PROCEDURES AND POLICIES IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT (SEPA)

Adopted April 24, 1997

SEPA RECORDS

Puget Sound Regional Council
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WHEREAS, pursuant to the State Environment Policy Act (SEPA), RCW 43.21C.120, it is the responsibility of the Puget Sound Regional Council, Seattle, Washington, (the “Regional Council”) to adopt procedures and policies to implement SEPA which are consistent with SEPA and the SEPA rules, Chapter WAC 197-11; and

WHEREAS, the Regional Council has provided public notice and opportunity for public comment as part of the process for adopting its SEPA procedures and formally designating its SEPA policies;

NOW THEREFORE,

BE IT RESOLVED BY THE PUGET SOUND REGIONAL COUNCIL, SEATTLE, WASHINGTON, as follows:

PART ONE
AUTHORITY

Section 1. AUTHORITY. The Regional Council adopts this resolution under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

This resolution contains the Regional Council’s SEPA procedures and policies.

The SEPA rules, Chapter WAC 197-11, must be used in conjunction with this resolution.
PART TWO
GENERAL REQUIREMENTS

Section 2. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the basic requirements that apply to the SEPA process. The following sections of Chapter 197-11 of the Washington Administrative Code are adopted by reference:

WAC

197-11-040 Definitions.

197-11-050 Lead agency.

197-11-055 Timing of the SEPA process.

197-11-060 Content of environmental review.

197-11-070 Limitations on actions during SEPA process.

197-11-080 Incomplete or unavailable information.

197-11-090 Supporting documents.

197-11-100 Information required of applicants.

Section 3. ADDITIONAL DEFINITIONS. In addition to those definitions contained within WAC 197-11-700 through 799, when used in this resolution, the following terms shall have the following meanings, unless the context indicates otherwise:

(1) "Regional Council" means the Puget Sound Regional Council, Seattle, King County, Washington.

(2) "Resolution" means the resolution or other procedures used by the Regional Council to adopt regulatory requirements.

(3) "SEPA rules" means WAC 197-11 adopted by the Department of Ecology.
Section 4. DESIGNATION OF RESPONSIBLE OFFICIAL.

(1) For those proposals for which the Regional Council is the lead agency, the responsible official shall be the Regional Council's Executive Director or her or his designee.

(2) For all proposals for which the Regional Council is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in this resolution.

(3) The Regional Council shall retain all documents required by the SEPA rules (Chapter WAC 197-11) and make them available in accordance with Chapter RCW 42.17.

Section 5. LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.

(1) When the Regional Council receives a proposal for or initiates an activity that involves a nonexempt action, it shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.

(2) When the Regional Council is not the lead agency for a proposal, it shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. It shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Regional Council may conduct supplemental environmental review under WAC 197-11-600.

(3) If the Regional Council receives a lead agency determination made by another
agency that appears inconsistent with the criteria of WAC 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 fifteen days of receipt of the determination, or the Regional Council must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the Regional council may be initiated by the responsible official.

(4) The responsible official is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.

PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

Section 6. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for deciding whether a proposal has a "probable, significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The following sections are adopted by reference, as supplemented in this part:

WAC

197-11-300 Purpose of this part.

197-11-305 Categorical exemptions.

197-11-310 Threshold determination required.

197-11-315 Environmental checklist.

197-11-330 Threshold determination process.
Section 7. USE OF EXEMPTIONS

(1) When the Regional Council initiates a proposal, it shall determine whether the proposal is exempt. The Regional Council’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this resolution apply to the proposal. The Regional Council shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the Regional Council shall make certain the proposal is properly defined and if the proposal includes exempt and nonexempt actions, the Regional Council shall determine the lead agency, even if the action that triggers the Regional Council’s consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the Regional Council may authorize exempt actions prior to compliance with the procedural requirements of this resolution, except that:

(a) The Regional Council shall not give authorization for:

(i) Any nonexempt action;

(ii) Any action that would have an adverse environmental impact; or
(iii) Any action that would limit the choice of reasonable alternatives.

(b) The Regional Council may withhold approval of an exempt action that would lead to modification of thy physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) The Regional Council may withhold approval of exempt actions that would lead to substantial financial expenditures by another party when the expenditures would serve no purpose if nonexempt action(s) were not approved.

Section 8. ENVIRONMENTAL CHECKLIST.

(1) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as a proposal is made requiring action by Regional Council and the proposal is not specifically exempted in this resolution; except, a checklist is not needed if the Regional Council and the proponent of an action agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The Regional Council shall use the environment checklist to determine the lead agency and, if the Regional Council is the lead agency, for determining the responsible official and for making the threshold determination.

(2) For private proposals, the Regional Council will require the
proponent to completed the environmental checklist, providing assistance as necessary. For Regional Council proposals, the Council shall complete the environmental checklist for that proposal.

Section 9. MITIGATED DNS.

(1) As provided in this section and in WAC 197-11-350, the Regional Council may clarify or change features of its own proposals, and may specify mitigation measures in its own DNSs, as a result of comments by other agencies or the public or as a result of comments by other agencies or the public or as a result of additional Regional Council planning. For private proposals, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or based on changes to, or clarifications of, the proposal made by the proponent.

(2) Mitigated DNSs issued under WAC 197-11-340(2) require a fifteen-day comment period and public notice.

(3) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the Regional Council’s decision and may be enforced in any manner specifically provided by the Regional Council.

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 10. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for preparing environmental impact
statements. The following sections are adopted by reference, as supplemented by this part:

WAC

197-11-400  Purpose of EIS.

197-11-402  General requirements.

197-11-405  EIS types.

197-11-406  EIS timing.

197-11-408  Scoping.

197-11-410  Expanded scoping (optional).

197-11-420  EIS preparation.

197-11-425  Style and size.

197-11-430  Format.

197-11-435  Cover letter or memo.

197-11-440  EIS contents.

197-11-442  Contents of EIS on nonproject proposals.

197-11-443  EIS contents when prior nonproject EIS.

197-11-444  Elements of the environment.

197-11-448  Relationship of EIS to other considerations.

197-11-450  Cost-benefit analysis.

197-11-455  Issuance of DEIS.

197-11-460  Issuance of FEIS.

Section 11.  PREPARATION OF EIS--ADDITIONAL
CONSIDERATIONS.

(1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) are the responsibility of the responsible official. Before the Regional Council issues an EIS, the responsible official shall be satisfied that it complies with this resolution and Chapter WAC 197-11.

(2) The DEIS and FEIS or draft and final SEIS shall be prepared by Regional Council staff, a proponent, or by a consultant selected by the Regional Council or the proponent. If the responsible official requires an EIS for a proposal and determines that someone other than the Regional Council will prepare the EIS, the responsible official shall notify such other person or entity immediately after completion of the threshold determination. The responsible official shall also notify the other person or entity of the Regional Council's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The Regional Council may require a proponent to provide information the Council does not possess, including specific investigations. However, the proponent is not required to supply information that is not required under this resolution or that is being requested from another agency. (This does not apply to information the Regional Council may request under other authority.)
PART FIVE
COMMENTING

Section 12. ADOPTION BY REFERENCE. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The following sections are adopted by reference, as supplemented in this part:

WAC

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.

Section 13. PUBLIC NOTICE.

(1) Whenever the Regional Council issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Regional Council shall give public notice as follows:

(a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;
(b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,

(c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(2) Whenever the Regional Council issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;

(b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,

(c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(3) Whenever possible, the Regional Council shall integrate the public notice required under this section with existing notice procedures for the Council’s nonexempt approval(s) required for the proposal, if any.

(4) The Regional Council may require the proponent to complete the public notice requirements for the proponent’s proposal at his, her or its expense.

Section 14. DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE REGIONAL COUNCIL.

(1) The Executive Director of the Regional Council or her or his designee shall be responsible for preparation of written comments for the Council in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
(2) This person shall be responsible for the Regional Council's compliance with WAC 197-11-550 whenever the Council 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.

PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS

Section 15. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act (NEPA) for the Regional Council’s own environmental compliance. The following sections are adopted by reference:

WAC

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statement--Procedures.

197-11-625 Addenda--Procedures.

197-11-630 Adoption--Procedures.

197-11-635 Incorporation by reference--Procedures.

197-11-640 Combining documents.

PART SEVEN
SEPA AND AGENCY DECISIONS

Section 16. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This
part contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The following sections are adopted by reference:

WAC

197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.

Section 17. SUBSTANTIVE AUTHORITY.

(1) The policies and goals set forth in this resolution are supplementary to those in the existing legal authorization of the Regional Council.

(2) Any Regional Council action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the limitation of WAC 197-11-660(1).

(3) The Regional Council designated and adopts by reference the following policies as the basis for the Regional Council’s exercise of authority pursuant to this Section:

(a) The Regional Council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities to each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe,
healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources,

(b) The Regional Council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Section 18. APPEALS AND REQUESTS FOR RECONSIDERATION.

(1) There shall be no administrative appeal of the adequacy of a Determination of Nonsignificance (DNS), final EIS or final Supplemental EIS. Persons wishing to dispute the adequacy of a DNS, final EIS or final Supplemental EIS may appeal directly to King County
Superior Court and/or file a request for reconsideration as described in Section 18(2). Judicial appeals shall be filed in accordance with RCW 43.21C.075 and RCW 43.21C.080.

(2) Following the completion of a DNS, final EIS or a final Supplemental EIS, any party may request the Responsible Official to reconsider the adequacy of the decision or final document. It is not necessary for a person to utilize this procedure in order to retain rights to commence a judicial appeal.

This optional reconsideration process relates only to perceived inadequacies in the DNS decision or in a final statement which are based on information available at the time that the DNS decision or final statement was prepared. If the perceived inadequacies relate to new information indicating a proposal's probable significant adverse environmental impacts or is based on substantial changes to the proposal itself which are likely to cause significant adverse environmental impacts, then the procedures in Subparagraph (3) of this section apply.

(a) A request for reconsideration must be filed in writing with the Responsible Official within thirty (30) days of the mailing by the Regional Council of the DNS or final document and/or notice of the availability of the final document to persons entitled to notice. The request must contain a short and plain statement of the alleged inadequacy of the document.

(b) Upon receipt of a timely filed request for reconsideration, the Responsible Official shall determine whether the issues raised by the request are of sufficient complexity and/or importance to warrant use of a Hearing Examiner. If the Responsible Official determines that a Hearing Examiner is warranted, the request shall be referred to the Hearing Examiner immediately. The Responsible Official shall provide a report to the Executive Board if the Official denies a request for use of a Hearing Officer from parties seeking reconsideration.
(c) If the matter is not referred to a Hearing Examiner, the Responsible Official shall make a determination on the request for reconsideration and provide a written response within thirty (30) days. If, upon reconsideration, the Responsible Official determines that additional environmental analysis is necessary, the Responsible Official shall direct the development of an EIS, addenda or supplemental EIS, consistent with the requirement of WAC 197-11-600, et. seq.

(d) If the matter is referred to a Hearing Examiner, the Hearing Examiner shall immediately contact the party (or parties) requesting reconsideration and hold a pre-hearing conference to establish procedures for the hearing. The Hearing Examiner shall have full discretion to design the procedures to fit the circumstances of each case. The pre-hearing conference will be used to determine, for instance, whether testimony will be presented live or in written form; whether cross-examination will be allowed; whether attorneys will be allowed to represent parties; whether the direct testimony of experts must be pre-filed; and whether pre- or post-hearing briefs will be accepted. The procedures should be designed to avoid unnecessary costs and delays. The Hearing Examiner shall schedule the proceedings after consulting with the Responsible Official to assure that the Hearing Examiner's decision can be made in a timely manner with minimum disruption to the Regional Council's use of the environmental document in a timely manner.

(e) The Hearing Examiner's decision shall be in the form of a recommendation to the Responsible Official. The recommendation shall be either to: deny the request for reconsideration; prepare an addenda; prepare a supplemental EIS, or prepare an EIS. The Hearing Examiner's recommendation shall be supported by a written decision.
(f) Upon receipt of the Hearing Examiner's recommendation, the Responsible Official shall determine whether to: implement the recommendation; take some action different than that recommended by the Hearing Examiner; or return the matter to the Hearing Examiner for further hearings. If the Responsible Official takes action other than that recommended by the Hearing Examiner or remands the matter to the Hearing Examiner for further hearings, the Responsible Official shall prepare a written explanation of the basis for such action.

(g) The Examiner's recommendation and any written document by the Responsible Official explaining why the recommendation was not followed shall be immediately submitted to the Regional Council's Operations Committee and Executive Board.

(3) (a) If a person believes that there is new information indicating a proposal’s probable significant adverse environmental impacts or if there are substantial changes so that the proposal is likely to have significant adverse environmental impacts not already discussed adequately in a final EIS or final Supplemental EIS, the person shall promptly file a request for the preparation of an EIS or Supplemental EIS. The Responsible Official may specify a due date for requests for additional environmental review based on allegations of new information or substantial changes to the proposal.

(b) The request for the preparation of an EIS or a supplemental EIS shall be filed with the Responsible Official and shall state clearly and succinctly the grounds for believing that preparation of a supplemental EIS is required. Specific reference shall be made in the request to the requirements of WAC 197-11-340(3) and WAC 197-11-600(4)(d), as appropriate.

(c) If the Responsible Official determines that an EIS or a Supplemental EIS should be prepared, then the regular procedures for preparing an EIS or SEIS will be utilized. If the
Responsible Official determines that an EIS or SEIS is not required, the Responsible Official shall inform the person in writing with a brief explanation of the reasons for rejecting the request.

(d) No judicial appeal challenging the failure of the Regional Council to withdraw a DNS pursuant to WAC 197-11-340(3) or to prepare a supplemental statement on the basis of WAC 197-11-600(4)(d) may be commenced unless the procedure set forth in this Subsection 3 is first utilized.

Section 19. NOTICE/STATUTE OF LIMITATIONS.
(1) The Regional Council or proponent of any action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the Regional Council or proponent pursuant to RCW 43.21C.080.

PART EIGHT
DEFINITIONS

Section 20. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains uniform usage and definitions of terms under SEPA. The following sections are adopted by reference, as supplemented by this resolution:

WAC

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
PART NINE
CATEGORICAL EXEMPTIONS

Section 21. ADOPTION BY REFERENCE. Regional Council adopts by reference the following rules for categorical exemptions, as supplemented in this resolution:
PART TEN
AGENCY COMPLIANCE

Section 22. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for agency compliance with SEPA. The following sections are adopted by reference.

WAC

197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.
ADOPTED by the Executive Board this 24th day of April, 1997.

Signed by Dave Russell

Dave Russell
Councilmember City of Kirkland
President
Puget Sound Regional Council

Attest: Signed by Mary McCumber

Mary McCumber
Executive Director
ADOPTION HISTORY PART I
Material prepared for the January 23, 1997 Operations Committee and Executive Board meetings
Operations Committee Meeting
Thursday, January 23, 1997 • 9:00 a.m. • 5th Floor Conference Room

Agenda

9:00 a.m.

1. Call to Order - Mayor Norman B. Rice, Chair

2. Roll Call

3. Communications and Citizen Comments

4. Consent Agenda
   a. Approval of Minutes of Meeting held December 5, 1996*
   b. Approval of Vouchers dated 12/12/96 through 1/14/97, in the amount of $542,490.64*

5. New Business
   a. Contract to Develop and Perform the 1997 Puget Sound Household and Preference Survey*
   b. Contract to Develop Linear Referencing System*
   c. Revised PSRC State Environmental Policy Act (SEPA) Procedures*
   d. Associate Membership for the Puyallup Tribe*
   e. Other New Business

6. Discussion Item
   • Status of FY 1998 Budget and Work Program*

7. Information Item
   • Staffing/Contracts Status Reports*

8. Announcements

Next Meeting Date and Time:

Special Operations Committee Meeting on the FY 1998 Budget and Work Program, Thursday, February 6, 1997; 8:30-10 a.m. (Tentative)
The Committee will determine if this meeting is necessary at the meeting on January 23.

Regular Operations Committee Meeting, Thursday, February 27, 1997, 5th Floor Conference Room, 1011 Western Avenue, Seattle, WA, 9:00 a.m.

10:00 a.m.

Adjourn

*Supporting materials attached for Operations Committee members and alternates. For copies of the complete agenda packet, please contact Sylvia Nelson, (206) 464-7518.

Sign language and communication material in alternate formats can be arranged given sufficient notice by calling Grace Foster at (206) 464-7090; TDD/TTY (206) 464-5409.
Puget Sound Regional Council

ACTION ITEM

To: Operations Committee

From: Mary McCumber, Executive Director

Subject: Amendment to Regional Council State Environmental Policy Act (SEPA) Procedures

AT ISSUE

The State Environmental Policy Act (SEPA), RCW 43.21C.120, requires the Regional Council to adopt procedures to ensure implementation of the Act. Pursuant to this requirement, it is necessary to amend the Council's SEPA procedures to comply with 1995 “regulatory reform” amendments passed as part of ESHB 1724. This legislation included an amendment to SEPA which was intended to streamline the administrative appeal process. The basic thrust of the SEPA amendment was to mandate that SEPA administrative appeal hearings be consolidated with the agency’s hearing or appeal on the underlying action.

RECOMMENDED ACTION

The Operations Committee should recommend that the Executive Board adopt Resolution EB-97-01 (attached) containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02.

DISCUSSION

Regional Council attorney, David Bricklin, a partner in the law firm of Bricklin and Gendler, reviewed the new requirements contained in RCW 43.21C.075 (see attached) with Regional Council staff and prepared amendments to Council SEPA procedures. The amended language is found in Section 18, pages 14 through 18 of Resolution EB-97-01 (attached). This Resolution consolidates past amendments into a single document, titled Procedures and Policies Implementing the State Environmental Policy Act.

The law requires agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action. The only appeal allowed under current Regional Council SEPA procedures is an appeal of a Determination of Nonsignificance (DNS). In the majority of cases, however, it would be
impossible to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different times. Therefore, the Regional Council is proposing to amend its procedures to eliminate the DNS appeal.

Under the proposed change, a challenge of a Determination of Nonsignificance would follow the same procedure as a challenge to a final EIS or final Supplemental EIS. In each case, a party may request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision under specific provisions set out in the current SEPA procedures, but no appeal to a higher level within the agency would be available. Appeals, however, should be made directly to the King County Superior Court, as is the case with a Final or Supplemental EIS.

Public notice regarding the proposed amendments was given January 2, 1997 in the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. Notice was also published in the Regional View. Comments on the proposed amendments will be available at your meeting on January 23, 1997.

If you have any questions or comments please, contact Norman Abbott, Responsible SEPA Official, (206) 464-7134.
Puget Sound Regional Council

Executive Board Meeting

Thursday, January 23, 1997 → 10:00 a.m. ←

Agenda 10:00 a.m.

1. Call to Order - Executive Doug Sutherland, President

2. Roll Call

3. Communications and Citizen Comments

4. President’s Remarks
   a. Appointment of 1997 PSRC Nominating Committee
   b. Update of PSRC Ad Hoc Legislative Tracking Committee

5. Policy Board Reports

6. Executive Director’s Report

7. Consent Agenda
   a. Approval of Minutes of Meeting held December 5, 1996*
   b. Approval of Vouchers dated 12/12/96 through 1/14/97, in the amount of $542,490.64*
   c. Contract to Develop and Perform the 1997 Puget Sound Household and Preference Survey*
   d. Contract to Develop Linear Referencing System*
   e. Revised PSRC State Environmental Policy Act (SEPA) Procedures*
   f. Associate Membership for the Puyallup Tribe*
   g. Certification of Transportation Elements in Local Comprehensive Plans (Cities of Tukwila and Woodinville)**
   h. Certification of Pierce County Countywide Planning Policies*
   i. Revised Policy Framework for 1997 ISTEA TIP Development Process*
   j. Guidance on Use of Regional Policies in Major Investment Studies*
   k. Routine Amendment to 1996-98 Transportation Improvement Program (TIP)*

8. New Business
   a. Revised Transportation Policy Board Composition to Incorporate Regional Transit Authority Representation*

9. Discussion Item
   a. Status of FY 1998 Budget and Work Program**
   b. Report on Seattle, Tacoma, Everett Metropolitan Area Planning Certification Review*

10. Information Item
    a. Growth Management Policy Board Telecommunication Report
    b. Executive Summary for Six-Year Action Strategy*
    c. 1997 Meeting Schedule*

11. Future Action Item
    a. FY 1998 Budget and Work Program

12. Announcements
    - Next Meeting Date and Time -
      a. Executive Board Meeting - Thursday, February 27, 1997, 6th Floor Board Room, 1011 Western Avenue, Seattle, WA, 10 - 11:30 a.m.
      b. General Assembly Meeting - Thursday, March 13, 1997, 3:30 p.m., Woodland Park Zoo, 5500 Phinney Avenue North, Seattle, WA; Education Center Theater.

12:00 noon

Adjourn

*Supporting materials attached for Executive Board members and alternates. For copies of the complete agenda packet, please contact the Information Center, (206) 464-7532.

**Supporting materials enclosed separately for Executive Board members and alternates. For copies call the Information Center.

Sign language and communication material in alternate formats can be arranged given sufficient notice by calling Grace Foster at (206) 464-7090; TDD/TTY (206) 464-5409.
ACTION ITEM  

January 22, 1997

To:  

Executive Board

From:  

Mary McCumber, Executive Director

Subject:  

Amendment to Regional Council State Environmental Policy Act (SEPA) Procedures

AT ISSUE

The State Environmental Policy Act (SEPA), RCW 43.21C.120, requires the Regional Council to adopt procedures to ensure implementation of the Act. Pursuant to this requirement, it is necessary to amend the Council’s SEPA procedures to comply with 1995 “regulatory reform” amendments passed as part of ESHB 1724. This legislation included an amendment to SEPA which was intended to streamline the administrative appeal process. The basic thrust of the SEPA amendment was to mandate that SEPA administrative appeal hearings be consolidated with the agency’s hearing or appeal on the underlying action.

RECOMMENDED ACTION

The Executive Board should adopt Resolution EB-97-01 (attached) containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02.

DISCUSSION

Regional Council attorney, David Bricklin, a partner in the law firm of Bricklin and Gendler, reviewed the new requirements contained in RCW 43.21C.075 (see attached) with Regional Council staff and prepared amendments to Council SEPA procedures. The amended language is found in Section 18, pages 14 through 18 of Resolution EB-97-01 (attached). This Resolution consolidates past amendments into a single document, titled Procedures and Policies Implementing the State Environmental Policy Act.

The law requires agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action. The only appeal allowed under current Regional Council SEPA procedures is an appeal of a Determination of Nonsignificance (DNS). In the majority of cases, however, it would be impossible to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different times. Therefore, the Regional Council is proposing to amend its procedures to eliminate the DNS appeal.
Under the proposed change, a challenge of a Determination of Nonsignificance would follow the same procedure as a challenge to a final EIS or final Supplemental EIS. In each case, a party may request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision under specific provisions set out in the current SEPA procedures, but no appeal to a higher level within the agency would be available. Appeals, however, should be made directly to the King County Superior Court, as is the case with a Final or Supplemental EIS.

Public notice regarding the proposed amendments was given January 2, 1997 in the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. Notice was also published in the Regional View. Comments on the proposed amendments will be available at your meeting on January 23, 1997.

If you have any questions or comments please, contact Norman Abbott, Responsible SEPA Official, (206) 464-7134.
1996

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under authority of Chapter 1.08 RCW
in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties. Any governmental action may be conditioned or denied pursuant to this chapter: PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter. Such designation shall occur at the time specified by RCW 43.21C.120. Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decisionmaker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. Except for permits and variances issued pursuant to chapter 90.58 RCW, when such a governmental action, not requiring a legislative decision, is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals. Such appeals shall be in accordance with procedures established for such appeals by the legislative authority of the acting local governmental agency. [1983 c 117 § 3; 1977 ex.s. c 278 § 8; 1971 ex.s. c 109 § 6.]

43.21C.065 Impact fees and fees for system improvements. A person required to pay an impact fee for system improvements pursuant to RCW 82.02.050 through 82.02.090 shall not be required to pay a fee pursuant to RCW 43.21C.060 for those same system improvements. [1992 c 219 § 1.]

43.21C.075 Appeals. (1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. (2) Unless otherwise provided by this section: (a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations. (b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review. (3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(1996 Ed.)

(a) Shall not allow more than one agency appeal proceeding on a procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement). The appeal proceeding on a determination of significance may occur before the agency's final decision on a proposed action. The appeal proceeding on a determination of nonsignificance may occur before the agency's final decision on a proposed action only if the appeal is heard at a proceeding where the hearing body or officer will render a final recommendation or decision on the proposed underlying governmental action. Such appeals shall also be allowed for a determination of significance/nonsignificance which may be issued by the agency after supplemental review; (b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision on a proposal and any environmental determinations made under this chapter, with the exception of the appeal, if any, of a determination of significance as provided in (a) of this subsection or an appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes; (c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and (d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only. (a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place for commencing an appeal. (b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.

[Title 43 RCW—page 135]
(6)(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and said certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together, and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable attorney's fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis. [1995 c 347 § 204; 1994 c 253 § 4; 1983 c 117 § 4.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.080 Notice of action by governmental agency—How publicized—Time limitation for commencing challenge to action. (1) Notice of any action taken by a governmental agency may be publicized by the acting governmental agency, the applicant for, or the proponent of such action, in substantially the form as set forth in rules adopted under RCW 43.21C.110:

(a) By publishing notice on the same day of each week for two consecutive weeks in a legal newspaper of general circulation in the area where the property which is the subject of the action is located;

(b) By filing notice of such action with the department of ecology at its main office in Olympia prior to the date of the last newspaper publication; and

(c) Except for those actions which are of a nonproject nature, by one of the following methods which shall be accomplished prior to the date of first newspaper publication:

(i) Mailing to the latest recorded real property owners, as shown by the records of the county treasurer, who share a common boundary line with the property upon which the project is proposed through United States mail, first class, postage prepaid.

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed.

(2)(a) Except as otherwise provided in RCW 43.21C.075(5)(a), any action to set aside, enjoin, review, or otherwise challenge any such governmental action or subsequent governmental action for which notice is given as provided in subsection (1) of this section on grounds of noncompliance with the provisions of this chapter shall be commenced within twenty-one days from the date of last newspaper publication of the notice pursuant to subsection (1) of this section, or be barred.

(b) Any subsequent governmental action on the proposal for which notice has been given as provided in subsection (1) of this section shall not be set aside, enjoined, reviewed, or otherwise challenged on grounds of noncompliance with the provisions of RCW 43.21C.030(2)(a) through (h) unless there has been a substantial change in the proposal between the time of the first governmental action and the subsequent governmental action that is likely to have adverse environmental impacts beyond the range of impacts previously analyzed, or unless the action now being considered was identified in an earlier detailed statement or declaration of nonsignificance as being one which would require further environmental evaluation. [1995 c 347 § 205; 1977 ex.s. c 278 § 1; 1974 ex.s. c 179 § 2; 1973 1st ex.s. c 179 § 2.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Purpose—1974 ex.s. c 179: "The purpose of this 1974 amendatory act is to establish methods and means of providing for full implementation of chapter 43.21C RCW (the state environmental policy act of 1971) in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the act." [1974 ex.s. c 179 § 1.]

Effective date—1973 1st ex.s. c 179: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1973: PROVIDED, HOWEVER, That prior thereto, the department of ecology may take such actions, including the issuing of notices and the conduct of public hearing, as are necessary to assure the implementation of section 1 of this act." [1973 1st ex.s. c 179 § 4.]

43.21C.087 List of filings required by RCW 43.21C.080. The department of ecology shall prepare a list

(1996 Ed.)
A RESOLUTION of the Executive Board of the Puget Sound Regional Council, Seattle, Washington, Adopting Procedures and Policies Implementing the State Environmental Policy Act, RCW 43.21C by repealing Executive Board Resolutions EB-92-01 and EB-92-02 and adopting EB-97-01.

WHEREAS, pursuant to the State Environment Policy Act (SEPA), RCW 43.21C.120, it is the responsibility of the Puget Sound Regional Council, Seattle, Washington, (the "Regional Council") to adopt procedures and policies to implement SEPA which are consistent with SEPA and the SEPA rules, Chapter WAC 197-11; and

WHEREAS, the Regional Council has provided public notice and opportunity for public comment as part of the process for adopting its SEPA procedures and formally designating its SEPA policies;

NOW THEREFORE, BE IT RESOLVED BY THE PUGET SOUND REGIONAL COUNCIL, SEATTLE, WASHINGTON, as follows:

PART ONE
AUTHORITY

Section 1. AUTHORITY. The Regional Council adopts this resolution under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This resolution contains the Regional Council's SEPA procedures and policies. The SEPA rules, Chapter WAC 197-11, must be used in conjunction with this resolution.

PART TWO
GENERAL REQUIREMENTS

Section 2. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the basic requirements that apply to the SEPA process. The following sections of Chapter 197-11 of the Washington Administrative Code are adopted by reference:
WAC
197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.

Section 3. ADDITIONAL DEFINITIONS. In addition to those definitions contained within WAC 197-11-700 through 799, when used in this resolution, the following terms shall have the following meanings, unless the context indicates otherwise:

(1) "Regional Council" means the Puget Sound Regional Council, Seattle, King County, Washington.
(2) "Resolution" means the resolution or other procedures used by the Regional Council to adopt regulatory requirements.
(3) "SEPA rules" means WAC 197-11 adopted by the Department of Ecology.

Section 4. DESIGNATION OF RESPONSIBLE OFFICIAL.

(1) For those proposals for which the Regional Council is the lead agency, the responsible official shall be the Regional Council's Executive Director or her or his designee.
(2) For all proposals for which the Regional Council is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in this resolution.
(3) The Regional Council shall retain all documents required by the SEPA rules (Chapter WAC 197-11) and make them available in accordance with Chapter RCW 42.17.
Section 5: LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.

(1) When the Regional Council receives a proposal for or initiates an activity that involves a nonexempt action, it shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.

(2) When the Regional Council is not the lead agency for a proposal, it shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. It shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Regional Council may conduct supplemental environmental review under WAC 197-11-600.

(3) If the Regional Council receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 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 fifteen days of receipt of the determination, or the Regional Council must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the Regional council may be initiated by the responsible official.

(4) The responsible official is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.

PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

Section 6. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for deciding whether a proposal has a "probable, significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The following sections are adopted by reference, as supplemented in this part:
WAC

197-11-300 Purpose of this part.
197-11-305 Categorical exemptions.
197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.

Section 7. USE OF EXEMPTIONS

(1) When the Regional Council initiates a proposal, it shall determine whether the proposal is exempt. The Regional Council’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this resolution apply to the proposal. The Regional Council shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the Regional Council shall make certain the proposal is properly defined and if the proposal includes exempt and nonexempt actions, the Regional Council shall determine the lead agency, even if the action that triggers the Regional Council’s consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the Regional Council may authorize exempt actions prior to compliance with the procedural requirements of this resolution, except that:

   (a) The Regional Council shall not give authorization for:

      (i) Any nonexempt action;

      (ii) Any action that would have an adverse environmental impact; or

      (iii) Any action that would limit the choice of reasonable alternatives.
(b) The Regional Council may withhold approval of an exempt action that would lead to modification of thy physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
(c) The Regional Council may withhold approval of exempt actions that would lead to substantial financial expenditures by another party when the expenditures would serve no purpose if nonexempt action(s) were not approved.

Section 8. ENVIRONMENTAL CHECKLIST.

(1) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as a proposal is made requiring action by Regional Council and the proposal is not specifically exempted in this resolution; except, a checklist is not needed if the Regional Council and the proponent of an action agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The Regional Council shall use the environment checklist to determine the lead agency and, if the Regional Council is the lead agency, for determining the responsible official and for making the threshold determination.

(2) For private proposals, the Regional Council will require the proponent to completed the environmental checklist, providing assistance as necessary. For Regional Council proposals, the Council shall complete the environmental checklist for that proposal.

Section 9. MITIGATED DNS.

(1) As provided in this section and in WAC 197-11-350, the Regional Council may clarify or change features of its own proposals, and may specify mitigation measures in its own DNSs, as a result of comments by other agencies or the public or as a result of comments by other agencies or the public or as a result of additional Regional Council planning. For private proposals, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or based on changes to, or clarifications of, the proposal made by the proponent.

(2) Mitigated DNSs issued under WAC 197-11-340(2) require a fifteen-day comment period and public notice.
(3) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the Regional Council’s decision and may be enforced in any manner specifically provided by the Regional Council.

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 10. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for preparing environmental impact statements. The following sections are adopted by reference, as supplemented by this part:

WAC
197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping (optional).
197-11-420 EIS preparation
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.
Section 11. PREPARATION OF EIS—ADDITIONAL CONSIDERATIONS.

(1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) are the responsibility of the responsible official. Before the Regional Council issues as EIS, the responsible official shall be satisfied that it complies with this resolution and Chapter WAC 197-11.

(2) The DEIS and FEIS or draft and final SEIS shall be prepared by Regional Council staff, a proponent, or by a consultant selected by the Regional Council or the proponent. If the responsible official requires an EIS for a proposal and determines that someone other than the Regional Council will prepare the EIS, the responsible official shall notify such other person or entity immediately after completion of the threshold determination. The responsible official shall also notify the other person or entity of the Regional Council’s procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The Regional Council may require a proponent to provide information the Council does not possess, including specific investigations. However, the proponent is not required to supply information that is not required under this resolution or that is being requested from another agency. (This does not apply to information the Regional Council may request under other authority.)

PART FIVE
COMMENTING

Section 12. ADOPTION BY REFERENCE. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The following sections are adopted by reference, as supplemented in this part:

WAC
197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
Section 13. PUBLIC NOTICE.

(1) Whenever the Regional Council issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Regional Council shall give public notice as follows:
   (a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;
   (b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,
   (c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(2) Whenever the Regional Council issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:
   (a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;
   (b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,
   (c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(3) Whenever possible, the Regional Council shall integrate the public notice required under this section with existing notice procedures for the Council’s nonexempt approval(s) required for the proposal, if any.

(4) The Regional Council may require the proponent to complete the public notice requirements for the proponent’s proposal at his, her or its expense.
Section 14. DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE REGIONAL COUNCIL.

(1) The Executive Director of the Regional Council or her or his designee shall be responsible for preparation of written comments for the Council in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(2) This person shall be responsible for the Regional Council's compliance with WAC 197-11-550 whenever the Council 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.

PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS

Section 15. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act (NEPA) for the Regional Council's own environmental compliance. The following sections are adopted by reference:

WAC
197-11-600 When to use existing environmental documents.
197-11-610 use of NEPA documents.
197-11-620 Supplemental environmental impact statement--Procedures.
197-11-625 Addenda--Procedures.
197-11-630 Adoption--Procedures.
197-11-635 Incorporation by reference--Procedures.
197-11-640 Combining documents.

PART SEVEN
SEPA AND AGENCY DECISIONS

Section 16. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject
proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The following sections are adopted by reference:

WAC
197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.

Section 17. SUBSTANTIVE AUTHORITY.
(1) The policies and goals set forth in this resolution are supplementary to those in the existing legal authorization of the Regional Council.

(2) Any Regional Council action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the limitation of WAC 197-11-660(1).

(3) The Regional Council designated and adopts by reference the following policies as the basis for the Regional Council’s exercise of authority pursuant to this Section:

(a) The Regional Council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities to each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources,

(b) The Regional Council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Section 18. ADMINISTRATIVE APPEALS AND REQUESTS FOR RECONSIDERATION.

(1) Any aggrieved person may appeal a Determination of Nonsignificance (DNS), issued by the Regional Council, by filing a notice of appeal with the Responsible Official within thirty (30) days of the date of issuance of the DNS.

(2) Upon filing of a notice of appeal, the Responsible Official shall arrange for a review by the Regional Council's Hearing Examiner to hear evidence and prepare findings, conclusions and a decision on the appeal. The Executive Board of the Regional Council shall appoint an individual, preferably an experienced attorney familiar with hearing procedures, as Hearing Examiner for the Regional Council.

(3) The Hearing Examiner, when he or she permits testimony, shall provide for testimony under oath, a taped or written transcript, and written findings and conclusions. The decision of the Hearing Examiner shall be the final decision of the Regional Council and may not be further appealed within the agency. Any subsequent judicial or other review or appeal shall be limited to those administrative records.

(4) Procedural determinations by the Responsible Official shall be entitled to substantial weight in the administrative appeal and in any subsequent proceedings.

(5) There shall be no administrative appeal of the adequacy of a Determination of Nonsignificance (DNS), final EIS or final Supplemental EIS. Persons wishing to dispute the adequacy of a DNS, final EIS or final Supplemental EIS may appeal Appeals of the shall be taken directly to King County Superior Court and/or file a request for reconsideration as described in Section 18(2). Such judicial appeals shall be filed within ninety (90) days of the last newspaper publication of the action taken in accordance with
pursuant to RCW 43.21C.075 and RCW 43.21C.080.

(6) (2) Following the completion of a DNS, final EIS or a final Supplemental EIS, any party may request the Responsible Official to reconsider the adequacy of the decision or final document. It is not necessary for a person to utilize this procedure in order to retain rights to commence a judicial appeal of the adequacy of a final EIS or a final Supplemental EIS:

This optional reconsideration process relates only to perceived inadequacies in the DNS decision or in a final statement which are based on information available at the time that the DNS decision or final statement was prepared. If the perceived inadequacies relate to new information indicating a proposal's probable significant adverse environmental impacts or is based on substantial changes to the proposal itself which are likely to cause significant adverse environmental impacts, then the procedures in Subparagraph (7) of this section apply.

(a) A request for reconsideration must be filed in writing with the Responsible Official within thirty (30) days of the mailing by the Regional Council of the DNS or final document and/or notice of the availability of the final document to persons entitled to notice. The request must contain a short and plain statement of the alleged inadequacy of the document.

(b) Upon receipt of a timely filed request for reconsideration, the Responsible Official shall determine whether the issues raised by the request are of sufficient complexity and/or importance to warrant use of a Hearing Examiner. If the Responsible Official determines that a Hearing Examiner is warranted, the request shall be referred to the Hearing Examiner immediately.

(c) If the matter is not referred to a Hearing Examiner, the Responsible Official shall make a determination on the request for reconsideration and provide a written response within thirty (30) days. If, upon reconsideration, the Responsible Official determines that additional environmental analysis is necessary, the Responsible Official shall direct the development of an EIS, addenda or supplemental EIS, consistent with the requirement of WAC 197-11-600, et. seq.

(d) If the matter is referred to a Hearing Examiner, the Hearing Examiner shall immediately contact the party (or parties) requesting reconsideration and hold a pre-hearing conference to establish procedures for the hearing. The Hearing
Examiner shall have full discretion to design the procedures to fit the circumstances of each case. The pre-hearing conference will be used to determine, for instance, whether testimony will be presented live or in written form; whether cross-examination will be allowed; whether attorneys will be allowed to represent parties; whether the direct testimony of experts must be pre-filed; and whether pre- or post-hearing briefs will be accepted. The procedures should be designed to avoid unnecessary costs and delays. The Hearing Examiner shall schedule the proceedings after consulting with the Responsible Official to assure that the Hearing Examiner's decision can be made in a timely manner with minimum disruption to the Regional Council's use of the environmental document in a timely manner.

(e) The Hearing Examiner's decision shall be in the form of a recommendation to the Responsible Official. The recommendation shall be either to: deny the request for reconsideration; prepare an addenda; or prepare a supplemental EIS, or prepare an EIS. The Hearing Examiner's recommendation shall be supported by a written decision.

(f) Upon receipt of the Hearing Examiner's recommendation, the Responsible Official shall determine whether to: implement the recommendation; take some action different than that recommended by the Hearing Examiner; or return the matter to the Hearing Examiner for further hearings. If the Responsible Official takes action other than that recommended by the Hearing Examiner or remands the matter to the Hearing Examiner for further hearings, the Responsible Official shall prepare a written explanation of the basis for such action.

(g) The Examiner's recommendation and any written document by the Responsible Official explaining why the recommendation was not followed shall be immediately submitted to the Regional Council's Operations Committee and Executive Board.

(7) (3) (a) If a person believes that there is new information indicating a proposal's probable significant adverse environmental impacts or if there are substantial changes so that the proposal is likely to have significant adverse environmental impacts not already discussed adequately in a final EIS or final Supplemental EIS, the person...
shall promptly file a request for the preparation of an EIS or Supplemental (or second supplemental) EIS.

(b) The request for the preparation of an EIS or a supplemental statement EIS shall be filed with the Responsible Official and shall state clearly and succinctly the grounds for believing that preparation of a supplemental EIS is required. Specific reference shall be made in the request to the requirements of WAC 197-11-340(3) and WAC 197-11-600(4)(d), as appropriate.

(c) If the Responsible Official determines that an EIS or a Supplemental EIS should be prepared, then the regular procedures of WAC 197-11-620 for preparing an EIS or SEIS will be utilized. If the Responsible Official determines that an EIS or SEIS supplemental statement is not required, the Responsible Official shall inform the person in writing with a brief explanation of the reasons for rejecting the request.

(d) No judicial appeal challenging the failure of the Regional Council to withdraw a DNS pursuant to WAC 197-11-340(3) or to prepare a supplemental statement on the basis of WAC 197-11-600(4)(d) may be commenced unless the procedure set forth in this Subsection 73 is first utilized.

Section 19. NOTICE/STATUTE OF LIMITATIONS.

(1) The Regional Council or proponent of any action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the Regional Council or proponent pursuant to RCW 43.21C.080.

PART EIGHT
DEFINITIONS

Section 20. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains uniform usage and definitions of terms under SEPA. The following sections are adopted by reference, as supplemented by this resolution:
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-979 Underlying-governmental action.

PART NINE
CATEGORICAL EXEMPTIONS

Section 21. ADOPTION BY REFERENCE. Regional Council adopts by reference the following rules for categorical exemptions, as supplemented in this resolution:

WAC
197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.
PART TEN
AGENCY COMPLIANCE

Section 22. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for agency compliance with SEPA. The following sections are adopted by reference.

WAC
197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.

ADOPTED by the Executive Board this 23rd day of January, 1997.

________________________________________
Doug Sutherland
Pierce County Executive
President, Puget Sound Regional Council

ATTEST:

________________________________________
Mary McCumber, Executive Director
Call to Order/Roll Call

The meeting of the Operations Committee was called to order at 9:00 a.m. by Mayor Norman B. Rice, Chair.

Members and Alternates present included:
- Mayor Norman B. Rice
- Mayor Jeanne Hansen
- Councilmember Karen Biskey
- Councilmember Jan Drago
- Commissioner Jack Fabulich
- Councilmember Larry Gossett
- Councilmember Gary Nelson
- Councilmember Ron Scholz

Guests and staff present for all or part of the meeting were (as determined by the signatures on the roster):
- Norman Abbott, PSRC
- Mary Lou Block, Snohomish County
- Walt Corneille, King County
- Theresa Fujiwara, City of Seattle
- Mark Gulbranson, PSRC
- Mary McCumber, PSRC
- Sylvia Nelson, PSRC
- Michele Schutz, PSRC
- Bob Sicko, PSRC
- Nancy Tosta, PSRC

Communications and Citizen Comments

There were no citizen comments or communications received.

Consent Agenda

a. Approval of Minutes of meeting held December 5, 1996.
b. Approval of Vouchers.

ACTION: It was moved and seconded to approve the minutes of the meeting held December 5, 1996, and to approve the vouchers for the period 12/12/96 through 1/14/97, in the amount of $542,490.64. The motion carried unanimously.

New Business

- Contract to Develop and Perform the 1997 Puget Sound Household and Preference Survey.

Bob Sicko explained that the Regional Council has conducted many household surveys for the region and that the 1997 Puget Sound Household Survey will be the first major survey since 1988. He reviewed the project in depth for Committee members. Following his presentation, the Operations Committee took the following action.

ACTION: Mayor Jeanne Hansen moved to recommend that the Executive Board authorize the Executive Director to initiate a contract, not to exceed $350,000 to develop and perform the 1997 Puget Sound Household and Stated Preference Survey; and approve a Work Program amendment to
authorize programming of $225,000 in carryover funds from FY 1996. Councilmember Biskey seconded the motion. The motion carried unanimously.

• Contract to Develop Linear Referencing System

Nancy Tosta reviewed this contract for Committee members, explaining that the Regional Council has developed a comprehensive road data base for the region, with input and assistance from member jurisdictions. She noted that the road data base is in a GIS format that allows proposed and existing projects, and other variables such as traffic volumes, numbers of lanes, accidents rates, etc., to be displayed in map form. “However, as the accuracy of road mapping improves, and members share new data, this road data base changes continuously. Currently, the process to develop displays of project, congestion, or other road features is based on a manual encoding of projects and events to reference their locations to the roads.” She explained that “the development of a linear referencing system for the regional road data base will establish a means to allow any project or event that takes place on a road to be registered automatically to the data base,” and noted that “the linear reference system will be provided to all member jurisdictions to aid in sharing and integrating data.”

ACTION: Councilmember Jan Drago moved to recommend that the Executive Board authorize the Executive Director to initiate a contract, not to exceed $35,000, to develop a transportation linear referencing system

• Revised PSRC State Environmental Policy Act (SEPA) Procedures

Norman Abbott reviewed the proposed amendment for Committee members, pointing out that “the law requires agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action. The only appeal allowed under current Regional Council SEPA procedures is an appeal of a Determination of Nonsignificance [DNS]. In the majority of cases, however, it would be impossible to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different times. Therefore, the Regional Council is proposing to amend its procedures to eliminate the DNS appeal.”

He explained that under the proposed change, a challenge of a DNS would follow the same procedure as a challenge to a final EIS or final Supplemental EIS. “In each case, a party may request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision under specific provisions set out in the current SEPA procedures. The ‘reconsideration request’ gives the Regional Council an internal method to address conflicts while avoiding the distinction of an appeal. Appeals would be made directly to the King County Superior Court, as is the case with a Final or Supplemental EIS.”

He also noted that public notice regarding the proposed amendments was given in the Bremerton Sun, the Everett Herald, the Seattle Times-PI, and the Tacoma News Tribune. “Notice was also published in the Regional VIEW.” Eleven citizens or agencies responded to the notice by requesting a copy of the amended language. The Regional Council received no comments on the amendment.
ACTION: Commissioner Jack Fabulich moved to recommend that the Executive Board adopt Resolution EB-97-01 containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02. Councilmember Drago seconded the motion.

In response to a question concerning the number of appeals a year, Mr. Abbott said that “we don’t take that many SEPA related actions,” and Ms. McCumber added that “the only things that are subject to SEPA that we do are our plans or amendments to the plans, so it’s when we update VISION 2020 or the Metropolitan Transportation Plan, also the air action that we took last spring--there was a request for reconsideration of our SEPA decision.” Mayor Rice noted that this was “more in being consistent with all jurisdictions that have that responsibility,” and Ms. McCumber said “this is consistent with what you are doing in your local jurisdictions.”

VOTE: The motion carried unanimously.

- Associate Membership for the Puyallup Tribe of Indians

Mark Gulbranson explained that the Puyallup Tribe of Indians has asked to become an Associate Member of the Regional Council. “They have been working with us on a number of GIS projects and they felt that an Associate Membership was in order.”

ACTION: Mayor Hansen moved to recommend that the Executive Board recognize the Puyallup Tribe of Indians as an Associate Member of the Puget Sound Regional Council and authorize the Regional Council President to send a letter to the Puyallup Tribe offering Associate Membership and to prorate the annual $424 associate membership dues for Fiscal Year 1997. Councilmember Biskey seconded the motion. The motion carried unanimously.

Councilmember Gossett asked about the difference between a regular membership and associate membership. Mr. Gulbranson explained that the difference is spelled out in the Interlocal Agreement. “The cities, counties and statutory members are considered the regular members of the Regional Council.” Ms. McCumber added that the Interlocal Agreement provides for membership for the cities, counties, the three major ports, the State DOT, Transportation Commission and the Indian Tribes. “We have talked to each of the federally recognized Tribes within the region and asked if they are interested in joining. They haven’t been interested, so we tried to find ways to make sure that they are involved in the ISTEA process and that we’re helpful with all the kinds of information that we have. One of the problems with belonging to the organization is you get into the sovereign rights issue and you get into our voting structure. Our voting structure is based on population and they’re a sovereign nation, so how does that fit within out Interlocal process. So, the associate membership route, I think, is a really great way to proceed because they get all the benefits of membership, they get all our information, and they can be involved. If they choose to be on one of the policy boards, the Executive Board can make a slot for them and they can be a voting member on a policy board, but they don’t have to get into the General Assembly’s voting structure. They get the benefit of being at the table and choosing what issues they choose to participate fully with.”

Commissioner Fabulich noted that the Tribe has become very active in Pierce County and he was “very much in favor of getting them involved” in the activities of the Regional Council. Ms. McCumber said that “this came out of staff-to-staff work on our Geographical Information System work.”
Call to Order/Roll Call

The meeting of the Executive Board was called to order at 10:05 a.m. by Mayor Norman B. Rice, Vice President. He introduced two new members of the Executive Board, Mayor Barb Fahey from Edmonds, and Commissioner Charlotte Garrido from Kitsap County. He also reported that King County Executive Ron Sims would be serving on the Executive Board and on the Operations Committee.

Attendance was determined by the signatures on the Attendance Sheet.

Members and Alternates present included:

- Mayor Norm Rice
- Councilmember Karen Biskey
- Councilmember Charlie Chong
- Commissioner Aubrey Davis
- Commissioner Pat Davis
- Councilmember Jan Drago
- Executive Bob Drewel
- Mayor Erselle Eade
- Councilmember Bob Edwards
- Councilmember Bob Evans
- Commissioner Jack Fabulich
- Mayor Barb Fahey
- Commissioner Charlotte Garrido
- Councilmember Larry Gossett

Members absent included:

- Mayor Brian Ebersole
- Mayor Ed Hansen
- Councilmember Rob McKenna
- Mayor Mitch Mitchusson
- Secretary Sid Morrison
- Councilmember Dave Russell
- Mayor Jeanne Hansen
- Ms. Renee Montgelas
- Commissioner Ed Morrow
- Councilmember Gary Nelson
- Councilmember Jack Fabulich
- Commissioner Charlotte Garrido
- Councilmember Larry Gossett

PSRC staff present for all or part of the meeting included:

- Norman Abbott
- Larry Blain
- King Cushman
- Mark Gulbranson
- Mary McCumber
- Richard Milne
- Sylvia Nelson
- Rocky Piro

- Mayor Mitch Mitchusson
- Secretary Sid Morrison
- Councilmember Dave Russell

A listing of guests who signed the attendance roster is attached to the official record of these minutes.

Communications and Citizen Comments.

No citizens had signed the roster to address the Board. Copies of a letter to Representative Karen Schmidt and Senator Gene Prince concerning comments on the 1996 Public Transportation Assessment Study were distributed to Board members and to the members of the audience.
Executive Drewel asked about the status of the Land Use Study Commission Report. Councilmember Biskey said that the most recent information she received was that the report is completed. Ms. McCumber reported that she and Nancy Tosta are working with the cities and counties organizations on the buildable lands section, “so there is one portion they are still working through.”

Executive Director’s Report

Ms. McCumber again directed attention to the calendar in the agenda and asked that Board members note the date of the General Assembly meeting, March 13, 1997. She also reported that the Regional Council has worked with its counterparts in Portland and Vancouver, B.C., to schedule the second annual Cascadia Metropolitan Forum, for May 8, 9 and 10, 1997, in Vancouver.

She also noted that the Regional Staff Committee and the Regional Project Evaluation Committee had both added a “specific slot for a representative from the Regional Transit Authority.”

Consent Agenda

ACTION: It was moved and seconded to adopt items (a) through (f) of the Consent Agenda: (a) approval of the minutes of the meeting held December 5, 1997; (b) approval of vouchers dated 12/12/96 through 1/14/97, in the amount of $542,490.64; (c) authorization for the Executive Director to initiate a contract, not to exceed $350,000, to develop and perform the 1997 Puget Sound Household and Stated Preference Survey, and approval of a Work Program amendment to authorize programming of $225,000 in carryover funds from FY 1996; (d) authorization for the Executive Director to initiate a contract, not to exceed $35,000, to develop a transportation linear referencing system; (e) adoption of Resolution EB-97-01 containing amended Regional Council SEPA procedures and repeal of existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02; and (f) recognition of the Puyallup Tribe of Indians as an Associate Member of the Puget Sound Regional Council and authorization for the Regional Council President to send a letter to the Puyallup Tribe of Indians offering Associate Membership and prorating the annual $400 associate membership dues for Fiscal Year 1997.

Councilmember Charlie Chong asked that regarding item (e) adoption of Resolution EB-97-01 containing amended Regional Council SEPA procedures and repeal of existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02, that the Chair permit public comment on this item, and if not, that it be deferred. Mayor Rice suggested it be removed from the Consent Agenda and said that the amended motion would be to adopt the Consent Agenda items (a) through (f) with the exception of (e). The motion carried unanimously, with Mayor Barb Fahey abstaining on the vote on the minutes.

ACTION: It was moved and seconded to adopt Consent Agenda items (g) through (k): (g) to certify the Transportation Elements in the City of Tukwila’s 1995 Comprehensive Plan and the City of Woodinville’s 1996 Comprehensive Plan as conforming with the requirements of the Growth Management Act and consistent with VISION 2020;
(h) to certify the Pierce Countywide Planning Policies and VISION 2020, as amended in 1993, as consistent;
(i) to adopt the Policy Framework for the 1997 ISTEA TIP Process and direct that staff use and distribute the Policy Framework to all eligible and interested parties to guide the development of project applications and the administration of the Regional Council's responsibilities for evaluating, prioritizing and selecting projects consistent with the requirements of the federal Intermodal Surface Transportation Efficiency Act (ISTEA);
(j) to provide the following guidance to project sponsors considering a Major Investment Study (MIS):

1. Recognize the unique role and importance of the Growth Management Act within the State of Washington, particularly with regard to its requirements to balance and integrate development goals, policies and objectives with transportation system investments; therefore, significantly greater weight or priority should be given to criteria which evaluate consistency or compatibility with regional policies describing intended regional growth and transportation strategies that were adopted consistent with countywide and local growth management policies.

2. In keeping with ISTEA's emphasis on efficiency, MIS project sponsors should make wise use of scarce financial resources in their planning efforts and use responsible professional planning judgments to apply "common sense tests" in the early stages of an MIS study to determine if an alternative is consistent or inconsistent with adopted regional, countywide and local policies.

3. In the scoping or preliminary screening (pre-EIS) stages of an MIS process, the review of alternatives should assess whether the potential implementation of a given alternative would be compatible with adopted regional policies and/or adopted countywide, and local GMA plans and policies which address intended growth strategies and development patterns within the region. If such an alternative is incompatible or inconsistent with such plans or policies, that alternative should be dropped from further consideration. Further consideration of any such incompatible alternative should be extremely rare and should carry a strong rationale for its exceptional circumstances, describing its unique benefits that are thought to warrant its further consideration in the MIS process; and

(k) To approve an amendment to the 1996-98 Regional TIP and UPWP to include the projects as shown in Exhibit A; and to give project selection approval to the projects in the manner listed in Exhibit A.

The motion carried unanimously.

Returning to discussion of agenda item (e), Councilmember Chong asked that Chris Leman be allowed to address the Board. Mayor Rice noted that he had come in following his call for citizen comments and said it would be appropriate.

Chris Leman, a member of the Seattle Community Council Federation and Chair of the Coalition of Washington Communities, said that "in 1992, I was very actively involved with the Puget Sound Regional Council's SEPA Policy, which was the first one that it adopted in many years. Also for years after that I served on the Air Quality and Transportation Technical Advisory Committee of the PSRC."

He called attention to "a very serious change" being proposed and urged that the PSRC "conduct a more
active outreach and public involvement effort” before going ahead with the change. The proposed change “would eliminate the current citizen right to appeal a declaration of nonsignificance,” in response to the 1995 passage of the ESHB1724, which revised some of the state requirements regarding SEPA.

“All of your local jurisdictions and state agencies have been involved in revising their SEPA procedures. Your actual procedures do not have to be immediately changed and the way that it is being done with your local jurisdictions is far better. The local jurisdictions have held very substantial public meetings and other discussions and done special mailings. The only public notice regarding this change that I am aware of has been either through existing PSRC mailing lists or ads on the back pages of the newspapers. In particular; I was not contacted personally, even though I was very involved in the current SEPA policies. There are a lot of citizen groups and neighborhood groups, especially, whose rights will be infringed by this change.”

Mr. Leman said he wanted to call attention to the principle of ESHB1724 and “the philosophy that the current SEPA policies of the PSRC follow, and that is, the value of resolving conflict without resorting to the courts. The administrative appeal is a wonderful, positive thing because if it’s ill taken it will be turned down, but if it’s well established then it is of value to your body because it will avert what a court will have done through much greater expense and polarization. That is the value of the administrative appeal process.

“Unfortunately, the change you have before you, and I apologize for arriving late, will eliminate the positive administrative means of dealing with objections and force people to go to court and the reasoning, which is given in the document, is faulty. What it says is that in a majority of cases it would be impossible to combine a hearing on a DNS appeal with a hearing on the underlying governmental action. The fact is, a number of your local jurisdictions are already doing that and that is the whole principle of trying to consolidate the processes. If you currently have the appeal process and the decision process not coexisting, then they can change so that they are, and that is what I feel you should be considering, at least as an option. It doesn’t look like it’s been considered yet.”

Norman Abbott explained that “we have only one appeal process in our current procedures and that is the DNS appeal. This is the only appeal that we needed to address under the new law, and, as Chris stated, there are two options, and we looked at both of those options. One would be to try to consolidate that appeal with the hearing on the underlying action. For us it didn’t seem very realistic for the Executive Board to deal with a DNS appeal at the decision meeting on an action. Also, we thought about the kind of work that the Regional Council does versus the kind of work that is done at the local level. For example, the last action taken by the Regional Council with SEPA implications, was the 1996 amendment to the MTP. The MTP decision meeting was well after a determination of nonsignificance would have been issued; and of course we didn’t file a DNS anyway. In the years I’ve been here we’ve never issued a determination of nonsignificance.

“That’s why we thought it would be better to simply treat the DNS the very same way as we treat a supplemental challenge or a challenge to an EIS, and that’s through a request for reconsideration. It is important to understand that this provides an internal process that has all the legitimacy of an appeal, but it simply isn’t an appeal under the state law and therefore allows us to hear these requests. It also allows the challengers to go directly to the courts, if that is what they prefer to do.
"The request for reconsideration for other issues, for example a challenge of a supplemental EIS, has been exercised at the Regional Council and has worked well."

Councilmember Chong suggested delaying action on this amendment to allow time for Norman Abbott and Chris Leman to meet and discuss the issue. Ms. McCumber wanted to make sure Councilmember Chong and other Board members knew there was "legal notification as well as publication in Regional View." She also said that this was more of an "administrative cleanup" issue, "something that we are supposed to do to comply with the state law; we don't have to do it today. If there were some discussions you wanted to have occur, those could happen and we could reschedule this for the February meeting."

Councilmember Nelson added that "everything Mr. Leman stated was very accurate. We jurisdictions have looked at the regulatory reform embodied in Engrossed House Bill 1724 and have lost sight of the streamlining that was intended to take place. The merits of the underlying approach of what is being done by a governmental body should in fact carry with it the DNS, or the final EIS, as a package so that if it gets appealed to the legislative body of the city or county or state institution, whatever the case might be, and as legal counsel has pointed out, at that point the intervenor can also take it to the Superior Court of the county in which they reside if they don't agree. What many jurisdictions fall into the trap of doing, which I think now Mr. Leman's accurately pointed out, is to bifurcate the system. You have the underlying application or call for judgement that is coming up through the channels to the legislative body, but then the EIS and everything that is attached to it and could be changed because of anything the legislative body does to the underlying permit, leapfrogs all the way to the Superior Court. I think we need to look at that."

ACTION: Councilmember Nelson moved to "defer further consideration on this item and refer the issue back to the Operations Committee to entertain additional testimony that could be done by those who brought the issue to us." Commissioner Morrow seconded the motion. The motion carried unanimously.

New Business

- Revised Transportation Policy Board Composition to Incorporate Regional Transit Authority Representation

King Cushman reminded Board members that this issue had been discussed at the Executive Board retreat. He reported that current state law requires that 50 percent of the representation from cities and counties on the Executive Board must come from either a regional transit board or a transit authority board. "It would be passing that requirement on to the Transportation Policy Board since they are doing so much of the work in the same area. In the unlikely event that no RTA representatives were appointed to our Transportation Policy Board, it would allow the same kind of consideration we've done with PSAPCA on the air quality issues. If there is no elected official that ends up being appointed, we'd have an ex-officio representative of the RTA as we do with PSAPCA."

ACTION: Executive Drewel moved to require that at least 50 percent of the county and city elected officials appointed to membership on the Transportation Policy Board from member jurisdictions within the four-county region also serve on local transit agency boards or on the
Papers that carried SEPA public notice/legal notice.

The Bremerton Sun
545 5th Street
Bremerton, WA 98337
Phone (360) 792-3335 FAX (360) 792-5262

Everett Herald
P.O. Box 930
Everett, WA 98206
Phone (206) 339-3100 FAX (206) 252-5613

The Medium Newspaper
2600 South Jackson
Seattle, WA 98144
Phone 323-3070 FAX 322-6518

Seattle Times-P.I. Classified
P.O. Box 70
Seattle, WA 98111
Phone 624-7355 FAX 464-3315

Tacoma News Tribune
P.O. Box 11000
Tacoma, WA 98411-5024
Phone (206) 597-8605 FAX (206) 552-7042
Pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C.120, the Puget Sound Regional Council adopts procedures to implement SEPA. These procedures must be consistent with SEPA and the SEPA rules. This notice constitutes formal notification that the Regional Council is proposing to amend its SEPA procedures by repealing Executive Board Resolutions EB-92-01 and EB-92-02 and adopting EB-97-01. This action is being taken to comply with new requirements stated in RCW 43.21C.075, which require agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action [See 43.21C.075].

The only appeal allowed under the current Regional Council procedures is an appeal of a Determination of Nonsignificance (DNS). In the majority of cases, however, it would be impossible to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different points in time. Therefore, the Regional Council is proposing to amend its procedures to eliminate the DNS appeal.

Under the proposed change, a challenge of a Determination of Nonsignificance would follow the same procedure as a challenge to a final EIS or final Supplemental EIS. In each case, a party may request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision under specific provisions set out in the current SEPA procedures, but no appeal to a higher level within the agency would be available.

For a copy of the proposed amended language, call Sheila Rogers at (206) 464-5815. Written comments on the proposed amendment should be sent to: Norman Abbott, Puget Sound Regional Council, 1011 Western Ave., Suite 500, Seattle, WA 98104-1035. Comments must be received by 4:00 p.m. on Wednesday, January 22, 1997. The Regional Council’s Executive Board will consider this amendment at its meeting on January 23, 1997, at 10 a.m., in the Council’s 6th Floor Board Room at 1011 Western Avenue.
Calls received requesting proposed language to amend SEPA procedures.

1/7/97
Nobi Kawasaki, 5750 East Hill Crest Drive
Port Orchard, WA 98366, (360) 871-3084

Barbara White-Davis, 2158 Long Lake Rd SE
Port Orchard, WA 98366, (360) 871-0926 Wk., (360) 871-1380 Hm.

1/10/97
Vicki Schatley, King County Department of Transportation
400 Yesler Way, Room 900, Seattle, WA 98104 296-6560

1/13/97
Anne Daily, 5920 103rd Place SW
Mukilteo, WA 98275 745-6751

Carol Bloom, 422 30th Avenue
Seattle, WA 98122

1/15/97
Jana Hunter, Renton Development Services Division
200 Mill Avenue So, Renton, WA 98055

Lisa Bowie, Transportation Solutions Inc.
16310 NE 80th Street, Suite 100, Redmond, WA 98052-3861 883-4134

1/17/97
Len Gardner, 521 N. 74th Street
Seattle, WA 98103 684-0988 Wk.

Christena Vanvalkenburgh, Department of Construction & Land Use
710 Second Avenue, Suite 200, Seattle, WA 98104-1703

1/21/97
Micheline Sierer, Gorden Thomas Honeywell
P.O. Box 1157, Tacoma, WA 98401 1-800-240-5051 FAX (206) 572-4516

Pete Hayes, Coldwell Banker Bain
150 Bellevue Way S.E., Bellevue, WA 98004
ADOPTION HISTORY PART II
Material prepared for the April 24, 1997 Operations Committee and Executive Board meetings
Puget Sound Regional Council

Operations Committee Meeting

Thursday, April 24, 1997 • 9:00 a.m. •

5th Floor Conference Room
1011 Western Avenue
Seattle, WA

Agenda

9:00 a.m.
1. Call to Order - Executive Bob Drewel, Chair
2. Roll Call
3. Communications and Citizen Comments
4. Consent Agenda
   a. Approval of Minutes of Meeting held February 27, 1997*
   b. Approval of Vouchers dated 2-27-97 through 4-15-97, in the amount of $890,039.63*
5. New Business
   a. Revised PSRC State Environmental Policy Act (SEPA) Procedures*
   b. Membership for the City of Edgewood*
   c. Other New Business
6. Information Item
   a. Staffing/Contracts Status Reports*
   b. Financial Report*
   c. FY 1996 PSRC Audit
   d. Status Report on FY 1998 Budget and Grant Application
7. Announcements
   Next Meeting Date and Time:
   Operations Committee Meeting, Thursday, May 22, 1997, 5th Floor Conference Room, 1011 Western Avenue, Seattle, WA, 9:00 a.m.

10:00 a.m.

Adjourn

*Supporting materials attached for Operations Committee members and alternates. For copies of the complete agenda packet, please contact Sylvia Nelson, (206) 464-7518.

Sign language and communication material in alternate formats can be arranged given sufficient notice by calling Grace Foster at (206) 464-7090; TDD/TTY (206) 464-5409.
ACTION ITEM

To: Operations Committee
From: Mary McCumber, Executive Director
Subject: Amendment to Regional Council SEPA Procedures

AT ISSUE

At its January meeting the Executive Board heard a proposal from staff to amend the Council’s procedures under the State Environmental Policy Act (SEPA). The amendment is necessary to comply with new requirements stated in RCW 43.21C.075 (attached) that require agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action.

After testimony by Mr. Chris Leman and discussion by Members, action on the proposal was deferred. Since the January meeting, staff have discussed options for complying with RCW 43.21C.075 with interested parties, selected local jurisdictions and the Regional Council’s attorney. These discussions have resulted in a modified proposal, although staff continue to recommend that appeals of a Determination of Nonsignificance (DNS) be eliminated. Please see the attached briefing paper titled Analysis of Issues Associated with Amending Regional Council SEPA Procedures for a re-cap of the January meeting and rationale for the staff recommendation.

RECOMMENDED ACTION

The Executive Board should adopt Resolution EB-97-01 (attached) containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02.

DISCUSSION

Regional Council attorney, David Bricklin, a partner in the law firm of Bricklin and Gendler, reviewed the new requirements contained in RCW 43.21C.075 with Regional Council staff and prepared amendments to Council SEPA procedures. The amended language is found in Section 18, pages 14 through 18 of Resolution EB-97-01 (attached). This Resolution consolidates past amendments into a single document, titled Procedures and Policies Implementing the State Environmental Policy Act.
If adopted, the proposed amendments would:

1. Eliminate the appeal of a Determination of Nonsignificance (DNS). The law requires agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action. Under current Regional Council procedures, the only appeal allowed is an appeal of a Determination of Nonsignificance (DNS). For most of the Council’s legislative decisions, it would be impractical to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different points in time. Therefore, the Regional Council proposed to amend its procedures to eliminate the DNS appeal. The procedures would still allow a party to request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision, including requesting use of an independent Hearing Examiner to evaluate the reconsideration request. This is the same procedure as a challenge to a final EIS or final Supplemental EIS.

DNS appeals would go directly to the King County Superior Court, as is the case with a Final or Supplemental EIS.

2. Strengthen the Request Reconsideration procedure. This procedure would be strengthened to allow the party seeking reconsideration to request the use of a Hearing Officer and, if the request is denied, the Responsible Official would file a report with the Executive Board that explains the decision.

3. Specify a due date for requests for additional environmental review based on allegations of new information or substantial changes to the proposal.

Public notice regarding the proposed amendments was given January 2, 1997, in the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. In preparation for the April meeting of the Executive Board, public notice was again provided in the same publications. Any comments received from these notices on the proposed amendments will be available at the April 24, 1997, meeting of the Executive Board.

If you have any questions or comments, please contact Norman Abbott, (206) 464-7134.
Executive Board Meeting
Thursday, April 24, 1997  → 10:00 a.m. ←

6th Floor Board Room
1011 Western Avenue
Seattle, WA

Agenda

10:00 a.m.
1. Call to Order - Councilmember Dave Russell, President
2. Roll Call
3. Communications and Citizen Comments*
   • Letters to Senator Gene Prince and Representative Karen Schmidt, 2/27/97*
   • Letters and Responses to Senator Slade Gorton, 2/28/97, 3/14/98, 3/26/97*
4. President's Remarks
   • Appointment of Policy Board Chairs
   • Status Report - Ad Hoc Litigation Committee
5. Policy Board Reports
6. Executive Director's Report
7. Consent Agenda
   a. Approval of Minutes of Meeting held February 27, 1997*
   b. Approval of Vouchers dated 2/27/97 through 4/15/97, in the amount of $890,039.63
   c. Membership for the City of Edgewood*
   d. Certification of Transportation Elements in Local Comprehensive Plans (Cities of Arlington, Black Diamond, Mountlake Terrace, Snohomish, Wilkeson, and Yarrow Pt)*/**
   e. Completion of Regional Transit Authority Major Investment Study*
   f. Routine Amendment to 1996-98 Transportation Improvement Program (TIP)*
8. Old Business
   • Revised PSRC State Environmental Policy Act (SEPA) Procedures*
9. New Business
10. Discussion Item
    • Update on ISTEA Reauthorization and State Legislation*
11. Future Action Item
    • FY 1998 Membership Dues
12. Announcements
    Next Meeting Date and Time -
    • Executive Board Meeting - Thursday, May 22, 1997, 6th Floor Board Room,
      1011 Western Avenue, Seattle, WA, 10 - 11:30 a.m.
    • Redevelopment for Livable Communities Conference, May 27-29, 1997, Tacoma*

11:30 noon
Adjourn

*Supporting materials attached for Executive Board members and alternates. For copies of the complete agenda packet, please contact the Information Center, (206) 464-7532.
**Supporting materials enclosed separately for Executive Board members and alternates. For copies call the Information Center.

Sign language and communication material in alternate formats can be arranged given sufficient notice by calling Grace Foster at (206) 464-7090; TDD/TTY (206) 464-5409.
ACTION ITEM

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If adopted, the proposed amendments would:
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Public notice regarding the proposed amendments was given January 2, 1997, in the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. In preparation for the April meeting of the Executive Board, public notice was again provided in the same publications. Any comments received from these notices on the proposed amendments will be available at the April 24, 1997, meeting of the Executive Board.

If you have any questions or comments please, contact Norman Abbott, (206) 464-7134.
1996
REVISED CODE
of
WASHINGTON

Containing all laws of a general and permanent nature enacted through March 7, 1996.

Volume 4

Titles
37 Federal Areas—Indians
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45 Townships

Published by The Statute Law Committee under authority of Chapter 1.08 RCW
in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties. Any governmental action may be conditioned or denied pursuant to this chapter. PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter. Such designation shall occur at the time specified by RCW 43.21C.120. Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decisionmaker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. Except for permits and variances issued pursuant to chapter 90.56 RCW, when such a governmental action, not requiring a legislative decision, is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals. Such appeals shall be in accordance with procedures established for such appeals by the legislative authority of the acting local governmental agency. [1983 c 117 § 3; 1977 ex.s. c 278 § 2; 1971 ex.s. c 109 § 6.]

43.21C.065 Impact fees and fees for system improvements. A person required to pay an impact fee for system improvements pursuant to RCW 82.02.050 through 82.02.090 shall not be required to pay a fee pursuant to RCW 43.21C.060 for those same system improvements. [1992 c 219 § 1.]

43.21C.075 Appeals. (1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:
(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.
(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.
(c) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall not allow more than one agency appeal proceeding on a procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement). The appeal proceeding on a determination of significance may occur before the agency's final decision on a proposed action. The appeal proceeding on a determination of nonsignificance may occur before the agency's final decision on a proposed action only if the appeal is heard at a proceeding where the hearing body or officer will render a final recommendation or decision on the proposed underlying governmental action. Such appeals shall also be allowed for a determination of significance/nonsignificance which may be issued by the agency after supplemental review;

(b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision on a proposal and any environmental determinations made under this chapter, with the exception of the appeal, if any, of a determination of significance as provided in (a) of this subsection or an appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place forcommencing an appeal.

(b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.
(6)(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall not except be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or in part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and said certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together, and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable attorney's fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis. [1995 c 347 § 204; 1994 c 253 § 4; 1983 c 117 § 4.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.080 Notice of action by governmental agency—How publicized—Time limitation for commencement of challenge to action. (1) Notice of any action taken by a governmental agency may be publicized by the acting governmental agency, the applicant for, or the proponent of such action, in substantially the form as set forth in rules adopted under RCW 43.21C.110:

(a) By publishing notice on the same day of each week for two consecutive weeks in a legal newspaper of general circulation in the area where the property which is the subject of the action is located;

(b) By filing notice of such action with the department of ecology at its main office in Olympia prior to the date of the last newspaper publication; and

(c) Except for those actions which are of a nonproject nature, by one of the following methods which shall be accomplished prior to the date of first newspaper publication;

(i) Mailing to the latest recorded real property owners, as shown by the records of the county treasurer, who share a common boundary line with the property upon which the project is proposed through United States mail, first class, postage prepaid.

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed.

(2) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

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Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Purpose—1974 ex.s. c 179: "The purpose of this 1974 amendatory act is to establish methods and means of providing for full implementation of chapter 43.21C RCW (the state environmental policy act of 1971) in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the act." [1974 ex.s. c 179 § 1]
ANALYSIS OF ISSUES ASSOCIATED WITH AMENDING REGIONAL COUNCIL SEPA PROCEDURES

April 3, 1997

INTRODUCTION/BACKGROUND

At its January meeting the Executive Board heard a proposal from staff to amend the Council’s procedures under the State Environmental Policy Act (SEPA). The amendment is necessary to comply with new requirements stated in RCW 43.21C.075 that require agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action.

The Proposed Amendment. Under current Regional Council procedures, the only appeal allowed is an appeal of a Determination of Nonsignificance (DNS). For most of the Council’s legislative decisions it would be impractical to combine a hearing on a DNS appeal with a hearing on the underlying governmental action because they normally occur at different points in time. Therefore, the Regional Council proposed to amend its procedures to eliminate the DNS appeal. The procedures would still allow a party to request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision, including requesting use of an independent Hearing Examiner to evaluate the reconsideration request. This is the same procedure as a challenge to a final EIS or final Supplemental EIS.

RESULTS OF THE JANUARY MEETING OF THE EXECUTIVE BOARD

In preparation for the January meeting of the Executive Board, public notice regarding the proposed amendments was given in the January Regional View and in the January 2, 1997, editions of the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. Eleven individuals or agencies responded to the notice by requesting a copy of the amended language. No comments on the amended language were received.

However, at the Executive Board meeting, Councilmember Chong asked that public comment be allowed on this item. Chris Leman, a member of the Seattle Community Council Federation and Chair of the Coalition of Washington Communities, testified that he was not aware of the proposed amendments, had not had time to study the proposed language, and therefore, would like the Board to defer action on the amendments to provide time to work with staff. Mr. Leman stated two primary concerns:

1. The current appeal is beneficial because it can be used to resolve conflict without resorting to the courts. Mr. Leman stated, “The administrative appeal is a wonderful, positive thing because if it’s ill-taken, it will be turned down, but if it’s well-established, then it is of value to your body because it will avert what a court will have done through much greater expense and polarization.”
2. Mr. Leman also wanted staff to determine how local jurisdictions comply with the SEPA requirement for consolidated hearings.

DISCUSSION

1. What issues arise if the Regional Council were to retain the DNS appeal and hold a consolidated hearing?

- **Timing.** The time between the DNS and the consolidated hearing would make the appeal impractical. The Regional Council’s SEPA actions address planning documents, such as VISION 2020 and the Metropolitan Transportation Plan (legislative matters), that require considerable time to move from an initial environmental decision (a DNS for example) to the decision of the Executive Board to recommend adoption of the plan by the General Assembly. If the appeal on the environmental action could not be resolved until the Executive Board made its recommendation on the plan itself, it would leave the Regional Council in the position of having to hear an appeal that, if granted, may require an EIS or other environmental work after the planning and decision-making process had been completed. This would waste the time of the public, elected officials and staff and result in a very inefficient decision-making process.

   The timing could vary, but following is a typical example for a two-year planning process:

<table>
<thead>
<tr>
<th>TIME</th>
<th>months 1-12</th>
<th>months 13-15</th>
<th>months 16-23</th>
<th>month 24</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plan Production Track</strong></td>
<td>complete draft plan</td>
<td>public and agency review of draft plan</td>
<td>complete final plan</td>
<td>final recommendation by Executive Board</td>
</tr>
<tr>
<td><strong>SEPA Track</strong></td>
<td>environmental studies; file DNS</td>
<td>DNS appeal</td>
<td>DNS Appeal Hearing</td>
<td></td>
</tr>
</tbody>
</table>

   In this example, the hearing takes place a year after the DNS appeal.

- **Executive Board Responsibility in an Appeal Hearing.** The Board would have to follow quasi-judicial rules in the appeal hearing; for example:

  - Allow testimony, rebuttal and cross examination.
  - Publish findings of fact, and demonstrate how the decision was reached based on the evidence.
The Board would also have to develop expertise in the technical aspects of SEPA to effectively conduct the appeal hearing.

2. How do local jurisdictions comply with the consolidated hearing requirement?

Staff contacted the City of Bellevue, Snohomish County and King County to determine how they handle the consolidated hearing requirement.

- Each jurisdiction allows a DNS appeal in quasi-judicial cases. Following is an example of a case: A party requests a permit to construct a church in a zone that allows them as a “conditional use.” The administration decision on the conditional use and the environmental decision (for example a DNS) are released at the same time. Both decisions could be appealed to a Hearing Examiner who would hold a consolidated hearing approximately 30 days after the original decision.

This process works because local actions are more often associated with projects and permits, so the DNS and the decision meeting can be consolidated. Also, local governments have often delegated decision responsibility to a hearings officer to make final recommendations or decisions.

- None of the jurisdictions allow a DNS appeal on legislative matters such as the adoption of a local comprehensive plan. They also did not have a “request for reconsideration” process, although they accept comments on DNS decisions and do reconsider their decision if the comments were persuasive.

CONCLUSIONS/RECOMMENDATIONS

The change in the law successfully streamlined quasi-judicial governmental decisions by consolidating the environmental decision with the decision on the underlying action (RCW 43.21C.075). But it also had the effect of making appeals of legislative matters impractical. Therefore, the staff continues to recommend elimination of the DNS appeal.

Many of the benefits of the administrative appeal (such as the ones identified by Chris Leman) are retained in the Request for Reconsideration contained in the Council’s SEPA procedures. The staff is recommending that the procedure be strengthened to allow the party seeking reconsideration to request the use of a Hearing Officer and, if the request is denied, the Responsible Official would have to file a report with the Executive Board that explains the decision. The language for this amendment is found in Section 18 (2)(b) on page 16 of Resolution EB-97-01 (attached). The language states: “The Responsible Official shall provide a report to the Executive Board if the Official denies a request for use of a Hearing Officer from parties seeking reconsideration.”
Another provision was added to the amendments that is unrelated to the appeal issue. This provision authorizes the SEPA Responsible Official to specify a due date for requests for additional environmental review based on allegations of new information or substantial changes to the proposal. This language was added to Section 18 (3)(a) on page 18 of Resolution EB-97-01 (attached).

In preparation for the April meeting of the Executive Board, public notice regarding the proposed amendments was given in the April Regional View and the April 3, 1997, editions of the Bremerton Sun, Everett Herald, Seattle Times - P.I., and Tacoma News Tribune. Any comments received from these notices on the proposed amendments will be available at the April 24, 1997, meeting of the Executive Board.

If you have any questions or comments please, contact Norman Abbott, (206) 464-7134.
A RESOLUTION of the Executive Board of the Puget Sound Regional Council, Seattle, Washington, Adopting Procedures and Policies Implementing the State Environmental Policy Act, RCW 43.21C by repealing Executive Board Resolutions EB-92-01 and EB-92-02 and adopting EB-97-01.

WHEREAS, pursuant to the State Environment Policy Act (SEPA), RCW 43.21C.120, it is the responsibility of the Puget Sound Regional Council, Seattle, Washington, (the “Regional Council”) to adopt procedures and policies to implement SEPA which are consistent with SEPA and the SEPA rules, Chapter WAC 197-11; and

WHEREAS, the Regional Council has provided public notice and opportunity for public comment as part of the process for adopting its SEPA procedures and formally designating its SEPA policies;

NOW THEREFORE,

BE IT RESOLVED BY THE PUGET SOUND REGIONAL COUNCIL, SEATTLE, WASHINGTON, as follows:

PART ONE
AUTHORITY

Section 1. AUTHORITY. The Regional Council adopts this resolution under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

This resolution contains the Regional Council’s SEPA procedures and policies.

The SEPA rules, Chapter WAC 197-11, must be used in conjunction with this resolution.
PART TWO
GENERAL REQUIREMENTS

Section 2. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the basic requirements that apply to the SEPA process. The following sections of Chapter 197-11 of the Washington Administrative Code are adopted by reference:

WAC
197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.

Section 3. ADDITIONAL DEFINITIONS. In addition to those definitions contained within WAC 197-11-700 through 799, when used in this resolution, the following terms shall have the following meanings, unless the context indicates otherwise:

(1) “Regional Council” means the Puget Sound Regional Council, Seattle, King County, Washington.

(2) “Resolution” means the resolution or other procedures used by the Regional Council to adopt regulatory requirements.

Section 4. DESIGNATION OF RESPONSIBLE OFFICIAL.

(1) For those proposals for which the Regional Council is the lead agency, the responsible official shall be the Regional Council's Executive Director or her or his designee.

(2) For all proposals for which the Regional Council is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in this resolution.

(3) The Regional Council shall retain all documents required by the SEPA rules (Chapter WAC 197-11) and make them available in accordance with Chapter RCW 42.17.

Section 5. LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.

(1) When the Regional Council receives a proposal for or initiates an activity that involves a nonexempt action, it shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.

(2) When the Regional Council is not the lead agency for a proposal, it shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. It shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Regional Council may conduct supplemental environmental review under Wac 197-11-600.

(3) If the Regional Council receives a lead agency determination made by another
agency that appears inconsistent with the criteria of WAC 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 fifteen days of receipt of the determination, or the Regional Council must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the Regional council may be initiated by the responsible official.

(4) The responsible official is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.

PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

Section 6. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for deciding whether a proposal has a "probable, significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The following sections are adopted by reference, as supplemented in this part:

WAC

197-11-300 Purpose of this part.

197-11-305 Categorical exemptions.

197-11-310 Threshold determination required.

197-11-315 Environmental checklist.

197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-360 Determination of significance (DS/initiation of scoping).
197-11-390 Effect of threshold determination.

Section 7. USE OF EXEMPTIONS

(1) When the Regional Council initiates a proposal, it shall determine whether the proposal is exempt. The Regional Council’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this resolution apply to the proposal. The Regional Council shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the Regional Council shall make certain the proposal is properly defined and if the proposal includes exempt and nonexempt actions, the Regional Council shall determine the lead agency, even if the action that triggers the Regional Council’s consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the Regional Council may authorize exempt actions prior to compliance with the procedural requirements of this resolution, except that:

(a) The Regional Council shall not give authorization for:

(i) Any nonexempt action;

(ii) Any action that would have an adverse environmental impact; or
(iii) Any action that would limit the choice of reasonable alternatives.

(b) The Regional Council may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) The Regional Council may withhold approval of exempt actions that would lead to substantial financial expenditures by another party when the expenditures would serve no purpose if nonexempt action(s) were not approved.

Section 8. ENVIRONMENTAL CHECKLIST.

(1) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as a proposal is made requiring action by Regional Council and the proposal is not specifically exempted in this resolution; except, a checklist is not needed if the Regional Council and the proponent of an action agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The Regional Council shall use the environment checklist to determine the lead agency and, if the Regional Council is the lead agency, for determining the responsible official and for making the threshold determination.

(2) For private proposals, the Regional Council will require the
proponent to completed the environmental checklist, providing assistance as necessary. For Regional Council proposals, the Council shall complete the environmental checklist for that proposal.

Section 9. MITIGATED DNS.

(1) As provided in this section and in WAC 197-11-350, the Regional Council may clarify or change features of its own proposals, and may specify mitigation measures in its own DNSs, as a result of comments by other agencies or the public or as a result of comments by other agencies or the public or as a result of additional Regional Council planning. For private proposals, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or based on changes to, or clarifications of, the proposal made by the proponent.

(2) Mitigated DNSs issued under WAC 197-11-340(2) require a fifteen-day comment period and public notice.

(3) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the Regional Council’s decision and may be enforced in any manner specifically provided by the Regional Council.

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 10. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for preparing environmental impact
statements. The following sections are adopted by reference, as supplemented by this part:

WAC

197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping (optional).
197-11-420 EIS preparation
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.

Section 11. PREPARATION OF EIS--ADDITIONAL
CONSIDERATIONS.

(1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) are the responsibility of the responsible official. Before the Regional Council issues as EIS, the responsible official shall be satisfied that it complies with this resolution and Chapter WAC 197-11.

(2) The DEIS and FEIS or draft and final SEIS shall be prepared by Regional Council staff, a proponent, or by a consultant selected by the Regional Council or the proponent. If the responsible official requires an EIS for a proposal and determines that someone other than the Regional Council will prepare the EIS, the responsible official shall notify such other person or entity immediately after completion of the threshold determination. The responsible official shall also notify the other person or entity of the Regional Council’s procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The Regional Council may require a proponent to provide information the Council does not possess, including specific investigations. However, the proponent is not required to supply information that is not required under this resolution or that is being requested from another agency. (This does not apply to information the Regional Council may request under other authority.)
PART FIVE
COMMENTING

Section 12. ADOPTION BY REFERENCE. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The following sections are adopted by reference, as supplemented in this part:

WAC

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.

Section 13. PUBLIC NOTICE.

(1) Whenever the Regional Council issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Regional Council shall give public notice as follows:

(a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;
(b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,

(c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(2) Whenever the Regional Council issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(a) Publishing notice in a newspaper of general circulation in the Country, city, or general area where the proposal is located;

(b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal; and,

(c) Creating and maintaining a mailing list based on responses during the scoping process and sending notice to those on the list.

(3) Whenever possible, the Regional Council shall integrate the public notice required required under this section with existing notice procedures for the Council’s nonexempt approval(s) required for the proposal, if any.

(4) The Regional Council may require the proponent to complete the public notice requirements for the proponent’s proposal at his, her or its expense.

Section 14. DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE REGIONAL COUNCIL.

(1) The Executive Director of the Regional Council or her or his designee shall be responsible for preparation of written comments for the Council in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
This person shall be responsible for the Regional Council’s compliance with WAC 197-11-550 whenever the Council 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.

PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS

Section 15. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act (NEPA) for the Regional Council’s own environmental compliance. The following sections are adopted by reference:

WAC
197-11-600 When to use existing environmental documents.
197-11-610 use of NEPA documents.
197-11-620 Supplemental environmental impact statement--Procedures.
197-11-625 Addenda--Procedures.
197-11-630 Adoption--Procedures.
197-11-635 Incorporation by reference--Procedures.
197-11-640 Combining documents.

PART SEVEN
SEPA AND AGENCY DECISIONS

Section 16. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This
part contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The following sections are adopted by reference:

WAC

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

Section 17. SUBSTANTIVE AUTHORITY.

(1) The policies and goals set forth in this resolution are supplementary to those in the existing legal authorization of the Regional Council.

(2) Any Regional Council action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the limitation of WAC 197-11-660(1).

(3) The Regional Council designated and adopts by reference the following policies as the basis for the Regional Council’s exercise of authority pursuant to this Section:

(a) The Regional Council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities to each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe,
healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources,

(b) The Regional Council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Section 18. ADMINISTRATIVE APPEALS AND REQUESTS FOR RECONSIDERATION.

(i) Any aggrieved person may appeal a Determination of Nonsignificance (DNS), issued by the Regional Council, by filing a notice of appeal with the Responsible Official within thirty (30) days of the date of issuance of the DNS.
(2) Upon filing of a notice of appeal, the Responsible Official shall arrange for a review by the Regional Council's Hearing Examiner to hear evidence and prepare findings, conclusions and a decision on the appeal. The Executive Board of the Regional Council shall appoint an individual, preferably an experienced attorney familiar with hearing procedures, as Hearing Examiner for the Regional Council.

(3) The Hearing Examiner, when he or she permits testimony, shall provide for testimony under oath, a taped or written transcript, and written findings and conclusions. The decision of the Hearing Examiner shall be the final decision of the Regional Council and may not be further appealed within the agency. Any subsequent judicial or other review or appeal shall be limited to these administrative records.

(4) Procedural determinations by the Responsible Official shall be entitled to substantial weight in the administrative appeal and in any subsequent proceedings.

(5) There shall be no administrative appeal of the adequacy of a Determination of Nonsignificance (DNS), final EIS or final Supplemental EIS. Persons wishing to dispute the adequacy of a DNS, final EIS or final Supplemental EIS may appeal. Appeals of the shall be taken directly to King County Superior Court and/or file a request for reconsideration as described in Section 18(2). Such judicial appeals shall be filed within ninety (90) days of the last newspaper publication of the action taken in accordance with pursuant to RCW 43.21C.075 and RCW 43.21C.080.

(6) Following the completion of a DNS, final EIS or a final Supplemental EIS, any party may request the Responsible Official to reconsider the adequacy of the decision or final document. It is not necessary for a person to utilize this procedure in order to retain rights to
commence a judicial appeal of the adequacy of a final EIS or a final Supplemental EIS.

This optional reconsideration process relates only to perceived inadequacies in the DNS decision or in a final statement which are based on information available at the time that the DNS decision or final statement was prepared. If the perceived inadequacies relate to new information indicating a proposal's probable significant adverse environmental impacts or is based on substantial changes to the proposal itself which are likely to cause significant adverse environmental impacts, then the procedures in Subparagraph (73) of this section apply.

(a) A request for reconsideration must be filed in writing with the Responsible Official within thirty (30) days of the mailing by the Regional Council of the DNS or final document and/or notice of the availability of the final document to persons entitled to notice. The request must contain a short and plain statement of the alleged inadequacy of the document.

(b) Upon receipt of a timely filed request for reconsideration, the Responsible Official shall determine whether the issues raised by the request are of sufficient complexity and/or importance to warrant use of a Hearing Examiner. If the Responsible Official determines that a Hearing Examiner is warranted, the request shall be referred to the Hearing Examiner immediately. The Responsible Official shall provide a report to the Executive Board if the Official denies a request for use of a Hearing Officer from parties seeking reconsideration.

(c) If the matter is not referred to a Hearing Examiner, the Responsible Official shall make a determination on the request for reconsideration and provide a written response within thirty (30) days. If, upon reconsideration, the Responsible Official determines that additional environmental analysis is necessary, the Responsible Official shall direct the development of an EIS, addenda or supplemental EIS, consistent with the requirement of WAC
If the matter is referred to a Hearing Examiner, the Hearing Examiner shall immediately contact the party (or parties) requesting reconsideration and hold a pre-hearing conference to establish procedures for the hearing. The Hearing Examiner shall have full discretion to design the procedures to fit the circumstances of each case. The pre-hearing conference will be used to determine, for instance, whether testimony will be presented live or in written form; whether cross-examination will be allowed; whether attorneys will be allowed to represent parties; whether the direct testimony of experts must be pre-filed; and whether pre- or post-hearing briefs will be accepted. The procedures should be designed to avoid unnecessary costs and delays. The Hearing Examiner shall schedule the proceedings after consulting with the Responsible Official to assure that the Hearing Examiner's decision can be made in a timely manner with minimum disruption to the Regional Council's use of the environmental document in a timely manner.

The Hearing Examiner's decision shall be in the form of a recommendation to the Responsible Official. The recommendation shall be either to: deny the request for reconsideration; prepare an addenda; or prepare a supplemental EIS, or prepare an EIS. The Hearing Examiner's recommendation shall be supported by a written decision.

Upon receipt of the Hearing Examiner's recommendation, the Responsible Official shall determine whether to: implement the recommendation; take some action different than that recommended by the Hearing Examiner; or return the matter to the Hearing Examiner for further hearings. If the Responsible Official takes action other than that recommended by the Hearing Examiner or remands the matter to the Hearing Examiner for further hearings, the
Responsible Official shall prepare a written explanation of the basis for such action.

(g) The Examiner's recommendation and any written document by the Responsible Official explaining why the recommendation was not followed shall be immediately submitted to the Regional Council's Operations Committee and Executive Board.

(7)(a) If a person believes that there is new information indicating a proposal's probable significant adverse environmental impacts or if there are substantial changes so that the proposal is likely to have significant adverse environmental impacts not already discussed adequately in a final EIS or final Supplemental EIS, the person shall promptly file a request for the preparation of an EIS or Supplemental (or second supplemental) EIS. The Responsible Official may specify a due date for requests for additional environmental review based on allegations of new information or substantial changes to the proposal.

(b) The request for the preparation of an EIS or a supplemental statement EIS shall be filed with the Responsible Official and shall state clearly and succinctly the grounds for believing that preparation of a supplemental EIS is required. Specific reference shall be made in the request to the requirements of WAC 197-11-340(3) and WAC 197-11-600(4)(d), as appropriate.

(c) If the Responsible Official determines that an EIS or a Supplemental EIS should be prepared, then the regular procedures of WAC 197-11-620 for preparing an EIS or SEIS will be utilized. If the Responsible Official determines that an EIS or SEIS supplemental statement is not required, the Responsible Official shall inform the person in writing with a brief explanation of the reasons for rejecting the request.

(d) No judicial appeal challenging the failure of the Regional Council to withdraw a DNS pursuant to WAC 197-11-340(3) or to prepare a supplemental statement on the basis of WAC
197-11-600(4)(d) may be commenced unless the procedure set forth in this Subsection 7 3 is first utilized.

**Section 19.** NOTICE/STATUTE OF LIMITATIONS.
(1) The Regional Council or proponent of any action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the Regional Council or proponent pursuant to RCW 43.21C.080.

**PART EIGHT**
**DEFINITIONS**

**Section 20.** PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains uniform usage and definitions of terms under SEPA. The following sections are adopted by reference, as supplemented by this resolution:

WAC

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-748 Environmentally sensitive area.
197-11-750 Expanded scoping.
197-11-752 Impact.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-979 Underlying governmental action.

PART NINE
CATEGORICAL EXEMPTIONS

Section 21. ADOPTION BY REFERENCE. Regional Council adopts by reference the following rules for categorical exemptions, as supplemented in this resolution:

WAC

197-11-800 Categorical exemptions.

197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.
PART TEN
AGENCY COMPLIANCE

Section 22. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains rules for agency compliance with SEPA. The following sections are adopted by reference.

WAC

197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.
ADOPTED by the Executive Board this 24rd day of April, 1997.

Signed by Dave Russell

________________________
Dave Russell
Councilmember City of Kirkland
President
Puget Sound Regional Council

Attest: Signed by Mary McCumber

________________________
Mary McCumber
Executive Director
MINUTES
Operations Committee
Thursday, April 24, 1997
9:00 A.M.
Fifth Floor Conference Room

Call to Order/Roll Call

The meeting of the Operations Committee was called to order at 9:00 a.m. by Executive Bob Drewel, Chair.

Members and Alternates present included:

Executive Bob Drewel
Councilmember Karen Biskey
Mayor Barb Fahey
Mayor Jeanne Hansen

Mayor Mitch Mitchusson
Councilmember Gary Nelson
Mayor Leonard Sanderson

Guests and staff present for all or part of the meeting were (as determined by the signatures on the roster):

Norman Abbott, PSRC
Mary Lou Block, Snohomish County
David Bricklin, Attorney
Jan Briggs, King County
Mark Gulbranson, PSRC

Mary Hawkins, PSRC
Chris Leman, Seattle Comm. Cncl Fed’n
Paul Locke
Mary McCumber, PSRC
Sylvia Nelson, PSRC

Communications and Citizen Comments

Chris Leman said he wanted to compliment Norman Abbott "because he has done a lot of work...convincing me that not all of the stuff that I proposed at the January meeting is possible. I am also glad to say that as a result of that, I think there are some net improvements in the process which will make it work better. One minor thing to mention is that the description of the process doesn’t really capture the fact that I was deeply involved in the original SEPA policies that were adopted a few years ago. I just regret I missed the fact that you were dealing with them. I would have brought it before this committee if I had time, but I had to bring it to the Executive Board and I think that the Executive Board delegated it to you and Norm and I'm relatively pleased with the result and am going to support it.”

Executive Drewel thanked Mr. Leman for taking his personal time to “make this thing work.”

Consent Agenda

a. Approval of Minutes of meeting held February 27, 1997.
b. Approval of Vouchers.
ACTION: It was moved and seconded to approve the minutes of the meeting held February 27, 1997, and to approve the vouchers for the period February 27 through April 15, 1997, in the amount of $890,039.63. The motion carried unanimously with Mayor Fahey abstaining because she said she was not at the last meeting.

New Business
a. Revised PSRC State Environmental Policy Act (SEPA) Procedures

Norman Abbott explained that the staff is proposing two changes, “one that we discussed in January regarding the appeal of a Determination of Non-Significance (DNS) and the other is a housekeeping change to authorize the Responsible Official to set a due date for the requests for additional review when a party alleges that new information exists or a proposal has changed substantially.”

He stated that “at the January Executive Board meeting staff proposed amending the SEPA procedures to eliminate the only administrative appeal allowed under our SEPA procedures. The staff argued that the amendment was necessary to comply with RCW 43.21C.075 [included in the agenda packet] that requires agencies to consolidate any SEPA appeals with a hearing or appeal on the underlying governmental action.”

After testimony by Mr. Chris Leman and discussion by members at the January meeting, action on the proposal was deferred. Since the January meeting, staff have discussed options for complying with the State SEPA rules with Chris Leman, the City of Bellevue, Snohomish County, King County, and the Regional Council’s attorney.

The staff now recommends: (1) eliminating the DNS appeal; (2) strengthening the Request for Reconsideration provision by allowing parties to ask for the use of a Hearing Officer and requiring the Responsible Official to report to the Executive Board if the request is denied (page 16); and (3) establishing a due date for requests for additional environmental review when parties believe new information or substantial changes to a proposal exist (page 18).

Mr. Abbott pointed out that notice was given in the Regional View and in the four regionwide newspapers. “A total of 20 people responded to our notice.” Of those 20, one sent in a letter, and that letter was given to Committee members.

Councilmember Nelson said he liked the changes. “It gets back to the issue of at least the Board being made aware of anyone who does wish to see something reviewed. I kind of like the reconsideration approach and the fact that the Board will be made aware of any time that staff denies the Hearing Examiner approach. I think that gives the public a fair opportunity. There is some wordsmithing from the old language I don’t particularly like. I don’t like the wording ‘perceived inadequacies’ because I think that opens the door for everybody and anybody deciding there might be something wrong, but overall I kind of like the whole drift of it now and I wish we would do something like this at the county level, where we would bring the SEPA issues right back into the county council. That’s what I think is lacking, the policymaking group having some understanding of what the content is of SEPA that’s involved in supporting the merits of an application.” He complimented Mr. Abbott on the work he had done.
Mayor Sanderson commented that cities are “limited to one public hearing on the record and one appeal on that record.” Ms. McCumber explained that that requirement is “how we got into this. Our rules didn’t comply with the new state law.” Mayor Sanderson said that “we have taken the position that if you run out of time you can extend it.”

ACTION: Mayor Hansen moved to recommend that the Executive Board adopt Resolution EB-97-01 containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02. Mayor Mitchusson seconded the motion. The motion carried unanimously.

b. Membership for the City of Edgewood

Mark Gulbranson explained that the City of Edgewood had requested membership in the Puget Sound Regional Council effective July 1.

ACTION: Mayor Hansen moved to recommend that the Executive Board recognize the City of Edgewood as a Member of the Puget Sound Regional Council, effective July 1, 1997, authorize the Regional Council President to sign the Interlocal Agreement, and authorize the Executive Director to bill the City of Edgewood for dues for the period July 1, 1997, through June 30, 1998, in the amount of $3,210. Mayor Mitchusson seconded the motion. The motion carried unanimously.

c. Other New Business - There was no other business brought to the Committee.

Information Items

• **Staffing Report** - This report was included in the agenda.

• **Financial Report** - Mr. Gulbranson introduced Mary Hawkins, Senior Accountant, who distributed the March financial report and reviewed it for Committee members.

• **FY 1996 PSRC Audit** - Ms. Hawkins explained that the PSRC had once again achieved a “clean audit.” Executive Drewel commented, “I think it is very important that the audit news be shared with the entire Executive Board. We’ve never had a bad audit and I think it is important for the organization to know that.”

• **Status Report on FY 1998 Budget and Grant Application** - Mr. Gulbranson noted that Assembly action authorized staff to submit the necessary grant applications in order to carry out the FY 1998 Budget and Work Program. “We’re well underway. We were a little bit concerned about our funding from the State as it relates to the RTPO money. That’s not all been nailed down. In the Senate version we’re fine.” He explained that if the House version passed, “we would have to come back in June to refine the budget and reflect less RTPO money than we anticipated. It’s not a large amount anymore, about $325,000. We took our whack a couple of years ago when they cut RTPO funding in half.” Ms. McCumber pointed out that the House version is aimed at “all the planning in DOT. We’re a part of that.”
Call to Order/Roll Call

The meeting of the Executive Board was called to order at 10:10 a.m. by Councilmember Dave Russell, President.

Attendance was determined by the signatures on the Attendance Sheet.

Members and Alternates present included:
Councilmember Dave Russell  Councilmember Bob Evans  Commissioner Ed Morrow
Councilmember Karen Biskey  Mayor Barb Fahey  Councilmember Gary Nelson
Commissioner Pat Davis  Commissioner Charlotte Garrido  Mayor Leonard Sanderson
Councilmember Jan Drago  Mayor Jeanne Hansen  Executive Doug Sutherland
Executive Bob Drewel  Mayor Mitch Mitchusson
Councilmember Bob Edwards  Ms. Renee Montgelas

Members absent included:
Mayor Brian Ebersole  Councilmember Rob McKenna  Mayor Norman B. Rice
Commissioner Jack Fabulich  Secretary Sid McKenna  Executive Ron Sims
Councilmember Larry Gossett  Councilmember Margaret Pageler  Councilmember Christopher Vance
Mayor Ed Hansen

PSRC staff present for all or part of the meeting included:
Norman Abbott  Mary McCumber  Charis Oothoudt
Peter Beaulieu  Richard Milne  Nancy Tosta
King Cushman  Sylvia Nelson  Margaret Warwick
Mark Gulbranson

A listing of guests who signed the attendance roster is attached to the official record of these minutes.

Communications and Citizen Comments.

No citizens had signed the roster to address the Board. Letters to Senator Gene Prince and Representative Karen Schmidt were included in the agenda, along with letters and responses to Senator Slade Gorton.

President's Remarks

President Russell reported that “we’ve just learned that the Municipal League of King County has selected our Executive Director, Mary McCumber, as the 1997 Public Official of the Year.” He then
Old Business

Revised PSRC State Environmental Policy Act (SEPA) Procedures

Norman Abbott began to explain the proposed amendment and how it differed from the proposal the Executive Board had in January. Executive Drewel asked if a presentation was necessary given the proposal has a unanimous recommendation of the Operations Committee. Karen Biskey agreed that a presentation was not necessary given the full discussion and resolution of outstanding issues that occurred at the Operations Committee meeting.

Executive Drewel said this comes with a unanimous recommendation from the Operations Committee.

ACTION: Executive Drewel moved to adopt Resolution EB-97-01 containing amended Regional Council SEPA procedures and repeal existing SEPA procedures found in Executive Board Resolutions EB-92-01 and EB-92-02. Councilmember Nelson seconded the motion. The motion carried unanimously.

Executive Drewel said he wanted to report on other discussions at the Operations Committee meeting earlier. “This organization received yet another clean audit from the Washington State Auditor’s Office for the period July 1, 1995 to June 30, 1996.” He also said that in May the Operations Committee would be taking a look at the FY 1998 membership dues and be making some refinements to the budget and work program, including some of the insurance buyback options and revision of carryover figures for FY 1998 in June.

Discussion Item

• Update on ISTEA Reauthorization and State Legislation

King Cushman noted that there wasn’t a lot of good news, “except if you look at good news that a lot of bad things are dying.” He reviewed a table he had prepared summarizing legislation of interest to the Regional Council. “Of still major importance is the DOT budget...SB 6061. There have been different versions passed in both the House and Senate, and a refusal of each side to consider the other’s versions. It is in conference committee at the moment and needs to get approved to meet the deadline by tomorrow night.”

Following his review of the legislation, and discussion of the perception that “there appears to be hundreds of millions of dollars going into wasteful overhead, environmental needs, things like that,” Commissioner Aubrey Davis said “I don’t think we want to give it too much credibility, it’s simply an argument that’s being used to justify an ideological position of no tax. For instance, when they make the argument that the construction of the interchange at DuPont is evidence that private enterprise can do it better than the government--that Weyerhaeuser is building an interchange--that tells you how far off they are in their basic facts. It’s being built by DOT with Weyerhaeuser money, and the reason it could be done as quickly as it is is because it is private money and therefore some of the rules and regulations don’t apply. The DOT figured out a way to make it fast. But, they are hitting us over the head saying,
Papers that carried the second SEPA public notice/legal notice.

The Bremerton Sun
545 5th Street
Bremerton, WA 98337
Phone (360) 792-3335 FAX (360) 792-5262

Everett Herald
P.O. Box 930
Everett, WA 98206
Phone (206) 339-3100 FAX (206) 252-5613

The Medium Newspaper
2600 South Jackson
Seattle, WA 98144
Phone 323-3070 FAX 322-6518

Seattle Times-P.I. Classified
P.O. Box 70
Seattle, WA 98111
Phone 624-7355 FAX 464-3315

Tacoma News Tribune
P.O. Box 11000
Tacoma, WA 98411-5024
Phone (206) 597-8605 FAX (206) 552-7042
PUBLIC NOTICE

Regional Council Proposing to Amend SEPA Procedures

Comments due: 4:00 P.M. - Tuesday, April 23, 1997

The Puget Sound Regional Council is proposing to amend its procedures under the State Environmental Policy Act (SEPA).

The amendment is necessary to comply with new requirements stated in RCW 43.21C.075 that require agencies to consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action. Under current Regional Council procedures, the only appeal allowed is an appeal of a Determination of Nonsignificance (DNS). For most of the Council’s legislative decisions, however, it would be impractical to combine a hearing on a DNS appeal with a hearing on the underlying governmental action, because they normally occur at different points in time. Therefore, the Regional Council is proposing to amend its procedures to eliminate the DNS appeal. The procedures would still allow a party to request the Regional Council’s Responsible SEPA Official to reconsider the adequacy of the decision, including requesting use of an independent Hearing Examiner to evaluate the reconsideration request. This is the same procedure as a challenge to a final EIS or final Supplemental EIS.

An initial proposal was presented to the Council’s Executive Board at its January meeting, and was deferred for further refinement. The Regional Council staff revised the proposed amendment to include a provision that would require the SEPA Responsible Official to provide a report to the Executive Board if the Official denied a request for use of a Hearing Officer from parties seeking reconsideration. A provision was also added that authorizes the SEPA Responsible Official to specify a due date for requests for additional environmental review when new information or substantial changes to a proposal are made.

At its April meeting, the Executive Board will consider the new language, discuss how local jurisdictions address DNS appeals on legislative issues, and consider other options for complying with SEPA requirements.

Copies of the amended language and an analysis memo will be available on April 3, 1997. For a copy of this material, contact Sheila Rogers at the Regional Council (206) 464-5815. Please address all comments on the proposed amendment to: Norman Abbott, Puget Sound Regional Council, 1011 Western Ave., Suite 500, Seattle, WA 98104-1035. Comments must be received by 4 p.m. on Tuesday, April 23, 1997. The Regional Council’s Operations Committee and Executive Board will consider this amendment at its meetings on April 24, 1997 at 9:00 and 10:00 a.m. respectively. The Operations Committee meets in the 5th Floor Conference Room, and the Executive Board in the 6th Floor Board Room, at 1011 Western Avenue.
Calls received requesting proposed language to amend SEPA procedures--April, 1997.

4/4/97
Elsie Sorgenfrei, 2112 Dubque
Snohomish, WA 98290, (360) 568-7833

Sam Pace, 3905 154th Avenue S.E.
Bellevue, WA 98006, 972-7653

4/7/97
Lloyd Redman, Lloyd & Associates
724 Walnut Street, Edmonds, WA 98020, (206) 771-4792

4/8/97
Mike Spence, 2033 6th Avenue, Suite 1040
Seattle, WA 98121, 448-0402

Karen Stewart, Snohomish County Planning & Development Services
3000 Rockefeller Avenue, MS 604, Everett, WA 98201 (206) 388-3311 ext. 2335

Robin Boynton, P.O. Box 1265
Carnation, WA 98014, (206) 333-6494

4/14/97
Henry J. Frause, 411 SW 186th
Normandy Park, WA 98166-3959, 242-0950

4/15/97
Christen Hansen, Airport Communities Coalition
21630 11th Avenue So., Des Moines, WA 98198, 870-6526

4/22/97
Jeff Elliott, Kitsap Transit
FAX (360) 377-7086, (360) 478-5494
To: Puget Sound Regional Council  
Attn: Mr. Dave Russell, Council President,  
1011 Western Avenue, Suite 500  
Seattle, WA., 98104-1035  
CC: Mr. Norman Abbott, SEPA Official, Mr. Chris Vance, RCAA and ACC.  
Ref.: 1.) State Environmental Policy Act (SEPA)  
2.) State Law (RCW 43.21C.075)  
3.) Regional View, dated April 1997, Proposed SEPA Amendments....p.3.  
Subject: Proposal to Amend PSRC’s Procedures to Eliminate the DNS Appeal On the Underlying Governmental Action.  
Dear Dave,  

It’s incumbent upon us (the public) that we understand the importance of Justice Dillon’s Rule which established a partnership between PUBLIC/PRIVATE. The implication of his Rule is that our Constitutional Rights and the Power of Law have been transferred to and is established as a Municipal Corporation entity. Therefore, “We the People” have a right to participate equally in all the procedural operations conducted under this marriage contract. [Our Constitution signifies and guarantees that we are all equal and are to be treated equally]. It’s important, then, that we live and operate together peaceably under the same rule—be it Federal or Corporational.  

According to my understanding of the implication of Dillon’s Rule, we should have in our possession the same detailed information as you, OUR President, OUR Councilmembers, and all involved Associated Agencies have. How can we comment upon the subject activity(s) without the benefit of essential information that OUR CORPORATION is dealing with?

There are several local agencies, each involved with their own set of procedures, identified in Ref. 3), namely:  
- The PSRC Council and their set of Procedures.  
- A Responsible SEPA Official with his procedures;  
- An FAA Agent to follow up on any impacts related to the (FEIS) and (FSEIS) Procedures;  
- An Independent Hearing Examiner and his Procedures.  
- A Legislative Staff Lawyer to monitor impacts to the State’s RCWs and Justice Dillon’s Rule—presently nonexistent as a Constitutional Statute.  

It appears to me that Justice Dillon’s Rule of homogenizing Constitutional Laws with Corporational By-Laws is illegal. If any Municipal Corporation had the power to remove you and your family from your premises, I’m sure that you would object immediately and do something about it.

My question is related to a proposed amendment to the PSRC’s Procedures Manual since it is related to the State’s Environmental Protection Agency (SEPA). To define the term(DNS) is April 16, 1997
SEPA Proposed Amendments

merely a dictionary task. However, to identify a significant aspect of a DNA problem might be
highly involved and critical in other applications. Therefore, why is it so important and
necessary to incorporate an insignificant DNA reference into a specific paragraph in the PSRC"s
Procedures Manual if it isn't considered to be significant? That thought switches my mind to
the notion that it may be related to some specific Port of Seattle Administrative function. Is it
by chance something more than just another strategic mitigation attempt at creating a method of
obtaining and transferring Funds to the Port?

I gladly would like to participate in the PSRC's Executive Board Discussion provided
that I had the same basic materials and references that this problem presents. Time is of the
essence! Please send me the most critical inputs that you have on hand that I could read and
comment upon in the time that remains. Thank you very much.

Yours truly,

Henry J. Frause

April 16, 1997