

## CHELAN DOUGLAS REGIONAL PORT AUTHORITY RESOLUTION NO. 2021-06

### A RESOLUTION OF THE CHELAN DOUGLAS REGIONAL PORT AUTHORITY RELOCATION ASSISTANCE PAYMENTS AND ADOPTING RELOCATION ASSISTANCE PROCEDURES

**Whereas** the Pangborn Memorial Airport (“PMA”) has historically been owned jointly by the Port of Chelan County and the Port of Douglas County, and managed by the Port of Chelan County and the Port of Douglas County as the PMA Governing Board under the terms of a 2003 Joint Operating Agreement (the “JOA”);

**Whereas** the Port of Chelan County and the Port of Douglas County formed the Chelan Douglas Regional Port Authority pursuant to an Interlocal Agreement dated June 19, 2019 (the “CDRPA”) to own, operate and manage PMA, including acting as the PMA Sponsor for the Federal Aviation Administration and undertaking public works projects for PMA, in lieu of operation under the JOA;

**Whereas** 42 U.S.C. § 4622, RCW 8.26.035, and related Washington Administration Code and Code of Federal Regulations provisions require public agencies to provide relocation assistance and benefits to certain persons impacted by public works projects, including the payment of certain moving and related expenses;

**Whereas** 49 C.F.R. § 24.10 provides an aggrieved person (as such term is defined in the C.F.R.) the right to appeal in any case where the person believes that an agency has failed to properly consider the person’s application for relocation assistance, including the person’s eligibility for, or the amount of a payment;

**Whereas** the Board of Directors of the CDRPA desire to authorize the Chief Executive Officer of the CDRPA to proceed with the processing and payment of relocation assistance claims to eligible persons, and further wish to adopt procedures for handling relocation assistance, including any appeals related to relocation assistance.

**Now, Therefore, Be it Resolved** by the Board of Directors for the Chelan Douglas Regional Port Authority as follows:

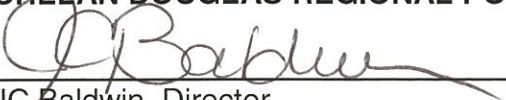
- A. The Chief Executive Officer of the CDRPA or his designee is hereby authorized to execute the required relocation assistance documents necessary to make relocation assistance payments and to make such payments in connection with the CDRPA’s public works projects on behalf of the CDRPA, in the form authorized by the CDRPA’s counsel, where total consideration paid by the CDRPA to an eligible person does not exceed a cumulative total of Two Hundred Thousand Dollars (\$200,000.00).
- B. Any relocation assistance documents for payments to a person or entity exceeding a cumulative total of Two Hundred Thousand Dollars (\$200,000.00) to such eligible person are subject to review and approval by the CDRPA Board of Directors.
- C. The Relocation Assistance Procedures set forth in Exhibit “A” attached to this resolution and by this reference incorporated herein are adopted. To the extent

federal or state relocation assistance law requires the head of the agency or its designee to perform an obligation, the delegations set forth in the Relocation Assistance Procedures are approved.

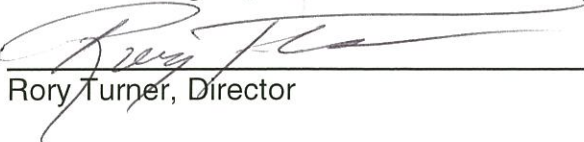
- D. Where a relocation assistance claim appeal is currently pending, the relocation assistance procedures will apply from the date of adoption to future steps in the appeal process.

DATED: March 23, 2021

**CHELAN DOUGLAS REGIONAL PORT AUTHORITY**

  
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JC Baldwin, Director

  
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Donn Etherington, Director

  
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Rory Turner, Director

  
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Jim Huffman, Director

  
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Alan Loeb sack, Director

  
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Mark M. Spurgeon, Director

## EXHIBIT "A"

### RELOCATION ASSISTANCE PROCEDURES

#### I. GENERAL

##### A. DETERMINATION OF ELIGIBILITY

The eligibility of a displaced person and the amount of relocation assistance will be determined by the rules established under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act"), RCW Chapter 8.26, and any other applicable relocation assistance rules, regulations or procedures related to a public works project of the Chelan Douglas Regional Port Authority (the "CDRPA").

If circumstances related to the acquisition of property for a public works project indicate that an owner, tenant, or other lawful occupant of the property to be acquired may be eligible for benefits under the Uniform Act, RCW Chapter 8.26, and any other applicable relocation assistance rules, regulations or procedures, the CDRPA will evaluate the impacts of the public works project and provide notices to the owner, tenant or other lawful occupant as required by 49 C.F.R. § 24.203, including a general information notice providing a general written description of the relocation assistance program, a notice of relocation eligibility, and the assurance that such owner, tenant, or other lawful occupant will not be required to move without at least ninety (90) days' advance written notice.

The CDRPA will also provide relocation assistance advisory services and any other services related to relocation assistance as required by law. In connection with the provision of relocation assistance services, the CDRPA may delegate its responsibilities to qualified professionals.

##### B. RELOCATION ASSISTANCE CLAIMS

A person qualifying as a "displaced person" as defined by RCW 8.26.020(4) must meet the general requirements for claims for relocation assistance payments under 49 C.F.R. § 24.207, including providing documentation reasonably required to support expenses incurred by the displaced person and the time for filing claims for a relocation payment. Upon receipt of a claim for a relocation payment, the CDRPA will review the claim and respond in writing to the claimant notifying the claimant of the CDRPA's determination, the basis for the CDRPA's determination, and the procedures for appealing that determination. As part of the review of the claim, the CDRPA may request additional information from the claimant in order to ensure a full evaluation of the claim is made. If such a request for additional information is made but not timely responded to by the claimant, then the CDRPA may evaluate the claim based on the information provided by the claimant.

### **C. SCOPE OF THE RELOCATION ASSISTANCE APPEAL PROCESS**

The Relocation Assistance Appeal Process applies only to the eligibility and types and amounts of benefits available to displaced persons under the Uniform Act and rules (including Washington statutes and applicable regulations) enacted thereunder. These procedures do not apply to any determination of just compensation payable for the acquisition of property.

### **D. POLICY**

In enacting these procedures, the CDRPA desires to carry out the purposes of the Uniform Act, the rules established thereunder, and RCW Chapter 8.26 to ensure the fair and equitable treatment of persons displaced by public works programs carried out by the CDRPA.

## **II. PROCEDURE FOR MAKING A RELOCATION ASSISTANCE APPEAL**

### **A. RIGHT TO APPEAL**

A person dissatisfied ("Aggrieved Person") with the CDRPA's written determination of such person's eligibility for relocation assistance payments or the amount of a payment ("Formal Letter of Determination") may have its eligibility or the amount of payment reviewed by means of the appeal process contained herein. A Formal Letter of Determination may include a notice of relocation eligibility or a written response to a claim for a relocation assistance payment. The requirements for submitting an appeal and the appeal stages are detailed more fully below. (See §§ IIC-IID.)

### **B. RIGHT TO LEGAL COUNSEL; NOTICES WHEN REPRESENTED BY LEGAL COUNSEL**

An Aggrieved Person may be represented by legal counsel or another representative in connection with an appeal of a Formal Letter of Determination, but is not required to have such representation.

Whenever any document containing an attorney's name, address and telephone number is filed by an attorney on behalf of an Aggrieved Person, or whenever an Aggrieved Person advises in its appeal or any other written notice to the CDRPA that the Aggrieved Person is represented by counsel, all notices sent by the CDRPA or other interested parties shall thereafter be sent to the Aggrieved Person's counsel instead of the Aggrieved Person.

### **C. APPEAL**

The appeal process contained herein is an Aggrieved Person's sole recourse for appealing any relocation assistance determination. Failure to file a timely appeal shall be a bar to consideration of the appeal under the process described in this Relocation Assistance Procedure; provided, that it shall not affect any rights to a judicial review that the Aggrieved Person would otherwise have.

If the Aggrieved Person seeks reconsideration of any Formal Letter of Determination, the Aggrieved Person must send a signed appeal letter explaining the objection. The appeal letter must be delivered or postmarked no later than sixty (60) days after the date of the Aggrieved Person's receipt of the Formal Letter of Determination to which objection is made. The appeal letter must be addressed to the following CDRPA official:

CDRPA Chief Executive Officer  
One Campbell Parkway, Suite A  
East Wenatchee, WA 98802

The CDRPA may elect to amend the designated CDRPA official for the purposes of considering an objection and appeal. In all events the CDRPA official reviewing the appeal shall not have been involved in the action appealed. If the Chief Executive Officer was involved in the action appealed, then the Chief Executive Officer shall turn the appeal letter over to the President of the Board of the CDRPA, who shall review the appeal.

If the CDRPA amends the designation, then the CDRPA will provide notice of such amended designation to the Aggrieved Person or to any displaced person as defined in the Uniform Act, RCW Chapter 8.26, and related rules.

The CDRPA has no prescribed form for an appeal letter. Any appeal filed by an Aggrieved Person shall specifically identify the Formal Letter of Determination that is being appealed, shall present all information supporting the appeal, including the issues claimed, the real property involved, and shall specifically identify the relief requested. The CDRPA may refuse to schedule any further action on the appeal until these requirements have been complied with or may issue an order providing for dismissal of such appeal upon failure of the appellant to meet these requirements within fourteen (14) calendar days of a request by the CDRPA for the required information.

The CDRPA shall permit a person to inspect and copy all materials pertinent to the person's appeal, except materials which are classified as confidential by the CDRPA and that exempt from disclosure under the Public Records Act, Chapter 42.56 RCW. The CDRPA may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

#### **D. APPEAL PROCESS**

The appeal process consists of two stages following receipt of a written appeal from an Aggrieved Person. The first stage is an internal review by the CDRPA. The second stage involves a formal hearing.

##### **1. Internal Review of Appeal**

The CDRPA will review all information submitted by the Aggrieved Person relating to an appeal, and will respond to the Aggrieved Person in writing within sixty (60) days of the receipt of a written appeal. The CDRPA may, but is not required to, set an informal meeting with the

Aggrieved Person as part of its internal review within the 60-day period at which the Aggrieved Person may make an oral presentation. The CDRPA's written response to the Aggrieved Person will include an explanation of the basis on which the CDRPA's decision was made. If the CDRPA does not grant the relief sought in the appeal letter submitted by the Aggrieved Person, in full or in part, the CDRPA's written response shall notify the Aggrieved Person of its right to formal review of the appeal in a hearing as provided in section II.D.2 below.

If the CDRPA deems an appeal letter incomplete or determines it requires additional information to further consider and respond to the appeal letter, the CDRPA, at its sole discretion, may request additional information and provide timeframes for the receipt of such information. Any such request for additional information by the CDRPA should not be construed as the extension of any deadlines relating to filing an appeal, but is meant to provide the CDRPA with the ability to more fully consider the appeal letter presented in accordance with section II.C above. If the requested information is not timely submitted, then the CDRPA shall make a written response to the appeal letter based on the appeal letter and any accompanying or provided information. The CDRPA may also consider the failure to provide the requested information in making the determination, including considering such failure as a waiver.

Nothing in this section shall be construed to restrict the format, form or forum for the provision of supporting information by an Aggrieved Person in support of its appeal.

## **2. Formal Hearing of Appeal**

### **a. General Procedures for Formal Hearing of Appeal**

If an Aggrieved Person disagrees with the CDRPA's written response to the appeal letter, or any portion thereof, the Aggrieved Person may request a hearing seeking reconsideration of such response. A request for a hearing must be made in writing and delivered or postmarked within thirty (30) days of the CDRPA's written response to the appeal letter, and addressed to the contact provided in section II.C above, unless the CDRPA has provided written notice of an alternate designee.

Upon receipt of such request for a hearing, the CDRPA shall retain a Hearing Officer to set and hear the matter. The Hearing Officer shall be selected by the CDRPA, but shall meet the requirements for relocation assistance appeals under the Uniform Act and related statutes and regulations.

The Hearing Officer will be responsible for setting the hearing, and for scheduling pre-hearing matters (i.e., briefing, discovery, site visit). In addition, the Hearing Officer will be responsible for receiving and responding to communications with the parties on any matter brought before the Hearing Officer.

The hearing shall be held at the administrative office of the CDRPA located at Pangborn Memorial Airport unless the parties agree to a different location. Once set, the Hearing Officer shall deliver

a written notice setting forth the date, time, and place of the hearing (and any related site visit) and any scheduled pre-hearing matters to the parties.

The Hearing Officer will provide any pre-hearing briefing and hearing requirements as they deem appropriate, subject to the following parameters: The hearing may include all pertinent information, oral testimony, written documentation, or otherwise, that may assist in ensuring a full and fair review of the appeal by the Hearing Officer, but shall be limited to information relevant to the scope set forth in section I.C above. If an Aggrieved Person fails to appear at the scheduled hearing, then the Aggrieved Person waives the right to a formal hearing, and the Hearing Officer may determine the issue based on any materials previously received from the Aggrieved Person and any testimony and documentation offered by the CDRPA.

The parties shall disclose to each other the expert witnesses they anticipate will testify at the hearing at least thirty (30) days prior to the date of the hearing. Reports shall be prepared by such experts, and such reports are due as part of this disclosure. Failure to timely disclose an expert or an expert report will prohibit the use of such expert's testimony or report at the hearing. Each party shall make their disclosed experts readily available for deposition at least fifteen (15) days prior to the date of the hearing.

The Aggrieved Person and the CDRPA shall each serve a list of the witnesses anticipated to provide testimony at the hearing, a list of exhibits anticipated to be introduced at the hearing, and copies of the exhibits on the Hearing Officer at least five (5) business days (Mondays- Fridays excluding federal holidays) prior to the date of the hearing.

At the hearing, the Aggrieved Person shall present its case first, setting forth the grounds and reasons for its position, and then the CDRPA shall be given the opportunity to respond and to present its case. After the Aggrieved Person and the CDRPA present their cases, the Aggrieved Person may make a closing statement summarizing its position, which will be followed by the CDRPA's closing statement,

At or following the hearing, the Hearing Officer may request additional information to assist in consideration of the appealed determination and may set a reasonable timeframe for submission of such information. If the requested information is not submitted within the requested timeframe, then the Hearing Officer shall issue a decision based on the information that has been submitted, but may also consider the failure to provide the requested information in the decision. Unless the Hearing Officer requests additional information or analysis, no additional information shall be submitted after conclusion of the hearing for consideration by the Hearing Officer.

The Hearing Officer will consider all pertinent evidence submitted by the parties to ensure a fair and full review of the appeal.

The Hearing Officer will provide a written decision to the parties within forty-five (45) days of the close of the hearing, or if additional information was requested by the Hearing Officer within forty-five (45) days of the Hearing Officer's receipt of all material necessary to render a decision. The Hearing Officer's decision shall be final. The Hearing Officer's decision will include a

statement that the Aggrieved Person has a right to judicial review of such decision pursuant to the Uniform Act, 49 C.F.R. § 24.10(g) and rules. Such judicial review shall be at the Aggrieved Person's own cost and expense, unless provided otherwise by law.

b. Discovery or Exchange of Information Prior to Formal Hearing

If the Aggrieved Person requests a formal hearing, the parties may engage in discovery. Generally, discovery, including objections to discovery requests and motions relating to discovery, shall be conducted as if the proceeding was before a Superior Court under the Washington State Rules for Superior Court Civil Rules, subject to the below limitations. Where the Civil Rules conflict with this Relocation Assistance Procedure, the Relocation Assistance Procedure will control.

(i) Parties may obtain discovery by one or more of the following methods: depositions upon oral examination; written interrogatories; and production of documents or things or permission to enter upon land or other property, for inspection and other purposes.

(ii) Unless necessary for the disposition of a motion to the Hearing Officer, discovery requests or responses will not be filed with the Hearing Officer.

(iii) Each party may take no more than four (4) depositions by oral examination, including those of the opposing party's expert witnesses. Permission of the Hearing Officer is required if (a) a party wishes to exceed this limit, or (b) the requested deponent has already been deposed by oral examination.

(iv) Each party may serve on the other party no more than twenty-five (25) written interrogatories, including all discrete subparts. Permission of the Hearing Officer is required for additional interrogatories.

(v) Each party may serve on the other party no more than two (2) sets of twenty (20) requests for production of documents or things or permission to enter upon land or other property, for inspection and other purposes. Permission of the Hearing Officer is required for additional requests for production.

(vi) The Hearing Officer may allow additional discovery requests as the Hearing Officer deems appropriate on a case-specific basis. The granting of any such additional discovery requests shall only be allowed if it does not create an undue burden on the producing party nor hinder or unduly delay the administration of the hearing. Any request for additional discovery shall be addressed to the Hearing Officer with a copy to the other party.

(vii) All discovery requests authorized by the Hearing Officer must be made in a manner so that all responses to any requests shall be received at least fifteen (15) days prior to the date of the hearing. Nothing in this section shall be construed to prevent the hearing from being reset subject to approval by the Hearing Officer.



(viii) If a party objects to a discovery request or a party fails to timely respond to a discovery request, and the parties are unable to resolve the matter without the assistance of the Hearing Officer, a motion seeking resolution of the dispute shall be addressed to the Hearing Officer with a copy to the other party.

#### **D. TIME FRAMES**

When computing any period of time prescribed or allowed by these procedures, the day of the act or event shall not be included in such time period. If a deadline for the appeal letter, for requesting a hearing, or for responding to any requests made by the CDRPA for additional information falls on a weekend (Saturday-Sunday) or on a federal holiday (i.e., a weekday where the U.S. Postal Service is closed), then such deadline shall occur at the end of the first business day following such weekend or holiday. If a time period is less than five (5) days, then weekends and federal holidays shall be excluded from such time period. If a time period greater than five (5) days does not specify that it applies to business days, then weekends and holidays in the interim period shall be counted as part of the time period.

### **III. SETTLEMENT NEGOTIATIONS PERMITTED**

Nothing in these procedures shall be construed as prohibiting the parties from entering into settlement negotiations to settle a dispute relating to a relocation assistance determination. The parties may attempt to settle any such dispute by exchanging settlement offers, by mediation, or by any other method agreed to by the parties. Any settlement negotiation efforts shall be treated in the same manner as if they were before a court under the Washington State Rules of Evidence.