

Ten Years' Experience With SEPA

Final Report of the Commission on Environmental Policy
on the State Environmental Policy Act of 1971 (SEPA)
including legislative history and proposed rules
June 1983

Ten Years' Experience With SEPA

Final Report of the
Commission on Environmental Policy

June 1983



Prepared under RCW 43.21C.200-204



Washington State Legislature

Commission on Environmental Policy

101 Public Lands Building • Olympia, Washington 98504 • 753-1839

June 1983

To the Legislature and Interested Citizens:

We have developed recommendations to improve the State Environmental Policy Act (SEPA) after a comprehensive study of the statute and its administrative rules.

SEPA was enacted in 1971, when our nation was awakening to its environmental problems. Our environmental concern is no less today than in 1971. Events of recent weeks and months have reminded us that environmental problems have not vanished over the past decade. We hope we are making environmentally more sensitive decisions today, and SEPA has been instrumental in this progress. We need a strong and fair statewide act to be sure environmental values are part of those decisions made every day that affect our lives.

We turned to the people who know SEPA best: citizens, builders, agency staff. We asked them to tell us, from their broad experience over the past decade, where the law was working well, and where it was not. We asked them to sit down and reason together. We hoped differences could be resolved by cooperation, not confrontation. We hoped that, by searching and researching together, a common, high ground could be reached.

We reached a consensus that SEPA can work better for all concerned. We can help environmental values to influence decisions by producing shorter documents and focusing on significant impacts. We can involve citizens and agencies earlier to identify issues before a lot of time and money is spent on a project and various options are rejected. We can strengthen the law by reducing duplication and delay and by making the process more predictable. We can write government regulations in plain language for our citizens to use.

The legislation proposed by this bipartisan Commission passed both our Senate and House of Representatives by a wide margin and was signed by Governor Spellman on April 23, 1983. At the signing ceremony for SSB 3006, representatives of environmental and citizen groups, business and industry, state and local government applauded our progress toward making SEPA work better for all concerned. We are confident that the new rules and, equally important, the goodwill that has emerged in these past two years can work together to achieve SEPA's goal of productive harmony between people and nature.

Senator Alan Bluechel
Chairman of the State Commission on
Environmental Policy

Senator Alan Bluechel, *Chairman* • Senator W.H. "Bill" Fuller • Senator Margaret Hurley • Senator Al Williams
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Jim Whiteside • Isabel Hogan

John Woodring, *Staff Counsel* • Ed McGuire, *Staff Counsel* • Carol Holmes, *Administrative Assistant*

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Institute of Environmental Studies
University of Washington

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Wildlife Ecologist
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Consulting Forester and Tree Farmer
Castle Rock

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Environmentalist
Port Townsend

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Environmental Planning Engineer
METRO, Seattle

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Snohomish Co. Office of Community Planning

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Environmentalist
Department of Ecology

Joe Robel

Environmentalist
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Seattle

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Kirkland, Dept. of Community Development

Greg Williams

Assistant Director
Snohomish County Planning Department

Bill Williamson

Attorney and NEPA Specialist
Seattle

Jerry Yamashita

Pacific Coast Oyster Growers Association
Seattle

LEGAL TECHNICAL COMMITTEE

Susan R. Agid

Senior Deputy Prosecutor
King County

Dave Akana

Washington State Pollution
Control Hearings Board
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Urban Planner
Seattle

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UPS Law School

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Environmental Hearings Office
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Chief of Environmental Coordination
Washington State Parks & Recreation Comm.

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Department of Community Development
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Seattle

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UPS Law School

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Seattle

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Ralph I. Thomas*

City Attorney
City of Kirkland

PROCESS TECHNICAL COMMITTEE

Don Chance*

Director, Land Use
Washington Forest Protection Association

Keith Dearborn

Attorney, Urban Planner
Seattle

Bryan Glynn

Assistant to the Director
King Co. Planning & Community Development

Dave Helser

Chief of Environmental Coordination
Washington State Parks and Recreation Comm.

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Regional Planning Program
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Environmental Coordinator
City of Everett

Ben Lonn

Assistant Area Manager
Department of Natural Resources

Fred Maybee

Applied Ecologist
Turmwater

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Assistant to the Director
Association of Washington Cities

Terry L. Novak

City Manager
City of Spokane

John Spangenberg

Land Planning Engineer
Quadrant Corporation

Roger Von Gohren

Director of Natural Resources
Association of Washington Business

*Chairmen

AN APPRECIATION

The Commission wishes to express its deep appreciation for the extraordinary volunteer effort by the citizens of Washington in assisting the Commission. Citizens contributed well over 10,000 hours without compensation to enable the Commission to succeed.

Many of the 96 members of the Commission's Advisory Committee took considerable time away from their jobs and homes in order to research, meet, negotiate, and prepare recommendations and presentations to the Commission. Most of the participants had important responsibilities as private citizens or public officials, and the Commission gratefully acknowledges their personal and professional contributions and sacrifices.

The Commission also thanks the many other citizens who were not part of the Advisory Committee, but who were interested enough to attend meetings or participate in the process. The Commission appreciates the time that many legislators and members of the leadership in the Senate and House gave to learning about and considering the Commission's proposals, as well as to the time many citizens gave to participate in the legislative process.

The Commission staff counsel and administrative staff, Ed McGuire, John Woodring, and Carol Pedigo, were invaluable in assisting the Commission, from getting the study underway through the printing of this final report.

Special mention should be made of the Commission's Co-Chairs Committee, whose members, representing environmental, business, and public agency perspectives, coordinated the work of the technical committees and helped resolve conflicts among the numerous recommendations. Without them, the broad-based consensus on the Commission's recommendations could not have occurred. The Commission's Drafting Committee members, which included Commission members Runstad, Smith, and Winn, as well as Ellen Peterson, Ralph Thomas, and Ken Weiner, labored long hours over the details of the Commission's proposals. The three other non-legislative Commission members, Isabel Hogan, James Summers, and Jim Whiteside also deserve special thanks.

The Commission wishes to express particular appreciation to its Special Counsel Kenneth S. Weiner, and to the law firm of Preston, Thorgrimson, Ellis & Holman, for the countless hours Mr. Weiner contributed without pay and in public service over the past two years to mediate among the various interests and serve as Chairman of the Commission's Drafting Committee and main author of the Commission's documents.

Executive Summary

EXECUTIVE SUMMARY

Ten Years' Experience with SEPA Final Report of the Commission on Environmental Policy (June 1983)

The legislature created a bipartisan Commission on Environmental Policy in 1981 to review the State Environmental Policy Act (SEPA). The Commission consisted of eight legislators and six citizens, chaired by Senator Alan Bluechel of Kirkland. The legislature instructed the Commission to study and make recommendations to:

... establish methods and means of providing for full implementation of the Act in a manner which reduces paperwork and delay, promotes better decision-making, establishes effective and uniform procedures, encourages public involvement, resolves problems which nearly ten years' experience with the Act has revealed, and promotes certainty with respect to the requirements of the Act. (Section 1, Chapter 289, Laws of 1981 (ESSB 4190), RCW 43.21C.200.)

The Commission was directed to:

... propose amendments, if considered necessary, to the State Environmental Policy Act of 1971 and the administrative rules interpreting and implementing the act. (RCW 43.21C.202(7).)

The Commission found that the statute was fundamentally sound, requiring some additional clarifications, and that improvements are needed the administrative rules and practices.

The Commission's principal goals have been:

- Reducing unnecessary paperwork, duplication, and delay;
- Simplifying the rules and making the process more predictable; and
- Improving the quality of environmental decisionmaking, including public involvement.

Based on these goals established by the legislature, the Commission has recommended several key reforms in the SEPA process, including:

- requiring an early scoping process to identify significant environmental impacts through agency and public involvement
- writing shorter environmental impact statements that will be used
- designing a better environmental checklist
- considering mitigation measures early in the process
- clarifying SEPA's substantive authority to condition or deny projects
- clarifying and simplifying appeals
- revising rules and forms in simpler format and English

Other important improvements are also recommended. They are highlighted at the conclusion of this executive summary.

Background

The legislature expressed concern that the SEPA process had become too confusing and cumbersome, weakening the ability to achieve the environmental protection goals of the statute. In some respects, it was difficult for business and industry, citizens and environmental organizations, and state and local officials to comply with the law and to participate in decisions affecting environmental quality.

The Commission was created after several legislative clashes over SEPA, finally resulting in a decision that a comprehensive review of ten years' experience with the act was needed. The bipartisan Commission's eight legislators included two Senators and two Representatives from each caucus. Its six citizens included two representatives of the environmental community, two of the business community, and two from local government.

The Commission developed its recommendations after careful study of experience in this state, in other states, and in the federal government, to make SEPA work better for all concerned. For example, statutory and rule changes will reduce paperwork and costs in a number of areas, and they improve the public's ability to participate earlier and more effectively in decisions.

Ultimately, SEPA's goal is better decisions, not better paperwork. Environmental studies should be used in making decisions. Environmental values will be part of decisions when the SEPA process is an integral part of daily agency activities. The Commission identified many areas of broad consensus on ways to make the SEPA process work better to achieve its purpose.

The Statute

As a result of its study, the Commission proposed legislation (SSB 3006) in its Initial Report of the Commission on Environmental (January 1983), along with a set of draft rules, and held four public hearings across the state on its recommendations. SSB 3006 was enacted substantially without amendment by the legislature and signed by Governor Spellman on April 23, 1983. SSB 3006 contains specific direction on the contents of the state SEPA rules (Section 7, Chapter 117, Laws of 1983 (SSB 3006), RCW 43.21C.110.)

This final report reprints the principal documents in SEPA's legislative history as a result of the comprehensive review and amendment by SSB 3006.

The Rules

The rules are central to SEPA, because they are the procedures used by every agency in the state to carry out the act.

Because SEPA is written in broad policy terms, the rules provide the details for understanding and using the act as intended. The Commission spent nearly two years drafting a set of proposed rules, based on its study, which was staffed by an Advisory Committee of diverse and experienced members.

This report describes how the Commission focused its efforts on developing efficient and uniform procedures for translating the law into practical action.

These rules would replace the guidelines issued by the previous Council on Environmental Policy on January 16, 1976 (WAC 197-10), and apply more broadly. Those guidelines assisted agencies in carrying out SEPA's most conspicuous requirement, the preparation of environmental impact statements (EISs). Unlike the guidelines, these rules apply to more than just the EIS and related procedures.

The Next Step

The Commission has completed its work. Since 1981, it has met its statutory responsibilities and has:

- proposed legislation which was enacted in the 1983 session (SSB 3006)
- proposed rules which have been transmitted to DOE for consideration (WAC 197-11)
- held four public hearings on its draft recommendations, invited public participation and held meetings open to the public, and consulted with local, state, and federal agencies and experts
- prepared an initial and final report to the legislature and to the public on its two-year study of ten years' experience with the act.

SSB 3006 directed the state Department of Ecology (DOE) to adopt new SEPA rules and authorized DOE to utilize rules proposed by the Commission. The Commission completed its work on the rules in June 1983 after inviting and incorporating public comment on its draft rules and ensuring consistency between its proposed rules and the recently enacted statutory amendments. DOE will now hold rulemaking proceedings under the state administrative procedure act.

After DOE adopts new SEPA rules, each state and local agency will have 180 days to revise its SEPA policies and procedures to be consistent with the statutory amendments and new statewide rules.

The act requires DOE to hold annual SEPA workshops, so that groups and individuals concerned with SEPA can meet to exchange information and experiences, in order to improve the way the act is being carried out. These workshops should help to identify and resolve emerging problems and avoid the kind of pent up pressure which led to numerous legislative efforts to revise SEPA over the past several years. The Commission emphasizes that adequate funding for DOE's SEPA oversight responsibilities is essential for the act to be carried out fully and fairly for all concerned.

New legislation, administrative rules, and workshops alone will not make SEPA work better. Solid, concise analysis and good writing cannot simply be legislated. Differences among concerned people cannot be regulated away. It will take a concerted effort by all those who care whether SEPA works well, to work together toward that end, using the tools recommended by the Commission. The Commission members believe that the process which led to a

broad consensus over the past two years can be a renewed foundation for SEPA's second decade.

KEY REFORMS

A Reform Package

The statutory and rule changes have been developed as a package, with each complementing the other. The Commission focused on the substance of the improvements, and, only toward the end of its studies on each part of the SEPA process, reached conclusions about whether changes in the statute, the rules, or both, were needed for mandating the reforms.

The next few pages describe the key reforms recommended by the Commission, all of which are included in the proposed rules and some of which have been enacted into SEPA through SSB 3006. These brief descriptions refer to some sections of the statute and the proposed rules, but the references are meant to be illustrative rather than comprehensive.

A summary of these and other changes in the proposed rules follows these highlights.

1. Scoping of Significant Impacts in Environmental Impact Statements

Issue:

Although environmental impact statements are only required to be prepared when a proposal has "significant" environmental effects, the law has not plainly stated this. As a result, "telephone book" sized EISs have been prepared, covering the "kitchen sink" in an effort to avoid court challenge. Impact statements are sometimes unduly long and have irrelevant information, which fails to focus on the key issues. Agencies and the public often do not have an opportunity or responsibility to help identify the impacts and alternatives early enough in the planning process. Applicants may pour money into detailed plans, only to find out about problems much later on. The Commission considered how to require early identification and narrowing of the issues to those which are truly significant.

Response:

The Commission decided that the statute should state unequivocally that EISs are only required to analyze "significant" impacts. These impacts, whether adverse or beneficial, must be "probable," and not remote, speculative or merely possible. The Commission recommended new rules that would require every agency to determine the scope of every impact statement. If a proposal only has two or three significant impacts, such as traffic or drainage, the EIS would only be required to analyze these impacts. This would encourage shorter, focused EISs. The scoping requirement would involve giving notice (the

"determination of significance") to other agencies and the public that an EIS is being prepared and would invite comments on what to put in it (its "scope"). Any further early consultation would be encouraged, but would be completely optional. In addition, the Commission simplified and increased certainty on the scope of an EIS by clearly identifying its three elements (proposed actions, impacts, and alternatives) and consolidating the existing list of environmental elements from over 20 major headings to nine.

(See, for example, RCW 43.21C.031 and 110(d) and (f); WAC 197-11-408 and 410, 960, and Part 4 generally.)

2. Shortening the EIS to be More Usable

Issue:

The environmental impact statement process has been valuable in finding and avoiding many environmental problems before they occur. Many statements are too long, repetitive, and hard to read, however, and may obscure the issues. When applicants face unnecessary preparation costs, and local officials and the public are put off by long, complex documents, the impact statement does not serve its intended role. The Commission considered how to shorten and simplify the EIS document so that it would be used better in planning and decisionmaking.

Response:

The Commission decided to recommend strict rules on the size of impact statements. The rules would encourage shorter, focused EISs, and set a page limit of 75 pages (or 150 pages if the proposal is unusually complex). Without reducing the environmental analysis required to make informed decisions, the Commission would simplify the EIS format by combining many subjects and requiring a more logical format. The Commission developed simpler and stronger rules enabling the use of existing environmental documents. These recommendations will work with the scoping requirements to cut out insignificant and irrelevant items and reduce paperwork. The rules would require a very short cover memo of the key issues to aid decisionmakers and the public. Shorter documents, better format, and scoping all serve to further the substantive goals of the act by getting information to decisionmakers in a form they can use.

(See, for example, RCW 43.21C.031 and 110; WAC 197-11-090, 402, 425, 430, 440, 443, 444, Part 4 generally, Part 6 generally.)

3. A New Environmental Checklist

Issue:

Better environmental impact statements are important, but only a very small fraction of proposals having environmental impacts actually require an EIS. Most proposals receive a more general review. An "environmental checklist" is used to decide if a proposal has environmental impacts severe enough to re-

quire preparation of an environmental impact statement. The current checklist is out of date, however. It is hard to fill out and is not very useful for planning. The current checklist also demands expert answers on difficult questions, which many citizens and private applicants cannot provide without hiring expensive consultants or lawyers. The Commission considered whether to eliminate or revise the checklist to provide better information while reducing technical jargon and the rule of experts.

Response:

The Commission decided that the idea of a brief, standardized checklist should be continued, but that the checklist should be overhauled to provide better information at less expense. The Commission designed a descriptive checklist, where a citizen or applicant would no longer have to hire experts to guess at "yes-no-maybe" answers to conclusory questions. Instead, the checklist would have actual description of a proposal or site based on an applicant's own knowledge of his or her project plans or property. While the new checklist will still contain a number of questions, a plain English introduction would clearly explain its purpose and caution government agencies on demanding overspecialized information from citizens. The new checklist would provide better environmental information for making decisions, including mitigation measures and nonproject actions. An agency could still require additional information based on its initial review of the checklist. Because the statute currently authorizes the rules to contain procedures for determining the significance of an impact, and because RCW 43.21C.110(1)(c) was broadened to include environmental documents besides EISs, additional legislation was not necessary.

(See, for example, WAC 197-11-325 and 1325.)

4. Using Mitigated Determinations of Nonsignificance

Issue:

Many proposals have some environmental impacts, but these impacts are not significant. Other proposals might possibly have significant impacts, but proponents may be interested in clarifying or changing the proposals to eliminate likely environmental problems. The guidelines do not expressly recognize that an agency's decision that an EIS is unnecessary may be based upon changes which have significant or sufficiently reduced -- "mitigated" -- environmental impacts. The Commission considered whether to recommend rules clearly allowing this.

Response:

The Commission decided that allowing proponents to improve their proposals from an environmental perspective early in the process would further SEPA's substantive goals. Project proponents also deserve more predictability and early notice and advice from agencies, so that the EIS requirement is not used as a threat to impose conditions unrelated to a project's impacts. The rules allow applicants to request early notice if an agency believes an EIS is likely to be required, and allow them to clarify or change the proposal accordingly;

public notice is given for such mitigated DNSs to avoid abuse. The new checklist will also provide better information and a better basis for these determinations. Additional legislation is not needed for the reasons noted above on the environmental checklist. The courts have also upheld the use of mitigated DNSs, as they have relied upon environmental checklists and draft EISs (which are both administrative rather than statutory creations).

(See, for example, WAC 197-11-340.)

5. Clarifying SEPA's Substantive Authority

Issue:

SEPA currently allows proposals to be conditioned or denied on environmental grounds. There are no uniform statewide rules to guide the use of the "substantive" authority. The Commission considered whether substantive authority should continue to exist, and, if so, should there be rules on its use.

Response:

The Commission decided that substantive authority -- using environmental considerations in decisions -- was central to SEPA. Otherwise the law would create meaningless and wasteful paperwork. The Commission recommended adoption of uniform rules governing the exercise of substantive authority for all agency decisions, whether state or local, legislative or adjudicatory. Some of the key provisions are as follows (the first and last have essentially been in the act at least since 1977):

- Mitigation measures must be related to specific, adverse environmental impacts clearly identified, documented, and stated in writing by an agency. Mitigation measures must be reasonable and capable of being accomplished.
- An agency must make available to the public a document stating its decision, including any mitigation measures and monitoring. Agencies must disclose their SEPA policies to the public and to applicants, including preparing a document that lists or contains the policies.
- Before requiring mitigation measures, agencies must consider local, state or federal requirements and enforcement which could mitigate significant impacts, in order to avoid unnecessary duplication or conflicts.
- Responsibility for implementing mitigation measures may be imposed on proposals of applicants only to the extent attributable to the identified adverse impacts of the proposal.
- In order to deny a proposal under SEPA, an agency must find that: (i) the proposal would be likely to result in identified significant adverse impacts; and (ii) reasonable mitigation measures are insufficient to mitigate the identified impact.

- Mitigation measures or denials must be based on formally adopted policies designated by the agency as a basis for exercising substantive authority. Decisionmakers must cite the SEPA policy which is the basis of any condition or denial under SEPA.

The proposed rules contain more specific requirements than the statute, because it was felt unnecessary to legislate all of the specifics contained in the rules.

(See, for example, RCW 43.21C.060; WAC 197-11-720.)

6. Clarifying Appeals Procedures.

Issue:

The law currently allows appeals of government decisions made under SEPA. SEPA allows an agency or project proponent to trigger a strict limitation on the time for appeal with adequate notice. A good deal of uncertainty remains, however, concerning the proper basis and timing for appeals. There has been a lot of confusion on the relationship between appeals under SEPA and other laws. The Commission considered whether appeals should continue to be allowed, and, if so, how to clarify and streamline them. The Commission carefully considered suggestions for limiting appeals, and judicial review and for imposing financial and other responsibility on appellants, as well as suggestions for broadening challenges.

Response:

The Commission decided that fairness to project proponents and citizens alike demands that they be allowed to question government decisions under SEPA and recommended that the statute clearly guarantee that right for procedural and substantive challenges. The Commission decided that bonds or other restrictions on access to review would not improve the environmental review process itself, and were a less constructive approach than increasing certainty and streamlining the appeals process. The Commission therefore recommended a new statutory section and clearer rules on appeals, balancing the interests of all parties. The Commission decided that SEPA challenges must be linked to some actual governmental decision or action and that SEPA issues should not be challenged before an agency issues a final EIS or makes a final decision on whether an EIS is required. The Commission also decided that local and judicial review would often be faster and fairer than allowing appeals only to a statewide administrative body. Some of the key recommendations are:

- If a local agency has an appeals process, it must be used, but agencies should generally not have more than one level of administrative SEPA appeals. The time for commencing a SEPA administrative appeal would coincide with any agency appeal on the underlying government action subject to SEPA review.
- While it would be contrary to SEPA's purpose to establish a mandatory and inflexible statute of limitations, the time period for

commencing a SEPA lawsuit (or portion of a lawsuit) is standardized at 30 days, unless a "notice of action" provides for a longer time or no statute of limitation applies.

- An early and adequate record should be created, so that subsequent review may be on the record.
- If all parties to an appeal consent, they have the option of taking the issues to the Shorelines Hearings Board, in order to encourage alternative approaches to dispute resolution, which may prove to be faster, cheaper, and more predictable than the courts.

(See, for example, RCW 43.21C.075; WAC 197-11-750.)

7. Simplifying the SEPA Rules

Issue:

The existing SEPA guidelines (WAC 197-10) are nearly eight years old and focus on procedural compliance with the environmental impact statement requirement of SEPA. Although the guidelines have provided valuable direction, they should be updated, simplified, and written in less technical language. They also need to shift emphasis to the overall environmental review process and address substance over procedure. The Commission considered ways to upgrade the guidelines and implement the statutory reforms.

Response:

The Commission decided that the best way to incorporate the recommendations and to make the SEPA process more predictable and work better was to reorganize and simplify the guidelines. The Commission recommended simplifying the format of the rules and rewriting them in plain language to make them more usable by public officials, applicants, and the public. A great deal of effort went into improving the format and style of the rules and the SEPA forms. An introductory section is included for laypersons; technical material has been placed in the latter parts. In addition, the Commission has emphasized integrating the SEPA process with agency decisionmaking and simplifying basic concepts, such as the content and timing of environmental review and standard definitions, in order to implement the Commission's three main objectives of better decisionmaking, less paperwork, and more certainty.

(RCW 43.21C.110 and 120; WAC 197-11.)

ILLUSTRATIONS

Figure 1 on the page 16 gives a general picture of the overall SEPA process. Figure 2 shows on page 17 some highlights of the paperwork reduction and simplification. Figure 3 on page 18 notes how each major interest benefits from some of the key reforms, and illustrates the common interest and consensus reflected in the Commission process. Figure 4 on the appeals process is on page 78.

OVERVIEW OF IMPROVEMENTS IN RULES

A. REDUCING PAPERWORK, DUPLICATION, AND DELAY

1. Scoping. The rules require the use of an early "scoping" process to identify significant environmental issues. Scoping means giving notice to agencies and the public that an environmental impact statement is being prepared and inviting comments on its scope. Scoping allows shorter, focused EISs and earlier public participation. This is intended to help identify and resolve problems early in the process before applicants and agencies spend a lot of time and money on a proposal.

2. Simpler EIS format. The rules spell out a simpler, standard format intended to eliminate repetitive discussion, highlight the significant impacts of the proposal and alternatives, and focus on the real issues. The number of main sections of an EIS would be reduced from 9 to 2; the number of major environmental headings would be consolidated from 20 to 9.

3. Reducing the length of EISs. The rules would put reasonable page limits on EISs, to make documents short enough that decisionmakers and the public read them (75 pages, or 150 pages for unusually complex proposals). The page limits do not apply to items which may be long and outside of the control of the agency, such as comments and responses and appendices. The rules take the approach that the environmental analysis must be rigorous, while the paperwork can and should be reduced, with the overall record providing the necessary documentation.

4. Requiring an EIS cover memo and fact sheet. The rules would require a cover memo of less than 2 pages to highlight the environmental issues for the reader. A standard form "fact sheet" would start the EIS and tell the reader when comments are due, where supporting documents are available, and other vital information.

5. Eliminating duplication by using existing studies. The rules direct and encourage agencies to use existing environmental studies wherever possible. Incorporation by reference is encouraged with appropriate rules so that agencies and the public can find the documents being referenced.

6. Eliminating repetitive discussions through phased review. In addition to better format, the rules provide for "phased" review, similar to "tiering" under NEPA, so that subsequent studies do not repeat material covered by earlier environmental reports. This also allows more thought to be given to the logical timing and scope of an environmental study and can produce more useful studies at less front-end cost.

7. Integrating SEPA requirements with other laws. The rules require agencies to coordinate their permit processes and SEPA compliance, especially when several agencies have authority over a project. The rules allow documents and notices to be combined, as long as SEPA requirements are met. Agencies must also comment specifically on concerns about environmental information, methodology, and mitigation measures.

8. Requiring earlier review. Where an agency's only action is a permit which requires the submission of detailed plans and specifications, the rules require the agency to provide for earlier environmental review, at the conceptual stage, so that environmental problems can be identified and resolved before major cost commitments are made.

9. Allowing flexible thresholds for minor new construction. The rules allow agencies to raise certain levels for categorical exemptions on minor new construction.

10. Requiring timely comment. The rules require agencies and the public to comment within the applicable time periods. The comment period for draft EISs has been shortened from 35 to 30 days; opportunity is provided to consider extensions.

B. SIMPLIFYING THE RULES AND INCREASING CERTAINTY

1. Revised guidelines. The Commission decided that the best way to simplify the rules and increase certainty was to rewrite the guidelines in simpler English and reorganize the rules so that they are more readable and usable by applicants, citizens, and agency officials. A great deal of effort went into improving the format and style of the rules. A nonregulatory introduction is included as the first section of the rules, so that members of the public who may be unfamiliar with SEPA can get an overview of the process before reading the rules.

2. Simpler and more uniform criteria and definitions under SEPA. The rules establish uniform definitions for key terms and more definite criteria and procedures for complying with the act's requirements. The rules establish uniform notice and other requirements to remove uncertainties about whether an applicant or agency would be subject to various challenges for the adequacy of its SEPA compliance.

3. Certainty on actions during the SEPA process. The rules provide better environmental protection and greater certainty on what actions can be taken while the SEPA process is underway.

4. Simplifying supplemental review. The rules establish one basic test for requiring supplemental review and reduce the types of supplemental documents from about 10 to 2: a supplemental EIS and an addendum.

5. Clarifying the relationship between environmental and other relevant factors in decisions. The rules stress that environmental values are often not reducible to monetary terms, and this must be considered if an agency uses a cost-benefit analysis in its decision. The rules also provide clearer guidance on the difference between EISs (for considering environmental factors) and the ultimate balancing by decisionmaker (which may include other relevant factors), but give agencies the option to discuss other impacts based on public comment or agency analysis.

6. Clarifying categorical exemptions. Along with statutory amendments, the rules reaffirm the ability of agencies and members of the public to rely on a system of categorical exemptions. The rules explain categorical exemptions more clearly and plainly provide for those circumstances when they would not apply. Since agencies and interest groups did not identify problems with many of the existing exemptions, the Commission did not undertake to review and revise the substance of categorical exemptions unless requested to do so by the legislature (school closures and EFSEC) or by members of the public. Few suggestions were received for changes, indicating that the existing exemptions had generally worked well since their adoption in 1976. The exemptions in the proposed rules are essentially the same as the current guidelines, with very few exceptions, such as the flexible thresholds for certain minor new construction.

7. Clarifying the appeals procedure. More uniform rules and a generally simpler and faster process for the conduct of SEPA appeals are provided, based on the recent statutory amendments. Multiple agency appeals have been reduced, saving costs for applicants, concerned citizens, agencies, and taxpayers. The rules provide that appeals should come at the end rather than the middle of the process and should generally cover both the SEPA challenge and agency permit decision. If an agency has an appeals procedure, it must be used before a lawsuit may be filed.

C. IMPROVING ENVIRONMENTAL DECISIONMAKING, INCLUDING PUBLIC INVOLVEMENT

1. Usable documents. One of the main ways the substantive goals of the act can better be achieved is by getting environmental information to decisionmakers in a form they will use. Shorter documents, better format, and scoping all serve this purpose. Earlier agency and public participation through scoping can also produce better decisions and help resolve environmental conflicts early.

2. Environmental checklist. A new "environmental checklist" requires description of a proposal and site, rather than conclusory "yes-no-maybe" answers. The new checklist also identifies mitigation measures and avoids demanding overspecialized material from citizens. It is designed to provide better environmental information at a lower cost to applicants. Since most projects are reviewed using checklists (because they do not have "significant" impacts requiring an EIS), the new checklist can go far toward improving decisionmaking.

3. Mitigated DNS. The rules allow agencies to issue a determination of nonsignificance (DNS) if a proposal does not have a significant impact, as a result of mitigation measures that will be implemented. The rules allow applicants to request early notice whether an agency believes an EIS is likely to be required, and to clarify or change the proposal accordingly; public notice is given for such mitigated DNSs to avoid abuse. The new checklist will also provide a better basis for these determinations.

4. Substantive authority and mitigation. The rules affirm SEPA's substantive authority -- the conditioning or denying of projects based on environmental impacts -- and provide a set of basic rules for its use. The rules are designed to allow reasonable mitigation measures to be imposed, and to protect applicants' from potential abuses. The rules also require agencies to disclose their SEPA policies to the public.

5. Recording the decision. The rules require an agency to document its decision and any mitigation measures and to make the document publicly available. The rules also require agencies to identify the substantive SEPA policies they used in making their decisions.

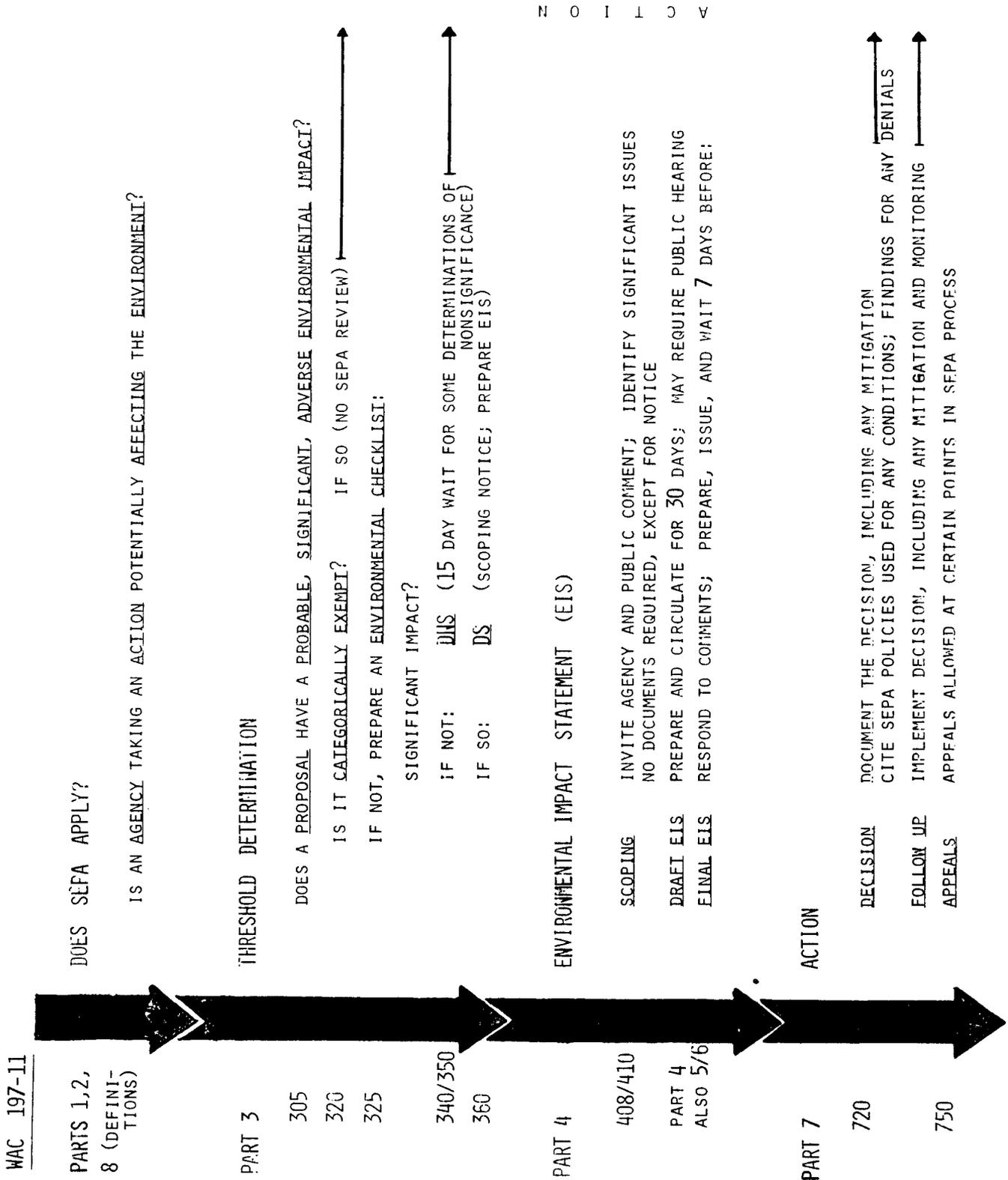
6. Emphasizing options. The rules stress the comparison of the environmental impacts of the reasonable alternatives, from describing a proposal in terms of options (especially for public and nonproject proposals) to putting the comparison of the environmental impacts of alternatives up front in an EIS.

7. Improving document content. In addition to reducing repetition, the rules update the content of checklists and EISs by specifying that emerging areas, such as hazardous waste and alternate energy resources, are covered. The rules give recognition to and provide clearer treatment of impacts on shoreline, urban, and public service elements than the existing guidelines.

8. Earlier and better public notice. In addition to early participation through scoping and early review procedures, the rules strengthen and clarify public notice, including newspaper publication and posting on-site, and encourage additional public notice and involvement.

9. SEPA REGISTER. The rules upgrade the SEPA REGISTER to create a way for interested citizens to find out about SEPA actions which may affect them and to provide agencies and applicants with a uniform method of providing notice.

FIGURE 1: GENERAL OVERVIEW OF THE SEPA PROCESS



NOTE: GENERAL REQUIREMENTS (PART 1), COMMENTING (PART 5), USE OF EXISTING DOCUMENTS (PART 6), DEFINITIONS (PART 7), AND AGENCY COMPLIANCE (PART 10) APPLY THROUGHOUT THE SEPA PROCESS.

SEPA PROCESS

Major Paperwork Reduction/
Simplification

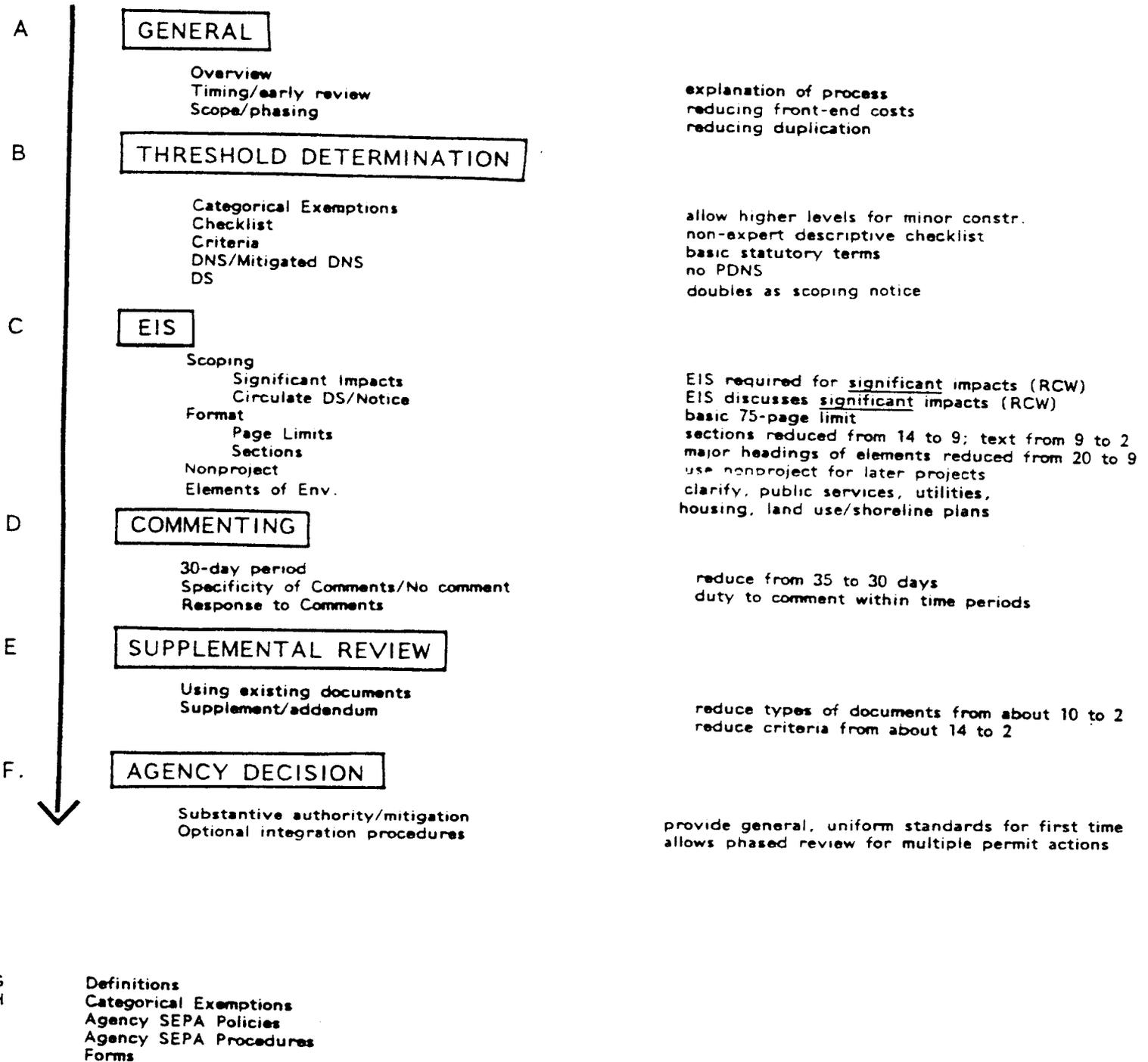


Figure 3

SOME COMMON BENEFITS OF REFORMS

business

government

environmentalists

NEW CHECKLIST

cheaper to prepare and easier to use

better information

better data and easier to assess agencies' evaluation of applicant responses

SCOPING

cuts expense of analyzing the kitchen sink; opportunity to resolve potential problems

puts resources into dealing with sig. problems; legal protection for shorter EISs

earlier participation in EISs; opportunity to identify alternatives & impacts and resolve problems before an agency or applicant becomes too committed

SHORTER, USABLE EISs

reduce paperwork

agency officials may read env. documents in making decisions

avoids obscuring issues and EISs which are hard for citizens to read, understand, & comment

SUBSTANTIVE AUTHORITY/ MITIGATION

more certainty on exercise; basic rules apply to all officials and decisions; allow mitigated DNS; deny for significant impacts only

clear authority to do; settle SEPA legislative intent issue

reaffirms leg. intent; agencies and applicants must identify any mitigation or monitoring; applies early in process