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Clerk 02/17/2016

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

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

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

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

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

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

197-11-080 Incomplete or unavailable information.

197-11-090 Supporting documents.

197-11-100 Information required of applicants.

197-11-158 SEPA/GMA project review - Reliance on existing plans, laws, and regulations

197-11-210 SEPA/GMA integration

192-11-220 SEPA/GMA definitions.

197-11-228 Overall SEPA/GMA integration procedures.

197-11-230 Timing of an integrated GMA/SEPA process.

197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.

197-11-235 SEPA/GMA integration documents.

197-11-238 SEPA/GMA integration monitoring.

197-11-250 SEPA/Model Toxic Control Act integration.

197-11-253 SEPA lead agency for MTCA actions.

197-11-256 Preliminary evaluation.

197-11-259 Determination of nonsignificance for MTCA remedial actions.

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

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

197-11-268 MTCA interim actions.

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

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

B. "DNS" means determination of nonsignificance.

C. "DS" means determination of significance.

D. "EIS" means environment impact statement.

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

F. “Executive Director” means the District executive director.

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

SECTION 4. Responsible Official.

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

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

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

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

SECTION 5. Lead Agency Determination and Responsibilities.

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

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

C. The District shall be the lead agency for a proposal that is a nonproject action, unless determined otherwise by the Board or the Executive Committee. When the District is the lead agency for a nonproject action, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

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

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

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

SECTION 6. Timing Considerations.

A. The responsible official shall begin any required environmental review for 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:

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.

197-11-355 Optional DNS process.

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

197-11-390 Effect of threshold determination.

B. Use of exemptions.

1. The responsible official shall determine whether the proposal is exempt. The official'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 shall apply to the proposal. The responsible official shall not require completion of an environmental checklist for an exempt proposal.

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

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

a. The responsible official 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 alternatives; and

b. The responsible official may withhold approval of exempt actions that would lead to modification

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of the physical environment, when such modification would serve no purpose if nonexempt actions were not approved.

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

SECTION 10. Mitigated DNS.

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

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

C. A mitigated DNS is issued under WAC 197-11-340(2), which requires a 14-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.

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.

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

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

SECTION 12. Commenting - Adoption by Reference.

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

B. The District adopts the following sections by reference:

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.
197-11-510	Public notice.
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.

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

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

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

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

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

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

B. The District adopts the following sections 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 15. Substantive Authority.

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

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

2. The District comprehensive plan.

3. District cooperative watershed management plans.

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

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

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

SECTION 16. Appeals.

A. The District's threshold determination and EIS shall be issued before the 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
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.

197-11-721	Closed record appeal.
197-11-712	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.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Land 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.

197-11-775 Open record hearing.

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.

197-11-192 Scoping.

197-11-794 Significant.

197-11-796 State agency.

197-11-797 Threshold determination.

197-11-799 Underlying governmental action.

SECTION 19. Categorical Exemptions. The District 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.

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SECTION 20. Agency Compliance - Adoption by Reference.

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

B. The District adopts the following sections 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.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city and one or more state agencies.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-942	Agreements on lead agency status.
197-11-944	Agreements on lead agency duties.
197-11-946	DOE resolution of lead agency disputes.
197-11-948	Assumption of lead agency status.

C. The District shall require the following fees for its activities in accordance with the provisions of

this resolution:

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

2. Environmental impact statement.

a. Except when the District is the proponent of a proposal, when the District is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by the District, the District may charge and collect a reasonable fee from any applicant to cover costs incurred by the District in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation, and the applicant shall post bond or otherwise ensure payment of such costs.

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

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

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

4. The District shall not collect a fee for performing it's duties as a consulted agency.

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

SECTION 21. Supplemental Procedures. The responsible official is authorized to develop and promulgate such procedures as the responsible official deems appropriate for implementing the SEPA rules and this resolution. The responsible official shall provide responses on behalf of the District when it is a consulted agency.

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

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

WAC	
197-11-960	Environmental checklist.
197-11-965	Adoption notice.
197-11-970	Determination of nonsignificance (DNS).
197-11-980	Determination of significance and scoping notice (DS).
197-11-985	Notice of assumption of lead agency status.
197-11-990	Notice of action.

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