



# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

February 17, 2016

### FCD Resolution

Proposed No. FCD2016-04.1

Sponsors

1 A RESOLUTION adopting SEPA Procedures for the King County  
2 Flood Control Zone District.

3 WHEREAS, the Washington State Department of Ecology has adopted rules for  
4 implementation of the state Environmental Policy Act ("SEPA"); and

5 WHEREAS, pursuant to RCW 43.21C.120 and WAC 197-11-904 the King  
6 County Flood Control Zone District ("District") gave notice of adoption of its SEPA  
7 procedures on February 3, 2016, in the Seattle Times, a newspaper of general circulation  
8 in the District, and held a public hearing on the proposed SEPA procedures on February  
9 16, 2016; now, therefore

10 BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE KING  
11 COUNTY FLOOD CONTROL ZONE DISTRICT:

12 SECTION 1. Authority. The District adopts this resolution under the state  
13 Environmental Policy Act ("SEPA"), RCW 43.21C.120 and WAC 197-11-904. This  
14 resolution contains the District's SEPA procedures and policies. The SEPA rules, chapter  
15 197-11 WAC, must be used in conjunction with this resolution.

16 SECTION 2. Adoption by Reference. Sections 2 through 7 contain the basic  
17 requirements that apply to the SEPA process. The District adopts the following sections  
18 of Chapter 197-11 WAC by reference:

19 WAC

20	197-11-040	Definitions.
21	197-11-050	Lead agency.
22	197-11-055	Timing of the SEPA process.
23	197-11-060	Content of environmental review.
24	197-11-070	Limitations of actions during SEPA process.
25	197-11-080	Incomplete or unavailable information.
26	197-11-090	Supporting documents.
27	197-11-100	Information required of applicants.
28	197-11-158	SEPA/GMA project review - Reliance on existing plans, laws, and
29		regulations
30	197-11-210	SEPA/GMA integration
31	192-11-220	SEPA/GMA definitions.
32	197-11-228	Overall SEPA/GMA integration procedures.
33	197-11-230	Timing of an integrated GMA/SEPA process.
34	197-11-232	SEPA/GMA integration procedures for preliminary planning,
35		environmental analysis, and expanded scoping.
36	197-11-235	SEPA/GMA integration documents.
37	197-11-238	SEPA/GMA integration monitoring.
38	197-11-250	SEPA/Model Toxic Control Act integration.
39	197-11-253	SEPA lead agency for MTCA actions.
40	197-11-256	Preliminary evaluation.
41	197-11-259	Determination of nonsignificance for MTCA remedial actions.

42           197-11-262   Determination of significance and EIS for MTCA remedial  
43                           actions.

44           197-11-265   Early scoping for MTCA remedial actions.

45           197-11-268   MTCA interim actions.

46           SECTION 3. Additional Definitions. In addition to those definitions contained  
47 in WAC 197-11-700 through WAC 197-11-799, when used in this resolution, the  
48 following terms shall have the following meanings, unless the context indicates  
49 otherwise:

50           A.    ""Board" means District board of supervisors.

51           B.    "DNS" means determination of nonsignificance.

52           C.    "DS" means determination of significance.

53           D.    "EIS" means environment impact statement.

54           E.    "Executive Committee" means the District executive committee.

55           F.    "Executive Director" means the District executive director.

56           G.    "SEPA rules" means chapter 197-11 WAC adopted by the Department of  
57 Ecology.

58           SECTION 4. Responsible Official.

59           A.    The responsible official shall be the Executive Director or designee, or if  
60 there is no Executive Director, the chair of the Board or designee. When the Executive  
61 Director or the chair designates another person as responsible official, the Executive  
62 Director or the chair shall be guided in making such designation by the nature of the  
63 proposal and the administrative decision making process normally used by the District.

64           B.   For all proposals for which the District is the lead agency, the responsible  
65   official shall make the threshold determination, supervise scoping, prepare any required  
66   EIS and perform any other functions assigned to the "lead agency" or "responsible  
67   official" by this resolution.

68           C.   The District shall retain all documents required by the SEPA rules and shall  
69   make them available in accordance with chapter 42.56 RCW.

70           D.   All decisions of the responsible official and the District relating to  
71   interpretation and application of this resolution shall be accorded substantial  
72   deference.

73           SECTION 5. Lead Agency Determination and Responsibilities.

74           A.   The District shall be deemed to initiate any "proposal" (as that term is  
75   defined in WAC 197-11-784), whether implemented by District employees and District  
76   contractors, or implemented by King County as contractor to the District. A proposal  
77   means a proposed "action" (as that term is defined in WAC 197-11-704). An action is  
78   either a project action or a nonproject action (see WAC 197-11-704).

79           B.   King County shall be the lead agency for a proposal that is a project action,  
80   unless determined otherwise by the Board or the Executive Committee. When King  
81   County is the lead agency for a project action, King County shall comply with the King  
82   County SEPA procedures and policies, as set forth in Chapter 20.44 KCC.

83           C.   The District shall be the lead agency for a proposal that is a nonproject  
84   action, unless determined otherwise by the Board or the Executive Committee. When the  
85   District is the lead agency for a nonproject action, the responsible official shall supervise



86 compliance with the threshold determination requirements, and if an EIS is necessary,  
87 shall supervise preparation of the EIS.

88 D. For the Green River System-Wide Improvement Framework Plan, interim or  
89 final, and for the Lower Green River Corridor Plan, the District shall be the lead agency,  
90 unless subsequently determined otherwise by the Board or the Executive Committee.

91 E. If the District receives a lead agency determination made by another agency,  
92 other than King County, for a proposal, and the determination in the opinion of the  
93 District appears to be inconsistent with the criteria of WAC 197-11-253 or 197-11-922  
94 through 197-11-940, the District may object to the determination. Any objection shall be  
95 made to the agency originally making the determination and resolved within 15 days of  
96 receipt of the determination, or the District shall petition the Department of Ecology for a  
97 lead agency determination under WAC 197-11-946 immediately following the 15-day  
98 time period. The petition shall be initiated by the responsible official.

99 F. When the District is lead agency for a Model Toxic Control Act  
100 ("MTCA") remedial action, the Department of Ecology shall be provided an opportunity  
101 under WAC 197-11-253(5) to review the environmental documents prior to public notice  
102 being provided. If SEPA and MTCA documents are issued together with one public  
103 comment period under WAC 197-11-253(6), the District shall jointly with the  
104 Department of Ecology decide which entity receives the comment letters and how copies  
105 of the comment letters will be distributed to the other agency.

106 SECTION 6. Timing Considerations.

107 A. The responsible official shall begin any required environmental review for  
108 proposals at the earliest point in the planning and decision making process when the

principal features of the proposal and its probable environmental impacts are reasonably identified.

B. To the extent that the District establishes any advisory body for purposes of making a recommendation on a proposal to the Board or Executive Committee, the responsible official shall provide such bodies with any relevant environmental documents before any final recommendation is transmitted to the Board or Executive Committee.

C. Any environmental review may be organized in phases as specified in WAC 197-11-060(5).

D. In all cases not otherwise covered, the timing of the District's environmental review for proposals shall be as specified on an individual, case by case basis by the responsible official, consistent with this resolution.

SECTION 7. Emergency Actions. Any action which in the opinion of the responsible official must be undertaken immediately, or within a time too short to allow full compliance with the provisions of this resolution, to avoid an imminent danger to property (public or private), or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of SEPA, the SEPA rules and this resolution.

SECTION 8. Categorical Exemptions and Threshold Determinations - Adopted by Reference.

A. Sections 8 through 10 contain rules for deciding whether a proposal has a "probable significant, adverse environmental impact," thereby requiring preparation of an EIS. This section also contains rules for evaluating the impacts of proposals not requiring an EIS. The District adopts the following sections by reference:

132 WAC

133 197-11-300 Purpose of this part.

134 197-11-305 Categorical exemptions.

135 197-11-310 Threshold determination required.

136 197-11-315 Environmental checklist.

137 197-11-330 Threshold determination process.

138 197-11-335 Additional information.

139 197-11-340 Determination of nonsignificance (DNS).

140 197-11-350 Mitigated DNS.

141 197-11-355 Optional DNS process.

142 197-11-360 Determination of significance (DS) / initiation of scoping.

143 197-11-390 Effect of threshold determination.

144 B. Use of exemptions.

145 1. The responsible official shall determine whether the proposal is exempt. The  
146 official's determination that a proposal is exempt shall be final and not subject to  
147 administrative review. If a proposal is exempt, none of the procedural requirements of  
148 this resolution shall apply to the proposal. The responsible official shall not require  
149 completion of an environmental checklist for an exempt proposal.

150 2. In determining whether a proposal is exempt, the responsible official shall  
151 make certain that the proposal is properly defined and shall identify the governmental  
152 licenses required (WAC 197-11-060).

153           3.    If a proposal includes both exempt and nonexempt actions, the responsible  
154 official may authorize exempt actions prior to compliance with the procedural  
155 requirements of this resolution, except that:

- 156           a.    The responsible official shall not give authorization for:
- 157                   i.       Any nonexempt action;
- 158                   ii.      Any action that would have an adverse environmental impact; or
- 159                   iii.     Any action that would limit the choice of alternatives; and
- 160           b.    The responsible official may withhold approval of exempt actions that  
161 would lead to modification of the physical environment, when such modification would  
162 serve no purpose if nonexempt actions were not approved.

163           SECTION 9. Environmental Checklist. A completed environmental checklist in  
164 the form provided by WAC 197-11-960 shall be prepared for any proposal not  
165 specifically exempted in this resolution; provided, that a checklist is not needed if the  
166 responsible official determines that an EIS is required, SEPA compliance has been  
167 completed or SEPA compliance has been initiated by another agency.

168           SECTION 10. Mitigated DNS.

169           A.    As provided in this section and in WAC 197-11-350, the responsible official  
170 may issue a DNS based on conditions attached to the proposal by the responsible official.

171           B.    Mitigation measures which justify issuance of a mitigated DNS may be  
172 incorporated in the DNS by reference to District staff reports, studies or documents.

173           C.    A mitigated DNS is issued under WAC 197-11-340(2), which requires a 14-  
174 day comment period and public notice.

D. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit or approval decision and may be enforced in the same manner as any term or condition of the permit or approval, or enforced in any manner specifically prescribed by the District.

E. If the responsible official's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the responsible official should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

SECTION 11. Environmental Impact Statements - Adoption by Reference.

A. The District adopts the following sections by reference:

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.
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.

198	197-11-443	EIS Contents when prior nonproject EIS.
199	197-11-444	Elements of the environment.
200	197-11-448	Relationship of EIS to other considerations.
201	197-11-450	Cost benefit analysis.
202	197-11-455	Issuance of DEIS.
203	197-11-460	Issuance of FEIS.

204           B.   Preparation of draft and final EISs (DEIS and FEIS) and draft and final  
205 supplemental EISs (SEIS) is the responsibility of the responsible official. Before the  
206 District issues an EIS, the responsible official shall be satisfied that it complies with this  
207 resolution and chapter 197-11 WAC.

208           C.   The DEIS and FEIS or draft and final SEIS shall be prepared by District  
209 staff or District contractors.

210           SECTION 12. Commenting - Adoption by Reference.

211           A.   This section contains rules for consulting, commenting and responding on  
212 all environmental documents under SEPA, including rules for public notice and hearings.

213           B.   The District adopts the following sections by reference:

214           WAC

215	197-11-500	Purpose of this part.
216	197-11-502	Inviting comment.
217	197-11-504	Availability and cost of environmental documents.
218	197-11-508	SEPA register.
219	197-11-510	Public notice.
220	197-11-535	Public hearings and meetings.

221 197-11-545 Effect of no comment.

222 197-11-550 Specificity of comments.

223 197-11-560 FEIS response to comments.

224 197-11-570 Consulted agency costs to assist lead agency.

225 C. Whenever the District issues a DNS under WAC 197-11-340 (2) or a DS  
226 under WAC 197-11-360(3), the District shall give public notice as follows:

227 1. If public notice is required for the permit or approval, the notice  
228 shall state whether a DS or DNS has been issued and when comments are due.

229 2. If no public notice is required for the permit or approval, the  
230 District shall give notice of the DNS or DS by publishing notice in a newspaper of  
231 general circulation in the District.

232 D. Whenever the District issues a DS under WAC 197-11-360(3), the District  
233 shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-  
234 408 and in the public notice.

235 E. Whenever the District issues a DEIS under WAC 197-11-455(5) or a SEIS  
236 under WAC 197-11-620, notice of the availability of documents shall be given by  
237 indicating the availability of the DEIS in any public notice required for a nonexempt  
238 license or approval and publishing notice in a newspaper of general circulation in the  
239 District.

240 F. Whenever possible, the District shall integrate the public notice required  
241 under this section with existing notice procedures for the District's nonexempt permits or  
242 approvals required for the proposal.

G. The responsible official shall be responsible for preparation of written comments for the District in response to a consultation request prior to a threshold determination participation in scoping and reviewing a DEIS.

H. The responsible official shall be responsible for the District's compliance with WAC 197-11-550 whenever the District is a consulted agency and is authorized to develop operating procedures that will ensure timely responses to consultation requests.

SECTION 13. Using Existing Environmental Documents.

A. This section contains rules for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act ("NEPA") for the District's own environmental compliance.

B. The District adopts the following sections 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.

SECTION 14. SEPA Agency Decisions.

A. Sections 14 through 16 contain rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA, and for appealing SEPA determinations to agencies or courts.



266 B. The District adopts the following sections by reference:

267 WAC

268 197-11-650 Purpose of this part.

269 197-11-655 Implementation.

270 197-11-660 Substantive authority and mitigation.

271 197-11-680 Appeals.

272 SECTION 15. Substantive Authority.

273 A. The following policies, plans, rules and regulations, and all amendments  
274 thereto, are designated as potential bases for the exercise of the District's substantive  
275 authority under SEPA:

276 1. The policies of RCW 43.21C.020(2).

277 2. The District comprehensive plan.

278 3. District cooperative watershed management plans.

279 4. Federal, State or County laws, regulations, policies and practices  
280 applicable to a proposal.

281 5. For proposals implemented by King County, the policies, plans,  
282 rules and regulations designated in KCC 20.44.080 as substantive authority for King  
283 County under SEPA.

284 B. Any decision to approve, deny or approve with conditions a proposal shall  
285 comply with the requirements of RCW 43.21C.060.

286 SECTION 16. Appeals.

287 A. The District's threshold determination and EIS shall be issued before the  
288 decision on the proposal. Any person may appeal a threshold determination or the

adequacy of a final EIS by filing a notice of appeal within the time period set forth in KCC 20.24.090 and in accordance with requirements and procedures of the King County office of the hearing examiner in KCC 20.24.090 - 20.24.210 (to the extent applicable); provided, that the notice of appeal shall be filed with the clerk of the Board, the duties and responsibilities of the County department or division shall be satisfied by the Executive Director or designee, and the decision of the hearing examiner shall be final unless appealed to superior court in accordance with KCC 20.24.240.

B. The appeal services of the office of the hearing examiner shall be provided for the District in accordance with the interlocal agreement between the District and King County regarding flood protection services, and shall be paid for by the District in accordance with the interlocal agreement.

SECTION 17. Notice - Statute of Limitations. The District may publish a notice of action pursuant to RCW 43.21C.080 for any action. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the District pursuant to RCW 43.21C.080.

SECTION 18. Definitions - Adoption by Reference.

A. This section contains uniform usage and definitions of terms under SEPA.

B. The District adopts the following sections by reference, as supplemented by section 3:

WAC

197-11-700 Definitions.

197-11-702 Act.

197-11-704 Action

312	197-11-706	Addendum.
313	197-11-708	Adoption.
314	197-11-710	Affected tribe.
315	197-11-712	Affecting.
316	197-11-714	Agency.
317	197-11-716	Applicant.
318	197-11-718	Built environment.
319	197-11-720	Categorical exemption.
320	197-11-721	Closed record appeal.
321	197-11-712	Consolidated appeal.
322	197-11-724	Consulted agency.
323	197-11-726	Cost-benefit analysis.
324	197-11-728	County/city.
325	197-11-730	Decision maker.
326	197-11-732	Department.
327	197-11-734	Determination of nonsignificance (DNS).
328	197-11-736	Determination of significance (DS).
329	197-11-738	EIS.
330	197-11-740	Environment.
331	197-11-742	Environmental checklist.
332	197-11-744	Environmental document.
333	197-11-746	Environmental review.
334	197-11-750	Expanded scoping.

335	197-11-752	Impacts.
336	197-11-754	Incorporation by reference.
337	197-11-756	Land covered by water.
338	197-11-758	Lead agency.
339	197-11-760	License.
340	197-11-762	Local agency.
341	197-11-764	Major action.
342	197-11-766	Mitigated DNS.
343	197-11-768	Mitigation.
344	197-11-770	Natural environment.
345	197-11-772	NEPA.
346	197-11-774	Nonproject.
347	197-11-775	Open record hearing.
348	197-11-776	Phased review.
349	197-11-778	Preparation.
350	197-11-780	Private project.
351	197-11-782	Probable.
352	197-11-784	Proposal.
353	197-11-786	Reasonable alternative.
354	197-11-788	Responsible official.
355	197-11-790	SEPA.
356	197-11-792	Scope.
357	197-11-192	Scoping.

358        197-11-794        Significant.  
359        197-11-796        State agency.  
360        197-11-797        Threshold determination.  
361        197-11-799        Underlying governmental action.

362                SECTION 19. Categorical Exemptions. The District adopts by reference the  
363 following rules for categorical exemptions as supplemented in this resolution:

364        WAC

365        197-11-800        Categorical exemptions.  
366        197-11-880        Emergencies.  
367        197-11-890        Petitioning DOE to change exemptions.

368                SECTION 20. Agency Compliance - Adoption by Reference.

369                A.    This section contains rules for District compliance with SEPA, including  
370 rules for charging fees under the SEPA process, designating categorical exemptions that  
371 do not apply within critical areas, listing agencies with environmental expertise, selecting  
372 the lead agency and applying these rules to current District activities.

373                B.    The District adopts the following sections by reference:

374        WAC

375        197-11-900        Purpose of this part.  
376        197-11-902        Agency SEPA policies.  
377        197-11-916        Application to ongoing actions.  
378        197-11-920        Agencies with environmental expertise.  
379        197-11-922        Lead agency rules.  
380        197-11-924        Determining the lead agency.

381	197-11-926	Lead agency for governmental proposals.
382	197-11-928	Lead agency for public and private proposals.
383	197-11-934	Lead agency for private projects requiring licenses from a local
384		agency, not a county/city and one or more state agencies.
385	197-11-938	Lead agencies for specific proposals.
386	197-11-940	Transfer of lead agency status to a state agency.
387	197-11-942	Agreements on lead agency status.
388	197-11-944	Agreements on lead agency duties.
389	197-11-946	DOE resolution of lead agency disputes.
390	197-11-948	Assumption of lead agency status.

391           C.    The District shall require the following fees for its activities in accordance  
392 with the provisions of this resolution:

393                   1.       Threshold determination. Except when the District is the proponent  
394 of a proposal, for every environmental checklist the District will review when it is lead  
395 agency, the District shall collect a fee of \$450.00 from the proponent of the proposal  
396 prior to undertaking the threshold determination. The time periods provided by this  
397 resolution for making a threshold determination shall not begin to run until payment of  
398 the fee.

399                   2.       Environmental impact statement.

400                       a.    Except when the District is the proponent of a proposal, when the  
401 District is the lead agency for a proposal requiring an EIS and the responsible official  
402 determines that the EIS shall be prepared by the District, the District may charge and  
403 collect a reasonable fee from any applicant to cover costs incurred by the District in

404 preparing the EIS. The responsible official shall advise the applicant of the projected  
405 costs for the EIS prior to actual preparation, and the applicant shall post bond or  
406 otherwise ensure payment of such costs.

407               b. The responsible official may determine that the District will  
408 contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for  
409 activities initiated by some persons or entity other than the District and may bill such  
410 costs and expenses directly to the applicant. The District may require the applicant to post  
411 bond or otherwise ensure payment of such costs. The consultants shall be selected by  
412 mutual agreement of the District and the applicant after a call for proposals.

413               c. If a proposal is modified so that an EIS is no longer required, the  
414 responsible official shall refund any fees collected under (a) or (b) of this subsection  
415 which remain after incurred costs are paid.

416               3. Except when the District is the proponent of a proposal, the  
417 District may collect a reasonable fee from an applicant to cover the cost of meeting the  
418 public notice requirements of this resolution relating to the applicant's proposal.

419               4. The District shall not collect a fee for performing its duties as a  
420 consulted agency.

421               5. The District may charge any person for copies of any document  
422 prepared under this resolution and for mailing the document, in a manner provided by  
423 Chapter 42.56 RCW.

424               SECTION 21. Supplemental Procedures. The responsible official is authorized to  
425 develop and promulgate such procedures as the responsible official deems appropriate for  
426 implementing the SEPA rules and this resolution. The responsible official shall provide

427 responses on behalf of the District when it is a consulted agency.

428       SECTION 22. Severability. If any provision of this resolution or its application to  
429 any person or circumstances is held invalid, the remainder of this resolution, or the  
430 provision to other persons or circumstances, shall not be affected.

431       SECTION 23. Forms. The District adopts the following forms and selections by  
432 reference:

433       WAC

434       197-11-960       Environmental checklist.

435       197-11-965       Adoption notice.

436       197-11-970       Determination of nonsignificance (DNS).

437       197-11-980       Determination of significance and scoping notice (DS).



438 197-11-985 Notice of assumption of lead agency status.

439 197-11-990 Notice of action.

440

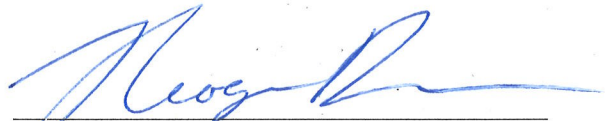
FCD Resolution was introduced on and passed by the King County Flood Control District on 2/16/2016, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,  
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles  
and Ms. Balducci

No: 0

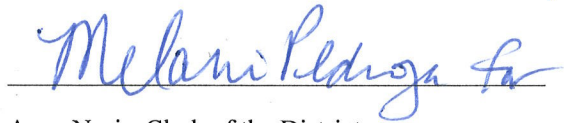
Excused: 0

KING COUNTY FLOOD CONTROL DISTRICT  
KING COUNTY, WASHINGTON



Reagan Dunn, Chair

ATTEST:



Anne Noris, Clerk of the District

Attachments: None