

RESOLUTION NO. 16-70

A RESOLUTION OF KITSAP TRANSIT'S BOARD OF COMMISSIONERS ADOPTING REVISED STATE ENVIRONMENTAL POLICY ACT PROCEDURES AND POLICIES GOVERNING PROJECTS INITIATED BY KITSAP TRANSIT WHICH REQUIRE ENVIRONMENTAL REVIEW

WHEREAS, Kitsap Transit is a Washington Municipal Corporation and Public Transportation Benefit Area Authority under Ch. 36.57A RCW organized for the purpose of providing public transportation services throughout Kitsap County, Washington, including Cross-Sound Passenger-Only Ferry Service; and

WHEREAS, Kitsap Transit regularly engages in projects to develop and improve the public transportation services in, and to and from Kitsap County; and

WHEREAS, many of Kitsap Transit's projects must be completed in compliance with the State Environmental Policy Act (SEPA), Chapter 43.21C of the Revised Code of Washington and Chapter 197-11 of the Washington Administrative Code ("WAC"); and

WHEREAS, many of Kitsap Transit's projects are governmental proposals that allow Kitsap Transit to assume Lead Agency status under SEPA, such that Kitsap Transit must adopt policies and procedures as required and authorized under SEPA; and

WHEREAS, the adoption of SEPA policies and procedures, in accordance with WAC 197-11-902 and WAC 197-11-904 is an action that is procedural in nature and therefore categorically exempt from SEPA review under WAC 197-11-800(20); and

WHEREAS, Kitsap Transit's Board of Commissioners previously adopted SEPA Policies and Procedures by Resolution 03-53 on October 7, 2003; and

WHEREAS, staff has recommended that the existing policies and procedures be updated and amended by means of the adoption of the revised SEPA Procedures and Policies attached hereto as Exhibit 1; and

WHEREAS, the Board is satisfied that the attached revised policies and procedures should be adopted.


NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS: the Kitsap Transit State Environmental Protection Act Procedures And Policies attached hereto as Exhibit 1 are approved and adopted as the SEPA Policies and Procedures of Kitsap Transit effective as of December 7, 2016, which fully replace and supersede the SEPA Policies and Procedures previously adopted pursuant to Resolution 03-53.

ADOPTED by the Board of Commissioners of Kitsap Transit at a regular meeting held on the 6th day of December, 2016.



Edward E. Wolfe, Chairperson

ATTEST:



Jill A. Boltz, CMC
Clerk of the Board

KITSAP TRANSIT
State Environmental Protection Act
PROCEDURES AND POLICIES
December 6, 2016

1. AUTHORITY

- 1.1** Pursuant to the State Environmental Policy Act ("ACT"), RCW 43.21C.120, and chapter 197-11 of the Washington Administrative Code ("CODE"), Kitsap Transit is required to adopt policies and procedures in compliance with and consistent with the ACT and the state-wide rules set forth in the Code. Sometimes the ACT shall be referred to as "SEPA" and the CODE referred to as "WAC".
- 1.2** Kitsap Transit adopts this document under the ACT and CODE. This document contains Kitsap Transit's SEPA Policies and Procedures for all projects requiring environmental review.
- 1.3** These policies and procedures are intended to be and shall be construed in a manner which is consistent with the SEPA Rules set forth in the CODE.
- 1.4** These SEPA Policies and Procedures supersede and replace any prior SEPA policies or procedures previously adopted by Kitsap Transit.
- 1.5** If any provision of these SEPA procedures and policies set forth herein or the application of these procedures and policies to any person or circumstance is held invalid, the remainder of these procedures and policies, or the application of such provision to other persons or circumstances, shall not be affected.

2. CODE RULES AND EXCEPTIONS

- 2.1** ***Incorporation Of Pertinent CODE Rules.*** Except as they may conflict with specific provisions set forth in Sections 3 through 9 below and except as Kitsap Transit may modify forms or procedures to better suit its circumstances and purposes, Kitsap Transit adopts all sections and

subsections of Chapter 197-11 of the CODE, as they may be amended from time to time, except the Excluded Sections as provided in Section 2.2 below.

2.2 Exceptions. Because the following CODE provisions either do not apply to Kitsap Transit or are governed by the provisions of Sections 3 through 9 below, the following CODE Rules are excluded:

WAC Sections:

197-11-158 through 238

197-11-335

197-11-810 through 870

197-11-902, 904, 906, 908, 914, 917, 950, 955

3. ADDITIONAL DEFINITIONS. In addition to those definitions contained within WAC 197-11-700 to 197-11-799, the following terms will have the following meanings, unless the context indicates otherwise:

“Division” means any division, department or organizational unit of Kitsap Transit.

“SEPA Rules” means the CODE Rules set forth in Section 2.1 above, together with the provisions set forth in Sections 4 through 11 of this document.

4. LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.

4.1 Subject to Section 4.4 below, Kitsap Transit is the lead agency for the proposals it initiates and is responsible for compliance with SEPA regulations.

4.2 When Kitsap Transit is not the lead agency for a proposal that involves non-exempt action, all Divisions of Kitsap Transit shall use and consider as appropriate either the DNS or DS of the lead agency in making decisions on the proposal. No Division of Kitsap Transit shall prepare a DNS, MDNS, DS or EIS in addition to that prepared by the lead agency unless required by WAC 197-11-600.

4.3 If Kitsap Transit receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of the receipt of the determination and, if not resolved, Kitsap Transit may petition the Department of Ecology for a lead agency determination under WAC 197-11-046 within the 15 day time period. Any such petition on behalf of Kitsap Transit shall be initiated by the Responsible Official as defined in Section 4.4 and/or Kitsap Transit's General Counsel.

4.4 Kitsap Transit may, in its sole discretion, delegate its lead agency status, on a case-by-case basis, to another agency with jurisdiction.

5. DESIGNATION OF RESPONSIBLE OFFICIAL OR SEPA REVIEW OFFICER. For those proposals for which Kitsap Transit is the lead agency, the Responsible Official (also known as the "SEPA Review Officer") shall be Kitsap Transit's Executive Director.

For all proposals for which Kitsap Transit is the lead agency, the Responsible Official shall make the threshold determination, supervise the preparation of environmental documents and analyses, including scoping and preparation of any required EIS, and perform any other functions assigned to the lead agency or Responsible Official.

The Responsible Official shall be responsible for Kitsap Transit's compliance with WAC 197-11-550 whenever Kitsap Transit is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate Divisions of Kitsap Transit.

6. ENVIRONMENTAL POLICIES. In its environmental review of any proposal where it is the lead agency, Kitsap Transit shall consider all probable significant adverse environmental impacts disclosed in the environmental documents prepared for the proposal, including those impacts that are also the concern of other governmental entities whose permit or approval is required or desired by Kitsap

Transit. Kitsap Transit will consider whether mitigation measures applied to the proposal are sufficient to mitigate significant adverse environmental impacts and, if not, whether additional mitigation is appropriate. In reaching a decision on the proposal, Kitsap Transit shall balance any unmitigated significant adverse environmental impacts against the purposes for and benefits of the proposal.

7. PUBLIC NOTICE. Public Notice of a Determination of Significance (“DS”), Determination of Non-Significance (“DNS”), Mitigated Determination of Non-significance (“MDNS”) commencement of scoping and availability of a draft, final or Supplemental EIS shall be provided by:

- a. Posting the property, for site-specific proposals;
- b. Publishing notice in a newspaper of general circulation in the general area where the proposal is located;
- c. Mailing to other agencies with jurisdiction; and
- d. Placing notice on Kitsap Transit’s website.

8. PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS AND SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENTS-ADDITIONAL CONSIDERATIONS.

8.1 Preparation of draft, final and supplemental EISs (collectively “EIS”) is the responsibility of the Responsible Official. Before Kitsap Transit issues an EIS, the Responsible Official shall be satisfied that it complies with the SEPA Rules and all other applicable legal requirements.

8.2 Draft, final and supplemental EISs shall be prepared by Kitsap Transit or by a consultant selected by Kitsap Transit.

8.3 In the sole discretion of Kitsap Transit, an EIS may discuss any or all of the following issues, which shall not be part of the criteria for threshold determinations or be subject to any of the other requirements or purposes of this document, including administrative or judicial appeal:

- a. Transportation considerations;
- b. Cost considerations;
- c. Economic effects;
- d. Other social or public policy analysis; or
- e. Cost-benefit analysis.

8.4 Whenever possible, Kitsap Transit will integrate the SEPA processes with other public input and will integrate SEPA notices and documents with other public notices on a contemplated action and with other documents providing other information on a project or proposal to the public or Kitsap Transit. Failure to provide such integration shall not be a basis for appeal or invalidation of a SEPA Decision.

8.5 Where Kitsap Transit is required or chooses to obtain a permit or other approval from another governmental entity for a project or program initiated by Kitsap Transit, Kitsap Transit will generally act as lead agency, and Kitsap Transit's EIS and other SEPA documents will form the basis for all subsequent decisions made by Kitsap Transit and/or other units of government having jurisdiction over the project in whole or part, including any disputes or appeals arising therefrom.

9. APPEALS.

9.1 Any aggrieved person may appeal Kitsap Transit's compliance with Chapter 43.21C RCW and WAC Chapter 197-11 by filing a notice of appeal with the Responsible Official within 15 days of the date of public notice of issuance of a final DNS, MDNS or availability of a final EIS (hereafter, a "SEPA Decision"). A person is aggrieved within the meaning of this section only when the following conditions are present: (a) the interest that the person is seeking to protect is within the zone of interests that are protected or regulated by SEPA; and (b) the person will suffer "injury in fact", i.e., that he or she will be "specifically and perceptibly harmed" by the proposed action. The DNS, MDNS or EIS should identify this appeal

process and the deadline for an appeal, but any failure to provide such notice shall not be construed to waive the deadline or otherwise invalidate the notice. The Responsible Official shall promptly arrange for review by Kitsap Transit's Executive Director or its Designee by means of an open record hearing.

9.2 The administrative appeal procedures set forth in this Section 9 must be used and followed before anyone may initiate judicial review of any SEPA issue that is reviewable under the SEPA Rules.

9.3 Appeals shall be submitted in writing and must include the following information:

- a. The project name identified in the SEPA determination;
- b. The name and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate one party as the contact representative for all parties to the appeal. All contact regarding the appeal, including notice of hearing date, shall be with this contact representative;
- c. A statement of the facts which support the standing of the appellant(s) under Section 9.1 above.
- d. The specific aspects of the SEPA determination being appealed and the reasons why each is claimed to be in error as a matter of fact or law; and
- e. An appeal fee in the amount of \$400.00, as such fee may be increased from time to time by a resolution of Kitsap Transit's Board of Commissioners.

9.4 All appeals hereunder shall be heard and decided by Kitsap Transit's Executive Director or its Designee. Issues on appeal shall be limited to those specifically identified in the notice of appeal.

- 9.5** Kitsap Transit's Executive Director may designate a hearing officer or other Designee to hear evidence and prepare recommended findings of fact, conclusions of law and a decision on any appeal. Kitsap Transit's Executive Director shall then review and adopt, reject or modify such recommendations in conjunction, if appropriate, with the decision on the underlying action that is the subject of the appeal. The Executive Director may dismiss an appeal without hearing if it is determined that the appeal fails to state a claim under SEPA, or it is without merit on its face, frivolous or brought merely to secure delay, or if the appellant lacks standing to bring the appeal.
- 9.6** No appeal may be taken from intermediate steps under SEPA such as lead agency or Responsible Official determinations, scoping or draft EIS adequacy. Only one appeal of a threshold determination or of the adequacy of an EIS is allowed.
- 9.7** The Executive Director or designee shall provide for testimony under oath, a taped or written transcript, and findings and conclusions. There shall be no discovery in an appeal hearing. Any subsequent judicial or other review or appeal shall be limited to this administrative record.
- 9.8** At the hearing, the Executive Director, Designee or Hearing Officer may establish time limits for the presentation of evidence and testimony. An appeal signed by multiple parties shall be deemed a single appeal and multiple appeals of the same SEPA Decision shall be consolidated into a single appeal proceeding. The Executive Director, Designee or Hearing Officer may establish other rules for the orderly and efficient conduct of the appeal hearing.
- 9.9** Procedural determinations by the Responsible Official shall be entitled to substantial weight in the administrative appeal and any subsequent proceedings.
- 9.10** Once the Executive Director or its designee has made a decision on the administrative appeal, the Responsible Officer may promptly cause a notice of action to be published in the form and manner set forth in RCW

43.21C.080. The notice shall specify that appeals raising SEPA issues must be filed within 21 days after the official notice of action, or be barred.

- 10 RESPONSIBILITY OF AGENCY-INFORMATION.** Kitsap Transit shall retain all documents required by the SEPA rules that make them available in accordance with Chapter 42.17 RCW.
- 11 SEVERABILITY.** If any provision of this policy or procedure or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application for the provision to other persons or circumstances, shall not be affected.

This document was approved by Kitsap Transit's Board of Commissioners at a regular meeting of the Board on December 6, 2016, pursuant to Resolution No. 16-70.¹

¹ Previous Policies: Resolution 03-53 Adopted October 7, 2003, is replaced by this Document.
Legal References: Chapter 43.21C RCW State Environmental Policy; 197-11 WAC State Environmental Policy Act (SEPA) Rules