



# Puget Sound Regional Council

## RESOLUTION NO. PSRC-EB-2016-01

**A RESOLUTION of the Executive Board of the  
Puget Sound Regional Council  
Adopting Procedures and Policies Implementing  
the State Environmental Policy Act, RCW 43.21C and Chapter 197-11 WAC by repealing  
EB-97-01 and adopting PSRC-EB-2016-01**

**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, (“PSRC”) to adopt procedures and policies to implement SEPA which are consistent with SEPA and the SEPA rules, Chapter 197-11 WAC;

**WHEREAS**, PSRC has previously adopted policies and procedures to implement SEPA, most recently in the form of Executive Board Resolution EB-97-01 which is repeated and superseded by this resolution; and

**WHEREAS**, PSRC has provided public notice of and an opportunity for public comment on this resolution;

**NOW THEREFORE BE IT RESOLVED** by the Puget Sound Regional Council, as follows:

### PART ONE AUTHORITY

Section 1. AUTHORITY FOR AND PURPOSE OF THIS RESOLUTION. PSRC adopts this Resolution under SEPA, RCW 43.21C.120, and WAC 197-11-904.

This Resolution contains PSRC’s SEPA procedures and policies. The purpose of this

Resolution is to adopt the uniform requirements of Chapter 197-11 WAC, with some modifications and additions relevant to PSRC operations. This Resolution repeals and supersedes EB-97-01.

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 the SEPA rules are adopted by reference, as supplemented in this part.

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

(2) "Resolution" means this Resolution PSRC-EB-2016-01.

(3) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

Section 4. DESIGNATION OF RESPONSIBLE OFFICIAL.

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

(2) For all proposals for which PSRC 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. The responsible official may provide additional guidance and procedures to carry out this Resolution.

(3) PSRC shall retain all documents required by the SEPA rules and make them available in accordance with Chapter RCW 42.17.

Section 5. LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.

(1) When PSRC 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 PSRC is not the lead agency for a proposal, it shall use and consider, as appropriate, either the DNS or the FEIS 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. PSRC may prepare or require an EIS addendum under WAC 197-11-600.

(3) If PSRC 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 within fifteen days of receipt of the determination by PSRC. If the objection is not resolved to the satisfaction of PSRC within that time period, then PSRC must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the same fifteen-day time period. Any such petition on behalf of the PSRC 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 EIS to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The following sections of the SEPA rules 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, except that notice of issuance of a DS shall be given as provided for in Section 13(1) of this Resolution.

197-11-390 Effect of threshold determination.

Section 7. USE OF EXEMPTIONS

(1) When PSRC initiates a proposal, it shall determine whether the proposal is exempt. PSRC'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. PSRC shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, PSRC shall make certain the proposal is properly defined under WAC 197-11-060, and if the proposal includes exempt and nonexempt actions, PSRC shall apply WAC 197-11-305, even if the action that triggers PSRC's consideration is exempt.

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

PSRC 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.

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 non-exempt proposal is made requiring

action by PSRC; except, a checklist is not needed if PSRC is the proponent, PSRC and the proponent of an action agree an EIS is required, issuance of an EIS Addendum is deemed appropriate by PSRC, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. If an environmental checklist is required, PSRC shall use the environmental checklist to determine the lead agency and, if PSRC is the lead agency, for making the threshold determination.

(2) For private proposals, PSRC shall require the proponent to complete the environmental checklist, providing assistance as necessary. For PSRC proposals, the responsible official shall complete the environmental checklist for that proposal.

Section 9. MITIGATED DNS.

(1) As provided in this section and in WAC 197-11-350, PSRC may clarify or change features of its own proposals, and may specify mitigation measures in its own Mitigated DNSs in response to comments by other agencies or the public or as a result of additional PSRC planning. For private proposals, the responsible official may issue a Mitigated 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 PSRC's decision and may be enforced by PSRC.

PART FOUR  
ENVIRONMENTAL IMPACT STATEMENT (EIS)

Section 10. PURPOSE OF THIS PART AND ADOPTION BY REFERENCE. This part contains the rules for preparing EISs. The following sections of the SEPA rules are

adopted by reference, as supplemented in 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).
- 197-1 -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, except that notice of issuance of a DEIS shall be given as provided for in Section 13(2) of this Resolution.
- 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 PSRC

issues an EIS, the responsible official shall be satisfied that it complies with this Resolution and the SEPA rules.

(2) The DEIS and FEIS shall be prepared by PSRC staff, a proponent, or by a consultant selected by PSRC or the proponent. If the responsible official requires an EIS for a proposal and determines that someone other than PSRC 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 PSRC's procedures for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) PSRC may require a proponent to provide information that PSRC 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 PSRC 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 of the SEPA rules 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 PSRC issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), PSRC shall give public notice of the availability of those documents on PSRC's website and as follows:

- (a) Furnishing notice to the entities listed in WAC 197-11-340(2)(b); and
- (b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal.

(2) Whenever PSRC issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620, PSRC shall give notice of the availability of those documents on PSRC's website and as follows:

- (a) Furnishing notice to the entities and persons listed in WAC 197-11-455(1);
- (b) Furnishing notice to anyone who has specifically requested in writing to be notified about the particular proposal;
- (c) In the case of a DEIS, furnishing notice to anyone who submitted comments during the scoping process; and
- (d) In the case of an SEIS, furnishing notice to anyone who submitted comments on the EIS being supplemented.

(3) Whenever PSRC issues an FEIS under WAC 197-11-460, notice of the availability of the FEIS shall be given on PSRC's website and in accordance with WAC 197-11-460(1), (2) and (3).

(4) Whenever PSRC issues an Addendum under WAC 197-11-625, notice of the

availability of the Addendum shall be given on PSRC's website and in accordance with WAC 197-11-625(3) and (4).

(5) Whenever possible, PSRC 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.

(6) PSRC may require the proponent to complete the public notice requirements for the proponent's proposal at the proponent's expense.

(7) In all cases where notice of the availability of a SEPA document is required by the SEPA rules or this Resolution, the notice of availability is sufficient if it identifies the proposal, the nature of the PSRC action, the SEPA document, and includes a website address for accessing the SEPA document itself.

Section 14. DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR PSRC.

(1) The Executive Director of PSRC 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 or other environmental document.

(2) This person shall be responsible for PSRC's compliance with WAC 197-11-550 whenever the Council is a consulted agency. This person is also 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 PSRC's own environmental compliance. The following sections of the SEPA rules 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 of the SEPA rules are adopted by reference, as supplemented in this part:

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) Any PSRC 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).

(2) PSRC designates the following policies as the basis for the PSRC's exercise of authority pursuant to this Section:

(a) PSRC shall use all practicable means, consistent with other applicable considerations of state policy, and PSRC responsibilities, to improve and coordinate plans, functions, programs, and resources to the end that the Central Puget Sound region 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, equitable, 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 foster high standards of living and a wide sharing of prosperity; and
- (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources,

(b) PSRC 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.

(3) After its decision on any proposal not exempt from SEPA, PSRC shall post on its website a document that states the SEPA decision to impose mitigation measures on the proposal where such mitigation is expressly in addition to the mitigation already part of the proposal, or to deny the proposal. The decision shall specify any mitigation measures that are not already part of the proposal, or as applicable, the basis for denial. If PSRC approves an action based on the mitigating measures that are part of the proposal, and no separate mitigation is imposed, then no separate SEPA decision is required.

#### Section 18. APPEALS.

(1) PSRC SEPA decisions may be appealed as provided in this section.

(2) The following SEPA decisions of the PSRC responsible official are appealable under this section pursuant to RCW 43.21C.075(3)(a-b) and WAC 197-11-680(3):

(a) adequacy of an FEIS, (b) adequacy of an EIS Addendum, and (c) issuance of a DNS or Mitigated DNS. Other PSRC SEPA decisions and documents are not subject to administrative appeal.

(3) (a) Appeals may not be filed before PSRC provides public notice of the issuance of the FEIS, EIS Addendum, DNS or Mitigated DNS.

(b) Appeals must be received by PSRC by 5 PM on the 14th calendar day following the date PSRC provides public notice of the issuance of the FEIS, EIS Addendum, DNS or Mitigated DNS. When the last day of the appeal period is a Saturday, Sunday, or a national or state holiday, the appeal period runs until 5 PM on the next business day.

(4) Appeals must:

- (a) Be in writing;
- (b) Contain a statement that identifies the FEIS, EIS Addendum, DNS or Mitigated DNS being challenged and the alleged errors in the FEIS, EIS Addendum, DNS or Mitigated DNS which make the document legally inadequate;
- (c) State the specific reasons why the Appellant believes the FEIS, EIS Addendum, DNS or Mitigated DNS to be legally inadequate;
- (d) State the harm suffered or anticipated to be suffered by Appellant and the relief requested by Appellant;
- (e) Include the signature, address, and phone number of Appellant and the name and address of Appellant's legal representative, if any;
- (f) Be accompanied by an appeal fee of \$100;
- (g) List as respondents all necessary parties set forth herein. The following are necessary parties to any appeal under this section and must be served by Appellant with a copy of the appeal document within 7 days after the filing of an appeal: the applicant for the underlying action that is the subject of SEPA review, and PSRC's responsible official. Intervention during the course of an administrative appeal under this section shall not be permitted; and
- (h) Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

(5) The PSRC Executive Director will appoint an individual familiar with SEPA and hearing procedures as Hearing Examiner for PSRC ("Examiner") for any appeal determined to be timely filed under subsection 18(3) and to contain all of the information in subsection 18(4) above. The Examiner will hear and decide SEPA appeals in accordance with this Resolution and any published Rules of Procedure approved by the Executive Director.

(6) Notice of the appeal hearing must be mailed by the Examiner to parties of

record at least 15 days before the scheduled hearing date.

(7) Appeals shall be governed by the following:

(a) Rules and procedures.

The Examiner shall follow the procedures set forth in this Resolution and any published Rules of Procedure approved by the Executive Director, unless the Examiner and parties to the appeal mutually agree to modify them in a particular case; provided, however, in all appeals, the procedures shall result in preparation of a record for use in any subsequent appeal proceedings.

(b) Consolidation of appeals.

All SEPA appeal challenges on the same environmental document will be heard by the Examiner in one single simultaneous appeal hearing.

(c) Burden of proof.

The burden of proof is on the Appellant to show that the PSRC responsible official's decision does not comply with SEPA.

(d) Standard of review.

The determination of the PSRC responsible official shall be accorded substantial weight by the Examiner in accordance with RCW 43.21C.075(3). A DNS or Mitigated DNS shall be overturned only if found to be clearly erroneous. An FEIS or EIS Addendum shall be overturned only if found to not be adequate under the rule of reason.

(e) Scope of review.

Review by the Examiner is limited to the validity of the challenged DNS or Mitigated DNS (i.e., whether an EIS is required) or the adequacy of the challenged FEIS or EIS Addendum. The Examiner's review shall also be limited to the specific reasons for legal inadequacy stated in the appeal.

(f) Examiner's decision.

The Examiner shall issue a decision within 14 calendar days of the close of record of the appeal hearing. The Examiner shall enter written findings of fact and conclusions of law, and an Order determining whether to uphold the challenged DNS or Mitigated DNS or whether the challenged FEIS or EIS Addendum is legally adequate. The Examiner is not empowered to enter injunctive relief. The Examiner's decision shall include notice of the date and place for commencing a judicial appeal.

(g) Notice of decision.

Copies of the Examiner's decision shall be mailed to parties of record and those requesting notice of the Examiner's decision.

(8) A party seeking judicial review of a PSRC SEPA decision subject to appeal under this Section 18 must, before seeking any judicial review, exhaust the administrative appeal procedure of this Section 18.

(9) Judicial review of any PSRC SEPA decisions shall be governed by the following:

(a) Decisions of the Examiner under this Section 18 shall be final and conclusive action unless within 21 calendar days of the date the decision is issued an Appellant appeals the decision to the King County Superior Court.

(b) PSRC SEPA decisions not subject to administrative appeal under Section 18 may be appealed to the King County Superior Court by an appellant within 21 calendar days of the date the decision is issued.

#### Section 19. NOTICE/STATUTE OF LIMITATIONS.

(1) PSRC 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 PSRC 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 of the SEPA rules are adopted by reference, as supplemented by this Resolution:

WAC

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.
- 197-11-799 Underlying governmental action.

PART NINE  
CATEGORICAL EXEMPTIONS

Section 21. ADOPTION BY REFERENCE. The following sections of the SEPA rules are adopted by reference, 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 of the SEPA rules 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.

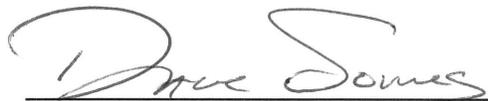
197-11-930 Lead agency for private projects with one agency with jurisdiction.

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 15<sup>th</sup> day of December, 2016.



John Marchione, Mayor  
City of Redmond  
President, Puget Sound Regional Council

ATTEST:

  
Josh Brown, Executive Director