

Policy Name: SEPA Process
Section: 3000 Operational: 3100 Administrative
Policy Number: 0000

Purpose: To establish District policy for SEPA compliance.

Reference: *Rescinds BIPRD Resolution 1997-3*
State Environmental Policy Act (SEPA), RCW 43.21C.120
SEPA rules, chapter 197-11 of Washington Administrative Code (WAC)

Policy:

The Bainbridge Island Metropolitan Park & Recreation District will operate in compliance with the requirements of the State Environmental Policy Act (SEPA) of the State of Washington.

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SECTION ONE SEPA PROCEDURES

1.01 Authority. The Bainbridge Island Metropolitan Park & Recreation District adopts these procedures under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules, chapter 197-11 of the Washington Administrative Code, (WAC). These procedures shall be used in conjunction with SEPA rules, definitions, and policies found in the WAC.

1.02 Section Purpose. These procedures herewith incorporate all state environmental rules and regulations. To the extent not inconsistent with the WAC these SEPA procedures shall provide for all environmental review within the District.

1.03 Definitions. In addition to those definitions in the WAC used in this resolution, the following terms shall have the following meanings, unless the context indicates otherwise:

1. "Department" means any division, subdivision or organizational unit of the District established by resolution, rule, or order.
2. "SEPA rules" means Chapter 197-11 WAC as adopted or amended by the State Department of Ecology.
3. "Resolution" means the resolution or other policies and procedures used by the District to effect these regulatory requirements.

1.04 Designation of Responsible Official. For those proposals that the District is the lead agency, the responsible official shall be the Executive Director or other person designated by the District.

1. For all proposals that the District 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 all other functions assigned to the "lead agency" or "responsible official" by the SEPA rules.
2. The District shall retain and make available all documents required by the SEPA rules.

1.05 Lead Agency Determination and Responsibilities. The District shall be the lead agency for non-exempt proposals unless it is previously determined by the Board of Commissioners that the District will act as a joint lead agency with the City of Bainbridge Island or that the City of Bainbridge Island or other agency will act as the lead agency.

1. When the District is the lead agency, the responsible official shall carry out the duties as set forth herein.
2. When the District is not the lead agency, the District shall rely upon the decision of the lead agency in making decisions on the proposal. The District shall not cause preparation of a DNS or EIS in addition to that prepared by the lead agency unless required under the WAC.
3. If the District receives a lead agency decision as to authority made by another agency that appears inconsistent with the state criteria it may object. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or if unresolved the District may petition the Department of Ecology for a lead agency status or shared lead agency determination within the fifteen-day time period. Any such petition by the District shall be initiated by the executive director.
4. The District through its executive director is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal.

1.06 Determination Status and Timing Considerations: For nonexempt proposals, the Determination of Nonsignificance (DNS) or final Environmental Impact Statement(EIS) for the proposal shall accompany the District's staff recommendations to the Board of Park & Recreation Commissioners.

1. The District shall wait no longer than 30 days for a consulted agency to respond to a District request for information.
2. The responsible official shall complete the threshold determination within 15 days of receiving all the requested information from the consulted agencies, unless prevailing circumstances make impractical this time line consistent with the WAC.
3. When the District must initiate further studies, including field investigations, to obtain the information to make a threshold determination, the District shall complete the studies within 30 days, unless prevailing circumstances make impractical this time line consistent with the WAC.

SECTION TWO CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

2.01 Section Purpose. This section provides for District rules on deciding whether a proposal has a probable significant and adverse environmental impact requiring an EIS. This section also contains rules for evaluating the impacts of proposals not requiring an EIS.

2.02 Use of Exemptions. The responsible official shall determine whether the proposal is exempt. The 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 ordinance apply to the proposal. The District shall not require completion of an environmental check list for an exempt proposal.

1. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental approvals required, if any.
2. If a proposal includes both exempt and nonexempt actions, the District may authorize exempt actions prior to compliance with the procedural requirements of these procedures, except that the District shall not give authorization for:
 - a. Any nonexempt action; or
 - b. Any action that would limit the choice of reasonable alternatives.
3. Additionally, the responsible official may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt action(s) were not approved.

2.03 Environmental Checklist. A completed environmental checklist (in the form provided in the WAC), shall be prepared at the same time a proposal is made, that is not specifically exempted by these procedures. A checklist is not needed if the responsible official determines a full EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The District shall use all information available and as set forth from the application conference for making the threshold determination as specified in the District's capacity as lead or joint lead agency.

2.04 Mitigated DNS. As provided in this section and in the WAC:

1. Mitigation measures (clarifications, changes, or conditions) must be described in writing. Justification for issuance for a mitigated DNS may be incorporated in the described DNS by reference to agency staff reports, studies or other documents. Such measure details must be specific, for example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas, proposal to "muffle machinery to X decibel" or "construct 200 stormwater retention point at Y location" are adequate.
2. A mitigated DNS requires a fifteen-day comment period and public notice prior to adoption.
3. Mitigation measure incorporated in a mitigated DNS adoption shall be deemed conditions of approval.

SECTION THREE ENVIRONMENTAL IMPACT STATEMENT (EIS)

3.01 Section Purpose. This section contains the basic requirements and types of EIS, preparation, scoping mandates and options.

3.02 Preparation of EIS. As used herein, "DEIS" means draft EIS, "FEIS" means Final EIS and "SEIS" means Supplemental EIS.

1. The DEIS and FEIS and draft and final SEIS shall be prepared by District staff, or by a consultant selected by the District.

2. Preparation of draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) are the responsibility of the District under the direction of the responsible official and shall comply with the WAC in all scoping mandates and identified options.

SECTION FOUR COMMENTING

4.01 Section Purpose. The purpose of this section is to outline notice requirements to private entities as well as to the media. This section also provides for inclusion of the SEPA register and outlines the conduct of public hearings, comments and response to comments as well as outlines procedures for consulted agency costs to assist the lead agency.

4.02 Public Notice. Whenever the District issues a DNS, or a Determination of Significance (DS), notice of such action shall be given by:

1. Indicating the availability and location of the DEIS or SEIS in any public notice required for a nonexempt proposal, and by doing at least 2, 3, 4 and 5 listed below.
2. Publishing notice in a newspaper of general circulation in the District or general area where the proposal is located.
3. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered. The District shall maintain a register of those who request in writing that they be notified.
4. Notifying any other local representative written news media sources; and
5. Posting the property for site specific proposals and mailing notices to property owners within 300 feet of the proposal, if the proposal is site specific as determined by the responsible official. If posting, the applicant shall supply and erect an eight-square-foot notice board on all site specific projects.

4.03 Designation of Official to Perform Consulted Agency Responsibilities. The senior planner, or designee, shall be responsible for preparation of written comments on the part of the District in response to consultation request from another agency prior to making a threshold determination, and participation in coping and reviewing a DEIS. The responsible official shall be responsible for the District's compliance with the WAC whenever the District is a consulted agency and the responsible official is authorized to develop operating procedures that will ensure responses to consultation requests in a timely fashion and include data from all appropriate departments of the District.

SECTION FIVE SEPA AND AGENCY DECISIONS

5.01 Section Purpose. The District herewith incorporates and establishes policies and rules for its SEPA's substantive authority, such as agency decisions, or rejection of SEPA determinations or decision appeals to a court of law.

5.02 Policy. The District designates and adopts the following policies as the basis for the District's exercise of authority pursuant to this section. The District recognizes that each person has a fundamental right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The District 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:

1. Attain the widest range of beneficial uses within the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
2. Preserve important historic, cultural, and natural aspects of our national, state, and local heritage.

5.03 Documents and Criteria. The most current versions of the following documents may be referenced as possible resources during the SEPA process:

1. Bainbridge Island Metropolitan Park & Recreation District Comprehensive Plan
2. City of Bainbridge Island Comprehensive Plan
3. City of Bainbridge Island Municipal Code
4. City of Bainbridge Shoreline Master Program
5. Shoreline Management Act
6. Growth Management Act
7. Forest Practice Act and Regulations
8. Kitsap County Open Space and Park & Recreation Comprehensive Park Plan
9. Kitsap County Greenways Plan

5.04 Appeals. Any agency or person with standing may appeal the District's SEPA decisions as follows:

1. Appeal of a DNS must be made within 15 days of the date that the DNS decision is final. It shall be final when postmarked as sent to the Department of Ecology.
2. Appeal of DS must be made to the District's Board of Commissioners within 15 days of the date the DS is issued.
3. Appeal of any FEIS substantive determination must be made to the District's Board of Commissioners within 15 days of the date the decision is made.
4. Appeal of any decision of a non-elected official which conditions or denies a proposal or action on the basis of SEPA must be made within 15 days of a final decision.
5. There will be no more than one administrative SEPA appeal proceeding, except in cases of determination of significance (DS). When possible an appeal of a determination of non-significance will be heard for an appeal ruling at the same time as a decision is made with regard to the underlying land use application.
6. Effect of Appeal. The filing of an appeal of a DNS or DS or adequacy of a final environmental impact statement (FEIS) shall stay the effect of any decision, proceedings, or actions in regard to the proposal.
7. The required forms shall apprise the users of appeal rights.

5.05 Appeals Criteria. The District establishes the following appeals criteria:

1. A notice of appeal, together with a filing fee (set by the Executive Director and reviewed periodically), shall be filed with the District's Executive Director, who shall notify the Board of Commissioners, the appellant, all parties requesting notice pertaining to the proposal, and the responsible official of the receipt of an appeal.
2. Content of the Appeal. Appeals shall contain:
 - a. The name and mailing address of the appellant and the name and address of his/her representative, if any;

- b. The appellant's legal residence or principal place of business;
- c. A copy of the decision which is appealed;
- d. The grounds upon which the appellant relies;
- e. A concise statement of the factual and legal reasons for the appeal;
- f. The specific nature and intent of the relief sought; and
- g. A statement that the appellant has read the appeal and believes the contents to be true, under penalty of perjury under the laws of the State of Washington, followed by his/her signature and the signature of his/her representative, if any.

3. Dismissal of Appeal. The Board of Commissioners may summarily dismiss an appeal without hearing when such appeal is determined by the Board of Commissioners to be without merit on its face, frivolous, or brought merely to secure a delay, or if the appellant lacks legal standing to appeal.

4. Time Requirement. The appeal shall be heard by the Board of Commissioners at a public hearing, notice of which shall be published once and mailed to the appellant and delivered to the responsible official at least 15 days before the public hearing.

5. Withdrawal of Appeal. An appeal may be withdrawn only by the appellant by written request filed with the District's Executive Director, who shall inform the Board of Commissioners and responsible official of the withdrawal request. If the withdrawal is requested prior to the response of the responsible official or before serving notice of the appeal, such request shall be permitted, the appeal shall be dismissed without prejudice by the Board of Commissioners, and the filing fee shall be refunded.

6. Response of Responsible Official. The responsible official shall respond in writing to the appellant's objections. Such response shall be transmitted to the District's executive director or designee who will then forward all pertinent information to the Board of Commissioners.

5.06 Public Hearing. Before rendering a decision, the Board of Commissioners shall hold one public hearing. Notice of the time and place of the public hearing shall be given as provided in Section 4.02. The hearing of an appeal of a determination of any matter such as nonsignificance or adequacy of an environmental impact statement on a project which requires a hearing by another statutory authority (i.e. subdivisions, reclassification, building permit, shoreline development permit) shall be held concurrently with the hearing on the underlying request when possible. Sufficient time shall be allowed for response by the responsible official and for review of said response by the Board of Commissioners and appellant.

1. The Board of Commissioners shall follow prescribed rules of appeals, if adopted, for the conduct of hearings and to preserve order under this section. The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with the rules if any of the Board of Commissioners.

2. At the public hearing the Board of Commissioners shall consider all relevant evidence and take testimony on oath. The public hearing shall be tape recorded. Upon completion of the public hearing, the Board of Commissioners shall enter findings of fact, conclusions of law and a decision, giving substantial weight to the decision of the responsible official.

3. The Board of Commissioners may render a decision on an appeal without holding a public hearing when both parties agree in writing that no issues of fact are to be decided. When issues of law are to be determined and opposing parties agree, they may request the Board of Commissioners render a decision based upon written briefs. The Board of Commissioners shall render a written decision within (30) days of receipt of briefs.

4. The decision of the Board of Commissioners shall be in writing, containing findings and conclusions, and be considered final unless an appeal is filed with the Superior Court in Kitsap County. Such appeals to Superior Court must be filed within (21) days of the Board of Commissioner's decision.

5. For any appeal from a decision of the Board of Commissioners to Superior Court in Kitsap County, the District shall provide, at the cost of the appellant, a record that shall consist of the following:

- a. Board of Commissioner's findings and conclusions;
- b. A summary of taped or written record or a tape thereof;

c. Exhibits and other documents considered by the Board of Commissioners.

SECTION SIX FEES AND SEVERABILITY

6.01 Section Purpose. The District shall require the following fees for its activities and provide for severability in accordance with the provisions of these procedures.

6.02 Fees. The District provides that:

1. The appeal filing fee shall be an amount set by the Executive Director and reviewed periodically.
2. The District may charge any person for copies of any document prepared under these procedures and for mailing documents, such costs shall be the actual cost to the district for reproduction and mailing.

6.03 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.