



February 2016

Please note that the agency address listed in Section 3.c. of Resolution R7-1 has changed. Information about Sound Transit's SEPA process can be obtained at the following address:

Sound Transit
Union Station
401 South Jackson Street
Seattle, Washington 98104-2826

In addition, letters of appeal should be addressed to Peter M. Rogoff, Chief Executive Officer, Sound Transit, at the address above.

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. R7-1

**Amendments to the RTA's rules and procedures for implementing the requirements
of the State Environmental Policy Act (SEPA)
BACKGROUND AND COMMENTS**

Meeting:	Date:	Agenda Item:	Staff Contact:	Phone:
Board of Directors	4/9/98	No. 8	Desmond Brown	684-6758
Board of Directors	4/23/98	No. 7	Perry Weinberg	689-4931

ACTION:

Adopt amendments to the RTA's rules and procedures for implementing the requirements of the State Environmental Policy Act (SEPA). The proposed rules and procedures would supersede those adopted previously by Resolution No. 7.

BACKGROUND:

The State Environmental Policy Act (SEPA) requires all state and local agencies to adopt rules and procedures for implementing SEPA. The RTA Board adopted "interim" SEPA rules and procedures in 1993 shortly after the RTA was formed. Those interim rules and procedures, which were based substantially on the former METRO SEPA procedures, have not been revised since they were first adopted.

Changes to the rules and procedures are needed to update some basic information about the RTA and to conform the rules with changes to a number of laws. These changes include amendments to SEPA and its implementing rules, changes to the state Growth Management Act (GMA), and certain regulatory reform legislation. The proposed new rules and procedures are consistent with all of these changes. In addition, changes to the RTA's SEPA rules and procedures are warranted to reflect the work that lies ahead during the project implementation and development phase.

In developing these amended SEPA rules and procedures, staff and legal counsel have reviewed the rules and procedures of other similar entities (e.g., the Port of Seattle) and of other local jurisdictions, including King, Pierce, and Snohomish counties. Many of the new provisions contained in the proposed rules are similar to those contained in the rules from these other jurisdictions.

In approving and adopting these new rules, SEPA requires that the RTA provide public notice of the proposed changes and an opportunity for public comment. An opportunity for public comment is being scheduled for the Board meeting at which the Board will be asked to take action on the resolution.

RELEVANT BOARD POLICIES AND PREVIOUS ACTIONS TAKEN:

- ◆ Adoption of Resolution No. 7 (November 12, 1993)

KEY FEATURES:

The main features of the amended rules and procedures are as follows (by section):

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- **Legislative Findings:** revised to explain general reasons underlying the changes.
- **Sections 1 (Authority) and 2 (Adoption of Rules):** editing revisions to improve clarity.
- **Section 3 (SEPA Information):** revised to update the RTA’s address.
- **Section 4 (Administrative Appeals):** provisions extensively revised and updated. The revisions generally track the appeals provisions of other public entities. The key changes include the following:

- “Standing” requirements added. Under the old resolution, no specific requirements were established for “who” could file an administrative appeal to argue against a RTA environmental decision. Basically anyone could file an appeal, so long as they submitted a letter meeting certain requirements.

The new resolution add adds a requirement that parties wishing to file an administrative appeal must meet certain minimum standing requirements. These include demonstrating that the party seeking to challenge an environmental determination is affected by the proposed determination and will suffer some real injury. This requirement is consistent with the showing that a challenger would have to make before filing a judicial appeal.

- Timing and filing requirements clarified and shortened. Consistent with recent SEPA rule amendments, the time for filing an appeal has been shortened. The rule now provides a 14-day appeal period, except for certain determinations of nonsignificance, which have a 21-day appeal period.
- Filing fee added. Under the old resolution, no fee was charged for filing an administrative appeal. Most local jurisdictions charge a filing fee for administrative SEPA appeals.

We surveyed SEPA appeal filings fees required by other local jurisdictions, which are as follows: Seattle (\$50); Snohomish County (\$100); King County (\$125); Port of Seattle (\$300); Pierce County (\$350). The principal rationale for having a filing fee is to discourage frivolous appeals.

The new resolution adds a filing fee for SEPA appeals, which we suggest be set at \$200, which reflects an average of the fees charged by the three counties that comprise the RTA. This dollar figure also represents a reasonable estimate of the cost of staff time for reviewing an appeal to determine whether it meets the criteria for a valid appeal. If those criteria are met, the RTA is required to appoint a hearing examiner to hear the appeal.

- Rules of Practice and Procedure Authorized. The new rules give the executive director authority to develop more detailed rules of practice and procedure for hearings without requiring future Board approval. Without such authority, development of procedural rules would be left to the appointed hearing examiner on a case-by-case basis.
- Limitation on Board Actions Eliminated. Under the old resolution, the Board was expressly precluded from taking any action on a project or a proposal while a valid administrative SEPA appeal was pending before the hearing examiner. Resolution of such appeals can take 45 to 60 days, or longer.

Under the new resolution, this automatic limitation has been deleted. The RTA Board may still decide that it does not want to take action on a proposal while an administrative appeal is pending, but the new resolution allows that decision to be made on a case-by-case basis. This may be important in some cases in order to obtain (or maintain) funding or to meet critical path schedule issues.

- Opportunity for Board review of hearing examiner decision eliminated. This change is consistent with applicable law (which only allows one administrative appeal).
- **Section 5 (Categorical Exemptions):** No changes.
- **Sections 6 through 10 (Scoping; Public Notice; Implementation; Definitions; Transition to New Rules):** Minor changes and additions to improve clarity.

- **Sections 11 (Revisions of SEPA Procedures) and 12 (Severability):** No changes.

FUNDING:

The proposed action does not have any direct budget impacts.

ALTERNATIVES:

The Board could retain the RTA's existing SEPA rules and procedures or could defer action on the amended rules until a later time. Retaining the existing rules is not recommended, because the rules are no longer consistent with current law and contain outdated information about the agency. The Board also could choose to approve the proposed resolution with modifications to specific revisions.

CONSEQUENCES OF DELAY:

Deferring action on the amended rules is not recommended, because it would delay the benefits that the RTA will realize from implementing the new rules. Amending the procedures now also is particularly timely so that the new procedures will be in place prior to the agency's issuance of forthcoming project-level environmental determinations.

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. R7- 1

A RESOLUTION of the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region amending rules and procedures to implement the Washington State Environmental Policy Act and superseding Resolution No. 7.

WHEREAS, pursuant to Chapters 81.104 and 81.112 RCW, the Regional Transit Authority ("RTA"), is responsible for implementing a high capacity transportation system within the RTA's service area; and

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

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

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

WHEREAS, the RTA wishes to amend those interim rules and procedures to update information about the RTA, and to reflect changes made to SEPA and the state SEPA rules, regulatory reform legislation, and changes to the Growth Management Act (chapter 36.70 RCW) and implementing regulations; and

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

WHEREAS, the RTA 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;

NOW THEREFORE BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

Section 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.

Section 2. Adoption of Rules. The state SEPA rules and procedures issued by the Department of Ecology 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. The state SEPA rules can be found in Chapter 197-11 of the Washington Administrative Code (WAC) and a copy can be viewed at the office named in Section 3 below.

Section 3. SEPA Responsible Official. WAC 197-11-910 is modified as follows:

- a. The responsible official for the RTA is the Executive Director of the RTA.
- b. Delegation. The responsible official may delegate any or all of his or her responsibilities orally or in writing.
- c. SEPA Information. Information about the RTA's SEPA process can be obtained at the following address:

Regional Transit Authority
1100 Second Avenue, Suite 500
Seattle, Washington 98101
(206) 684-6776

The RTA will provide information about environmental documents, the status of SEPA review for a proposal, and will answer questions about SEPA compliance. There may be a charge for certain documents (WAC 197-11-914).

Section 4. Administrative Appeals. WAC 197-11-680 is modified as follows to provide for appeals of RTA SEPA decisions:

- a. 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 a determination of significance (DS). Appeals of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) also are not allowed.

b. Who May Appeal. A party wishing to file an administrative appeal of an RTA 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.

c. How to Appeal. Appeals of SEPA determinations are made by mailing or delivering a letter of appeal to the RTA Executive Director. The letter must include the information and filing fee set out in Section 4e below.

d. Timing of Appeals. The letter of appeal and filing fee must be received by the Executive Director, at the address given in Section 3a above 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 shall be extended for an additional seven (7) days if the appeal is of a DNS or Mitigated DNS for which public comment is required 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 p.m. on the next business day.

e. Filing Appeals. For an appeal to be accepted, the letter of appeal must:

1. Be in writing;

2. Contain a statement that sets forth:

(a) the basis for the Petitioner's standing, including

i. how the Petitioner's interests are within the zone of interests protected by SEPA; and

ii. how the SEPA decision being appealed will cause the Petitioner injury-in-fact. If the alleged injury-in-fact has not already occurred, Petitioner must set forth facts establishing the immediate, concrete, and specific future injury-in-fact that will

occur to that Petitioner as a result of the SEPA determination under appeal;

- (b) the document or determination being appealed;
- (c) the specific errors complained of;
- (d) the corrective action being sought;
- (e) the reasons why the determination should be changed;
- (f) whether further oral or written comment or a hearing is requested;
and
- (g) the signature, address, and phone number of the Petitioner and the name and address of Petitioner's designated representative, if any.

Supporting documents may be submitted with the letter of appeal.

3. Be accompanied by an appeal fee of \$200; and
4. Be timely received by the Executive Director, as described in 4. B., above.
Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

f. Hearing Examiner. If an appeal is determined to contain all of the elements listed under Section 4e. above, the Executive Director shall appoint an individual familiar with SEPA and hearing procedures as Hearing Examiner for the RTA.

g. 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 Executive Director pursuant to section 4.j. of this Resolution.

h. Deadlines. The Hearing Examiner shall have thirty (30) days after securing sufficient information to make a decision in writing. The Hearing Examiner may set deadlines for the submission of any additional information or comments.

i. Appeal Hearing. A hearing shall be provided if requested by the Petitioner. The hearing shall provide reasonable opportunity for the parties to present oral or written testimony and argument, consistent with this resolution, SEPA and the state SEPA rules. Procedural determinations made by the responsible official shall be entitled to substantial weight. The Hearing Examiner 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 the RTA's receipt of an appeal unless the parties agree otherwise.

j. Authority of Executive Director to Adopt Hearing Examiner Rules of Practice and Procedure. The Executive Director 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 RTA staff. Adoption of or amendments to these rules of practice and procedure by RTA staff does not require legislative action by the RTA Board.

k. Exhaustion of Administrative Appeal Procedures. A party seeking judicial review of an RTA SEPA decision subject to appeal under this section must, before seeking any judicial review, exhaust the appeal procedures of this section.

Section 5. Categorical Exemptions. WAC 197-11-800(1) and WAC 197-11-908, concerning flexible thresholds for categorical exemptions shall be interpreted by the RTA as applying those exemptions specified by a city or county under these WACs to those proposals of the RTA that are located in said city or county.

Section 6. 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) shall 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 the state SEPA 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.

Section 7. Public Notice. For notices of DS, DNS, MDNS, scoping, EIS, and public hearings (but not public meetings) on environmental documents, the RTA shall, in addition to, or in conjunction with, the circulation requirements to other agencies and affected tribes:

a. publish notice in a newspaper of general circulation in the general area where the proposal is located (if there is more than one such newspaper, the responsible official may select one newspaper for publication); initial newspaper publication shall occur at least fifteen (15) days before a public hearing;

b. furnish notice to anyone who has specifically requested to be notified about the particular proposal;

c. file the documents required by WAC 197-11-508 with the state department of ecology for publication of notice in the state SEPA REGISTER.

Section 8. Implementation. Mitigation measures included in the RTA's decision on a proposal or project shall be incorporated into design plans and, where applicable, construction contracts. The responsible official may audit or review compliance with mitigation commitments. The Executive Director or his/her designee may direct appropriate corrective action if necessary.

Section 9. Definitions. This part contains uniform usage and definitions of terms under SEPA. These definitions supplement those contained in WAC 197-11-700 to 800.

a. **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 shall be the next working day.

b. Board. "Board" means the governing legislative body of the RTA. The Board is responsible for final decisionmaking by the RTA except to the extent that certain decisions or types of decisions are lawfully delegated to staff.

c. Executive Director. "Executive Director" means the chief administrative officer of the RTA, as designated by temporary or permanent appointment.

d. Preferred Alternative. "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.

e. RTA. "RTA" means the Regional Transit Authority. For purposes of this resolution, the RTA's procedural responsibilities will be carried out by the responsible official unless otherwise specified.

f. Staff. "Staff" or "staff member," for the purposes of this resolution, means employees of the RTA or staff members of other agencies assigned to work on RTA issues by interlocal agreement. It does not include Board members.

Section 10. Transition to New Rules. 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 prior to 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.

Section 11. Revision of SEPA Procedures. The RTA may amend its SEPA procedures from time to time as may be necessary. The responsible official may provide additional guidance and procedures to carry out this resolution.

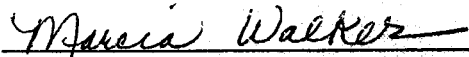
Section 12. Severability. If any provision of this resolution or its application to any person or circumstance is held invalid, the remainder of this resolution or the application of the provision to other persons or circumstances shall not be affected.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on the 23rd day of April, 1998.



Bob Drewel
Board Chair

ATTEST:



Marcia Walker
Board Administrator