

RESOLUTION NO. 3-05

A RESOLUTION of the Board of Directors of the Snohomish County Public Transportation Benefit Area Corporation (SCPTBAC, dba Community Transit) to implement the rules and procedures of the Washington State Environmental Policy Act.

WHEREAS, pursuant to RCW, Snohomish County Public Transportation Benefit Corporation ("Community Transit"), is responsible for implementing a transit system within the benefit service area; and

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

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

WHEREAS, Community Transit wishes to establish SEPA procedures to reflect the state SEPA rules, regulatory reform legislation, and the Growth Management Act (Chapter 36.70 RCW) and implementing regulations; and

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

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

WHEREAS, the adoption of these rules and procedures are categorically exempt from SEPA review;

Now, THEREFORE BE IT RESOLVED by the Board of Community Transit as follows:

Section 1. Authority. This resolution is adopted under RCW 43.21C.120 and WAC 197-11-904 and WAC 197-11-906, and is intended to implement those provisions.

Section 2. Adoption of Rules. The state SEPA rules and procedures issued by the Department of Ecology and contained in Chapter 197-11 WAC are hereby adopted by reference, except as modified in the following sections. Chapter 197-11 WAC should therefore be used in conjunction with this resolution. The state SEPA rules can be found in Chapter 197-11 of the Washington Administrative Code (WAC) and a copy can be viewed at the office named in Section 3 below.

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

- a. The responsible official for Community Transit is the Chief Executive Officer.

b. Delegation. The responsible official may delegate any or all of his or her responsibilities orally or in writing.

c. SEPA Information. Information about Community Transit's SEPA process can be obtained at the following address:

SEPA Official
Community Transit
7100 Hardeson Road
Everett, WA 98203

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

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

a. SEPA Decisions Subject to Administrative Appeal. Administrative appeals are provided for the following final SEPA procedural determinations: Determination of Nonsignificance (DNS), Mitigated DNS, or final environmental impact statement (EIS). An administrative appeal is not provided for a determination of significance (DS). Appeals of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) also are not allowed.

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

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

d. Timing of Appeals. The letter of appeal and filing fee must be received by the Chief Executive Officer, at the address given in Section 3a above by 5:00 p.m. of the fourteenth (14) calendar day following the date the challenged environmental document or determination is issued. This appeal period shall be extended for an additional seven (7) days if the appeal is of a DNS or Mitigated DNS for which public comment is required under WAC 197-11-340(2)(a). When the last day of an appeal period is a Saturday, Sunday, or a national or state holiday, the appeal period runs until 5 p.m. on the next business day.

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

1. Be in writing;
2. Contain a statement that sets forth:

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

- i. a demonstration that the appeal is legitimately related to environmental issues appropriate for a SEPA document; and
- ii. how the Petitioner is harmed by the SEPA decision under appeal;

(b) the document or determination being appealed;

(c) the specific errors complained of;

(d) the corrective action being sought;

(e) the reasons why the determination should be changed;

(f) whether further oral or written comment or a hearing is requested; and

(g) the signature, address, and phone number of the Petitioner and the name and address of Petitioner's designated representative, if any.

Supporting documents may be submitted with the letter of appeal.

3. Be accompanied by an appeal fee of \$200; and

4. Be timely received by the Chief Executive Officer, as described in 4.d., above. Failure to comply with the procedural requirements of this section is grounds for dismissal of an appeal.

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

g. Appeal Procedures. The Hearing Examiner will conduct an appeal hearing consistent with these rules and procedures, applicable legal requirements, and any Hearing Examiner Rules of Practice and Procedure adopted by the Chief Executive Officer pursuant to section 4.j. of this Resolution.

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

i. Appeal Hearing. A hearing shall be provided if requested by the Petitioner. The hearing shall provide reasonable opportunity for the parties to present oral or written testimony and argument, consistent with this resolution, SEPA and the state SEPA rules. Procedural determinations made by the responsible official shall be entitled to substantial weight. The Hearing Examiner may establish procedures for the hearing, and may set the time period allowed for each party to the appeal, including staff, to

present its case. A hearing may not be scheduled for at least five (5) days from the Community Transit's receipt of an appeal unless the parties agree otherwise.

j. Authority of Chief Executive Officer to Adopt Hearing Examiner Rules of Practice and Procedure. The Chief Executive Officer shall have the authority to adopt rules of practice and procedure for the Hearing Examiner to use in implementing this resolution and may delegate this authority to appropriate Community Transit staff. Adoption of or amendments to these rules of practice and procedure by Community Transit staff does not require legislative action by Community Transit's Board.

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

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

Section 6. Scoping. The responsible official shall decide the scoping method and deadline for a given proposal, consistent with WAC 197-11-408. Any scoping beyond the minimum in WAC 197-11-408 (including formal or informal meetings and the use of forms, notices, or documents other than the form in WAC 197-11-980) shall be considered expanded scoping and is not required for adequate scoping under state law. The expanded scoping provisions in WAC 197-11-410 may be used without formally designating the process as "expanded scoping". In keeping with the intent of the state SEPA rules, the responsible official is encouraged to be innovative and shall have very broad discretion in developing creative scoping methods. A scoping process may also be used before a threshold determination (or at any other time in the SEPA process) to assist in identifying impacts and alternatives, including mitigation measures.

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

- a. Publish notice in a newspaper of general circulation in the general area where the proposal is located (if there is more than one such newspaper, the responsible official may select one newspaper for publication); initial newspaper publication shall occur at least fifteen (15) days before a public hearing;
- b. Furnish notice to anyone who has specifically requested to be notified about the particular proposal;
- c. File the documents required by WAC 197-11-508 with the state department of ecology for publication of notice in the state SEPA REGISTER.

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

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

a. Usage. The usage of the word "may" means "is authorized to" and is "optional and permissive and does not impose a requirement" (WAC 197-11-700 (3)(b)). Days are in calendar days. If a final date falls on a weekend or a state or national holiday, the date shall be the next working day.

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

c. Chief Executive Officer. "Chief Executive Officer" means the chief administrative officer of Community Transit, as designated by temporary or permanent appointment.

d. Preferred Alternative. "Preferred Alternative" means a preference for a particular alternative course of action, at the time the preference is expressed. A preferred alternative is not an action or decision within the meaning of WAC 197-11-070.

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

Section 10. Transition to New Rules. All environmental documents and notices issued after this resolution is adopted must follow the requirements laid out in this resolution. Environmental documents and notices issued prior to the adoption date of this resolution, including draft, final, or supplemental EISs, do not require revision or reissuance to meet the requirements of this resolution.

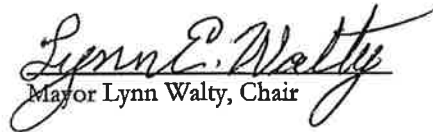
Section 11. Revision of SEPA Procedures. Community Transit may amend its SEPA procedures from time to time as may be necessary. The responsible official may amend procedures or provide additional guidance to carry out this resolution without action by Community Transit's Board.

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

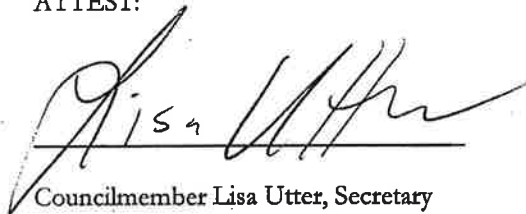
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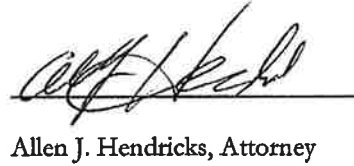
ADOPTED by the Board of the Community Transit at a regular meeting thereof held on the 7
day of April, 2005.


Mayor Lynn Walty, Chair

ATTEST:


Councilmember Lisa Utter, Secretary

APPROVED AS TO FORM


Allen J. Hendricks, Attorney