

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a
Date of Meeting May 3, 2011

DATE: April 26, 2011

TO: Tay Yoshitani, Chief Executive Officer

FROM: Elizabeth Leavitt, Director, Aviation Planning & Environmental Programs
Stephanie Jones-Stebbins, Director, Seaport Planning & Environmental Programs
Michael Lufkin, Senior Environmental Program Manager
Paul Meyer, Manager, Permitting and Compliance

SUBJECT: Resolution No. 3650, second reading and final passage, as amended, adopting, revising and updating the Port of Seattle's (Port) State Environmental Policy Act (SEPA) procedures and formalizing new Port SEPA policies for addressing greenhouse gas (GHG) emissions.

ACTION REQUESTED:

Second Reading and Final Passage of Resolution No. 3650, as amended, adopting, revising and updating existing Port SEPA procedures to conform with current law and Port structure, and formalizing new Port policies clarifying how greenhouse gas emissions (GHG) and climate considerations will be incorporated into SEPA review when the Port is acting as a "lead agency."

SYNOPSIS:

The Commission is requested to adopt Resolution No. 3650, which compiles and updates existing Port SEPA procedures into a single resolution that conforms with changes that have been made to Washington's SEPA laws and rules and reflects the current organizational structure of the Port. Additionally, the resolution provides guidance to Port staff and the Port SEPA responsible official when evaluating proposals under the SEPA that (1) are likely to result in GHG emissions; and/or (2) may be impacted by the effects of climate change. In the Port's recent SEPA determinations, we have already been estimating quantities of greenhouse gas emissions (GHG) as part of our SEPA review of proposed actions. Other local governments, such as the City of Seattle and King County, also already require the evaluation of GHG emissions as part of their permitting actions.

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The Commission was briefed on February 1, 2011, on proposed revisions to the Port's policies related to SEPA. Resolution No. 3650 as put out for a 30-day public comment period in order to solicit feedback and input from interested stakeholders and the public. No comments were received on Resolution No. 3650.

BACKGROUND:

The State Environmental Policy Act or SEPA, Chapter 43.21C RCW, was enacted in 1971 to “promote the policy of fully informed decision making by government bodies when undertaking ‘major actions significantly affecting the quality of the environment.’ ”

SEPA requires public agencies to: (1) consider the environmental consequences of their proposed actions; (2) identify and evaluate probable impacts, alternatives and mitigation measures; and (3) encourage public involvement in agency decision making. Local government agencies like the Port must adopt policies and procedures for implementing SEPA. These "agency SEPA procedures" must be formally designated by rule, ordinance, or resolution.

Proposed Revision to Existing Port SEPA Procedures

The Port previously adopted three resolutions implementing SEPA: Resolution No. 3028 (adopted December 1987), Resolution No. 3211 (adopted February 1996), and Resolution No. 3539 (adopted May 2005). Collectively, these three resolutions identify the procedures used by the Port for implementing SEPA, including the identity of the responsible official, the method(s) for public notice, the procedures for administrative appeals, if any, and other information about the Port's review procedures.

From time to time it becomes necessary to update, amend and revise SEPA 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. Some of the proposed revisions to the existing Port SEPA procedures include:

- Compilation of the procedures into a single Port SEPA resolution;
- Conformity with changes that have been made to state SEPA laws and rules;
- Revisions that reflect the current organizational structure of the Port;
- Addition of a Table of Contents;
- General cleanup and edits that aim to make the document easier to use and read; and
- Addition of guidance to Port Staff and the Port responsible official when evaluating proposals under the State Environmental Policy Act that (1) are likely to result in GHG emissions; and/or (2) may be impacted by the effects of climate change.

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SEPA and Climate Change

SEPA was adopted to ensure that environmental values are considered during decision-making by state and local agencies. Until relatively recently, however, climate change and greenhouse gas pollutants have been given relatively little or no consideration in environmental review documents. This situation is changing rapidly. Many state and local governments both here in Washington state and around the country are beginning to develop policies, regulations, and guidance on how, where, and when to address climate change in their environmental review processes. Some are doing so because their failure to address climate change was challenged in court as contrary to SEPA-like statutes. Others are simply recognizing the importance and value of incorporating climate change considerations into governmental decision-making, resource and development planning, and permitting and approval.

To date, the Port has not adopted any policies related to the assessment of GHG emissions and climate change under SEPA. However, in the Port's recent SEPA determinations considerations or evaluations, we have already been estimating quantities of GHG emissions as part of our SEPA review of proposed actions, as have other local jurisdictions such as the City of Seattle and King County.

Staff believes it is in the best interest of the Port to act now to clarify how climate considerations should be incorporated into its SEPA review when it is acting as a "lead agency." Towards that end, the proposed SEPA climate change policies address the following:

- Clarifying that the Port will consider GHG emissions and the effect of changes in climate on proposed actions as a mandatory component of SEPA environmental review;
- Requiring the identification and calculation of GHG emissions associated with a project proposal, within reasonable spatial and temporal boundaries, as part of SEPA environmental review;
- Encouraging the identification of mitigation measures that the Port may voluntarily incorporate to reduce a project's GHG emissions below a level of significance or to reduce the Port's GHG emission baseline;
- Acknowledging that when making the "threshold determination" under SEPA there is no uniform standard for determining the "significance" of a project's GHG emissions impacts;
- Acknowledging that any decision by the Port as to whether there is an adverse environmental impact from a proposal will be made on a case-by-case basis;
- Identifying factors that may be considered by the Port when determining whether a project's GHG emissions constitute a "significant" impact; and
- Considering the effects of climate change on projects that are designed for long-term utility and located in areas that are considered vulnerable to specific effects

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of climate change (such as increasing sea level or ecological change) within the project's timeframe.

PUBLIC COMMENTS ON THE PROPOSED RESOLUTION:

Resolution No. 3650 was put out for a 30-day public comment period in order to solicit feedback and input from interested stakeholders and the public. The public comment period ran from February 9, 2011, through March 11, 2011, and included notice in regional newspapers, distribution to individuals and organizations on the Port SEPA mailing list, and posting on the Port's external website.

No comments were received on Resolution No. 3650.

COMMENTS RECEIVED AT FIRST READING:

At the First Reading of Resolution No. 3650 on April 12, 2011, Commissioner Albro proposed revisions to two sections of the SEPA procedures. The first proposed revision related to the delegation of SEPA responsibilities by the designated Port responsible official to another Port official (Section 5.3). Commissioner Albro proposed that delegation of authority under Section 5.3 be made subject to concurrence with the Port Chief Executive Officer. Accordingly, Resolution No. 3650 has been amended as set forth below (revised language is italicized):

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*.

The second proposed revision to Resolution No. 3650 relates to when and how the Port may, in its discretion, supplement the SEPA public notice requirements of Chapter 197-11 WAC. Accordingly, Section 15.2 has been revised, as set forth below, to clarify when and how the Port may provide additional notification of SEPA documents to the public:

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;

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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.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Resolution No. 3650, revising and updating the Port's SEPA procedures and formalizing new Port SEPA policies clarifying how greenhouse gas emissions and climate considerations will be incorporated into the environmental review process, with Exhibit A (SEPA Environmental Policies, including Appendix A), Attachment 1 (Basic Procedural Framework Governing SEPA Administrative Appeal Rules and Procedures), and Attachment 2 (GHG Emissions Quantification Methodologies).
- PowerPoint presentation.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

February 1, 2011 – Commission briefing on proposed revisions to the Port's policies related to the State Environmental Policy Act (SEPA).

April 12, 2011 – First Reading, Resolution No. 3650, adopting, revising and updating the Port of Seattle's (Port) State Environmental Policy Act (SEPA) procedures and formalizing new Port SEPA policies for addressing greenhouse gas (GHG) emissions.