adopted by reference. They include:

1. The purpose of an EIS (WAC 197-11-400);
2. The requirements that apply to the preparation of EISs (WAC 177-11-402);
3. Three types of EISs: draft, final, and supplemental (WAC 197-11-405);
4. When EISs must be prepared (WAC 197-11-406);
5. How to decide the scope of an EIS (WAC 197-11-408);
6. Optional expanded scoping (WAC 197-11-410);
7. Who can prepare EISs (WAC 197-11-420);
8. Style and size of EISs, including page limits (WAC 197-11-425);
9. Format of EISs, including flexibility for different types of proposals (WAC 197-11-430);
10. EIS cover letter and memo (WAC 197-11-435);
11. Required contents of a EIS (WAC 197-11-440);
12. The content of EISs on nonproject proposals (WAC 197-11-442);
13. Rules on the content of EISs on proposed projects when there has already been a nonproject EIS (WAC 197-11-443);
14. The various elements of the environment, consisting of the natural and built environment (WAC 197-11-444);
15. The relationship of EISs to other considerations such as economic, social, or technical factors (WAC 197-11-448);
16. The discretionary use of a quantified cost-benefit analyses in a EIS (WAC 197-11-450);
17. The procedures for issuing a draft EIS (WAC 197-11-455); and
18. The procedures for issuing a final EIS (WAC 197-11-460).

Section 11.1 Scoping

The responsible official shall decide the scoping method and deadline for a given proposal, consistent with WAC 197-11-408. Special attention should be given to writing scoping notices in plain English and avoiding technical jargon. Scoping techniques can vary by proposal. Any scoping beyond the minimum in WAC 197-11-408 (including formal or informal meetings and the use of forms, notices, or documents other than the form in WAC 197-11-980) shall be considered expanded scoping and is not required for adequate scoping under state law. If a consultant is preparing an EIS, the consultant's contact should make provision for possible changes in the scope of the EIS based upon the scoping process.

Section 11.2 Additional Scoping

The expanded scoping provisions in WAC 197-11-410 may be used without formally designating the process as "expanded scoping." In keeping with the intent of the state rules, the responsible official is encouraged to be innovative and shall have very broad discretion in developing creative scoping methods. A scoping process may also be used before a threshold determination (or at any other time in the SEPA process) to assist in identifying impacts and alternatives, including mitigation measures. If so, the form of the scoping notice shall be revised accordingly, so that agencies and members of the public understand the purpose and process being used.

Section 11.3 EIS Preparer

An EIS may be prepared by Port staff, consultants on contract to the Port, or other private entities under the direction of the responsible official. If an applicant's consultant is preparing the EIS, the applicant shall consult with the responsible official prior to final selection of consultants. The responsible official shall have the discretion to design the EIS process and carry out the responsibilities set forth in WAC 197-11-420.

Section 11.4 Non-Environmental Information

The responsible official may include non-environmental information on any subject relevant to a decision in an EIS. The information may be in the EIS or in other documents and shall not be used in determining whether an EIS meets the requirements of SEPA (WAC 147-11-440(8)).

Section 11.5 Mitigation Commitments

The Port is not required to commit to mitigation measures in an EIS itself. Mitigation measures that are identified and expressly committed to by the final decision-maker at the Port (see Section 19 below) shall be incorporated into design plans and, where applicable, project development.

PART FIVE COMMENTING

Section 12. Purpose/Adoption by Reference

This part explains how to comment and respond on all environmental documents under SEPA, including rules for public notice and hearings. The Port may receive comments on its own

proposals and may comment on other agencies' proposals or environmental documents. The state rules in WAC 197-11-500 to 570 are hereby adopted by reference. They include:

1. The purpose of the commenting provisions and list of notice and time requirements (WAC 197-11-500 and 502);
2. Making environmental documents available (WAC 197-11-504);
3. Filing environmental documents with the State SEPA register (WAC 197-11-508);
4. Providing public notice (WAC 197-11-510);
5. Public hearings and meetings procedures (WAC 197-11-535);
6. The effect on agencies and the public of not commenting on environmental documents (WAC 197-11-545);
7. Specific commenting requirements (WAC 197-11-550);
8. Response to comments in FEISs (WAC 197-11-560); and
9. Prohibiting consulted agencies from charging lead agencies for assistance under SEPA (WAC 197-11-570).

Section 13. Port SEPA Comments to Other Agencies

The Port's [office] shall be responsible for coordinating and preparing Port comments to other agencies on the environmental documents of other agencies. Environmental Programs shall also be responsible for coordinating consultation requests under SEPA from other agencies to the Port. The responsible official or designee shall sign written comments from the Port and may establish deadlines for responses from offices within the Port in order to meet commenting deadlines established by law or by other agencies in their requests.

Section 14. Costs for Port Environmental Documents

Normally, after the initial printing, the Port will charge for the copying of its environmental documents. Copying charges will be consistent with the requirements of Chapter 42.56 RCW and WAC 44-14-07001. The Port will not charge other agencies to which the Port is required by law to send the documents. The Port may make documents available without charge. The responsible official may establish internal policies or procedures or make determinations on an individual basis.

Section 15. Public Notice

In addition to the circulation requirements to other agencies and affected tribes, the Port will give public notice in the following manner:

Section 15.1 Required Notices

For threshold determinations that require notice under Chapter 197-11 WAC, scoping notices, EISs, and public hearings on a draft EIS the Port shall:

1. Publish notice in a newspaper of general circulation in the county, city, 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 who has specifically requested in writing to be notified about the particular proposal;
3. File the documents required by WAC 197-11-508 with the state Department of Ecology for publication of notice in the SEPA Register;
4. (For EIS and Public Hearings on a DEIS only) issue a press release announcing the EIS or the Public Hearing;
5. (For EISs and Public Hearings on a DEIS only) create or maintain a mailing list based on responses during the scoping process and send notice to those on the list. This list may be combined with any list kept by the Port pursuant to Section 15.1.2 above.
6. Publish notice on the Port's website.

Section 15.2 Additional Optional Notice

For proposals of sufficient size and complexity or that have community sensitivity, in addition to notification required under Chapter 197-11 WAC, the Port may:

1. Publish notice in Port newsletters, if any;
2. Notify the news media orally or by press release, including neighborhood newspapers or trade journals;
3. Post the property, for site specific proposals;
4. Increase the length of public comment;
5. Request that a notice be posted on the main bulletin board, if any, at the city or county council or planning department where the proposal is located;
6. Create or maintain a mailing list for a particular proposal or type of proposal, which may include the identification of citizen and public interest organizations, and send notice to those on the mailing list; or
7. Use other reasonable methods appropriate to a particular proposal.

Section 15.3 Notices of Adoption and Addenda

Notices of adoption and addenda shall be circulated as required by WAC 197-11-625 and 630, respectively. The date of issue is the date the document has been made publicly available and sent to the required recipients. A decision document (Section 19) shall be provided to anyone requesting it.

**PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS**

Section 16. Purpose/Adoption by Reference

This part contains rules for the Port's use of existing environmental documents for its SEPA compliance. The "existing" documents might be prepared by the Port or by local, state, or federal agencies under SEPA or NEPA (National Environmental Policy Act, 43 USC 4321 et seq.). The state rules in WAC 197-11-600 through 640 are hereby adopted by reference. These rules include:

1. When to use existing environmental documents (WAC 197-11-600);
2. Use of NEPA documents, including environmental assessments (WAC 197-11-610);
3. Procedures for Supplemental Environmental Impact Statements (SEISs) (WAC 197-11-620);
4. Procedures for addenda (WAC 157-11-625);
5. Procedures for adoption (WAC 197-11-630);
6. Procedures for incorporation by reference (WAC 197-11-635); and
7. How to combine SEPA and other documents (WAC 197-11-640).

Section 17. Adoption Hearing and Addenda

Section 17.1 Federal Adoption Hearing

If the Port has issued a notice to adopt a federal environmental document as a substitute for preparing a SEPA EIS, and a federal agency subsequently holds a hearing on the environmental document, the federal hearing may be combined with and, if so, shall suffice for any public hearing required under WAC 197-11-610.

Section 17.2 Addenda

If subsequent environmental detail or other environmental analysis is necessary or desirable and a SEIS is not required (it does not meet the two criteria in WAC 197-11-600(3)(b)), then an addendum may be used to conduct or document the analysis. An addendum may be used to add to any kind of environmental document, and may be used at any time in the SEPA process.

PART SEVEN SEPA AND AGENCY DECISIONS

Section 18. Purpose/Adoption by Reference

This part contains rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations. The state rules in WAC 197-11-650 to 680 are hereby adopted by reference. They include:

1. Purpose and implementation of decision-making under SEPA (WAC 197-11-650 and 655);
2. Substantive authority and mitigation (WAC 197-11-660); and
3. Appeals (WAC 197-11-680)

Section 19. Port Decision Document

After its decision on any proposal not exempt under SEPA, the Port shall make available to the public a document that states the decision. The document shall specify any mitigation or monitoring that will occur. The document may be a resolution, letter, or other document used by the Port to convey its decision. The document may incorporate by reference relevant portions of environmental documents. See WAC 197-11-660(l)(b).

Section 19.1 Substantive SEPA Policies

To the extent the Port conditions or denies proposals under SEPA, the document required by the preceding section shall cite the agency SEPA policy (from Section 20 below or from other policies, plans, rules, or resolutions formally designated by the Port) that is the basis for conditioning or denying the proposal.

Section 20. Port SEPA Policies

The Port adopts by reference the state environmental policy as set forth in SEPA, RCW 43.21C.020. Specifically, in order to carry out the policy set forth in SEPA, it is the Port's continuing responsibility to use all practicable means and measures, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the Port, the state, and its citizens may:

1. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, including from hazardous waste or other toxic substances, or other undesirable or unintended consequences;

4. Preserve important historic, cultural, and natural aspects of our national heritage;
5. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
6. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
7. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;
8. Manage public waterways and adjacent lands, fisheries, and other natural resources wisely; and
9. Mitigate probable adverse environmental impacts resulting from proposals, particularly significant impacts, to the extent of the Port's authority and guided by the policies stated above and in SEPA and the Port's other statutory responsibilities.

Section 21. Appeals

Port SEPA decisions may be appealed as provided in this section.

Section 21.1 SEPA Decisions Subject to Appeal

The following SEPA decisions of a Port responsible official are appealable under this section pursuant to RCW 43.21C.075(3)(a) and (b) and WAC 197-11-680(3): (a) adequacy of a final environmental impact statement (FEIS), and (b) issuance of a determination of nonsignificance (DNS) or mitigated determination of nonsignificance (MDNS). Other Port SEPA decisions and documents are not subject to administrative appeal.

Section 21.2 Timing of Appeals

1. Appeals may not be filed before the Port provides public notice of the issuance of an FEIS, DNS or MDNS.
2. Appeals must be filed by 5 p.m. of the 14th calendar day following the date the Port provides public notice of the issuance of an FEIS, DNS or MDNS. 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 21.3 Public Notice

1. When required pursuant to WAC 197-11-510, the Port shall provide public notice, in accordance with this subsection. The Port shall provide public notice of the issuance of an FEIS, DNS or MDNS. 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.

Section 21.4 Notice of Action

At its discretion, the Port may publish notice of action taken pursuant to this Resolution and pursuant to RCW 43.21C.080. The form of any such notice of action shall be substantially in the form provided by WAC 197-11-990.

Section 21.5 Filing Appeals

Appeals must:

1. Be in writing;
2. Contain a statement that identifies the FEIS or MDNS being challenged and the alleged errors in the FEIS or MDNS which make the document legally inadequate;
3. State the specific reasons why Petitioner believes the FEIS or MDNS to be legally inadequate;
4. State the harm suffered or anticipated to be suffered by Petitioner and the relief requested by Petitioner;
5. Include the signature, address, and phone number of Petitioner and the name and address of Petitioner's legal representative, if any;
6. Be accompanied by an appeal fee of \$300;
7. 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
8. Be delivered to the Port of Kennewick Director of Planning and Development, 350 Clover Island Drive, Suite 200, Kennewick WA 99336.
9. Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

Section 21.6 Hearing Notice

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

Section 21.7 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 these Rules.

Section 21.8 Appeal Procedures

1. Rules and procedures.

The Examiner shall follow the procedures set forth in this Section 21, including Attachment 1 to this resolution, unless the Examiner and parties agree to modify them in any particular case. Attachment 1 to this resolution contains the basic procedural framework that shall govern any appeals brought under this section. Port staff may prepare a more detailed set of rules and procedures, consistent with the basic procedures set forth herein and in Attachment 1.

2. Consolidation of appeals.

All procedural SEPA appeal challenges will be heard by the Examiner in a 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 the specific reasons for legal inadequacy stated in the appeal.

6. Examiner's decision.

The Examiner shall enter a decision within 14 days of the close of record of the Appeal Hearing. The Examiner shall enter written findings of fact and conclusions of law, and an Order determining whether the challenged FEIS or MDNS is legally adequate. The Examiner is not empowered to enter injunctive relief.

7. Notice of decision.

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

Section 21.9 Exhaustion of Administrative Appeal Procedures

A party seeking judicial review of a Port SEPA decision subject to appeal under this Section 21 must, before seeking any judicial review, exhaust the appeal procedure of this Section 21.

Section 21.10 Judicial Review

1. Decisions of the Examiner under this Section 21 shall be final and conclusive action unless within twenty-one (21) calendar days of the date the decision is issued an appellant appeals the decision to the Benton County Superior Court.

2. Port SEPA decisions not subject to administrative appeal under Section 21 may be appealed to the Benton County Superior Court by appellant within twenty-one (21) calendar days of the date the decision is issued.

PART EIGHT DEFINITIONS

Section 22. Definitions

This part contains uniform usage and definitions of terms under SEPA. The usage and definitions in WAC 197-11-700 to 799 are hereby adopted by reference. Additional definitions are below.

Section 22.1 Commission

“Commission” means the Port Commission of the Port of Kennewick, Benton County, Washington. The Port Commission is responsible for final Port decision-making except to the extent that certain decisions or types of decisions are lawfully delegated to Port staff.

Section 22.2 Days and Dates

Days are in calendar days. If a final date falls on a weekend or a state or national holiday, the date shall be the next working day.

Section 22.3 Decision Document

“Decision Document” means the publicly available document stating the Port’s decision (Section 19 and WAC 197-11-660(1)(b)).

Section 22.4 Port

“Port” means the Port of Kennewick, Benton County, Washington. Unless specified, Port may refer to the Port Commission or staff.

Section 22.5 Port Offices

“Port offices” means administrative subdivisions of the Port.

Section 22.6 Preferred Alternatives

“Preferred Alternative” means a preference for a particular alternative course of action, at the time the preference is expressed. A preferred alternative is not an action or decision within the meaning of WAC 197-11-070.

Section 22.7 Responsible Official

The “responsible official” is the staff member responsible for SEPA procedural compliance by the Port. The Port’s responsible official is identified in Section 5 of this resolution.

Section 22.8 Staff

“Staff”, “staff member”, or “Port staff” means the employees of the Port and not the Port Commissioners.

**PART NINE
CATEGORICAL EXEMPTION**

Section 23. Adoption by Reference

The categorical exemptions provisions in WAC 197-11-800, 880, and 890 are hereby adopted by reference and shall be applied in conjunction with Section 9 above and WAC 197-11-305. They include:

1. Categorical exemptions for all agencies (WAC 197-11-800);
2. Emergencies (WAC 197-11-890); and
3. Petitions to the Department of Ecology (WAC 137-11-890).

**PART TEN
AGENCY COMPLIANCE**

Section 24. Adoption by Reference

The provisions in WAC 197-11-914 through 955 are hereby adopted by reference. They include:

1. The list of agencies with environmental expertise (WAC 197-11-920);
2. The rules for determining lead agency (WAC 197-11-922 through 948);
3. SEPA and costs that may be charged (WAC 197-11-914); and
4. The effective date and application of the statewide rules and this resolution to Port activities (WAC 197-11-916 and 955).

Section 25. Additional Agencies with Expertise

The following agencies, or their successors, in addition to those listed in WAC 197-11-920, shall be considered agencies with environmental expertise by the Port:

Section 26. Revision of SEPA Policies or Procedures

The Port may amend its SEPA policies or procedures from time to time as may be necessary. The responsible official may provide additional guidance and procedures to carry out this resolution.

Section 27. 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.

**PART ELEVEN
FORMS**

Section 28. Adoption by Reference

The forms in WAC 197-11-960 through 990 are hereby adopted by reference. The Port may modify the forms to include additional wording and information to explain proposed actions or the Port's SEPA policies and procedures.

ATTACHMENT 1

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

1. Prehearing Conference. Once an appeal has been timely filed, the Examiner shall schedule a Prehearing Conference within 14 days. Each party shall bring to the Prehearing Conference a written list preliminarily designating witnesses (both expert and lay witnesses) 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 two 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's testimony.

3.2 Within three 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's testimony.

4. Hearing Memorandum/Expert Testimony.

4.1 Within five weeks after the Prehearing Conference, the Petitioner shall file its hearing memorandum. The Petitioner shall file in writing, at the same time as the hearing memorandum, all direct expert testimony from Petitioner's expert witnesses, along with copies of any exhibits introduced through or relied upon by the expert witnesses. To the extent any of the exhibits relied upon by Petitioner's expert witnesses are already contained in the Administrative Record, these exhibits may be referred to and not attached.

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

extent any of the exhibits relied upon by Petitioner's expert witnesses are already contained in the Administrative Record, these exhibits may be referred to and not attached.

5. Production of Exhibits. Seven 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 Motions. Prehearing Evidentiary motions must be filed at least ten days before the hearing date. Responding memoranda to any motion may be submitted at least five calendar days before the hearing date. The Examiner will issue a decision on any prehearing evidentiary motions two days before the hearing date.

7. Appeal Hearing. The appeal hearing shall be conducted nine 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, to cross-examination by Respondent of any witness whose testimony has been offered by Appellant, including expert witnesses whose testimony has been offered in writing pursuant to this rule, and to Appellant's redirect of any witness from which cross-examination testimony is taken.

7.3 Respondent's Case. The Respondent's case at the hearing shall be limited to the presentation of lay testimony, to cross-examination by Petitioner of any witness whose testimony has been offered by Respondent, including expert witnesses whose testimony has been offered in writing pursuant to this rule, and to Respondent's redirect of any witness from which cross-examination testimony is taken.

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.

9. Decision. The Examiner shall enter a decision within 14 days after the close of record of the Appeal Hearing consistent with Resolution 2012-44, as amended.

PORT OF KENNEWICK
RESOLUTION 2012-45

**A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS
APPROVING A PROPOSAL BY STRATEGIC CONSTRUCTION MANAGEMENT, INC. TO
PERFORM ARCHITECTURAL AND ENGINEERING WORK FOR THE REHABILITATION
OF THE PORT'S OAK STREET DEVELOPMENT BUILDINGS ONE AND TWO**

WHEREAS, following nearly 30 years of continued occupancy and modification to serve the needs of prior tenants the Port is in the process of rehabilitating Oak Street Development Buildings #1 and #2 to accommodate the needs of future incubator tenants; and

WHEREAS, the Port desires to contract with an architectural firm for design services, and staff has reviewed qualifications of three architectural firms; and

WHEREAS, Strategic Construction Management, Inc. has assembled a team of professionals necessary to produce biddable construction documents with a focus on constructability and cost savings; and

WHEREAS, Strategic Construction Management, Inc. has presented a proposal to perform the desired service for the sum of \$153,602.00, which represents less than ten percent (10%) of the estimated cost of the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick does hereby approve the proposal by Strategic Construction Management, Inc to provide architectural and engineering services for the rehabilitation of the Port's Oak Street Development Building #1 and # 2, in an amount not to exceed \$153,602.00.

BE IT FURTHER RESOLVED that the Executive Director is authorized to sign any contract documents necessary to implement the work of Strategic Construction Management, Inc.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of September 2012.

PORT OF KENNEWICK
BOARD OF COMMISSIONERS

By: _____
SKIP NOVAKOVICH, *President*

By: _____
DON BARNES, *Vice President*

By: _____
GENE WAGNER, *Secretary*