

RESOLUTION NO. R2018-17
State Environmental Policy Act Rules

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Executive Committee	06/07/2018	Recommend to Board	Desmond Brown, General Counsel Perry Weinberg, Director - Environmental Affairs & Sustainability and Senior Legal Counsel.
Board	06/28/2018	Final Action	

PROPOSED ACTION

Amending rules and procedures to implement the Washington State Environmental Policy Act and superseding Resolution No. R7-1.

KEY FEATURES SUMMARY

- Amends Sound Transit’s rules and procedures for implementing the State Environmental Policy Act (SEPA) to update information about Sound Transit, reflect changes to the state SEPA rules, and reflect current agency practices for implementing SEPA. The document has also been reformatted to current agency standards.
- The main amendments to Sound Transit’s SEPA rules address:
 - Updating to current agency terminology, address and contact information.
 - Updating public notice and document distribution requirements to include the use of the Sound Transit website, electronic media and reduce mail and paper copies.
 - Clarifications regarding exemptions from SEPA review, greenhouse gas and climate change analysis, and identification of a preferred alternative during the SEPA process.

BACKGROUND

The SEPA (Chapter 43.21C RCW, and implementing statewide regulations) and State SEPA rules (Chapter 197-11 WAC), set forth an environmental policy for Washington state that requires Sound Transit to consider and, mitigate where appropriate, the environmental impacts of various programs and projects. Sound Transit is also required to adopt SEPA rules and procedures that are consistent with the rules adopted by the Washington State Department of Ecology, as may be amended, and may adopt by reference any or all of these rules.

Sound Transit’s SEPA rules were last amended in April 1998. Sound Transit amends these rules and procedures from time to time to keep them up to date and consistent with current state regulations and agency practices. The agency SEPA rules and procedures are being updated and made current for use in implementing the ST3 programs and projects, most of which will require review under SEPA.

FISCAL INFORMATION

While there is no direct fiscal action associated with the proposed action, the amended SEPA rules and procedures will provide for more efficient application of SEPA to agency programs and projects which may reduce the cost of implementing these programs and projects.

SMALL BUSINESS/DBE PARTICIPATION AND APPRENTICESHIP UTILIZATION

Not applicable to this action.

PUBLIC INVOLVEMENT

Sound Transit has provided public notice of and an opportunity for public comment on the amendment of these rules and procedures and the adoption of this resolution.

TIME CONSTRAINTS

A one-month delay would not create a significant impact.

PRIOR BOARD/COMMITTEE ACTIONS

Resolution No. 7-1: Amended rules and procedures to implement the Washington State Environmental Policy Act and superseding Resolution No. 7.

Resolution No. 7: Adopted interim rules and procedures to implement the Washington State Environmental Policy Act.

ENVIRONMENTAL REVIEW

KH 5/30/2018

LEGAL REVIEW

AJP 6/1/2018



RESOLUTION NO. R2018-17
State Environmental Policy Act Rules

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority adopting State Environmental Policy Act Rules and superseding Resolution No. R7-1.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under chapters 81.104 and 81.112 of the Revised Code of Washington (RCW) for the Pierce, King and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Sound Transit district on November 5, 1996, November 4, 2008 and November 8, 2016, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region.

WHEREAS, the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW, and implementing statewide regulations, Chapter 197-11 of the Washington Administrative Code (WAC) (state SEPA rules), set forth an environmental policy for Washington state that requires Sound Transit to consider and, where appropriate, mitigate the environmental impacts of various programs and projects; and

WHEREAS, Sound Transit is required to adopt SEPA rules and procedures that are consistent with the rules adopted by the Washington State Department of Ecology (Ecology), as may hereafter be amended, and may adopt by reference any or all of these rules; and

WHEREAS, by Resolution No. 7 Sound Transit adopted interim SEPA rules and procedures, which contemplated future amendments or modifications; and

WHEREAS, by Resolution R7-1, Sound Transit amended those interim rules and procedures to update information about Sound Transit and to reflect changes made to SEPA, state SEPA rules, regulatory reform legislation, the Growth Management Act (chapter 36.70 RCW) and implementing regulations; and

WHEREAS, Sound Transit wishes to further modify the agency's SEPA rules to update information about Sound Transit and clarify the rules; and

WHEREAS, Sound Transit has provided public notice of and an opportunity for public comment on the amendment of these rules and procedures and the adoption of this resolution; and

WHEREAS, Sound Transit may modify these rules and procedures at some future date; and

WHEREAS, the adoption of these rules and procedures are categorically exempt from SEPA review pursuant to WAC 197-11-800(19).

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that Resolution No. R7-1 is hereby superseded with updated State Environmental Policy Act Rules, which are hereby adopted as follows:

1.0 Scope

- 1.1 **Authority.** This resolution is adopted under RCW 43.21C.120 and WAC 197-11-904 and WAC 197-11-906 and is intended to implement those provisions.
- 2.0 **Definitions.** This part contains uniform usage and definitions of terms under SEPA. These definitions supplement those contained in WAC 197-11-700 to 800.
 - 2.1 **Usage:** The usage of the word "may" means "is authorized to" and is "optional and permissive and does not impose a requirement" (WAC 197-11-700 (3)(b)). Days are in calendar days. If a final date falls on a weekend or a state or national holiday, the date will be the next working day.
 - 2.2 **Board:** The governing legislative body of Sound Transit. The board is responsible for final decision-making by Sound Transit except to the extent that certain decisions or types of decisions are lawfully delegated to board committees or to staff.
 - 2.3 **Chief executive officer (CEO):** The chief administrative officer of Sound Transit, as designated by temporary or permanent appointment.
 - 2.4 **GHG emissions and climate change:** Greenhouse gases (GHG) and climate change are addressed, as appropriate, in the air quality section of environmental documents.
 - 2.5 **Preferred alternative:** A preference for a particular alternative course of action, at the time the preference is expressed. A preferred alternative may be identified at any time in the SEPA process: scoping, draft EIS, or final EIS. A preferred alternative is not an action or decision within the meaning of WAC 197-11-070. The board may select any of the alternatives studied in environmental review. The identification of a preferred alternative will not be construed as an improper commitment to, or as a final decision on, a particular proposal or course of action.
 - 2.6 **Sound Transit:** The Central Puget Sound Regional Transit Authority. For purposes of this resolution, Sound Transit's procedural responsibilities will be carried out by the responsible official unless otherwise specified.
 - 2.7 **Staff:** Employees of Sound Transit or staff members of other agencies assigned to work on Sound Transit issues by interlocal agreement. It does not include board members.

3.0 Procedure

- 3.1 **Adoption of rules.** The state SEPA rules and procedures issued by Ecology (as currently existing or as subsequently amended) and contained in Chapter 197-11 WAC are hereby adopted by reference, except as modified in the following sections. Chapter 197-11 WAC should therefore be used in conjunction with this resolution.
- 3.2 **SEPA responsible official.** WAC 197-11-910 is modified as follows:
 - 3.2.1 The SEPA responsible official for Sound Transit is the CEO.
 - 3.2.2 **Delegation.** The responsible official may delegate any or all of his or her responsibilities orally or in writing.

3.2.3 **SEPA information.** Information about Sound Transit’s SEPA process can be obtained at the following address:

Sound Transit
401 South Jackson Street
Seattle, WA 98104

(206) 398-5000 (Phone)
(888) 889-6368 (TTY Relay 711)

Email: main@soundtransit.org

3.3 **Administrative appeals.** WAC 197-11-680 is modified as follows to provide for appeals of Sound Transit SEPA decisions:

3.3.1 **SEPA decisions subject to administrative appeal.** Administrative appeals are provided for the following final SEPA procedural determinations: Determination of Nonsignificance (DNS), Mitigated DNS, or final environmental impact statement (EIS). An administrative appeal is not provided for an addendum or for intermediate steps under SEPA (e.g. lead agency determination, determination of significance (DS), scoping, and draft EIS adequacy).

3.3.2 **Who may appeal.** A party wishing to file an administrative appeal of a Sound Transit SEPA determination under this section (Petitioner) must demonstrate that his or her interests are within the zone of interests protected by SEPA and that the SEPA determination under appeal will cause the Petitioner injury-in-fact.

3.3.3 **How to appeal.** Appeals of SEPA determinations are made by mailing or delivering a letter of appeal to Sound Transit’s CEO. The letter must include the information and filing fee set out in section 3.3.5.

3.3.4 **Timing of appeals.** The letter of appeal and filing fee must be received by Sound Transit’s CEO, at 401 S. Jackson Street, Seattle, WA 98104, by 5:00 p.m. of the fourteenth (14) calendar day following the date the challenged environmental document or determination is issued. This appeal period will be extended for an additional seven (7) days if the appeal is of a DNS or Mitigated DNS under WAC 197-11-340(2)(a). When the last day of an appeal period is a Saturday, Sunday, or a national or state holiday, the appeal period runs until 5:00 p.m. on the next business day.

3.3.5 **Filing appeals**

3.3.5.a For an appeal to be accepted, the letter of appeal must be in writing, be accompanied by an appeal fee of \$200, be timely received by the CEO, as described in section 3.3.4, and contain a statement that sets forth:

- The basis for the Petitioner’s standing, including (1) how the Petitioner’s interests are within the zone of interests protected by SEPA; and (2) how the SEPA decision being appealed will harm the Petitioner. If the alleged harm has not already occurred, Petitioner must set forth facts establishing the immediate, concrete, and specific future harm that will occur to that Petitioner as a result of the SEPA determination under appeal;
- The SEPA document or determination being appealed;

- The specific errors alleged, and the specific reasons why Petitioner(s) believes the SEPA document or determination is legally inadequate; a clear statement of the issues is an essential element of an appeal;
 - The corrective action being sought;
 - The reasons why the document or determination should be changed;
 - Whether further oral or written comment or a hearing is requested; and
 - The signature, address, phone number, and email address of the Petitioner and the name, address, phone number, and email address of the Petitioner's designated representative, if any.
- 3.3.5.b Supporting documents may be submitted with the letter of appeal.
- 3.3.5.c Failure to comply with the procedural requirements of section 3.3.5 is grounds for dismissal of an appeal.
- 3.3.6 **Hearing Examiner.** If an appeal is determined to contain all of the elements listed under section 3.3.5, the CEO shall appoint an individual familiar with SEPA and hearing procedures as Hearing Examiner for Sound Transit.
- 3.3.7 **Appeal procedures.** The Hearing Examiner will conduct an appeal hearing consistent with these rules and procedures, applicable legal requirements, and any Hearing Examiner Rules of Practice and Procedure adopted by the CEO pursuant to section 3.3.11.
- 3.3.8 **Deadlines.** The Hearing Examiner will issue a decision in writing within thirty (30) days after securing sufficient information. The Hearing Examiner may set deadlines for the submission of any additional information or comments.
- 3.3.9 **Appeal hearing.** A hearing will be provided if requested by the Petitioner or Sound Transit. The hearing will provide reasonable opportunity for the parties to present oral or written testimony and argument, consistent with this resolution, SEPA and the state SEPA rules, and any adopted Hearing Examiner Rules of Practice and Procedure (see section 3.3.11). Procedural determinations made by the responsible official shall be entitled to substantial weight by the Hearing Examiner, in accordance with RCW 43.21C.075(3), and the burden of proof is on the Petitioner to show that the Sound Transit responsible official's decision does not comply with SEPA.
- 3.3.9.a Sound Transit may establish procedures for the hearing and may set the time period allowed for each party to the appeal, including staff, to present its case. A hearing may not be scheduled for at least five (5) days from Sound Transit's receipt of an appeal, and it must be held within ninety (90) days of receipt of an appeal, unless the parties mutually agree otherwise.
- 3.3.10 **Consolidation of appeals.** All procedural SEPA appeal challenges on the same environmental document may be heard by the Hearing Examiner in one single simultaneous appeal hearing.
- 3.3.11 **Authority of CEO to adopt Hearing Examiner rules of practice and procedure.** The CEO shall have the authority to adopt rules of practice and procedure for the Hearing Examiner to use in implementing this resolution and may delegate this authority to appropriate Sound Transit staff. Adoption of or amendments to such

rules of practice and procedure by Sound Transit staff does not require legislative action by the Sound Transit Board.

- 3.3.12 **Exhaustion of administrative appeal procedures.** A party seeking judicial review of a Sound Transit SEPA decision subject to appeal under this section must, before seeking any judicial review, exhaust the appeal procedures of this section.
- 3.4 **Categorical exemptions.** For WAC 197-11-800(1) and WAC 197-11-908, concerning flexible thresholds for categorical exemptions, Sound Transit will apply those flexible thresholds specified by a city or county under these WACs to Sound Transit proposals located in said city or county.
- 3.5 **Scoping.** The responsible official shall decide the scoping method and deadline for a given proposal, consistent with WAC 197-11-408. 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) will be considered expanded scoping and is not required for adequate scoping under state law. 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 state SEPA rules, the responsible official is encouraged to be innovative and has 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.
- 3.6 **Public notice.** For notices of DS, DNS, mitigated DNS, scoping, EIS, and public hearings (but not public meetings) on environmental documents, Sound Transit will provide notice and circulate documents to the public, other agencies and affected tribes as required by the state SEPA Rules.
- 3.6.1 In addition, Sound Transit will:
- 3.6.1.a Give public notice of the availability of those documents and hearings on its website;
 - 3.6.1.b Furnish notice to any person, organization, or governmental agency who has specifically requested in writing to be notified about the particular proposal or environmental document;
 - 3.6.1.c Provide notice using one or more of the methods specified in WAC 197-11-510(1)(a) through (f); and
 - 3.6.1.d File the documents required by WAC 197-11-508 with Ecology for publication of notice in the state SEPA register.
- 3.6.2 Sound Transit may also:
- 3.6.2.a Provide electronic notice (via email or other electronic media) as a substitute for mailed notice or provide the required distribution of DNS, DS, and EIS by sending the document via email, compact disc, or other electronic media in lieu of hard copy distribution.
 - 3.6.2.b Provide notice using other methods as selected by Sound Transit.
- 3.7 **Implementation.** Mitigation measures included in Sound Transit's decision on a proposal or project will be incorporated into design plans and, where applicable, construction contracts. The responsible official may audit or review compliance with mitigation commitments. The CEO or his/her designee may direct appropriate corrective action if necessary.

- 3.8 **Revision of SEPA procedures.** Sound Transit may amend its SEPA procedures from time to time as may be necessary. All environmental documents and notices issued after this resolution is adopted must follow the requirements laid out in this resolution. Environmental documents and notices issued before the adoption date of this resolution, including draft, final, or supplemental EISs, do not require revision or reissuance to meet the requirements of this resolution. The responsible official may provide additional guidance and procedures to carry out this resolution.
- 3.9 **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 will not be affected.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on June 28, 2018.



Dave Somers
Board Chair

ATTEST:



Kathryn Flores
Board Administrator