

RESOLUTION NO. 410

ADOPTION OF RULES FOR IMPLEMENTATION
OF THE STATE ENVIRONMENTAL POLICY
ACT (RCW 43.21C) BIRCH BAY WATER
DISTRICT NO. 8

WHEREAS, the Washington State Department of Ecology adopted effective April 4, 1984 rules (WAC 197-11) for the implementation of the State Environmental Policy Act ("SEPA"), and

WHEREAS, the District may adopt its own SEPA Rules consistent with WAC 197-11, and

WHEREAS, the District's present rules for implementing SEPA (Resolution No. 167) need to be revised to be consistent with the recently adopted SEPA Rules in WAC 197-11, and

WHEREAS, the District gave notice of proposed adoption of SEPA Rules and Policies on _____, 1984 and held a public hearing on this Resolution on August 23, 1984, and

WHEREAS, the District finds it appropriate and desirable to adopt rules for the purpose of implementing SEPA, BE IT THEREFORE RESOLVED:

Section I: Policies. The District adopts by reference the policies of SEPA as set forth in RCW 43.21C.010 and RCW 43.21C.020 and as stated in WAC 197-11-030. The District, pursuant to RCW 43.21C.060, may condition or deny any District action to further these policies adopted by reference as well the following regulations, plans, codes, policies, procedures, license requirements or contract conditions:

- (1) Birch Bay Water District No. 8 Comprehensive Water Plan.
- (2) Birch Bay Water District No. 8 Comprehensive Sewer Plan.
- (3) All resolutions of the District.
- (4) Water supply contract between the City of Blaine and Birch Bay Water District No. 8.
- (5) Wastewater discharge permits from the state of Washington.

Section II: Adoption by Reference. The District adopts by reference Chapter 197-11 of the Washington Administrative Code, including WAC 197-11-060(3)(c), 197-11-410 and 197-11-440(8), except that the following sections of WAC 197-11 are not adopted by the District:

WAC 197-11-010,
WAC 197-11-055(2)(b),
WAC 197-11-055(3)(a)-last sentence,
WAC 197-11-055(4)(b),
WAC 197-11-904(2),
WAC 197-11-908(1),
WAC 197-11-908(2),
WAC 197-11-910,
WAC 197-11-914,
WAC 197-11-918,
WAC 197-11-940, and
WAC 197-11-955.

A summary of each section is provided in Attachment A hereto, which by this reference is incorporated herein.

Section IV: Responsible Official.

1. The Responsible Official shall be the Manager or his/her designee. When the Manager designates another employee as Responsible Official, the Manager shall be guided in making such designation by the nature of the proposal(s) and the administrative decision-making process normally used by the District.

2. The Responsible Official shall carry out the District's duties, functions, and procedural responsibilities as Lead Agency under the SEPA Rules.

3. All decisions of the Responsible Official and the District relating to interpretation and application of the SEPA Rules shall be accorded substantial deference.

Section V: Timing.

1. The Responsible Official shall begin any required environmental review for proposals initiated by the District at the earliest point in the planning and decision-making process when the principal features of that proposal and its probable environmental impacts are reasonably indentified.

2. The Responsible Official shall begin any required environmental review for proposals not initiated by the District no later than upon receipt of a complete application which application shall not be complete without any required environmental document and fee. However, the Responsible Official may initiate environmental review (including preparation of EIS's) at the conceptual stage rather than the final detailed design stage and have informal conferences with the applicant prior to the submittal of a complete application. When conducting such early environmental review, the applicant shall provide the Responsible Official with sufficient information (consistent with WAC 197-11-100 and WAC 197-11-335) as to permit the Responsible Official to conduct an adequate review consistent with these rules.

3. To the extent that the District establishes any advisory body for purposes of making a recommendation on a proposal to the Board of Commissioners, the Responsible Official shall provide such bodies with any relevant environmental documents for its consideration before any final recommendation is transmitted to the Board of Commissioners.

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

5. In all cases not otherwise covered above, 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 these SEPA Rules.

Section VI: 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 these SEPA Rules, to avoid an imminent threat to public health or safety, to prevent 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 and these SEPA Rules.

Section VII: Categorical Exemptions. No presumption of impact significance shall be accorded any proposal due to it or any part of it not being categorically exempt or due to the property where the proposal is to be implemented being located within a designated environmentally sensitive area.

Section VIII: Environmental Impact Statements. An applicant

environmental degradation, shall be exempt from the procedural requirements of SEPA and these SEPA Rules.

Section VII: Categorical Exemptions. No presumption of impact significance shall be accorded any proposal due to it or any part of it not being categorically exempt or due to the property where the proposal is to be implemented being located within a designated environmentally sensitive area.

Section VIII: Environmental Impact Statements. An applicant may be required or authorized by the Responsible Official to participate in EIS preparation if the Responsible Official determines that this will aid in preparing a meaningful environmental analysis. The extent of applicant involvement in the EIS preparation shall be as specified by the Responsible Official so long as

(a) The EIS shall be prepared under the direction of the Responsible Official and in conformance with these SEPA Rules; and

(b) The applicant is not required to provide more information than allowed by these SEPA Rules, provided that the Responsible Official may authorize a lesser degree of participation by the applicant than allowed by these SEPA Rules.

Section IX: Appeals.

1. Any aggrieved person may appeal the District's threshold determination or the determination of EIS adequacy by filing a Notice of Appeal with the Manager of the District. The Notice of Appeal shall be sufficiently detailed so as to provide reasonable notice to the District of (a) how the person or his/her property is adversely affected by the proposal, (b) any new facts which would be important to and affect the determination, and (c) the reasons why the determination was incorrect.

2. The threshold determination and the EIS adequacy may each be appealed only once. Such limitation does not apply to appeals to the Board of Commissioners under RCW 43.21C.060 (or another state statute) or to administrative appeals before another agency.

3. Any appeal of a threshold determination shall be filed within 15 days of the date of that determination or of the date whenever any required notice is made, whichever is later; provided that if there is any state statutory requirement for appeals to the District, the time limits for filing appeals specified therein shall control. An appeal of a threshold determination may not be postponed until a decision is made on the proposal, but shall be made within the time limits provided here or thereafter be barred.

4. Any appeal of EIS adequacy shall be filed within 15 days of the date of an agency's final decision on a proposed action or the date whenever any required notice thereof is made, whichever is later; provided that if there is any state statutory requirement for appeals to the District, the time limits for filing appeals specified therein shall control.

5. Any appeal which is timely filed shall be scheduled for a hearing before the Board of Commissioners no later than 30 days after filing of the appeal. The hearing shall be electronically recorded, be conducted on the record consistent with applicable law, provide for testimony under oath and otherwise be in accord with applicable law. Within 10 days of the conclusion of the hearing, the Board shall render its decision accompanied by appropriate findings of fact and conclusions of law.

6. The procedural determinations made by the Responsible Official shall be entitled to substantial weight in any appeal.

7. No person having a right to judicial appeal shall pursue judicial review without having first used this administrative appeal process prior to seeking judicial review, unless expressly provided otherwise by state statute.

Section X: Public Notice.

1. Public notice and opportunity for public comment on adoption of or revision to these SEPA Rules shall be provided by notifying a newspaper of general circulation in the general area where the District has its principal offices.

2. Public notice and opportunity for public comment on the preparation of an environmental document or its availability and that public hearing(s), if any, will be held shall be provided by notifying a newspaper of general circulation in the general area where the District has its principal offices; provided, that the Responsible Official is not required, but may utilize, in his/her sole discretion, in addition to the notice hereby required, existing District notice procedures and/or procedures or methods set out in WAC 197-11-510(1)(a-f).

3. The Responsible Official may use the form of "Notice of Action" provisions of RCW 43.21C.080 for public or official notices required by these SEPA Rules.

4. The District may require an applicant to complete any required public notice requirements for the applicant's proposal at applicant's expense.

Section XI: Fees. No application shall be complete nor shall any environmental document be final until all fees imposed hereby have been paid to the District. The following fees shall be required for District activities conducted as a result of these SEPA Rules:

- (a) A fee of \$200.00 shall accompany any Environmental Checklist filed with the District for which it is to act as the Lead Agency;
- (b) For all proposals that the District is the Lead Agency and the Responsible Official determines that an EIS is required, the applicant shall pay a fee equal to the administrative costs of supervision and preparation of the draft and final EIS's or any amendments thereof unless otherwise expressly limited by these SEPA Rules.
 - (i) The amount of the fee shall be based upon the actual total costs for services and materials plus reimbursement for out-of-pocket expenses (including but not limited to consultant reports) borne by the District in complying with these SEPA Rules. It shall not include costs for obtaining information from consulted agencies or efforts related to pre-draft consultation.
 - (ii) The applicant shall make an initial payment of \$200.00 to the District or post bond in an amount equal to the projected costs as estimated by the Responsible Official, whichever is greater.
 - (iii) All fees shall be paid in full before the document being prepared is finalized.

Section XII: Supplementary Procedures. The Responsible Official is authorized to develop and promulgate such procedure as he/she deems appropriate for implementing these SEPA Rules. The Responsible Official shall provide for responses on behalf of

the District when it is a consulted agency.

Section XIII: Severability. If any provision of these SEPA Rules or their application to any person or circumstance is held invalid, the remainder of these SEPA Rules or the application of the provision to other persons or circumstances shall not be affected thereby.

Section XIV: Repeal. Resolution 167 is hereby repealed.

ADOPTED at a regular meeting of the Board of Water Commissioners of Birch Bay Water District No. 8, Whatcom County, Washington, held this 13th day of ~~August~~, 1984.

September

e-r. O'Connor

COMMISSIONER

Francis A. Gischer

COMMISSIONER

Harold Gunderson

COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 410 of the Board of Water Commissioners of Birch Bay Water District No. 8, Whatcom County, Washington, adopted at the regular meeting thereof on the 13th day of ~~August~~, 1984.

September

Harold Gunderson

SECRETARY

BIRCH BAY WATER DISTRICT NO. 8
NOTICE OF PUBLIC HEARING RELATING
TO ADOPTION OF RULES FOR IMPLE-
MENTATION OF THE STATE ENVIRONMENTAL
POLICY ACT.

NOTICE IS HEREBY GIVEN that a public hearing will be held before the commissioners of Birch Bay Water District No. 8 in the hearing room of the District at 4895 Birch Bay Lynden Road, Blaine, Washington on the 23rd day of August, 1984 at 10:00 a.m. of said day to consider adopting rules implementing the Washington State Environmental Policy Act.

All persons interested in any manner in that question may appear at the hearing and give testimony in support of or in opposition to the proposed rules. Written testimony may also be considered by the Commissioners if received at the District office at 4895 Birch Bay Lynden Road before 10:00 a.m. August 23, 1984.

By order of the Commissioners of Birch Bay Water District No. 8.

/s/

D.P. SIZEMORE, Manager

PUBLISHED this _____ day
of August, 1984.