

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
Representative Richard "Doc" Hastings • Representative Homer Lundquist • Representative Eugene V. Lux
Representative Georgette Valle • Judith M. Runstad • James W. Summers • Chris Smith • Norman L. Winn
Jim Whiteside • Isabel Hogan

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

COMMISSION ON ENVIRONMENTAL POLICY

MEMBERS

Senator Alan Bluechel, Chairman
Senator W.H. "Bill" Fuller
Senator Margaret Hurley
Senator Al Williams
Representative Richard "Doc" Hastings
Representative Homer Lundquist
Representative Eugene Lux
Representative Georgette Valle
Mayor Isabel Hogan, Kent
Judith M. Runstad
James W. Summers
Chris Smith
Norman L. Winn
Commissioner Jim Whiteside, Yakima County

ADVISORY TECHNICAL COMMITTEE CHAIRPERSONS

John Black, Urban Planner
Don Chance
Director, Land Use
Washington Forest Protection Association
Stephen Crane
Attorney, Crane, Stamper, Boese, Dunham & Daily
Ken Kinared
Springer Development, Bellevue
Robert Landau
Chairman of the Board,
Gall Landau Construction Company, Inc.
Charles Mize
Assistant to the Director
Association of Washington Cities
Ellen Peterson
Office of City Attorney, Seattle
Ralph Thomas
City Attorney, Kirkland
Jim Williams
Assistant to the Director
Washington State Association of Counties
Vim Wright
Institute of Environmental Studies
University of Washington

SPECIAL COUNSEL

Charles Lean
Assistant Attorney General
Kenneth Weiner
Attorney, Preston, Thorgrimson, Ellis and Holman

STAFF

Ed McGuire, Staff Counsel
Ron Woodring, Staff Counsel
Carol Holmes Pedigo, Administrative Assistant

TECHNICAL COMMITTEE MEMBERS

CONTENTS TECHNICAL COMMITTEE

F. Boersma

Institute for Environmental Studies
University of Washington

Stephen Crane*

Attorney
Crane, Stamper, Boese, Dunham, & Daily

Robert S. Derrick

Chief of Land Use Management Division
City of Bellevue

Polly Dyer

Institute for Environmental Studies
University of Washington

David Feltman

Building and Land Development Division
King County

Jeannie L. Hale

League of Woman Voters
Seattle Board

Dave Helser

Chief of Environmental Coordination
Washington State Parks & Recreation Comm.

Heather McCartney

Resource Management and Assessment
Everett

Ellen Peterson*

Office of City Attorney
City of Seattle

Cliff Portman

Environmental Specialist
City of Seattle

Diane White

Environmental Coordinator
City of Bellevue

ENVIRONMENTAL IMPACT STATEMENT TECHNICAL COMMITTEE

Anne Aagaard

SAVE & F.O.W.
Seattle

Bernie Chaplin

Project Planning Supervisor
Department of Transportation

Howard Cornell

Vice President/Land
Daon Corporation

Karen Dennis

League of Women Voters
Land Use Committee, Chairperson

Marsha Hibson

Environmentalist
Department of Natural Resources

Jim Huffman

Environmental Coordinator
Chelan County, P.U.D.

Phil Kauzloric

Environmentalist
Department of Fisheries

John P. Lynch

Urban Planner
Seattle

Jim Mangi

Environmental Consultant
Ertec Northwest

Katie Mills

Planning Department
City of Tacoma

Gr Moore

President
Friends of Washington

Errol Nelson

Consulting Engineer and Planner
Wilsey and Ham, Inc.

Leonard Newstrum

Yarrow Point Conservancy Society
Bellevue

Carl F. Peters

Environmental and Land Use Consultant
John Graham and Company

Thomas C. Starr

Engineer and Land Surveyor
Friday Harbor

Leona A. Thomas

Washington Environmental Council
Protect the Peninsula's Future

Jim Williams*

Assistant to the Director
Washington State Association of Counties

Vim Wright*

Institute of Environmental Studies
University of Washington

Bob Ziegler

Applied Ecologist
Department of Game

GUIDELINES TECHNICAL COMMITTEE

Nicholas Adams

President
Thurston Regional Land Use Federation

Jan Arntz

Senior Environmental Specialist
Department of Construction and Land Use
City of Seattle

Dennis Braddock

Environmental Analyst and Consultant
Bellingham

Fran Carlson

Interested Citizen
Bellevue

Suzanne Cole

Carma Developers
Seattle

Wes Culp

Environmental Manager
Department of Natural Resources

Jack Davis

Environmentalist
Olympia

E.S. Dziedzic

Wildlife Ecologist
Lacey

Kelby Fletcher

Attorney
Seattle

Robert Gamalison

WA Assoc. of Realtors

Richard Gorini

Department of Planning and Development
Port of Vancouver

Dave Helser

Chief of Environmental Coordination
Washington State Parks & Recreation Comm.

Stephen Hyer

Director of Growth Management Research
Washington Association of Realtors

Lyn Keenan

Director of Planning
SEA Washington

Rodney Kerlake

Planning Department
City of Tacoma

Ken Kinared*

Developer
Bellevue

Rex Knight

Manager of Engineering Services
King County Department of Public Works

Bruce Laing

Councilman
King County

Pat Lambert

Senior Planner
Snohomish County Office of
Comm. Planning

Robert L. Landau*

Chairman of the Board
Gall Landau Young Construction Co., Inc.

Dennis Lundblad

Comprehensive Management Division
Department of Ecology

Robert McIntosh

Environmental Law
Department of Transportation

Michael Nicholson

Director
Whatcom County Planning

Kelly Niemi

Consulting Forester and Tree Farmer
Castle Rock

Andrew Palmer

Environmentalist
Port Townsend

Rodney Proctor

Environmental Planning Engineer
METRO, Seattle

Gary Reiersgard

Senior Planner
Snohomish Co. Office of Community Planning

Janet Rhodes

Environmentalist
Department of Ecology

Joe Robel

Environmentalist
Washington Department of Fisheries

Joe Schicklich

Attorney
Seattle

Kay Shoudy

Dir. of Planning and Comm. Development
City of Redmond

Stephanie L. Warren

Associate Planner
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
Olympia

John Black*

Urban Planner
Seattle

Donald M. Carmichael

Professor of Environmental Issues
UPS Law School

David L. Day

Attorney
Mt. Vernon

Mark Eames

Attorney
Ogden, Ogden & Murphy, Seattle

Richard Gidley

City Attorney
Bellevue

Steven W. Hale

Attorney
Coble, Barrett, Langenbach & McInerney

William Harrison

Environmental Hearings Office
Olympia

Dave Helser

Chief of Environmental Coordination
Washington State Parks & Recreation Comm.

Sam Jacobs

Department of Community Development
City of Kirkland

Roger Leed

Pres., Washington Environmental Council
Seattle

Richard L. Settle

Professor of Environmental Issues
UPS Law School

Ben Shuey

Attorney
Seattle

Neal Shulman

City Manager
City of Richland

James T. Stewart

Attorney and Tree Farmer
Montesano

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.

Jack Kartez

Regional Planning Program
Washington State University

Bob Landies

Environmental Coordinator
City of Everett

Ben Lonn

Assistant Area Manager
Department of Natural Resources

Fred Maybee

Applied Ecologist
Turmwater

Chuck Milze*

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.

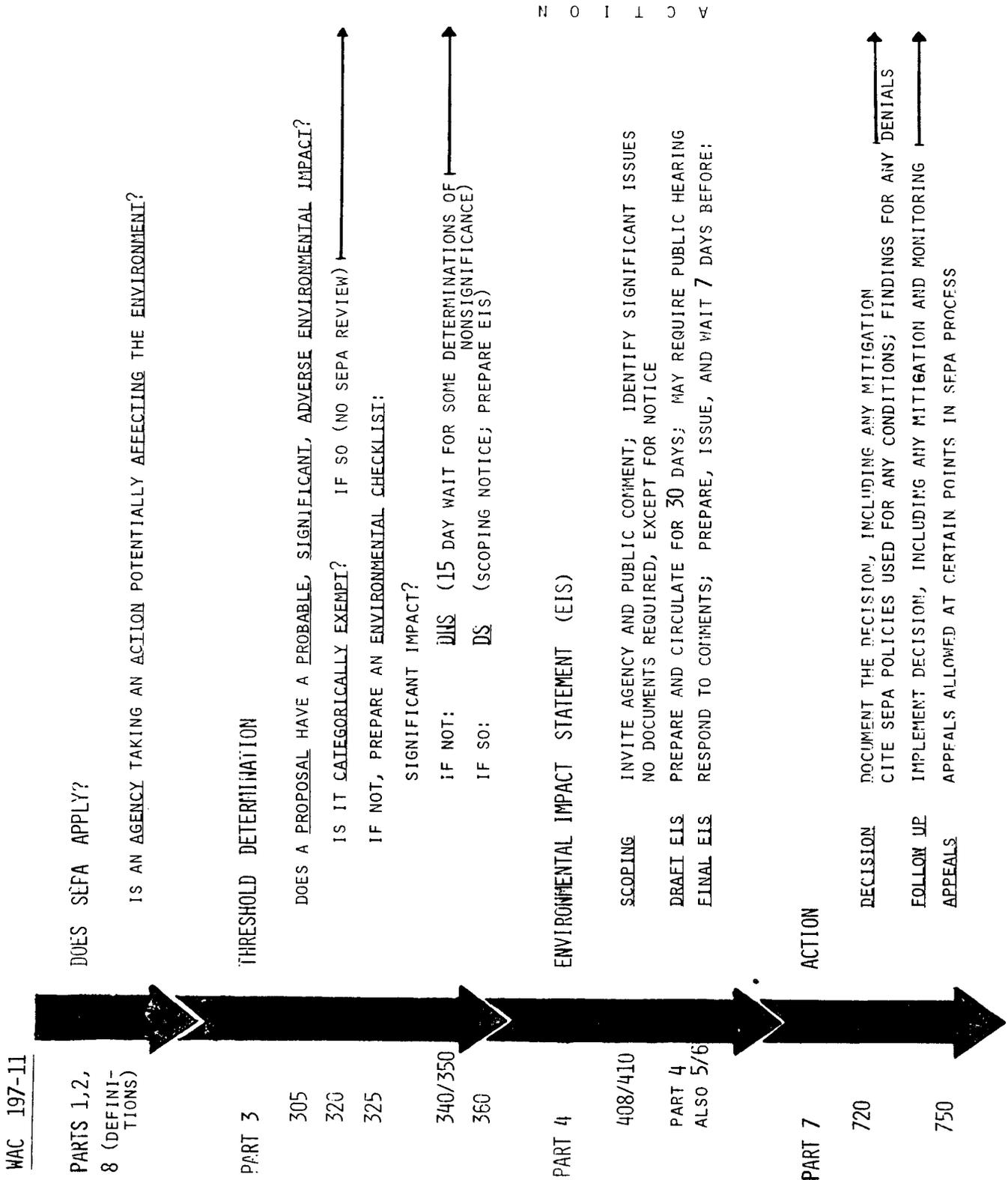
6. Emphasizing options. The rules stress the comparison of the environmental impacts of the reasonable alternatives, from describing a proposal in terms of options (especially for public and nonproject proposals) to putting the comparison of the environmental impacts of alternatives up front in an EIS.

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

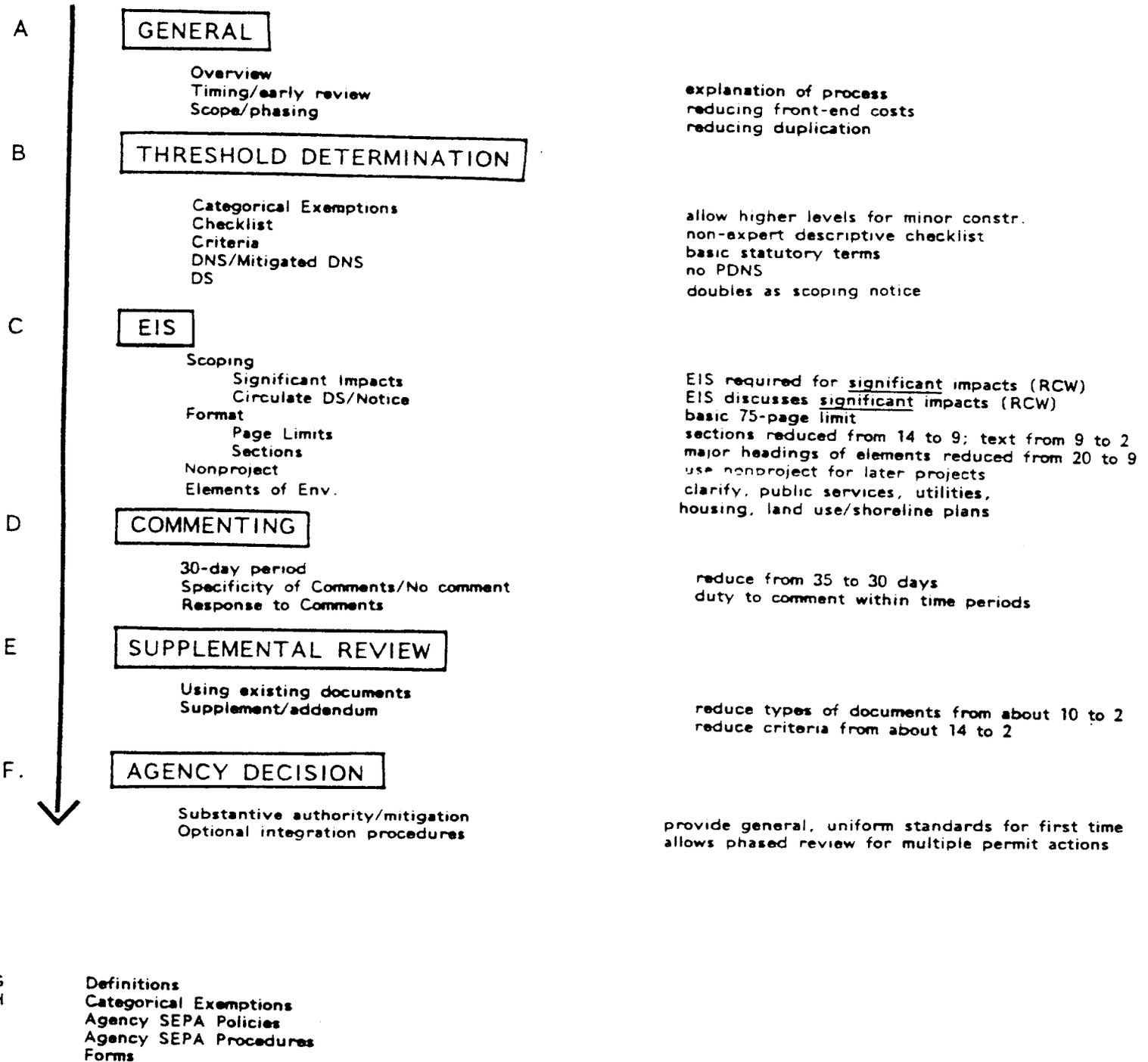


Figure 3

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

The Statute
43.21C

LEGISLATIVE HISTORY
OF SSB 3006 (SEPA AMENDMENTS)

Need for Legislative History

Most legislation in Washington state has scarce, if any, legislative history explaining a bill. Legislative intent, even of major laws, is usually difficult to find.

SEPA is one example. Legislators, public officials, citizens, and the courts have relied on the legislative history of the National Environmental Policy Act (NEPA) to help interpret the state law since 1971.

The diverse groups and individuals concerned about SEPA felt strongly that our state act should have its own legislative history, particularly after a comprehensive two-year study of 10 years of state and local experience with the act. The Commission's review was undertaken, in part, to reexamine and to articulate legislative intent in many important areas, in order to reduce some of the controversy and confusion about the law's purposes.

Legislative intent for SEPA aids people in interpreting and complying with a law that is written in broad, sweeping terms. It assists agencies in writing SEPA rules, policies, and procedures; it assists legislators in reviewing rules and in considering any future amendments; and it assists courts in interpreting SEPA when language or rules may be ambiguous.

Over the past decade, there has been considerable debate over SEPA's intent. The Commission's review produced a remarkable consensus about the act's intent. It was felt important to document these understandings about previously controversial issues to establish a legislative history for our state law and to provide renewed foundation for SEPA's second decade.

A Conscious Effort to Clarify Legislative Intent

This final report compiles and publishes the key documents in SEPA's current legislative history. It does not reprint the various proposed amendments that failed in committee and on the floor, which also provide insight into legislative intent, because it was felt that affirmative statements of intent would be more useful to the reader and to those using SEPA on a daily basis.

1. The Commission Report and Rules

The most obvious indicator of legislative intent, other than the words of the statute itself, is the Commission's own report and explanation of its proposals. The chairman and more than half of the members of the Commission were members of the legislature. SSB 3006 was developed by the Commission as part of its review, and the legislation proposed by the Commission in its Initial Report was enacted virtually without amendment.

In addition, the Commission's Initial Report was distributed to all legislators close to the start of the session. This Final Report also describes the purposes of the major reforms (see, for example, the Executive Summary) and reprints the key documents in the legislative history.

The Commission also felt strongly that rule recommendations should be published along with proposed legislation, so that the nature of the improvements to the SEPA process being authorized by SSB 3006 could be known and considered prior to enacting the legislative amendments. The rule recommendations themselves, therefore, contribute to an understanding of legislative intent. This may not be typical for legislation, but the process leading to SSB 3006 was unusually long and deliberative for state legislation. (See the description at the end of this section on the relationship between the legislation and rules.)

2. Section by Section Summary of SSB 3006

Because of the complex and comprehensive nature of the bill, legislative sponsors and leaders placed great emphasis on having a detailed Section by Section Summary of SSB 3006. This detailed summary was periodically revised and accompanied the bill throughout the legislative process.

The Section by Section Summary deserves special explanation to those who may be unfamiliar with its purpose and role. This is not necessarily a typical document in state legislative history, but, as noted above, there was a determined effort to have an adequate record of legislative intent on the bill. The fact that this document was referred to in testimony and floor debate also indicates the importance of its role in the legislative deliberations.

Individual copies of the Section by Section Summary of SSB 3006 (in Part Two of the Initial Report) were distributed to the members of the Senate and House committees responsible for the bill before the bill was considered. It was also distributed to the members of both caucuses before floor consideration and debate on the measure.

The Section by Section Summary was revised after the Senate action to reflect the clarifications of text and intent adopted in Senate committee and on the floor. The summary was revised again after House action to reflect the clarifications of intent reflected in the carefully-prepared House floor colloquy (see explanation of Qs & As on SSB 3006 below). The Section by Section Summary of SSB 3006 printed in this Final Report is the same as the one included with and mailed to all agencies after the enactment of the bill, so that the detailed summary of the legislation would be available as soon as possible to SEPA practitioners.

3. Qs & As on SSB 3006

There was concern that the Commission's Report and the Section by Section Summary alone might not command sufficient attention as legislative history because the courts or future law clerks might not be familiar enough with these documents to use them to interpret SEPA. Likewise, there was concern that people who were not familiar with the 1981-1983 SEPA review, including

public and private counsel in future years, might not know about these resources to cite them to their clients or to the courts.

Therefore, floor colloquies in both the Senate and the House were felt to be essential to underscore the intent of some of the provisions about which concern had been expressed at public hearings.

Unlike some floor colloquies, which may reflect impromptu responses or personal opinions, considerable thought was given to the Qs & As on SSB 3006. As is evident from the proceedings, from the content of the exchange, and from the participants in the colloquies, the Qs & As represented a bipartisan consensus.

It should be noted that the four Senate Qs & As were originally planned to be read into the Journal of the House, as well as into the Journal of Senate. The House members viewed both sets of Qs & As as completely consistent with one another, with the House Qs & As in no way at variance with the Senate's. Because of the time limitation at the end of the session (SSB 3006 was passed by the House on the final day of the cutoff), the leadership requested that the floor colloquy be as brief as possible, and the Senate Qs and As were not repeated for the House journal. Copies of the complete set of Qs & As were distributed with the Commission's Memorandum to Agencies and are reprinted in this report.

The Senate Qs and As were exchanged between Senator Ted Bottiger (D-Tacoma), Senate majority leader, and Senator Alan Bluechel (R-Kirkland), sponsor of the bill. The House Qs & As were exchanged between Representative Roger Van Dyken (R-Lynden), a member of the House committee majority reporting the measure, and Representative Lorraine Hine (D-Des Moines), a member of the House leadership and a mayor with considerable experience with SEPA legislation and administration. All of the legislators had experience with SEPA over a number of years and spent considerable time at learning the details of the bill as its floor leaders. House leadership felt so strongly that the floor colloquy should be considered reliable by the courts that Rep. Van Dyken even spent time introducing Rep. Hine and her credentials before initiating the Qs & As (this was unnecessary in the Senate, where the Commission chairman, Senator Bluechel answered the questions).

4. Memorandum to Agencies and Interim Guidance

Immediately after the Governor signed SSB 3006, the Commission prepared a "Memorandum to Agencies", enclosing "Interim Guidance on SEPA Implementation" (May 1983).

The memorandum and guidance was intended to alert the entities responsible for SEPA implementation (notably government agencies, although the material received wider circulation) to the statutory changes and to provide guidance and information on the new law. The guidance would encourage agencies, courts, and other concerned parties to interpret and administer SEPA revisions in a uniform and consistent manner until the new state and local rules are adopted, which would take between six months and a year.

The memorandum highlights aspects of SEPA compliance that require immediate attention in light of the changes that went into effect on April 23. Guidance on how to handle new requirements, such as scoping, is included. The memorandum and guidance covers two especially crucial items:

- o a simple chart illustrating the appeals process, along with detailed explanation of the revised process; and
- o the key aspects of the legislative history: the act, the Section by Section Summary, and the Qs & As.

The memorandum and guidance were circulated to the Commission members and approved by them prior to distribution.

5. Bluechel Memorandum (April 11, 1983)

During the legislative debate in the House, a number of questions were raised about specific terms or concepts in the bill. Senator Bluechel sent a memorandum, dated April 11, 1983, to Representative Dennis Dellwo on SSB 3006 addressing several subjects. The memorandum notes that the Commission and its advisory committee had considered the questions and subjects raised.

Because this material is part of the legislative history and may be helpful background for the reader, it is included in this report.

BACKGROUND ON SEPA

Introduction

The State Environmental Policy Act of 1971 ("SEPA," Chapter 43.21C RCW) was enacted during the 1970 and 1971 sessions, at the beginning of an extraordinary decade of environmental legislation. SEPA, modeled after the National Environmental Policy Act of 1969 (NEPA), may have been the most significant piece of environmental legislation to emerge from those legislative sessions. Although NEPA has legislative history, the initial passage of SEPA was accomplished with little opposition or comment. There was scarce legislative history, as noted in the previous section of this report.

The lack of controversy over SEPA disappeared rapidly. Numerous court decisions and the absence of clear statewide procedures interpreting SEPA prompted the legislature to amend the act, particularly in 1973, 1974 and 1977. Administrative guidelines were adopted in 1975 (they went into effect in January 1976) and were slightly amended in 1977. After a decade of experience with SEPA and piecemeal adjustment, the legislature created the Commission on Environmental Policy in 1981 and directed this comprehensive review of the act and guidelines. This section of the Commission's report provides an overview of SEPA by briefly reviewing the act, guidelines, and major statutory amendments before 1983.

1. State Environmental Policy Act

SEPA's purpose is to: declare a state policy encouraging productive and enjoyable harmony between people and the environment; promote efforts to prevent or eliminate damage to the environment; stimulate human health and welfare; and enrich the understanding of the ecological systems and natural resources important to the state and nation.

As originally enacted, SEPA was almost an exact copy of the National Environmental Policy Act (NEPA). Both use the "detailed statement" (environmental impact statement or EIS) as the principal "action forcing" mechanism to bring environmental factors to the attention of decisionmakers. Both require that environmental values be given "appropriate consideration" in planning and making decisions. There are a few differences between SEPA and NEPA as they were originally adopted.

SEPA contains a stronger declaration of environmental rights than NEPA. RCW 43.21C.020(3) provides that each person has a fundamental and inalienable right to a healthful environment. This was the original text of NEPA, but it was altered during passage to state that "... each person should enjoy a healthful environment" The significance of this difference, if any, is unclear, but it has created controversy which the Commission addressed in its review. NEPA's EIS requirement refers to the "human environment", while SEPA uses the term "environment" in RCW 43.21C.030(2)(c). NEPA applies to federal agencies, while SEPA applies to all branches of government in the state, including state agencies, municipal and public corporations, and counties. SEPA tends to cover much smaller agencies and actions. Both NEPA and SEPA apply to government approvals of proposals by private applicants.

The original act did not define some of its basic terms, nor spell out how the environmental review process would work. The Washington courts were required to interpret the Act and develop the framework for SEPA implementation, based in large measure on federal administrative guidelines and court interpretation of them. By 1973, the courts had established that SEPA applies to virtually all discretionary governmental approvals of private as well as public activity, as with federal and other states' administrative and judicial precedents. The "threshold determination" concept was emphasized by the courts. This required state and local agencies to evaluate environmental information and determine whether an environmental impact statement (EIS) would be required before the first discretionary governmental decision on a proposal is made. The judiciary emphasized that SEPA's procedural requirements would be enforced.

The new procedures caused considerable concern among land developers, builders, and agencies because the requirements were not uniform or clearly set out. The legislature responded in 1974 by commissioning the Council on Environmental Policy.

2. SEPA Guidelines

During the 1974 legislative session, the act was amended to create the Council on Environmental Policy (RCW 43.21C.100) for the purpose of adopting state-wide SEPA guidelines (RCW 43.21.110). The guidelines were intended to provide for full implementation of SEPA:

... in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the Act. (Chapter 179, Section 6, Laws of 1974, Extraordinary Session)

The guidelines (197-10 WAC) defined "actions" subject to SEPA. These generally include public projects and the licensing of private projects that modify the physical environment. Nonproject "actions" which require governmental approval, such as ordinances and regulations controlling the use of the physical environment, are also considered "actions." Next, the guidelines contain a listing of activities exempted from the EIS requirement. For those proposals not exempted, the agency responsible for SEPA compliance, the lead agency, makes a "threshold determination." An EIS must be prepared if the proposal is found to have a potential significant adverse impact on the environment. The lead agency is responsible for preparation of a draft EIS intended to "transmit information concerning a proposed governmental action and the alternatives to that action to public officials, project sponsors, and interested citizens" (WAC 197-10-405). After circulation and review of the draft EIS, a final EIS is completed before the agency may take action on the proposal.

The SEPA guidelines were written to govern the content of rules to be adopted by other units of government, including state agencies, counties, cities, and special districts. Although many of the guidelines provisions are mandatory, some flexibility is allowed in areas such as designation of "responsible official," exemptions, intragency appeals, and timing of certain procedural requirements.

It is therefore necessary to refer to the guidelines in conjunction with the applicable agency regulations.

The Council on Environmental Policy, which adopted the Guidelines in December 1975, expired in June 1976. RCW 43.21C.100 provided that authority to amend the guidelines was transferred to the Department of Ecology (DOE). In response to petitions for change and a series of public hearings, DOE adopted some guideline amendments in December 1977. No further amendments have been adopted.

3. Legislative Amendments to SEPA

The legislature first amended SEPA in 1973 in response to concerns expressed by state and local agencies and proponents of private development. In 1973, certain development permits for single family residences were exempted from the EIS requirement (RCW 43.21C.070), and "substantial weight" was given to the threshold determination of a governmental agency and its determination of adequacy on an EIS (RCW 43.21C.090). The optional "notice of action" and statute of limitations provisions were established in 1973 and amended in 1974 and 1977 (RCW 43.21C.080). The 1977 amendment reducing the time period for challenging private projects under SEPA from 60 to 30 days.

The 1974 amendments creating the Council on Environmental Policy and directing the adoption of SEPA guidelines also included a number of other sections on reporting and interagency coordination.

The 1977 amendments focused on the exercise of substantive authority (which is based upon RCW 43.21C.020, 030(1), and 060). In revising RCW 43.21C.060, the legislature acknowledged the substantive authority of SEPA and required certain agencies relying on SEPA to condition or deny proposals to specify the adverse environmental impacts leading to the decision, although there remained arguments over legislative intent. Local governments were required to adopt policies governing the exercise of SEPA's substantive authority. Finally, people could appeal a decision by a nonelected official to condition or deny a proposal to the local legislative authority.

In addition to the 1973, 1974, and 1977 amendments, SEPA has been amended very infrequently for specific legislative exemptions, some of which have been controversial: the Hood Canal Bridge restoration, in 1979 and 1980 (RCW 43.21C.032, now repealed); codification of the forest practices exemption, in 1981 and 1983 (RCW 43.21C.037); drought emergencies, in 1981 (RCW 43.21C.210); emergency work at Mt. St. Helens, in 1982 and 1983 (HB 3519, RCW 43.21C.500 containing a 1988 sunset clause); incorporation of a cities or towns, in 1982 (RCW 43.21C.220; also see RCW 36.93.170); school closures, in 1983 (Section 1, Chapter 109, Laws of 1983, HB 719); and the Washington State Housing Finance Commission's adoption of its housing plan (Section 29, Chapter 161, Laws of 1983, SB 3245).

This report covers the 1981 and 1983 amendments to SEPA creating the Commission on Environmental Policy (technically "environmental policy commission") and enacting the Commission's recommendations.

SEPA IN THE 1983 LEGISLATURE

Introduction

The Commission proposed legislation (SSB 3006) in its initial report in January 1983. The legislation was subsequently enacted with three minor amendments, described below, which did not change the intent of the bill's substantive provisions. SSB 3006 was passed by large majorities in both houses and was signed by Governor Spellman on April 23, 1983.

The chronology of the enactment of SSB 3006 is printed at the end of this section.

The Legislative Process

Although the legislation was developed as part of the Commission's lengthy study, the legislature's chronology began in December 1982. At its December 13 meeting, the Commission unanimously recommended a draft bill, as well as draft SEPA rules. Senate Bill No. 3006 was prefiled for introduction on December 22, 1982, initiating the legislative process for the 48th Legislature.

The Commission had been planning public hearings across the state on its recommendations. In order to be consistent with RCW 34.04, the hearings were held after at least 20 days notice. The Commission held public hearings in Seattle, Olympia, Yakima, and Spokane during the first three weeks in January 1983. As a result of public comments to the Commission, particularly from environmental and citizen groups, several important changes and clarifications were made to the bill resulting in Senate Substitute Bill No. 3006. SSB 3006 was the proposed legislation included in the Commission's Initial Report to the Legislature.

Three aspects of the legislative process deserve special mention: the public hearings, the Senate substitute bill, and the three amendments made during committee and floor action.

1. Public Hearings

In addition to the Commission's four statewide public hearings mentioned above, the Senate Parks and Ecology Committee and the House Environmental Affairs Committee held five public hearings on SSB 3006. The Senate committee also had lengthy debates in executive session at which several amendments were rejected. The House committee had two lengthy executive sessions at which amendments were rejected. The committees' executive sessions were open to the public to attend.

Senate Committee Chairman Jerry Hughes (D-Spokane) stressed that the committee would hear from all those who wanted to speak, and that the committee would have full public hearings on the bill, notwithstanding the fact that the measure had been developed by several members of the committee and enjoyed considerable support from an extraordinary consensus of diverse interests.

Likewise, House Committee Chairman Nancy Rust (D-Seattle) stressed that the committee would hear public comment, and the committee extended its second hearing until nearly midnight to allow interested persons to speak. The number and length of the public hearings and committee meetings, all of which were well-attended by committee members, reflected serious consideration of the bill by the legislature.

2. Senate Substitute Bill

As noted above, the Commission received constructive comments on its recommendations as a result of its four public hearings in January. In addition to those testifying at the hearings, many phone calls and comment letters were received. As a result, the chairman and many Commission members felt that changes and clarifications were needed in the original prefiled draft bill (SB 3006).

The chairman directed the Commission's Drafting Committee to meet with Commission members, staff, participants in the Commission process, and commenters in an effort to revise the bill and resolve the problems identified. The Drafting Committee held several meetings in mid-to-late January and produced a substitute bill. The chairman consulted with Commission members and received a consensus that the substitute bill should be put forward as the Commission's proposal and replace the original prefiled draft.

This first Senate substitute bill (SSB 3006) was therefore included in the Commission's Initial Report, along with the detailed Section by Section Summary. At the first Senate committee public hearing on January 31, it was clearly explained that the measure before the committee was SSB 3006.

The principal changes in the substitute bill focused on the appeals section, including the attorneys fees provision (section 4), and on the contents of the state rules, especially on clarifying the intent of the provisions dealing with "socioeconomic" impacts and categorical exemptions (section 7). These provisions are explained elsewhere in this report.

Perhaps the most important point to emphasize here is that those unfamiliar with the Commission's review took out of context and attributed highly exclusionary intent to the types of impacts reviewable under SEPA as a result of the Commission's original draft which stated that "The list of elements of the environment shall not include socioeconomic impacts. It shall include public services, ... housing, ... [etc.]". The Commission's intent was simply to eliminate a confusing and mischievous term from the lexicon, and replace it with an affirmative statement and clearer definition of the types of impacts related to growth and the built environment that must be considered. (See, for example, the Section by Section Summary of SSB 3006 and Qs & As on SSB 3006).

The Commission hopes that the unfortunate impression left by the original draft will not encourage neighborhood groups or developers to try to push the law to the extreme by arguing, on the one hand, that environmental analysis under SEPA must include impacts on the social or economic environment (as compared with the physical environment), or, on the other, that SEPA ex-

cludes urban physical deterioration or impacts on the natural resource base caused by population or land use changes.

Readers may be interested to know that the day after the legislature sent SSB 3006 to the Governor, the United States Supreme Court rendered a unanimous decision interpreting the term "human environment" in NEPA as meaning the "physical environment". Metropolitan Edison v. People Against Nuclear Energy, 51 LW 4371, 103 S. Ct. 1556 (April 19, 1983). The Court continued to include environmental health as one element of environmental quality, as does SSB 3006 (Sec. 7(1)(f)). In an opinion similar to the discussion in this report and in the Section by Section Summary of SSB 3006, the Supreme Court stated:

The theme of Sec. 102 is sounded by the adjective "environmental": NEPA does not require the agency to assess every impact or effect of its proposed action, but only the impact or effect on the environment. If we were to seize the word "environmental" out of its context and give it the broadest possible definition, the words "adverse environmental effects" might embrace virtually any consequence of a governmental action that someone thought "adverse." But we think the context of the statute shows that Congress was talking about the physical environment--the world around us, so to speak. NEPA was designed to promote human welfare by alerting governmental actors to the effect of their proposed actions on the physical environment.

51 LW at 4373 (emphasis in original).

3. Legislative Amendments to SSB 3006

There were three minor amendments to SSB 3006, two in the Senate committee and one on the floor of the Senate. They were:

- (i) Adding a sentence to Section 7(1)(a) on categorical exemptions stating: "The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment." (lines 20-22).
- (ii) Adding the phrase "in the aggregate" to the attorneys fees provision in Section 4(9)(line 2).
- (iii) Amending language in Section 7(1) and deleting proposed section 10, in order to maintain the existing law which gives authority for SEPA rules adoption to the department of ecology (DOE), rather than temporarily transferring such authority to the Commission, as initially proposed in SSB 3006.

The first two amendments emphasize the existing intent of the legislation, as stated in the Commission's Initial Report. These two amendments, which dealt with substantive provisions of the bill were not controversial and were sponsored (in the case of the Section 7(1)(a) floor amendment) and co-sponsored (in the case of the Section 4 committee amendment) by the Commission chair-

man, Senator Bluechel. The third amendment was procedural in nature and did not affect the bill's substantive provisions.

The phrase "in the aggregate" amending the attorneys fees provisions was included to be certain that the overall award for any case, even if multiple parties or appeals are involved, does not exceed one thousand dollars.

The amendment on categorical exemptions was drafted essentially to insert a definition of "categorical exemption" into the statute and is consistent with the statutory amendment in Section 1 of SSB 3006 (RCW 43.21C.031) stating that categorically exempt actions do not require environmental review. The amendment was intended to clarify and emphasize the legislative intent since 1974 and upheld by the courts that the categorical exemptions in the rules are limited to types of actions that do not have significant impacts. The legislative history and the rejection of proposed committee amendments make clear that agencies are not required to examine whether a given proposal has a significant impact if the proposed activity properly fits within the type of activity categorically exempted in the rules, even though some recent cases have implied that agencies might have to do so (the reason for having a system of categorical exemptions is to eliminate the need for individual environmental review). The courts may continue to review such an agency determination and may review whether a type of activity is validly exempted by the rules.

The committee amendment to retain rulemaking authority in DOE was sponsored by Senator Al Williams (D-Seattle), a member of the Commission. Senator Williams expressed concern, based on prior rulemaking experiences, that the governmental body responsible for final adoption of the rules should be composed of officials of an existing department subject to traditional checks and balances, rather than a special commission composed of citizens (SSB 3006 would have removed the legislative members of the Commission from acting in a rulemaking capacity to prevent potential separation of powers problems).

The amendment explicitly allows DOE to "utilize proposed rules developed by the environmental policy commission" (line 31), and authorizes DOE to adopt modifications as a result of its public hearing process, which occurs under the state administrative procedure act not less than 20 days after proposed rules are published in the Washington State Register. The amendment emphasizes DOE's responsibility under the administrative procedure act to hold public hearings, consider comments on their merits, and assure consistency and implementation of legislative intent (the phrase "preservation of protections afforded by this chapter" (line 10) would apply to the wide range of protections afforded to all parties under SEPA). Committee members emphasized they did not intend to disavow the Commission's rulemaking proposals by this amendment, but were concerned only with the method of adopting the final rules.

Relationship Between Legislative Intent and Proposed Rules

The legislature has become increasingly concerned about whether agency rules are consistent with legislative intent. Recent amendments to the state administrative procedure act have required agencies to address legislative intent in

their rulemaking process and have established a way for the legislature to review rules.

The SEPA process over the past two years is unusual in the intimate connection between the development of new SEPA rules and the development of SEPA legislation. The Commission took an extraordinary approach in developing this 1983 amendatory legislation.

As explained in Summary of the Commission Meetings and in the next part of this report on the proposed rules, the Commission found that the statute was basically sound and that changes should occur mainly in the administrative rules implementing the statute. In addition, because most of the improvements would occur through the rules, the Commission felt that a clear indication of the likely rule changes would be both desirable and necessary to have a consensus on statutory amendments and the intent of the changes being authorized by SSB 3006.

The rule revisions and the proposed statutory changes were therefore developed simultaneously as part of the Commission's comprehensive review. As a general observation on the Commission's process, rule revisions were developed prior to the drafting of the proposed legislation. The Commission published a set of draft rules in its Initial Report, so that the administrative reforms authorized by SSB 3006 could be generally considered in the legislative process. The briefings to the legislative committees, caucuses, and floor included descriptions of the overall package of improvements, including key reforms in the rules (such as the environmental checklist, mitigated DNS, better EISs, use of existing environmental documents through adoption, and so on).

Other 1983 SEPA Amendments

In addition to SSB 3006, the legislature enacted three other amendments to SEPA in 1983. The amendments exempted SEPA compliance for Mt. St. Helens emergency work (SB 3519), for the State Housing Finance Commission's housing plan (SB 3245), and for school closures (HB 719). The Commission did not develop or review these other amendments.

The Commission had endorsed a categorical exemption in the rules for school closures (but not for demolition or reuse of a facility), and recommended that a process be established for public review of school closures. The Commission rejected a proposal to exempt the state Energy Facility Site Evaluation Council (EFSEC) from SEPA, concluding that its activities could be efficiently integrated with SEPA; although proposed in the previous session, an EFSEC exemption was not enacted in 1983.

Legislative Chronology

The following chronology lists the committee hearings, meetings and legislative action on SSB 3006 and relevant Commission meetings. Although the bill was developed over time through the Commission's deliberations, as explained above, this chronology begins on December 22, 1982, when the Commission's draft bill was prefiled for introduction.

LEGISLATIVE CHRONOLOGY

1982

December 22 SB 3006 prefiled for introduction

1983

January 5 Commission public hearing in Seattle
January 6 Commission public hearing in Olympia
January 10 First reading, referred to Senate Parks and Ecology
January 18 Commission public hearing in Yakima
January 25 Commission public hearing in Spokane
late January Commission Initial Report published, proposing SSB 3006
January 27 Senate Parks and Ecology meeting: briefing by
Kenneth S. Weiner, Commission Special Counsel
January 28 Senate Parks and Ecology meeting: briefing by
Kenneth S. Weiner, Commission Special Counsel
January 31 Senate Parks and Ecology public hearing
February 7 Senate Parks and Ecology public hearing
February 16 Senate Parks and Ecology public hearing
February 21 Senate Parks and Ecology executive session;
SSB 3006 reported with two minor amendments;
majority: 1st substitute bill be substituted, do pass
minority: do not pass
February 23 Passed to Rules committee for second reading
March 16 Briefings to Senate caucuses
March 24 Placed on second reading calendar by Rules committee;
Senate debate; Passed with one clarifying amendment;
Placed on third reading; Floor colloquy (Qs & As);
Read third time and passed by a vote of 42-6
March 26 First reading, referred to House Environmental Affairs
March 31 House Environmental Affairs meeting: briefing by
Kenneth S. Weiner, Commission Special Counsel
April 7 House Environmental Affairs public hearing
April 11 House Environmental Affairs public hearing
April 12 House Environmental Affairs executive session
April 13 House Environmental Affairs executive session;
SSB 3006 reported without amendment;
majority: do pass; minority: do not pass
April 15 Briefings to House caucuses;
Placed on second reading calendar by Rules committee
April 17 House debate; Passed without amendment to Rules committee
for third reading;
April 18 Placed on third reading; Floor colloquy (Qs & As);
Read third time and passed by a vote of 85-13;
President of the Senate and Speaker of the House signed
SSB 3006 and delivered to the Governor
April 23 Signing ceremony in Governor's office;
Governor signed SSB 3006 as passed;
May 1983 Commission issues Memorandum to Agencies and
Interim Guidance, distributing Summary and Qs & As
June 20 Commission's final meeting; recommends proposed rules to
DOE

OUTLINE of SEPA and SSB 3006

No Change

.010	Purpose
.020	Declaration of state environmental policy and environmental right
.030	"Action-forcing" procedures (EIS, etc.)
.035	Fifty cubic feet irrigation project exemption
.040	Report on agency authority
.050	SEPA not detract from pollution laws (Muskie-Jackson compromise)
.080	Notice of action
.087	DOE list of notice of action filings
.090	Decision of agency accorded substantial weight
.130	Model ordinances
.135	Local SEPA procedures
.150	Use of NEPA EIS
.160	SEPA/ECPA coordination
.170	Council on environmental policy (recodified from .100)
.175	Council on environmental policy personnel (recodified from .105)
.165	Challenge to consistency of SEPA rules
.210	Exemption for drought emergencies under RCW 43.06.210
.220	Exemption for incorporation of cities and towns
.550	Exemption for Mt. St. Helens emergency recovery
.900	Short title
.910	Severability

New Sections

.031	Significant Impacts
.075	Appeals
.095	State SEPA rules to be accorded substantial weight

Amended Sections

.037(3)	Forest practices exemption
.060	Substantive/supplementary authority
.110	Content of SEPA rules
.120	State and local rule revisions

Repealed Sections

.032	exemption for Hood Canal bridge reconstruction (completed)
.085	limitation on rule challenges (covered by new section .075)
.140	study required in 1972 (completed)

Decodified Sections

.070	establishment of single family exemption (completed in 1973)
.200-204	sections dealing with the Commission on Environmental Policy after its expiration in July 1983

(Decodification still allows historical notes and remains in the legislative history; since these provisions would be relevant to legislative intent, but are no longer functional, they should be decodified rather than repealed.)

SECTION-BY-SECTION SUMMARY
of
S.S.B. 3006

Passed by the Senate (42-6) on March 24, 1983
Passed by the House (85-13) on April 18, 1983
Signed By the Governor on April 23, 1983

Introduction

Background

The State Environmental Policy Act (SEPA) was enacted in 1971 in response to the environmental awakening across the nation and in the state. Closely patterned after the National Environmental Policy Act of 1969 (NEPA), many of SEPA's provisions are identical to those of the federal law.

One of the original purposes of SEPA and NEPA is to incorporate environmental values into decisions of public officials, which were frequently dominated by economic and technical considerations. The law, therefore, requires that "unquantified environmental values and amenities will be given appropriate consideration in decisionmaking along with economic and technical considerations." RCW 43.21C.030(2)(b).

Over the past decade, SEPA has contributed to making environmental considerations a routine part of agency decisionmaking. Public agencies, private firms, and citizens are much more competent about and sensitive to environmental issues than a decade ago. The importance of giving timely and appropriate consideration to environmental factors, and of taking actions to preserve environmental quality, is no less valid today than a decade ago. This fact has been brought home in recent weeks and months, for example, by news of our region's air pollution, toxic waste sites, and threats to watersheds and wilderness.

Balancing

SEPA is designed to provide a way for public officials to balance competing considerations and resource demands in order to achieve a "wide sharing of life's amenities" and a "productive harmony" between people and nature. RCW 43.21C.020. SEPA requires certain environmental analyses to occur, including the use of the environmental impact statement as a tool to aid decisionmakers. SEPA does not require the impact statement to be the only decisionmaking document, nor does it dictate the particular result of the balance to be struck by decisionmakers in individual cases. There may be many considerations--economic, legal, social,

political, technical, to name a few--which the responsible public officials may wish to weigh in making a decision which involves taxpayer dollars or the use of public regulatory authority.

Authority

Prior to SEPA, however, some agencies claimed that they lacked the authority to protect the environment as they carried out their jobs. SEPA makes environmental protection the business of every agency in the state, by supplementing agencies' existing authorities. RCW 43.21C.020, .030(1), .060. This applies to decisions on private projects for which government approvals are required, as well as public proposals. SEPA is intended to help public officials make decisions that are based on an understanding of environmental consequences and to take actions that protect, restore, and enhance the environment.

Tempered by a "rule of reason" and a recognition of the "balancing" judgments inherent in decisionmaking, SEPA requires that "to the fullest extent possible the policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth" in the Act, and that all agencies of the state "use all practicable means, consistent with other essential considerations of state policy" to carry out the Act's policies.

In essence, the statute requires that the state's environmental policies be interpreted consistent with other essential considerations of state policy. If there is no conflict with other considerations, it is assumed that the course of action which most furthers the state's environmental policy, as set forth in SEPA, will be taken. There may be conflicts or inconsistencies, however. In these situations, the state environmental policy helps to articulate standards and criteria and serves as a guide. SEPA does not dictate a particular result, but, rather, by considering environmental values, assists public officials, private applicants, and citizens to make the tough choices about actions they propose or which would affect them.

Administration of SEPA

The legislature has also recognized that SEPA's emphasis on substantive actions and better environmental decisions should not be diluted by unnecessary or ambiguous procedural and paperwork requirements. In 1974, the legislature directed a set of state guidelines be prepared to establish uniform procedures, encourage public involvement, reduce duplicative practices, and promote certainty on the Act's requirements. Although the administration of the Act has improved as a result, some problems were not solved and additional problems have arisen over the past eight years.

In 1981, the legislature created an environmental policy commission to examine the statute and guidelines "to establish methods and means of providing for full implementation of the Act in a manner which reduces paperwork and delay" and to resolve problems and to promote greater certainty and uniformity. RCW 43.21C.200.

The principal objectives of the bill are:

1. Reducing unnecessary paperwork, duplication, and delay.
2. Simplifying the state rules and making the process more predictable.
3. Improving the quality of environmental decisionmaking.

The commission found that the statute is fundamentally sound, but that many administrative practices should be improved. Public officials should be able to condition or deny proposals based on environmental impacts, but need to follow certain rules in doing so. Public officials also have an important role in reducing excess paperwork and avoiding duplication and delay. Applicants such as private project proponents deserve earlier and less costly environmental review and greater certainty regarding SEPA's requirements. Citizens should be able to participate more effectively in the process and know what mitigation measures result from a decision. Everyone should have shorter and more readable environmental documents which discuss the significant environmental impacts, supported by the necessary analysis.

The statutory reforms, therefore, clarify the law and direct and authorize that the statewide rules governing SEPA compliance be improved in specified ways, in order to fulfill the Act's legislative intent.

Section 1

Section 1 would add a new section, RCW 43.21C.031, to SEPA in order to make clear that an environmental impact statement (RCW 43.21C.030(2)) is required only when a proposed action, which is not exempted by the SEPA rules under RCW 43.21C.110(1)(a), has a probable significant adverse environmental impact. This section would also make clear that an impact statement is required to discuss and analyze only those environmental impacts which are likely to occur ("probable") and could degrade environmental quality ("adverse"). An environmental impact statement may discuss probable significant beneficial environmental impacts. Furthermore, if an impact statement is required, it should be organized in a sensible fashion and need not discuss the items listed in RCW 43.21C.030(2)(c) in separate sections.

Under existing law, environmental impact statements (EISs) are required under RCW 43.21C.030(2)(c) only when a proposal has "significant" environmental effects. The purpose of this section is to emphasize that the system of categorical exemptions in the rules can be relied upon; it does not prohibit judicial review (see summary of section 7). This section simply reaffirms the existing system of categorical exemptions and makes clear that an action shall be considered not to have a significant environmental impact (and therefore does not require environmental review or an EIS) if it is categorically exempted in the state SEPA rules under RCW 43.21C.110(1)(a).

The existing standard for putting a type of action in the rules as a "categorical exemption" would remain as stated under RCW 43.21C.110(1)(a), which has been upheld and relied upon by agencies and the courts. The types of actions included as categorical exemptions in the rules are limited to those which are not major actions significantly affecting the quality of the environment. The courts may still decide if a categorical exemption contained in the rules meets this criterion (see RCW 43.21C.110(3)). The courts may also decide whether a specific proposed action fits within a given categorical exemption.

The existing law is currently interpreted as meaning that EISs are required to discuss only "significant" impacts. The statute does not clearly say this, however. As a result, EIS preparers have written long statements which are sometimes filled with irrelevant information and may fail to focus on the key issues. This legal defensiveness and "kitchen sink" approach to EISs does not aid decisionmakers, applicants, or the public in considering serious environmental concerns. In addition, other agencies and the public often do not have an opportunity or responsibility to help identify the impacts and alternatives early enough in the planning and environmental review process.

This section states unequivocally that EISs are required to analyze only "significant" impacts. EISs may, but are not required to, discuss probable impacts which are not significant and adverse, if doing so would be helpful to integrate SEPA with environmental review requirements under other laws for example. It is intended that any discussion of nonsignificant impacts and accompanying mitigation measures would be very brief and summary in nature. This section would also require every agency to determine the scope of every environmental impact statement by consulting with agencies and the public. 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.

By requiring scoping, the section is intended to promote early identification and resolution of potential problems. The

actual methods and nature of the scoping process and requirements would be established in the rules, so that statutory amendments would not be required in order to make any improvements in scoping which may become needed as the agencies gain experience with this kind of process. It is expected that an agency could further specify the scoping process and methods it wishes to use in its SEPA procedures, and that these methods may vary with each particular proposal.

"Probable" refers to impacts which are reasonably likely to occur, in contrast to impacts which are merely possible or remote or speculative. This is not meant as a strict probability test. An impact may be significant if its chance of occurrence is not great, but where the resulting environmental impact would be severe (as in a serious nuclear reactor accident).

In addition, this section authorizes agencies to write environmental impact statements in a more logical and readable fashion by combining the various subjects which the statute requires to be discussed in an impact statement. Currently the statute requires certain items to be covered in environmental impact statements in RCW 43.21C.030(2)(c). This section does not alter these requirements, but makes clear that these sections may be consolidated or included in those sections of an EIS where the responsible official decides they logically belong. This should eliminate unnecessary duplication and excess paperwork.

In addition, the subjects listed in RCW 43.21C.030(2)(c) have frequently been confusing to people who prepare and read EISs. This section clarifies the intent of those subsections by indicating that those subsections are meant to be read in their plain and logical meaning. For example, the requirement to discuss the "relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity" is another way of saying that the impact statements must discuss significant short term and long term environmental impacts. Similarly the discussion of "irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented" is intended to refer to significant irrevocable commitments of natural resources, and "adverse environmental impacts which cannot be avoided should the proposal be implemented" refers to significant environmental impacts which will not or cannot be avoided or substantially mitigated.

Consideration was given to revising or eliminating some of these categories altogether, in order to ensure that they were not treated as separate sections simply for the purpose of producing an adequate environmental impact statement. However, it was felt that this would be unnecessary, and that use of their common meaning and their consolidation or inclusion as applicable in the

relevant sections of an EIS would be a preferable way to clarify the existing requirements.

Section 2

This section would delete the sunset clause on the exemption contained in RCW 43.21C.037 regarding Class I, II, and III forest practices.

This section recognizes that there is continuing debate on the complex and technical subject of what forest practices should be subject to SEPA. This section acknowledges the appropriateness of continuing permanent exemptions for Class I, II, and III forest practices from the requirement of RCW 43.21C.030(2)(c) and intends that the Forest Practices Board continue to meet its ongoing responsibilities under the Forest Practices Act, including determining what practices should be included in Class I, II, and III forest practices, and what practices should be subject to RCW 43.21C.030(2)(c) as Class IV forest practices.

Section 3

Section 3 would enact certain amendments concerning aspects of SEPA's "substantive authority". SEPA's substantive authority is contained in several provisions, most notably: the declaration of a substantive state environmental policy in RCW 43.21C.020 (which the state courts have held contains sufficiently definite standards to be interpreted and enforced); the requirement in RCW 43.21C.030(1) to interpret and administer state law in accordance with those policies; and the supplementary mandate provision of RCW 43.21C.060, which states that the policies and goals set forth in the Act are supplementary to those set forth in agencies' existing authorizations.

Despite various state court decisions, there has been substantial controversy over the past ten years concerning whether SEPA was intended to have substantive effect, and whether SEPA does or should have substantive effect (in contrast to whether SEPA should be viewed as an essentially procedural statute or disclosure law).

The intent of this section, among other things discussed below, is to settle this issue and affirm that SEPA is more than a disclosure law and that it grants agencies authority over public and private proposals. This corresponds with existing case law, such as the Polygon v. City of Seattle case, 90 Wn.2d 59 (1978), which upheld and applied SEPA's substantive and supplementary authority. This section clearly grants agencies the authority to mitigate their own proposals or to condition or deny proposals of

applicants. The section clarifies how agencies may condition or deny proposals based on the environmental impacts, following specified rules and safeguards. The process for conditioning or denying a proposal under this section would require that:

1. An agency must identify policies which will serve as a possible basis for conditioning or denying proposals under SEPA.
2. These policies must be formally designated by the agency or, for local governments, by the local legislative body, within six months of the effective date of the revised SEPA rules.
3. If an agency conditions or denies a proposal, the agency must identify the environmental impacts in its environmental documents.
4. The agency must state any conditions in writing.
5. An agency may condition a proposal to avoid or reduce ("mitigate") environmental impacts.
6. In order to deny a proposal under SEPA, an agency must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under SEPA; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact.

The phrase "capable of being accomplished" maintains the existing law. SEPA currently requires agencies "to use all practicable means, consistent with other essential considerations of state policy" to preserve and enhance environmental quality. The dictionary defines the word "practicable" as "capable of being accomplished." This determination is made by the government agency, which is the entity responsible for SEPA compliance. An agency can deny a project, as noted above, if the impacts cannot be sufficiently mitigated.

The term "possible basis" is used because a particular proposal may or may not be conditioned or denied, and if it is, the particular environmental impact may involve one or another policy for protecting the environment. The section requires that agencies formally designate the policies which will be used as potential bases for the exercise of this authority. This section gives agencies enough latitude to articulate policies broadly enough that they need not predict every future environmental problem or concern. It is expected that agencies will prepare a document which contains their SEPA policies, so that members of the public and applicants know what these policies are. This section is not intended to allow agencies to adopt policies which conflict with the state's environmental policy as set forth in SEPA.

The section requires the agencies to identify these policies in any form, whether regulation, plan or code, which has the force of law and serves a regulatory function for the agency. In the case of local government, the appropriate legislative body is required to make this designation. The term "identify" is used to clarify that the agency need not have created or developed the policy as long as it formally designates the policy as a possible basis for the exercise of authority under the Act. The section does not specify the level of detail for these identified SEPA policies. It is intended that this be left to each agency, as long as they are formally designated and identified for the public to know.

Some of the major differences between this amendment and the existing law (which was last amended in 1977) include: (1) Limitations and requirements for the exercise for substantive authority apply to all local officials (the 1977 amendments and existing law apply mainly to actions not requiring a legislative decision); (2) The section makes clear that agencies may condition proposals to mitigate specific adverse impacts which are identified in the environmental documents prepared under SEPA, but may only deny a proposal if these impacts are significant and if they cannot be sufficiently mitigated. This determination will be made by the governmental agency. The existing law does not distinguish between conditions and denials or require an agency to make any findings in denying a proposal; (3) Mitigation measures which are required for a proposal shall be reasonable and capable of being accomplished. This follows the rule of reason and makes clear that mitigation must be reasonably related to a proposal's identified adverse environmental impacts and be technically or otherwise capable of being carried out. This requirement is consistent with SEPA's directive to use "all practicable means and measures" to implement its policies (RCW 43.21C.020). The state rules would additionally clarify the principles for the exercise of substantive authority and mitigation measures (see RCW 43.21C.110(1) in Section 7 below); (4) The section would retain an appeal to locally elected officials, but would allow the local legislative authority to eliminate such an appeal (the appeal to the local legislative authority was originally desired in 1977 as a check on nonelected officials).

Section 4

This section specifies general principles and specific requirements for appeals under SEPA, especially regarding the time periods for commencing an appeal under SEPA.

Current case law has not recognized a statutory right of appeal under SEPA. Instead, the courts have fallen back on other

statutes or inherent constitutional review power to hear SEPA cases. The first part of this section makes clear that SEPA provides a basis for challenging whether governmental action is in compliance with substantive and procedural provisions of the Act, and that any appeals brought under SEPA must be linked to a specific governmental action. The reason for this section is to make clear that SEPA's purpose is to combine environmental considerations with public decisions, and therefore that these two elements should be integrated not only in the environmental review process itself, but also in the appeals process. It also clarifies that the right to a healthful environment, contained in RCW 43.21C-.020(3), relates to SEPA compliance for specific governmental action. This section would not restrict courts from requiring agencies to enforce their substantive SEPA determinations, including permit conditions or mitigation measures for public or private proposals.

As noted above, the bill expressly provides for the right to challenge substantive and procedural compliance with the act. The existing right to a healthful environment is not amended. Conditions to mitigate environmental impacts are governmental actions under section 3 of the bill, and lawsuits may be brought under section 4 to ensure that they are enforced.

Consequently, this subsection (2) sets forth two general rules:

1. Appeals under SEPA are of the governmental action together with its accompanying environmental determinations; and
2. Appeals of environmental determinations must be commenced within the time required to challenge the governmental action which has been the subject of environmental review.

Although these two general rules are applicable to most situations, including essentially all agency administrative appeals, there are some special circumstances which need to be taken into account. The remainder of this section deals with how to implement these two principles and the exceptions to them.

Subsection (3) deals with agency administrative appeals. Subsection (4) requires appellants to use an agency appeal if available prior to seeking judicial review. Subsection (5) deals with the time for commencing judicial appeals, where statutes or ordinances specify time limits on appeal. Subsection (6) deals with the record on judicial appeal. Subsection (7) allows the parties in a judicial appeal to remove the SEPA issues to the administrative setting of the Shorelines Hearings Board if they wish. Subsection (8) contains definitions for this section. Subsection (9) allows the court in its discretion to award attorney fees under certain limitations. It is intended that time period for appeals are not commenced until after the rele-

vant decision has been made and notice has been given of the time and place to appeal such decision.

Subsection (3) specifies five items which must be included in agency appeal procedures, if an agency decides to establish an administrative appeals process. This section does not require an agency to establish an appeals procedure. The purpose of these provisions is to streamline local agency and state agency appeals, reduce multiple layers of appeal, and consolidate the substantive and procedural issues as much as possible under the State Environmental Policy Act, consistent with other applicable state law. Subsection (4) requires the exhaustion of administrative remedies if such are available and is intended to make clear that agencies may not limit standing for judicial review through their own agency appeal procedures under subsection (3).

Subsection (5) deals with the application of time periods in which judicial appeals may be brought under SEPA. SEPA itself does not contain a mandatory time limit for commencing an appeal, in part because of the wide variety of fact situations to which the law applies. Instead, the legislature enacted RCW 43.21C.080 in 1973 (and subsequently amended this provision in 1974 and 1977), allowing an optional "notice of action" to be filed. If the "notice of action" is used, it then creates a mandatory time limit within which SEPA appeals must be brought on that proposed action.

Some statutes and ordinances contain time periods for challenging governmental actions which are subject to environmental review under this chapter, such as local land use approvals. (The action which is subject to SEPA review is commonly referred to as the "underlying governmental action".) In these cases, there may be a conflict between the time limits contained in the notice of action provision (RCW 43.21C.080) and the time limits for appealing the underlying governmental action.

In addition, even if there are no conflicts with RCW 43.21C.080 (because, for example, the optional notice of action is not used), it was felt inequitable to require a judicial appeal under SEPA to be filed within the time limit for appealing the underlying action -- if this time limit were less than 30 days. One reason is that it takes some time to review environmental documents and decide whether to bring an appeal. In addition, some courts have held that appeals under SEPA should be taken within the same time period as would be required for appealing the underlying governmental action (for those actions which have time limits for appeal and for which the notice of action time period did not apply). This means that the time period for appeal may be much shorter than 30 days.

As a result, the bill states that an appeal to the courts must be commenced within 30 days if there is a time period in statute or ordinance for appealing the underlying governmental action. This guarantees a 30 day period to file a lawsuit if time periods for appeal are set by another statute or ordinance. Subsection (5)(a) also requires the appellant to submit to the agency a notice of intent to file a lawsuit within the time period for commencing an appeal on the underlying governmental action, if there is such a period, in those cases where there has already been an agency administrative appeal and there is formal notice to the parties of record. This requirement was included in order to allow agencies and applicants to have greater certainty of the status of their proposals at the time the appeal on the underlying action expires. This requirement also maintains consistency with the general principle of commencing appeals in the time required by the underlying action, although only a notice would be required.

If those cases where there has not already been an agency appeal, however, it was felt unfair to impose the early notice requirement because parties of record for notice purposes would often not have been identified. It is also intended to be sufficient for the appellant to submit one notice of intent to commence a lawsuit to the agency, even though there may be multiple underlying actions.

Subsection (5)(b) allows the notice of action to be used and its publication requirements to be met within the time period for commencing an appeal on the underlying action, if there is one. As a practical matter, this will mean that the newspaper notice requirements of RCW 43.21C.080 could be compressed in time or frequency and would be legally allowed.

By governing appeals under this chapter (and their relationship with any other time periods for appeal as may exist), this section is written to avoid modifying any other statute of limitations under state law. This section is not intended to create a statute of limitations on SEPA appeals other than that already in RCW 43.21C.080 or as specified in subsection (5) of this section, where the underlying governmental action has a time period for appeal established by statute or ordinance.

This section also requires appeals on the record, consistent with other applicable law, and allows an optional appeal to the Shorelines Hearings Board and then to an appellate court if the parties to an appeal wish to do so. Several definitions are specified for purposes of this section and the notice of action section.

Subsection (9) allows a court to award attorneys fees under specified circumstances. They are: (1) a court may in its discre-

tion award attorneys fees; (2) the court must find the legal position of a party to be frivolous and without reasonable basis (in order to protect the parties from potential harassment and expensive litigation over the awarding of attorneys fees themselves, such findings are intended to be based on the legal merits and the record and not on discovery and evidentiary proceedings concerning the parties); (3) because SEPA litigation is often related to other causes of action, the attorneys fees award is limited to issues arising out of this chapter; (4) the prevailing party may include a governmental agency; (5) an award for any given lawsuit is limited to reasonable attorneys fees up to one thousand dollars in the aggregate, regardless of multiple defendants or multiple appeals, which may be awarded at the trial court level; (6) the award under this section relates to attorneys fees only; any costs which may otherwise be allowed to be awarded by the court are not governed by this section and are not included in the dollar limitation for attorneys fees.

Section 5

This section would be similar to the existing RCW 43.21C.090, by requiring that the state SEPA rules adopted under RCW 43.21C-.110 be accorded substantial deference in the interpretation of SEPA. There has been concern raised over the past several years about whether the courts adequately review and consider the state SEPA administrative rules before interpreting the State Environmental Policy Act. As a result of comprehensive review and revision of these rules, it was felt extremely important that the courts should first turn to the administrative rules to see if they interpret a provision involved and should give substantial weight to such interpretation.

Section 6

This section would recodify the existing authorization for the currently expired Council on Environmental Policy. The various interests concerned with SEPA felt that there was much merit in having a high level state Council on Environmental Policy, similar to the White House Council on Environmental Quality, which oversees NEPA. Recognizing the state's current fiscal situation, it was felt that it would be difficult for such a council to be funded and operational at this time. However, it was felt important not to repeal or decodify this section, but rather to continue a latent authority for the entity known as the Council on Environmental Policy in the statute, so that the legislature might reactivate the council promptly in the future, without causing the misperception that an entirely new agency was being invented.

Section 7

This section specifies the content of the state SEPA rules. Under the bill, the revised rules would be issued and adopted under the administrative procedure act process by the Department of Ecology, which may utilize the rules prepared by the environmental policy commission (RCW 43.21C.204).

Subsection (1) would change the term "guidelines" to "uniform rules", which would be mandatory statewide rules for the SEPA process. The intent of using the term "rules", rather than guidelines, was to emphasize that the rules are intended to be regulatory, and not advisory (which is sometimes implied by the use of the term guidelines). The term "rules" was added throughout this section to maintain consistency. The word "guidelines" was not deleted in subsection (1) because the Department of Ecology may find it useful to issue guidelines in addition to rules for certain matters (such as evolving areas of environmental assessment methods for which strict regulation would be inappropriate or premature).

Paragraph (a) continues the existing authorization for categorical exemptions enacted in 1974. Categorical exemptions are just that: types of activities which do not have significant environmental impacts. Under state law, rules, and practice for more than seven years, if an agency concludes that a particular proposal fits within a categorical exemption in the state rules, individual environmental review on that proposal is not conducted (also see section 1). This paragraph maintains the status quo and adds an additional protection by noting that the rules shall provide for certain circumstances where routinely exempt actions would require environmental review (such as a segment of a series of actions which together have a significant impact, or certain actions in designated "environmentally sensitive" areas).

Some confusion has arisen in situations where courts have been confronted with proposals having significant impacts, but an agency asserts the proposal is categorically exempt. In such cases, the courts are faced with two questions (the answer to the first will usually resolve the issue): (1) does the proposal fit within the asserted exemption, including taking into account that the rules provide for certain circumstances in which potentially exempt actions would not be exempt; and if so, (2) does the type of action exempted by the rules result in significant adverse environmental impacts. If the answer to the second question is affirmative, the exemption in the rules would be overbroad. Judging by the tone (not the results) of a few judicial opinions, the state courts have not always recognized that the importance of a reliable and efficient system of categorical exemptions is such that it would be better in the rare instance to find an exemption overbroad, than to require individual case-by-case environmental

review on every governmental activity. Such individual review would defeat the very purpose of having categorical exemptions and would create an immense paperwork, bureaucratic, and cost burden on government and taxpayers.

Paragraph (c) makes clear that the rules are applied to the preparation of environmental documents under SEPA and not to just environmental impact statements. The new rules would cover the overall environmental review process, and shift emphasis from exclusive preoccupation with environmental impact statements to emphasis on an overall environmental review process better integrated with planning and decisionmaking. Thus other environmental documents besides impact statements would be important to the overall implementation of SEPA's procedural requirements and the efficient function of the environmental review process, including the timing of environmental review.

The phrase "timing of environmental review" was added to make clear that the environmental process frequently involves judgments as to the most appropriate timing for environmental review by lead agencies, and that the rules may provide for agencies and applicants to rely on previous or future environmental reviews for their SEPA compliance. This would authorize important administrative procedures such as phased review and adoption, for example. This paragraph also requires that the public be involved in the scoping process and in the review of draft environmental impact statements. This public review has been the practice over the past decade, but is not explicitly stated in other sections of the Act (i.e., RCW 43.21C.030(2)(d)). This section would make clear that such public participation is required.

Paragraph (d) reiterates subsection RCW 43.21C.031, requiring environmental impact statements to analyze only reasonable alternatives and probable adverse environmental impacts which are significant. Environmental impact statements are not necessarily limited to discussing only those alternatives and impacts (for example, beneficial environmental impacts may be discussed). The intention of this section is that EISs are only required to discuss reasonable alternatives and their probable significant, adverse environmental impacts, however, and that any other discussion is not intended to be a basis for finding an environmental impact statement to be inadequate for purposes of meeting the EIS requirement.

Paragraph (f) requires the establishment of a list of elements of the environment, which is the method for defining what is appropriately considered within the term "environment." This section makes clear that environmental analysis may only be required under SEPA for those subjects listed as elements of the environment. Environmental documents may include other information, consistent with the statute and the rules, but this

information is not required under SEPA. The bill would not prohibit the inclusion of any impacts in an EIS.

This section also clarifies considerable confusion which resulted from a recent court decision involving so-called "socio-economic" impacts. The court misconstrued the phrase in SEPA which requires the state's environmental policy to be carried out in a way which will "promote the general welfare...and fulfill the social, economic, and other requirements of present and future generations of Washington citizens." RCW 43.21C.020(1)(c). This statutory phrase refers to factors which decisionmakers consider in weighing and balancing final decisions. It was not intended to require that "environmental" impact statement documents discuss every social, economic, or other consideration which might relate to the general welfare. To do so would substantially broaden the existing scope and interpretation of SEPA's environmental analysis requirements.

This section would clarify the issue by listing those urban-type impacts which have traditionally been important and included in environmental documents. The impacts of most significant concern, for example, involve the nature and cost of infrastructure and growth impacts, such as public services, including utilities, water, sewer, schools, fire and police protection; transportation; environmental health; and land and shoreline use, including housing and a description of the relationships with land use plans and designations (which may include shoreline plans and population changes which may have an impact on other elements of the environment). Environmental health refers to human health and the health of all living things. Housing includes low income housing affected by a proposal.

Traditional areas of concern which would clearly be covered by this section include the need and cost of public services as a result of new development; the impacts of major infrastructure investments, such as highways, sewers, and airports, on neighborhoods which they traverse or affect; and the problems of blight of downtown and urban areas which would be caused by proposed actions.

The list of elements of the environment would be divided into two groups: the natural and the built environment. The natural environment would relate to natural resources, and the built environment would relate to more urban elements. The term "built" environment was used to avoid conveying the impression that these elements are present only in already urbanized areas.

The bill specifies the major headings, and the Department of Ecology would still be able to list subheadings in the statewide SEPA rules. The rules recommended by the Commission on Environmental Policy, which was created by the legislature in 1981, would

include noise, aesthetics, housing, recreation, historic and cultural preservation, among other things, as subheadings under "land and shoreline use." Environmental impacts in these areas would be required to be considered under SEPA. Although other items cannot be required under SEPA, a local government or other agency has the option to include analysis of any impact in an environmental impact statement.

As noted above, the term "socioeconomic" was not used because of the lack of any common understanding of its meaning. This term "socioeconomic" is extremely vague and has never been defined by court decisions, federal rules, or state or local rules sufficiently to provide any real certainty or clarity for the SEPA process. Furthermore, it gets confused with the "general welfare" considerations involved in the ultimate balancing by decision-makers, as noted above. It was felt that use of this term confused, rather than aided, the preparation of adequate environmental analyses.

In short, this section takes the approach of specifically requiring the consideration of those important items which have been included in environmental impact analysis for a decade in this state. These elements relate to human interaction with the physical or natural world. They pertain to growth, infrastructure, and urban impacts, but avoid creating a wide open liability for the adequacy of discussing impacts which are not environmental in nature.

Thus, analysis of economic competition, how proposals are financed, data on race, creed, religion or education, and similar information are examples of the type of material which is not appropriate to require in environmental impact statements. Requiring the inclusion of every possible kind of "impact" would dilute SEPA's environmental protection mandate and encourage the abuse of SEPA by using the statute for purposes for which it was not intended. Although some gray areas will no doubt continue to exist, as human activities do not always fit into neat categories, the rules would further elaborate these factual situations to increase certainty in SEPA requirements. In addition, it is expected that the scoping process will help to identify the relevant, environmentally significant impacts.

Paragraph (j) authorizes rules for better analysis for nonproject proposals, such as plans and policies, and for encouraging better interagency coordination and integration between SEPA and other laws. Similarly, paragraph (l) authorizes rules for improving use of environmental documents and planning decision-making and implementing SEPA substantive policies and appeal procedures. An index to the proposed rules is attached.

Section 8

This section requires that state and local agencies update their own SEPA procedures when there are revisions in the state-wide SEPA rules and requires them to adopt their own SEPA policies under RCW 43.21C.060 and their own SEPA procedures within 180 days of the effective date of the state rules or after the establishment of an agency whichever shall occur later. This provision ensures that state and local agencies continue to update their own rules as rule revisions are made or as new agencies or local governments are established. In addition, this section provides that the existing SEPA procedures--not SEPA policies--continue to be effective until the new ones are adopted, as long as the new ones are adopted within the 180 day period specified by this section.

This section does not restrict or alter the ability of agencies to update, amend, or adopt new SEPA policies or procedures at any time.

Section 9

Section 9 requires the Department of Ecology to conduct annual statewide workshops and to publish annually a SEPA handbook or supplement to assist people in carrying out the act and rules. One of the problems which was identified in the SEPA process was the development of bad habits and practices by agency staff, applicants, citizens and others affected by SEPA. Misinterpretation, confusion, and bad habits can undermine the effectiveness and intent of the reforms included in the legislation and implementing rules. This section is essential to following through on the improvements in the law and to making SEPA work as intended. The failure to do this on an annual basis would jeopardize the entire reform effort.

Section 10

Section 10 specifies three sections in the existing law to be repealed. Section RCW 43.21C.032 contains a provision exempting the restoration of the Hood Canal Bridge, which was enacted in 1979 and is now completed and is no longer needed in the law. RCW 43.21C.085 which was enacted in 1974 contains a provision on the time limits for challenging rules adopted by agencies. This provision is now encompassed by the new section RCW 43.21C.075 (Section 4 of this bill). RCW 43.21C.040 required a report to be submitted to a prior legislature, and this section has since ceased to have any effect and should be repealed as well.

Section 11

This section would decodify four sections of SEPA. Section RCW 43.21C.070 directed the Department of Ecology to issue rules exempting individual single family residences. This was accomplished in 1973 and this provision should be decodified. Similarly Sections .200, .202, and .204 regarding the Environmental Policy Commission should also be decodified upon the expiration of the Commission. These four provisions are being decodified rather than being repealed, so that their legislative intent continues to remain on the books, are available in the legislative history, and apply to the rules under RCW 43.21C.110. Because their mandates have been or will have been completed, their presence in the codified law tends to be unnecessarily confusing.

Section 12

This section recodifies RCW 43.21C.100 as 43.21C.170 for the reason explained in Section 5 above on the Council on Environmental Policy.

Section 13

This section recodifies RCW 43.21C.105 as 43.21C.175 for the reason explained in Section 5 above on the Council on Environmental Policy.

Section 14

This section is a standard section indicating that section headings are not part of the law, although they will be included as part of the codification of the law.

Section 15

This section provides for the effective date of the various sections of the law. Section 3 regarding the conditioning and denying of proposals based on SEPA policies and section 4 regarding appeals apply prospectively only. This is to avoid affecting the rights and remedies of any project currently under way and in the midst of decisionmaking and appeal procedures. Sections 1, 5, 6, 7 and 8 of the Act make important improvements in the interpretation of the law. Agencies may be in the midst of the environmental review process for certain proposals at the current time and may wish to avail themselves of these interpretations immediately. As a result, agencies may, but are not required, to apply these sections retrospectively. As a practical matter, only section 1 will be relevant for retrospective application, as the remaining sections deal mainly with new rulemaking and statutory codification (which have yet to occur).

Section 16

This section is a severability clause.

Section 17

This section contains an emergency clause, so that important clarifications and legislative direction can take effect immediately, including direction to the Department of Ecology regarding the state rules. This section also postpones the effective date of Section 3 of the Act until for 180 days after the new rules are effective, so that state and local agencies have time to prepare for formally designating their SEPA policies.

Source: Commission on Environmental Policy

Qs & As on S.S.B. 3006 (SEPA)

Note: S.S.B. 3006 passed the Senate on March 24, 1983 (42-6) and the House on April 18, 1983 (85-13). On April 23, 1983, the Governor signed SSB 3006 as passed by the legislature. The following questions and answers were exchanged in order to reaffirm the intent of the measure. The Senate Qs and As were exchanged between Senators Bottiger and Bluechel. The House Qs and As were exchanged between Representatives Van Dyken and Hine.

CATEGORICAL EXEMPTIONS (Senate)

Q: Does the bill eliminate judicial review of categorical exemptions?

A: No. The bill makes it clear that people can rely on a system of categorical exemptions established by the rules. A categorical exemption is a type of action which does not significantly affect the environment. The courts may still decide if a categorical exemption contained in the rules meets this criterion. The courts may also decide whether a specific proposed action actually fits within a particular categorical exemption in the rules.

PROBABLE (House)

Q: Does the term "probable" change the existing law?

A: No. The state supreme court has consistently stated that an environmental impact statement is required "whenever more than a moderate effect on the quality of the environment is a reasonable probability." This is not meant as a strict statistical probability test. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

CAPABLE OF BEING ACCOMPLISHED (House)

Q: Does the phrase "capable of being accomplished" in section 3 maintain the existing law?

A: Yes it does. SEPA currently requires agencies "to use all practicable means, consistent with other essential considerations of state policy" to preserve and enhance environmental quality. The dictionary defines the word "practicable" as "capable of being accomplished." This determination is made by the government agency, which is the entity responsible for SEPA compliance. Section 3 provides that an agency can deny a project if the impacts cannot be sufficiently mitigated.

ENFORCEMENT OF MITIGATION MEASURES (House)

Q: Does the bill continue the right of private citizens to bring SEPA lawsuits and to seek judicial enforcement of mitigating conditions?

A: Yes. The bill expressly provides for the right to challenge substantive and procedural compliance with the act. The existing right to a healthful environment is not amended in this bill. Conditions to mitigate environmental impacts are governmental actions under Section 3 of the bill, and lawsuits may be brought under Section 4 to ensure that they are enforced.

ATTORNEYS FEES (Senate)

Q: Does the bill impose attorneys fees in every case; what protection is there against harassment of plaintiffs; can a court award more than one thousand dollars in a lawsuit; for example, because of multiple defendants?

A: The bill does not impose attorneys fees. It allows a court in its discretion to award up to a maximum of one thousand dollars in fees if the court makes certain findings. The findings are findings of law, not of fact or intent; they are intended to be as objective as possible and to prevent expensive and harassing discovery of a party's motivations and group affiliation if any. Although an award may be made at the trial court level, the total liability for attorneys fees for a lawsuit under this act is one thousand dollars, regardless of whether there are multiple defendants or appeals.

SOCIOECONOMIC IMPACTS (Senate)

Q: Does the bill include analysis of the impacts of a project upon urban areas, communities and neighborhoods?

A: Yes. The bill specifies that impacts on the "built" environment and on the "natural" environment must be analyzed. This includes the impacts upon, and the quality of, our physical surroundings, whether they are in wild, rural, or urban areas. The term "socioeconomic" does not have a uniform meaning and has caused a great deal of uncertainty. Rather than using a vague and confusing term, the bill specifies the traditional areas of urban environmental concern, such as public services, transportation, environmental health, and land and shoreline use, including housing, noise, aesthetics, and so on.

ENVIRONMENTAL HEALTH AND HOUSING (House)

Q: Section 7(1)(f) refers to "environmental health" as an element of the environment; does this include human health? Also, this provision refers to "housing"; does this include low income housing?

A: Yes. Environmental health is a broader category which includes human health and the health of all living things. Housing includes low income housing affected by a proposal.

ELEMENTS OF THE ENVIRONMENT (House)

Q: The bill lists certain elements of the built environment and examples of items to be included as subheadings in the rules. Some people call these "socioeconomic" elements. It is my understanding that the bill clarifies but does not overrule the result in the Barrie II case and would require consideration of subheadings such as noise and aesthetics to continue to be included. It is also my understanding that agencies, which would include local government, may discuss any types of impacts in EISs, including impacts which may not be environmental in nature. Is this correct?

A: Yes. The bill specifies the major headings, and the Department of Ecology would still be able to list subheadings in the statewide SEPA rules. The rules recommended by the Commission on Environmental Policy, which was created by the legislature in 1981, would include noise, aesthetics, housing, recreation, historic and cultural preservation, among other things, as subheadings under "land and shoreline use." Environmental impacts in these areas would be required to be considered under SEPA. Although other items cannot be required under SEPA, a local government or other agency has the option to include analysis of any impact in an environmental impact statement.

AGENCY RULE REVISIONS (House)

Q: Sections 3 and 8 require government agencies to adopt certain policies, rules, and regulations not later than 180 days after the effective date of the statewide rules to be adopted under Section 7. Can they later update, amend, or adopt new ones?

A: Yes.



Washington State Legislature

Commission on Environmental Policy

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

April 11, 1983

MEMORANDUM FOR REP. DENNIS DELLWO

FROM: SEN. ALAN BLUECHEL

SUBJECT: SSB 3006

Mr. Peter Eglick made a number of comments, on behalf of neighborhood groups, in his testimony Friday before the House Environmental Affairs Committee. It may be helpful for you to know that over the past two years, the Commission on Environmental Policy and its technical committees considered the questions and subjects raised by Mr. Eglick. Some of the matters were analyzed and discussed in considerable detail. A number of these points are addressed in the Commission's initial report and in the section-by-section summary of the bill.

"Probable" (secs. 1 and 7, pages 1 and 10)

Mr. Eglick said that the term "probable" differs from existing law. This is incorrect.

The state supreme court has stated in at least five cases that a significant impact exists and an EIS is required "whenever more than a moderate effect on the quality of the environment is a reasonable probability". ASARCO v. Air Quality Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979). See also the Sisley, Marino, Swift, and Norway Hill cases.

The term "probable" is used so that the EIS requirement is not applied simply to impacts which will definitely occur -- which would be a far too narrow test -- but also to impacts which could occur. One purpose of preparing an EIS is to learn what the impacts are, and how severe they would be.

The use of this word also follows existing law by requiring discussion of those impacts which might well occur -- and not merely those which are possible, remote, or speculative. The supreme court has repeatedly stated that discussion of remote or speculative impacts is not required under SEPA. See, e.g., Cheney v. Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976). Also see Initial Report of the Commission on Environmental Policy (1983), part one at 2-3 (CEP Initial Report).

A question was raised about nuclear accidents (severe impacts with a statistically low probability of occurrence). The case law covers this situation under the term "significant", which requires consideration of an impact's intensity

Senator Alan Bluechel, Chairman • Senator W.H. "Bill" Fuller • Senator Margaret Hurley • Senator Al Williams
Representative Richard "Doc" Hastings • Representative Homer Lundquist • Representative Eugene V. Lux
Representative Georgette Valle • Judith M. Runstad • James W. Summers • Chris Smith • Norman L. Winn
Jim Whiteside • Isabel Hogan

Final Report
Page 55

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

(severity) and unknown risks to public health and safety. See, e.g., CEP Initial Report, part three at 58. (Also see the extensive rulemaking and case law on inclusion of Class 9 accidents and Table S-3 by the Nuclear Regulatory Commission.) This is a well-established interpretation of the act, and nothing in the bill would change it.

We received some comments in our public hearings requesting the revised rules to mention expressly, in the definition of "significance", those situations where an impact may not be statistically great but would be very severe if it occurred. This is the normal and appropriate function for SEPA rules (as you may know, the statute does not define "significance", but directs the rules to do so). I would expect such a recommendation from the Commission to DOE.

In short, SSB 3006 codifies -- it does not alter -- the existing law regarding "probable".

Scoping Notice (Sec. 1, page 2)

Mr. Eglick suggested adding the phrase "upon adequate notice" to the scoping requirement. SSB 3006 and the Commission's recommendations currently cover this. The suggestion is redundant with the meaning of scoping.

Scoping itself is defined in term of giving notice and opportunity to comment. CEP Initial Report, part three at 57.

Even after the technical committees made their initial recommendations, the Commission itself spent over two months defining the scoping process and how it would work, prior to unanimously adopting the recommendation on July 27, 1982. The Commission's report states:

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 its scope.

CEP Initial Report, part one at 3 (emp. supp.). The draft rules recommended by the Commission would require agencies to give notice under the same provision as notice for environmental impact statements.

The section-by-section summary of SSB 3006 states that the rules will establish the actual methods and procedures for scoping (page 4).

Thus, SSB 3006 would amend RCW 43.21C.110(1)(a)(SSB 3006, page 9) to require the rules to include procedures for public participation in scoping. This section has served the state well since 1974 and should be adequate to ensure that the rules contain proper notice provisions.

The suggested amendment is unnecessary. Furthermore, it is mischievous because it does not specify what constitutes adequate notice (this is what the rules are for).

Time to Adopt Policies

Mr. Eglick complained that six months was too short a period for agencies to designate their SEPA policies. The Washington Environmental Council comments on SB 3006 requested 120 days (January 5, 1983 public hearing comments, page 2). SSB 3006 extended the time by two more months to 180 days. (See Sec. 8, pages 11 and 12 of SSB 3006.)

The requirement to have SEPA policies is not new. It was enacted in 1977. Many agencies currently have them, and the bill would not require redesignation. CEP Initial Report, part three at 75.

Mr. Eglick also did not point out to the committee that the six month period begins after the effective date of the new rules, which would be at least 3 months after the bill would go into effect. (SSB 3006, page 11, line 30 and page 12, line 10.)

Concern was voiced that agencies be able to revise these policies over time. This is precisely the intent of the amendments to RCW 43.21C.120 (Sec. 8 of SSB 3006), which make the section self-perpetuating, and would clearly extend SEPA's requirements to new agencies or localities which may be created. Revisions in statewide and agency policies and procedures can be made without the need for future statutory amendment to this section. See page 16 of SSB 3006 section-by-section summary.

Mr. Eglick also asked the consequences of an agency's failure to adopt policies. If this occurs, the agency would be violating SEPA and would be acting illegally if any actions subject to SEPA were taken. There are, for example, several federal court cases where the courts directed and supervised laggard agencies' adoption of NEPA procedures immediately. The likely consequence is any discretionary actions taken by the agency in the absence of SEPA policies could be declared invalid. County and city attorneys and chief executives are not likely to subject their agencies to this.

"Capable of Being Accomplished" (Sec. 3, page 4, line 12)

Mr. Eglick suggested deleting the phrase that mitigation measures must be capable of being accomplished.

Since SEPA's enactment, this has been the operative phrase in the statute for requiring mitigation. RCW 43.21C.020 (unchanged by SSB 3006) requires agencies to use "all practicable means, consistent with other essential considerations of state policy" to preserve and enhance the environment.

The dictionary defines "practicable" as "capable of being accomplished or effected". This is in accord with existing case law and with the existing 1975 state guidelines (see, e.g., WAC 197-10-440(11)(c), page 8 of section-by-section summary of SSB 3006). Each agency continues to be responsible for deciding what mitigation conditions are reasonable and feasible to require of applicants. RCW 43.21C.060; SSB 3006, Sec. 4.

This phrase does not alter existing law at all.

Enforcement of Mitigation Measures (Sec. 4, page 4)

Concern has been voiced about whether the request for an appeal to be linked to a governmental action precludes a citizen lawsuit to enforce mitigation commitments. It would not.

As you may know, some interests have long advocated that SEPA is merely a disclosure law and should not be used to condition or deny projects. The Commission examined this issue in great detail over several months, hearing presentations from diverse interests. The Commission concluded that SEPA should have "substantive" effect and reaffirmed its conclusion by recommending that the bill add explicit authority to the existing statute for agencies to "mitigate" impacts. See page 6 of SSB 3006 section-by-section summary and CEP Initial Report, part one at 5 .

SSB 3006 adds a statutory right in SEPA to challenge whether governmental action complies with SEPA's requirements. This includes the substantive requirement in RCW 43.21C.030(1) -- not changed by SSB 3006 -- that: "to the fullest extent possible, the policies, regulations, and laws of the State of Washington shall be interpreted and administered" in accord with SEPA.

Since 1977, any mitigation measure imposed under SEPA must be identified in the relevant environmental documents and stated in writing as a condition by the agency. RCW 43.21C.060. By the very terms of SEPA itself, a mitigation condition is a governmental action.

The bill merely states: "The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action." SSB 3006, Sec. 4(1), page 4, lines 34-36. Since mitigation conditions are specific governmental actions, such a lawsuit will obviously be related to a "specific governmental action."

Thus, the requirement to have SEPA challenges linked to governmental actions does not eliminate a citizen's right to challenge an agency's: (1) lack of imposing a mitigation measure at all; (2) determination that a mitigation measure is adequate for the impact; or (3) enforcement of the mitigation measure as a condition. This intent is unequivocally stated in the section-by-section summary of SSB 3006 (page 8).

Appeal Period (Sec. 4, page 5)

Mr. Eglick suggested that section 4 be amended to impose a 30 day SEPA statute of limitations. Because this amendment would reduce citizens' abilities to challenge SEPA compliance, the Commission rejected this approach.

SEPA does not contain a mandatory statute of limitations. Instead, it creates an optional "notice of action" which, if used, sets a time limit for appeal. RCW 43.21C.080. SSB 3006 section-by-section summary at 9.

Many decisions made under SEPA are never subject to time limits for filing challenges. Most governmental actions do not currently have a statute of limitations, and agencies often do not use the optional "notice of action". The common law of laches applies (a reasonable time under the circumstances). Courts have heard SEPA cases filed 11 months after a rezone decision. Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980).

You previously asked about the ability to bring a lawsuit to enforce mitigation measures. As you know, mitigation measures may take several years to implement, and any environmental damage from noncompliance may occur years later. A flat 30 day limit for any type of SEPA appeal, if that is what was suggested, would be too short and inflexible and would undermine substantive protections.

SSB 3006 simply guarantees a 30 day period to file a lawsuit in those situations where another applicable law already sets a statute of limitations. SSB 3006 section-by-section summary at 9-10. The Commission believed that the existing law of laches provided adequate protection for all parties for other situations. SSB 3006 intentionally does not establish a mandatory statute of limitations for all SEPA challenges, because this could undermine SEPA's purposes and policies.

Mr. Eglick also questioned whether the section was understandable. One of the difficulties in dealing with SEPA appeals is that SEPA is an "overlay" on other laws, and great care must be taken to avoid inadvertent and inconsistent alteration of these other appeal procedures. This section was reviewed by a wide cross-section of people who felt it was adequate, and that the rules and DOE handbook would be able to explain it more graphically and at greater length. The Commission spent more than two months on the appeals process to try to avoid mistakes. Suggestions which may sound simple, such as a flat 30 day appeal limit, can cause serious harm to the act and citizens' rights.

Typed Transcript (Sec. 4, page 7)

Mr. Eglick complimented the acceptance of a taped transcript for administrative hearings and suggested forcing judges in the courts to use tapes as well. While this may be commendable from a cost standpoint, it is impractical to tell judges that they cannot have written transcripts of proceedings.

SSB 3006 includes provisions encouraging judges to use tapes and thus lower court costs: "A taped or written transcript may be used". SSB 3006, sec. 4, page 7, line 2. If a judge still wants a written transcript, the bill would encourage transcription of only those portions which are necessary, in order to reduce costs. This provision incorporates existing court rules and case law and should lead to lower costs than at present.

The Commission felt it was inappropriate to tell a judge that he or she had to listen to tapes (of varying quality) and simply could not have a written transcript of the relevant portions of the record.

Attorneys Fees (Sec. 4, page 8)

Mr. Eglick suggested the provision be deleted as unnecessary. This provision received careful examination by the Commission and was limited in SSB 3006 to a very narrow set of circumstances. CEP Initial Report, part 2 at 10-11.

Public agencies and private applicants have expressed concern that, for a small filing fee (e.g. \$75), a lawsuit can delay or halt a multimillion dollar project because of inflation or loss of financing. Citizens and environmental groups have expressed concern that restricting access to the courts is unacceptable because SEPA relies on citizen on judicial enforcement.

The Commission agreed that restricting judicial access should not be included in the bill. There are no limitations on standing or any bonding requirements, both of which have been sought by industry. CEP Initial Report, part one at 6.

SSB 3006 reflects agreement that some financial responsibility would be appropriate if a court in its discretion made specific findings under an objective standard that a suit was both frivolous and without reasonable basis. SSB 3006 section-by-section summary at 11. In discussions on this provision, Mr. Eglick and Mr. Leed said that their lawsuits at the trial court level cost on the order of \$15,000-\$20,000. They cannot seriously argue that a limit of \$1000 including any appeals, if awarded at all, would have a chilling effect (assuming, for argument's sake, that a court found they brought a frivolous suit without reasonable basis).

This provision is also far narrower than other attorneys fees bills now moving through the legislature, unopposed by many of those objecting to SSB 3006.

Elements of the Environment (Sec. 7, page 10)

Mr. Eglick suggested distinguishing between the "natural" environment and the "human" environment. This conflicts with both NEPA and SEPA. It would be even more confusing than the current situation.

NEPA uses the term "human environment" in the statute. 42 USC 4332(2)(C). In contrast, SEPA uses only the term "environment". RCW 43.21C.030(2)(c).

The NEPA regulations do not define the "human environment" in two parts, as Mr. Eglick suggested, nor do they use a list of elements of the environment.

Since the mid-1970s, SEPA has used a list of elements of the environment to bring some certainty to those subjects which must be analyzed in EISs. This approach is different and more specific than the federal approach because of the vast number of local actions under SEPA, which required a simpler and more

(ab627)

certain method than NEPA. While the approach is different, the same types of environmental impacts have been included under both laws. See SSB 3006 section-by-section summary at 14-15.

Much effort has been made to attribute exclusionary intent to SSB 3006. The intent, quite simply, was to be logical.

Under the current SEPA guidelines, the list is divided into two parts: the "physical" and the "human" environment. This is illogical. The physical elements (earth, air, water, wildlife, energy) all involve extensive human interaction. These elements are our "natural" resources.

The human elements all involved human interaction with physical change, from public services and transportation to land use, housing, aesthetics, and historical/cultural preservation. The "built" (human-made) environment, a term used in the NEPA rules, is a more accurate description. 40 CFR 1502.16(g); CEP Initial Report, part three at 29, 31-32.

Under the NEPA regulations, the entire environment is the "human environment", and it means human interrelationships with the natural or physical world. 40 CFR 1508.14. The applicable federal case law plainly state that "relating project impact to the effect on the physical environment, such as air, water, and ecosystems, implements the intent of Congress in enacting the statute. [citations omitted.] The reference point of physical environmental effects serves also to confine scarce resources for EIS preparation to those cases where they are most needed, a goal our circuit has identified as an appropriate one." Goodman Group v. Dishroom, 679 F.2d 182, 185 (Ninth Cir., 1982).

NEPA does not treat "human environment" as separate and distinct from the natural or physical environment. The federal courts have rejected the idea that human environment means those things affecting humans: "The fallacy of the plaintiffs' expansive definition of 'human environment' is apparent from the statement in their brief that 'Congress obviously intended by its use of the phrase 'human environment' to require an EIS in all situations where a major Federal action has a significant effect on humans.' Since nearly all major Federal actions significantly affect humans, plaintiffs presumably would require environmental impact statements for every major Federal action. This certainly goes far beyond the Congressional intent in enacting NEPA." Nat'l Assoc. of Gov't Employees v. Rumsfeld, 418 F. Supp 1302, 1305-6 (1976), aff'd 523 F.2d 1051 (emp. supp.).

The problem with simply amending SSB 3006 to add "human environment" as a subset of "environment" would be precisely the implication suggested above: that any impact upon humans -- not environmental impacts -- would require SEPA analysis. This conflicts with existing law and policy under both SEPA and NEPA.

There are many reasons for being concerned about the suggested amendment. It would signal a radical expansion of SEPA, making it an impact statement requirement for every human activity, from tax equity to rate equity to racial equity. Any private or governmental proposal could be held up on virtually any

ground, and the size of impact statements and the public resources for staffing them could be staggering.

Continued confusion and litigation will result unless the law sets some parameters -- both a required minimum (floor), as well as a limit (ceiling) on what is required to be included in EISs.

There were more than 60 cases dealing with the confusing phrase 'socioeconomic' under the former 1973 federal guidelines. The number has dropped to about 9 under the new rules adopted in 1978.

We can continue the current protections and contents of EISs and have certainty. But to do so requires saying what we mean, not leaving things open to illogical categories, confusing terms, and years of litigation.

Retroactivity (Sec. 15, page 13)

Mr. Eglick suggested that this process would render pending cases moot. This is extremely unlikely. The bill clearly states that the appeals and substantive authority sections (secs. 3 and 4) are prospective only. The Commission stated that this is "to avoid affecting the rights and remedies of any project currently underway and in the midst of decisionmaking and appeal procedures." CEP Initial Report, part two at 16.

The only provisions which an agency may apply retrospectively deal with the codification or recodification of existing law (secs. 1 and 6) or with rule-making (secs. 5, 7, and 8). It is hard to see how the only retrospective section changing the statute directly, rather than through new rules, would pose a problem. It simply allows an agency to do scoping or to organize an EIS logically (sec. 1).

Conclusion

The Commission examined these and hundred of other issues in the course of the past two years. Recommendations were not made lightly and were based on many viewpoints through an extraordinarily open public process.

Some helpful clarifications have been suggested which are appropriate for inclusion in the rules.

In most, if not all, instances there is no debate over intent. This should be evident from the discussion in the Commission's report and bill summary. SSB 3006 provides ample authority for the rules to explain and interpret the act further. I would be glad to work with you or any member of the committee who may be concerned about whether some of these points will be covered in the Commission's final report and the rules, so that the intent is unequivocal. Many of us also have no hesitation to seek corrective legislation if the courts depart from the stated intent of this bill.

(ab627)

At this juncture in the legislative session, and after exhaustive Senate debate, possible amendments should be carefully scrutinized, for they are likely to delay and jeopardize the bill's enactment. I am not asking you to share my enthusiasm for the bill or the process which created it, though I hope you would. I do hope that when you have had an opportunity to review these items, you will conclude that they have been adequately addressed.



Washington State
Legislature

Commission on Environmental Policy

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

May 1983

MEMORANDUM TO AGENCIES

SUBJECT: SEPA Legislation (SSB 3006)

Purpose of this Memorandum

The Governor signed legislation into law on April 23, 1983, which amends SEPA. A copy of SSB 3006 is enclosed.

This memorandum is intended to alert you to the new statutory changes and to provide guidance and information on the new law, in order to assist your agency to carry out its responsibilities under SEPA and SSB 3006. Because new state and local rules will take between six months and a year to be adopted, this guidance is being issued to encourage agencies, courts, and other concerned parties to interpret and administer SEPA revisions in a uniform and consistent manner.

Many of the new statutory provisions give direction to the Department of Ecology (DOE) regarding revised rules. Most of the reforms in the SEPA process will therefore occur through revised rules.

The state Commission on Environmental Policy, created in 1981, developed SSB 3006 and is now completing its final report and its recommendations to DOE on the rules. New rules will probably be adopted by DOE in the fall, following rulemaking proceedings under the administrative procedure act. DOE public hearings will probably occur in July or August, shortly after DOE receives the Commission recommendations.

Once the new rules are adopted, each state agency and local government will have six months to designate its SEPA policies (if it has not already done so) and to revise its SEPA procedures.

Specific Provisions of SSB 3006

SSB 3006 is effective immediately (except for section 3 governing substantive authority, which goes into effect in 180 days). Perhaps the major effect of SSB 3006 on agencies' existing SEPA practice is found in section 4 on the appeals process. This sec-

Senator Alan Bluechel, Chairman • Senator W.H. "Bill" Fuller • Senator Margaret Hurley • Senator Al Williams
Representative Richard "Doc" Hastings • Representative Homer Lundquist • Representative Eugene V. Lux
Representative Georgette Valle • Judith M. Runstad • James W. Summers • Chris Smith • Norman L. Winn
Jim Whiteside • Isabel Hogan

Final Report

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

Page 64

tion creates a more uniform appeals process and governs agency administrative appeals as well as judicial appeals under SEPA. This section is explained in some detail in the attached guidance, in order to promote uniform interpretation and avoid confusion in a difficult area of law.

The other section which affects your agency now is section 1. This section codifies existing law and practice and encourages environmental impact statements to be focused and organized logically. The section states that: (1) EISs are required and are written on environmental impacts which are probable, adverse, and significant; (2) individual environmental review is not required on proposals which are categorically exempt (this does not eliminate judicial review of categorical exemptions contained in the rules, however, as the bill summary and enclosed set of questions and answers explains); (3) agencies must consult with other agencies and the public to identify and focus on the relevant impacts; and (4) EISs can be organized logically.

The existing guidelines (WAC 197-10) encourage concise and useful environmental documents and public participation. Many agencies and applicants have not fully implemented these provisions for fear of being challenged procedurally. SSB 3006 is intended to provide support to agencies to administer SEPA's valuable substantive and procedural protections with less paperwork and cost for all concerned.

Conclusion

During the comprehensive review which has occurred over the past two years, a broad consensus emerged that SEPA and its environmental review process is very important and can be improved, particularly in the way the law is administered. We sincerely hope that state agencies, municipal and public corporations, and counties will work with each other and with concerned citizens, environmental, and business interests to build on the this consensus and to improve the SEPA process as an important tool in planning and decisionmaking.



Senator Alan Bluechel
Chairman

Enclosures:

Interim Guidance on SEPA Implementation
Attachment 1 Appeals Process
Attachment 2 Qs & As on SSB 3006
Attachment 3 Section by Section Summary of SSB 3006
Attachment 4 SSB 3006



Washington State Legislature

Commission on Environmental Policy

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

MAY 1983

INTERIM GUIDANCE ON SEPA IMPLEMENTATION

Substitute Senate Bill No. 3006 (SSB 3006), amending the State Environmental Policy Act (SEPA), was signed by the Governor and went into effect on April 23, 1983. SEPA applies to all agencies of the state, including state agencies, municipal and public corporations, and counties (hereafter, agencies). RCW 43.21C.020.

SSB 3006 does not affect most of the existing SEPA statute (RCW 43.21C). SSB 3006 leaves 17 provisions untouched; amends four provisions (two relate to rulemaking which has yet to occur, and one continues the existing forest practices provision by deleting a sunset clause); and repeals, recodifies, or decodifies nine provisions for housekeeping purposes. It also adds four new sections. These are described in the Attachment 3.

Because of the lack of legislative history on SEPA, the Commission and the Legislature made a conscientious effort to provide legislative history in its comprehensive review of the act. The two principal documents are a set of Questions and Answers exchanged on third reading in the Senate and House (Attachment 2) and the Section by Section Summary of SSB 3006, which was revised accordingly from the Commission's Initial Report and which accompanied the bill through both Houses and will be printed in the Commission's Final Report (Attachment 3).

Effective Date

Because SSB 3006 is effective immediately (except for section 3 governing substantive authority), this interim guidance is being issued to assist agencies meet their responsibilities in carrying out the act.

A major purpose of the two year comprehensive review leading up to statutory and rule changes is to make the SEPA process simpler, more uniform, and administered better. This interim guidance is intended to promote uniform interpretation and implementation of SEPA and SSB 3006 until there are new statewide SEPA rules.

Section 3 of SSB 3006 -- which amends existing provisions for agency conditioning or denying of proposals on environmental grounds under SEPA -- does not go into effect for six months (October 23, 1983). Please note, however, that agencies are

not be required to designate SEPA substantive policies or adopt revised SEPA procedures until six months after the effective date of the new statewide SEPA rules to be issued by the Department of Ecology (DOE). This provision is explained in more detail below.

SSB 3006

SECTION 1 - Significant Impacts

When EIS Required. Section 1 reaffirms existing law by stating that EISs are required when environmental impacts are probable, adverse, and significant. EISs are required to analyze only such impacts in order to focus on important environmental issues. EISs may, but are not required to, discuss beneficial environmental impacts or impacts which are not significant.

Probable. "Probable" refers to impacts which are reasonably likely to occur, in contrast to impacts which are merely possible or remote or speculative. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred (as in a serious nuclear reactor accident). This section also allows discussion of the required contents of EISs to be consolidated and logically organized.

Scope and Consultation. Section 1 requires agencies to consult with other agencies and the public to identify the significant impacts and limit the scope of EISs. The existing SEPA guidelines encourage this (see, for example, WAC 197-10-405,410), and many agencies have developed their own methods for agency and public consultation. SSB 3006 requires the new state rules to specify the procedures for "scoping" (section 7(1)(c)). Therefore, in the interest of minimizing administrative disruption, we believe that agencies may continue to use their existing consultation processes and rules until the new procedures are adopted.

Agencies should at the least announce that an environmental impact statement is being prepared and that the public and other agencies may comment on its scope. "Scope" consists of the range of actions, alternatives, and impacts to be analyzed. This may be done by press release, published notice, newsletter, signs, mailings, or other methods which an agency may wish to use. Agencies may, but are not required to, have procedures or meetings for scoping until and unless specified by the new statewide rules, which have yet to be adopted.

Retrospective Option. Agencies may, but are not required to, apply the provisions of section 1 -- such as scoping and focused

and logical EISs -- to SEPA compliance or environmental reviews currently in process (section 15). Otherwise, the provision applies to SEPA reviews commenced after April 23, 1983, which is the effective date of the act.

SECTION 2 - Forest Practices

SSB 3006 deletes the sunset clause from the existing forest practices provision (RCW 43.21C.037). This means that the existing provision remains in the law. The existing provision contains, among other things, a statutory exemption for Class I, II, and III forest practices but not for Class IV forest practices.

SECTION 3 - Supplementary Authority

Section 3 amends the provisions relating to conditioning or denying governmental action under SEPA. The Section by Section Summary of SSB 3006, which was prepared by the Commission and accompanied SSB 3006 through the legislative process, is appended in Attachment 3. Although the summary explains the changes in this section, several points should be emphasized.

Deadlines. The section contains two time deadlines:

1. Effective date of the section: The requirement to make findings.

The section goes into effect in six months, at which time agencies cannot deny proposals under SEPA unless significant adverse impacts are identified in an EIS and reasonable mitigation measures are insufficient to mitigate the identified impact. In other words, after October 23, 1983, agencies must make the two findings specified in the section if and when they deny a proposal under SEPA. Conditions or denials may be based upon current SEPA policies until the deadline for "formal designation" (see # 2 below). Agencies may, of course, deny a proposal under other available authority.

2. Deadline for formal designation: The requirement to designate SEPA policies for conditions or denials.

All agencies must formally designate their SEPA policies no later than six months after the effective date of the new statewide SEPA rules. This will be later than October 23, 1983 and will coincide with the date by which all agencies

must adopt their own revised agency SEPA procedures (section 8). It will probably be sometime in early 1984.

Agencies would be well-advised to begin the process of identifying their SEPA policies now, in order to avoid problems with the statutory deadline. The failure to meet the deadline could have two consequences: (1) agencies may not be able to use SEPA's substantive authority to control environmental impacts; and (2) any discretionary actions taken by the agency could be declared invalid because the agency would be in violation of SEPA (RCW 43.21C.060 and .120).

Agency SEPA Policies. Several points should be noted:

1. Sections 3 and 8 are written so that agencies are not required to designate or redesignate SEPA policies if agencies have already done so. SSB 3006 merely requires that policies be designated by a certain date.
2. SEPA policies must be identified by every agency. The policies must be incorporated into regulations, plans, or codes. In the case of local government, formal designation means designation by the appropriate legislative body.
3. The deadline for designating SEPA policies and revising agency SEPA procedures is the same -- six months after the effective date of the new state rules. Agencies may adopt their policies and procedures at the same time or in the same document if they wish.
4. Sections 3 and 8 would not prevent agencies from updating, revising, or adding policies in the future, after initial designation.
5. This section does not specify or change the level of detail for agency SEPA policies from that in the existing law, enacted in 1977 (RCW 43.21C.060). This section is intended to give agencies sufficient latitude to articulate policies broadly enough that they need not predict every future environmental problem or concern. It is expected that some agencies will be more specific than they have been in the past and that agencies will develop substantive standards. The intent of this requirement is for agencies to prepare a document which contains agency SEPA policies, so that applicants and members of the public know what these policies are and can, along with agency decisionmakers, actually find, read, and use these policies. This section is not intended to allow agencies to adopt policies which conflict with the state's environmental policy set forth in SEPA.

SECTION 4 -- Appeals

This section includes a statutory right of appeal: a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of SEPA (sec. 4(1)).

Any appeal under SEPA must be linked to specific governmental action (this includes lack of a SEPA determination which may be required). In addition, as a general rule, SEPA appeals must treat the underlying governmental action (such as a decision to approve or reject a project or plan) together with any accompanying environmental determinations under SEPA (such as the existence or vailidity of environmental documents or mitigation conditions imposed under the authority of SEPA). As a general rule, SEPA appeals must be brought at the same time as appeals on the underlying governmental action subject to SEPA compliance.

The appeals process specified by SSB 3006 is explained in further detail in Attachment 1. The time limits for commencing lawsuits under SEPA are illustrated in Figure 1 in Attachment 1.

SECTION 5 - Deference to State Rules

Section 5 states that the rules to be promulgated by DOE as a result of SSB 3006 shall be accorded "substantial deference" by the courts in the interpretation of SEPA (the rules are binding on agencies). Because the major reforms are being made in the rules, rather than in statute, this provision was included to ensure that citizens and courts look to the rules for interpreting SEPA and providing a much-needed sense of uniformity and consistency. This doctrine has had a salutary effect in the implementation of the federal reform rules under NEPA.

SECTION 6 - Council on Environmental Policy

Section 6 continues the provision for the Council on Environmental Policy, which expired in 1976, in the statute. Because of the state's fiscal situation, it was felt to be an inopportune time to reestablish the Council, so it remains essentially a latent authority which may be reactivated in the future.

SECTION 7 - Content of State SEPA Rules

Section 7 directs DOE to issue new statewide "uniform rules" on SEPA. It authorizes DOE to utilize the proposed rules developed by the Commission on Environmental Policy, which was established in 1981 to review SEPA. The section requires DOE to follow the rulemaking provisions of the administrative procedure act, including public hearings and consideration of comments.

The remainder of the section describes subjects which DOE must include in the rules. These items are described in the attached Section by Section Summary of SSB 3006 and in the Questions and Answers on SSB 3006 exchanged on the floor of the Senate and House, which is appended in Attachment 2.

As noted in the cover memorandum, the Commission will be making its final recommendations to DOE prior to July 1, 1983. DOE expects to adopt rules in the fall, following the rulemaking procedures of the administrative procedure act and the direction specified in SSB 3006.

SECTION 8 - Agency Rules

Section 8 requires agencies to designate SEPA policies and to revise their own SEPA procedures, as discussed above in section 3. This section also requires agencies to revise their procedures whenever statewide rules are revised. Agencies may update, revise, or add to their SEPA policies and procedures at any time on their own.

Agencies may adopt their policies and procedures in a single document or in several documents, and at the same time, or at different times. The deadline for designating policies and revising procedures as a result of SSB 3006, however, is 180 days after the effective date of the new statewide rules.

Section 8 adds a requirement that when new agencies or local governments are created, they must adopt SEPA policies and procedures within 180 days of their establishment.

SECTION 9 - DOE Workshops and Handbook

Section 9 directs DOE to conduct annual statewide workshops and to publish and update a SEPA handbook. One of the problems in the past was the lack of continuous oversight and exchange of information and techniques for administering SEPA. A major pur-

pose of this provision is to assist people in improving the implementation of SEPA, so that bad habits can be avoided and better understanding and working relationships can be developed among all those who are interested in SEPA. DOE will work with state and local agencies and concerned citizens to carry out these responsibilities within available resources.

DOE would welcome ideas from all concerned parties on ways to implement these responsibilities.

SECTIONS 10-17 - Statutory Housekeeping

These provisions contain basic technical statutory, or housekeeping, measures. As part of its two-year comprehensive review, the Commission on Environmental Policy identified a number of provisions in SEPA which were no longer functional or should be reorganized. Sections 10-14 accomplish this. These provisions do not affect ongoing agency responsibilities.

Sections 15 and 17 govern the effective date of SSB 3006, as explained in the beginning. Sections 3 and 4 are prospective only, in order to avoid affecting the rights and remedies of any project currently underway and in the midst of decisionmaking and appeal procedures.

Sections 1 and 5-8 may be applied by agencies retrospectively, but, as a practical matter, this should only affect section 1 (because sections 5, 7, and 8 refer to the new rules which have yet to be adopted by DOE).

Section 8 would also expressly allow agencies to designate SEPA policies under RCW 43.21C.060 within the next six months, if they have not done so under the deadline imposed in the 1977 amendments to .060. This is would be irrelevant in any event under the designation requirement in section 3.

Conclusion

This guidance is in memorandum form, and does not purport to be a rule. It is intended to provide advice from a statutory body with special expertise and responsibilities for SEPA oversight. It is being issued so that the objectives of the SEPA reforms can be furthered by government agencies with as much insight, uniformity, and common sense as possible, until new

statewide rules go into effect.

We urge all those concerned with SEPA to turn to the enclosed legislative history of SSB 3006 for additional guidance on interpreting specific provisions of the act. DOE and the Commission on Environmental Policy should be consulted for further information and advice.

We also hope those concerned with SEPA will make an effort to be informed about and participate in the administrative rulemaking process at the state and local level.

Attachments

- Attachment 1 Appeals Process
- Attachment 2 Qs & As on SSB 3006
- Attachment 3 Section by Section Summary of SSB 3006
- Attachment 4 SSB 3006

ATTACHMENT 1
INTERIM GUIDANCE ON SEPA IMPLEMENTATION
Commission on Environmental Policy

APPEALS PROCESS (Section 4)

Right of Review. This section includes a statutory right of appeal: a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter (sec. 4(1)). Appeals are to administrative, legislative, or judicial bodies, unless otherwise noted.

Any appeal under SEPA must be linked to a specific governmental action. This includes the lack of a SEPA determination which may be required. This provision is intended to make sure that SEPA's substantive mandate is met by considering environmental factors in the context of agency decisions and actions.

The subsection states that SEPA "is not intended to create a cause of action unrelated to a specific governmental action". This simply echoes SEPA's basic purpose: to make sure that the government gives appropriate consideration to the environment and uses all practicable means, consistent with other essential considerations of state policy, to preserve and enhance environmental quality. RCW 43.21C.020 and .030. This phrase also helps to clarify the time for commencing any appeals.

This section does not alter the existing law on standing or on the standards for judicial review.

Timing of Review. This section codifies the general rule that SEPA appeals should treat the underlying governmental action (such as a decision to approve or reject a project or plan)* together with any accompanying environmental determinations under SEPA (such as the existence or validity of environmental documents or mitigation conditions).

Generally, SEPA appeals must be commenced at the same time as appeals on the governmental action subject to SEPA. The reason for this general rule is to integrate, as much as possible, consideration of environmental factors under SEPA with normal agency planning and decisionmaking.

* The agency action subject to SEPA compliance is commonly referred to as the "underlying governmental action" (sec. 4(5)).

The section specifies exceptions to the general rule, however. It allows agencies to have an appeal on a determination of significance/nonsignificance before making a final decision (sec. 4(3)(a)). This is an individual agency option, and is neither required nor prohibited.

For purposes of judicial review, SEPA determinations and substantive agency action must always be reviewed together (sec. 4(6)(c)). A lawsuit on the underlying governmental action must still be filed within the time period set by the applicable state or local statute of limitation. The SEPA portion of a lawsuit, however, is not required to be filed within the time period for challenging the underlying governmental action.

Instead, SSB 3006 provides a 30-day period for filing the SEPA portion of a lawsuit in those situations where a statute or ordinance set a time limit for appealing the underlying governmental action (sec. 4(5)). The phrase "statute or ordinance" is used because it is intended that the time for filing the SEPA portion of a lawsuit not be shortened as a result of administrative or court rule. Although the time period for appealing the underlying governmental action may be less than 30 days, this provision is included to provide a 30-day period for filing a SEPA lawsuit, in order to allow time to review environmental documents and prepare a lawsuit.

Notice of Intent. There is one additional procedure in section 4, which applies only when there has been an agency appeal proceeding and there is the 30-day time limit for filing a lawsuit discussed above. When the parties have been through an agency SEPA appeal and have been notified of the result of the appeal, a party who wishes to file a lawsuit must inform the agency of this intention.

Section 4(5)(a) requires the party to submit a "notice of intent" to the SEPA responsible official of the intention to bring suit. This notice must be given within the time period for appealing the underlying governmental action. This is a simple notice and does not require lawyers, pleadings, or supporting documents. This notice is a statement of intent, and does not obligate a party to file a lawsuit.

There may be more than one underlying governmental action, such as several permits or approvals for a project, each having a time limit for commencing a lawsuit after the agency appeal proceeding. In that case, the notice of intent should be submitted within the latest of the time periods which apply to the underlying governmental action. As noted in point #5 below, agencies should probably consider the 30-day period for bringing the SEPA portion of a lawsuit to run from five days after the agency mails a notice to the parties of record (or otherwise gives official notice in

accordance with its rules) of the agency's appeal decision and the time limit for commencing judicial review.

The "notice of intent" requirement is included in the law because the vast majority of agency appeals never go to court. This notice would enable agencies and applicants to know whether their proposals will be challenged further or whether they can proceed with their projects without unnecessary delay waiting for an appeal period to expire.

Figure 1 illustrates the procedures and timing of appeals under section 4.

Procedures. The following points are important in understanding the appeal provisions:

1. Agencies are not required to have SEPA administrative appeals. Experience has shown that agency appeals frequently reduce the pressure for lawsuits. If an agency has SEPA appeals proceedings, they must conform to the requirements in this section.

2. Agencies and/or applicants may continue to use the "notice of action" in RCW 43.21C.080. SSB 3006 affects the notice of action as follows: (i) the newspaper publication may be accomplished within the period for appealing the underlying governmental action, which may be shorter than needed to meet the publication requirements of RCW 43.21C.080; (ii) the time period for appeal will continue to be 30/90 days, unless there is a statute or ordinance requiring an earlier appeal of the underlying governmental action, in which case the appeal period will be 30 days (for consistency and uniformity); and (iii) the term "action" cannot simply refer to SEPA procedural determination.

3. Neither SEPA nor SSB 3006 create a mandatory, across-the-board statute of limitation. Rather, they provide for: (1) an optional "notice of action", which, if used, triggers a mandatory time period for challenging agency action and SEPA compliance; this time period is 30 days for private proposals and 90 days for public proposals (RCW 43.21C.080); and (2) the filing of the SEPA portion of any lawsuit within 30 days, if another statute or ordinance already contains a time period for filing a lawsuit on the governmental action (SSB 3006, sec. 4(5)).

4. The common law of "laches" (no unreasonable delay in commencing a lawsuit) would continue to govern the timeliness of bringing SEPA actions when there is no notice of action or no overlapping time period in statute or ordinance for appealing the

underlying governmental action subject to SEPA. This remains unaffected by SSB 3006.

5. Notice of the time to commence an appeal should not be given prior to final agency action, with the exception of sec. 4(3)(a) noted above. For a notice of action, RCW 43.21C.080 specifies the time as the date of last newspaper publication. If there is an agency appeal under sec. 4(3), the time to commence a judicial appeal should probably be considered to run from five days after mailing of notice to the parties of record (or giving of official notice in accordance with agency rules), in order to allow some time for mail delivery or distribution of the notice. This is suggested as a reasonable approach, and the precise procedures should be specified by the rules which DOE will adopt.

6. Section 4(3) directs agencies to minimize multiple levels of appeal and to consolidate procedural and substantive appeals under SEPA. Agencies may continue to have an administrative appeal on each successive SEPA procedural determination, namely, the adequacy of a determination of significance/nonsignificance and, later, the adequacy of a final EIS. This section does not allow a separate appeal on other aspects of SEPA procedural compliance, such as scoping or draft EISs. It was felt that such additional "interlocutory" appeals would disrupt the environmental review process and would not be ripe until the final EIS was issued.

7. Section 4(7) allows the parties on mutual consent to take their appeal to the state Shorelines Hearings Board in Olympia. This includes agency as well as judicial appeals. The purpose of this provision is to allow parties to use non-judicial ways to resolve disputes, which may prove faster and less expensive. This section would require a superior court to certify the Board's final order to appellate court, further expediting the appeals process.

8. The attorneys fees provisions and other aspects of section 4 are explained in more detail in the enclosed Questions and Answers and Section by Section Summary of SSB 3006 (Attachments 2 and 3).

Attachment/Figure 1

FIGURE 4 : TIMING OF JUDICIAL APPEALS UNDER SEPA

SUMMARY: THE EXISTING NOTICE OF ACTION IN RCW 43.21C.090, IF FILED, ALLOWS 30 DAYS FOR FILING A SEPA LAWSUIT ON PRIVATE PROPOSALS AND 90 DAYS FOR FILING A SEPA LAWSUIT ON PUBLIC PROPOSALS. A NOTICE OF ACTION MAY CONTINUE TO BE USED UNDER SSB 3000. THE MAIN CHANGES UNDER SSB 3006, SECTION 4, ARE:

- (1) THE SEPA PORTION OF A LAWSUIT MUST BE COMMENCED IN 30 DAYS IF THERE IS A TIME PERIOD IN STATUTE OR ORDINANCE FOR JUDICIAL APPEAL OF THE UNDERLYING GOVERNMENTAL ACTION SUBJECT TO SEPA (REFERRED TO BELOW AS "OTHER APPEAL PERIOD").
- (2) IF THERE IS ANOTHER APPEAL PERIOD AND THERE HAS BEEN AN AGENCY APPEAL PROCEEDING - AND A PARTY MAY WANT TO FILE A SEPA LAWSUIT - THE PARTY MUST SUBMIT A "NOTICE OF INTENT" TO FILE A SEPA LAWSUIT TO THE SEPA RESPONSIBLE OFFICIAL WITHIN THE TIME PERIOD FOR FILING A LAWSUIT ON THE UNDERLYING GOVERNMENTAL ACTION.

TIME PERIODS FOR APPEAL	REQUIREMENTS	TIMELINE
1 NOTICE OF ACTION (NOA) / NO OTHER APPEAL PERIOD	TWO CONSECUTIVE WEEKLY PUBLISHED NOTICES, THEN...	
2 NOA / OTHER APPEAL PERIOD AGENCY APPEAL FIRST NO AGENCY APPEAL	AGENCY GIVES NOTICE TO PARTIES OF RECORD AFTER AGENCY APPEAL, THEN: APPELLANT GIVES "NOTICE OF INTENT" WITHIN OTHER APPEAL PERIOD 30 DAYS TO FILE LAWSUIT AFTER LAST PUBLICATION OF NOA 30 DAYS TO FILE LAWSUIT AFTER LAST PUBLICATION OF NOA (NO "NOTICE OF INTENT")	
3 NO NOA / OTHER APPEAL PERIOD AGENCY APPEAL FIRST NO AGENCY APPEAL	AGENCY GIVES NOTICE TO PARTIES OF RECORD AFTER AGENCY APPEAL, THEN: APPELLANT GIVES "NOTICE OF INTENT" WITHIN OTHER APPEAL PERIOD 30 DAYS TO FILE LAWSUIT AFTER AGENCY NOTICE TO PARTIES OF RECORD 30 DAYS TO FILE LAWSUIT AFTER AGENCY GIVES OFFICIAL NOTICE (NO "NOTICE OF INTENT")	
4 NO NOA / NO OTHER APPEAL PERIOD	COMMON LAW OF "LACHES" (NO UNREASONABLE DELAY IN FILING A LAWSUIT)	

The Rules
WAC 197-11

3

3

3

PREFACE TO THE PROPOSED RULES

The Role of Rules in SEPA

The quality of the administrative rules for carrying out SEPA is central to the act's success. Legal commenters have observed that the statute is written in broad terms, more in the style of a constitution than a typical statute. A practical set of procedures is needed to make the law work as intended.

The act therefore requires the department of ecology (DOE) to issue uniform statewide rules. The act specifies, in one of its longest sections, what the rules must contain.

The SEPA process, like that of its federal cousin NEPA, has been defined by administrative rules more than many people realize. Legislation and court cases may grab headlines, but the administrative rules have given shape to the SEPA process from the early 1970s through the present. Recognizing this fact, the legislature directed the Commission to review SEPA's administrative rules and practices.

In addition to a renewed commitment by all interests to work together to make SEPA work as intended, better rules may be the single most effective way to improve the SEPA process. Rules establish concrete mechanisms to carry out the act's environmental protection mandate and to meet the three aims of reducing unnecessary paperwork, duplication, and delay; simplifying the procedures and making the process more predictable; and improving the quality of environmental decisionmaking, including public involvement.

The Materials in this Report

The proposed rules are in Appendix B. This Preface explains some of the background for the proposal and indicates some of the alternatives considered by the Commission.

The Summary of Proposed Rules, which follows, highlights the main features of the proposal and the process which generated the recommendations. It is similar to a traditional rulemaking preamble, which explains the rule's purposes and provisions.

The Section by Section Analysis of the Proposed SEPA Rules, which concludes this section, helps the reader to understand the format of the rules and highlights aspects of the rules and drafting considerations. The Section by Section Analysis is an administrative history, similar to the Section by Section Summary of the legislation. It is intended to help people understand the basic concepts and intent of the rules.

Problems with the Existing Process

The Commission's study found that SEPA has been a positive influence on state and local decisionmaking, but several important problems have developed under the statute.

First, while the state has issued and periodically revised a set of guidelines for implementing the environmental impact statement (EIS) process, the status of these guidelines is not unequivocal. Some court decisions have not referred to them in interpreting the statute. In addition, the term "guidelines" connotes an advisory, rather than a mandatory, function. Another problem has been that the scope of the existing state guidelines is largely confined to the EIS process. There is a lack of direction on other important procedural and substantive requirements of SEPA.

As a result of these factors, inconsistent agency practices have evolved under the statute. This in turn has impeded interagency coordination in preparing environmental analyses and making decisions affecting the environment. It has also caused uncertainty and confusion among those outside of government seeking a role in the EIS process and has diminished their ability to contribute relevant information and make informed comments on an agency's analysis. It has caused the private applicant the bewilderment of being confronted with a host of different means of implementing the same law.

Third, many environmental impact statements contain technical evaluations which are difficult for the layperson to decipher. Such documents are more likely to be put on the shelf as reference material than closely read by the final decisionmakers. Highly technical analyses are also difficult for applicants and the general public to comprehend and comment upon.

Fourth, the preparation of environmental impact statements has tended to become an end in itself rather than a means to better decisionmaking. RCW 43.21C.030(2)(c)'s requirement of a "detailed statement" is the most clearly defined, firmly established standard under SEPA, and the existing guidelines focus on the preparation of this document. It was only natural that members of the public seeking a role in the process, and courts faced with the task of interpreting this law, should focus on the EIS. In the meantime, however, SEPA's relationship to agency planning and decisionmaking has not received sufficient attention.

Fifth, in anticipation of litigation, some agencies adopt the "kitchen sink" approach to discussing virtually all environmental issues raised by a proposal rather than concentrating on the significant ones. The resulting "litigation proof" documents often include large accumulations of materials that are difficult to assimilate both by members of the public attempting to evaluate a project and by officials required to consider environmental factors in their planning and decisionmaking. The document, in attempting to become legally defensible, has simultaneously become less useful to its readers.

Finally, when taken together, these deficiencies have contributed to a broader and more general problem under the statute. Agencies have generated excess paperwork, produced unnecessary delays, and duplicated their efforts under the statute (specific problems and issues for certain key parts of the process

are explained in this report's executive summary). As a result, scarce resources have been unproductively spent, and private applicants needlessly inconvenienced. Equally important, effective public participation and public confidence in the process has been weakened as a result.

Improvements in the SEPA Process

In 1981, the legislature directed the Commission to 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 year's experience with the Act has revealed, and promotes certainty with respect to the requirements of the Act. (Section 1, Chapter 289, Laws of 1981, RCW 43.21C.200.)

The legislature enacted the Commission's statutory recommendations for improvements to the act in SSB 3006, including the provision governing the content of the state SEPA rules, directing DOE to:

... adopt and thereafter amend rules of interpretation and implementation of this chapter (the state environmental policy act of 1971), subject to the requirements of chapter 34.04 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. (Section 7(1), Chapter 117, Laws of 1983, RCW 43.21C.110(1), amended text underscored.)

The legislature also added a new section to the act directing that:

The rules promulgated under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter. (Section 6, Chapter 117, Laws of 1983, RCW 43.21C.100.)

By directing that uniform rules be issued and given deference, the legislature sought to clarify the status of the department's guidance on SEPA and to provide for a single set of uniform regulations to be followed by all agencies. When all agencies follow the same rules, it should make it easier for them to work alongside one another in preparing and considering environmental analyses under SEPA. Uniform rules will also provide the public with a clearer understanding of how state and local government functions under SEPA, and make it easier for applicants and other citizens to acquire the information they need to participate in the SEPA process. The confusion that exists in the private sector, both among business and individual citizens, which was created by different agencies applying the same law differently with different terminology and different procedures, will be greatly reduced. Some variations will still be necessary and desirable because of different agency missions and programs and local conditions, but they will occur within a more uniform set of rules.

Similarly, by extending coverage of the rules to SEPA's substantive and procedural requirements, instead of limiting them to the environmental impact statement, the legislature sought to achieve a better balance in the interpretation of SEPA. The rules should place renewed emphasis on what happens both before and after an EIS is prepared and focus attention on the extent to which environmental analyses actually contribute to environmental quality. The EIS will assume its appropriate role, not as an end in itself, but as a step in the SEPA process that begins with planning, goes through assessment, and, if necessary, a detailed statement, to a decision, and ends with follow-up on that decision and better procedures for appeals.

Major Alternatives Considered by the Commission

The Commission considered a wide range of alternatives in its review. These alternatives may be grouped in three types: alternative concepts for the rules; alternative frameworks for the SEPA process; and alternative provisions for the rules.

1. Alternative Concepts for the Rules

The Commission considered several concepts for improving SEPA practices and procedures. The "no action" alternative was considered and rejected because it was felt necessary to address the problems with the existing process. In addition, failure to do so would probably result in considerable legislative controversy and could result in legislation that would seriously weaken SEPA.

A variation on the "no action" alternative was to retain the existing guidelines, and either upgrade their status by requiring that they be given deference or by enacting them legislatively. It was felt that this also would not sufficiently address the existing problems with the current guidelines.

Similarly, the Commission carefully considered and rejected the alternative of making no changes in the statute, but only changing the administrative rules. The Commission felt that administrative exhortations to reduce paperwork had not been effective enough, and that clear statutory direction was needed. In addition, the appeals provisions required statutory authority, and the Commission's comprehensive review revealed the need for some minor technical amendments, such as repealing or decodifying various sections.

It should be stressed that the existing guidelines have served the state and the SEPA process well. They were studied and used by other states and by the federal government when the new Council on Environmental Quality NEPA Regulations were developed in the late 1970s. The proposed rules incorporate a large amount of the existing guidelines, and many provisions verbatim. The guidelines are about seven years old now, however, and required updating in some form to keep pace with improvements in environmental assessment techniques and procedures and to increase certainty of the act's requirements.

Equally important, although the guidelines include many farsighted concepts, it was felt that a new impetus was necessary to get people to break bad habits and to administer the SEPA process as intended. One of the major challenges

of the Commission was to recommend improvements that would provide this impetus, while limiting changes in the procedures and avoiding disruption that could be caused by a new process. The Commission and its Drafting Committee spent a great deal of time trying to minimize the transition to a new set of rules. This will also preserve important precedents under the current law and reduce the need for major new court interpretation.

Another alternative concept was to use simple revision of the existing guidelines by adding or deleting some specific language. This "line out" approach to improving the rules was rejected because it was not possible to fit the recommended improvements into the current organization (focused, as it is, on EISs) without causing conceptual inconsistencies or excessive repetition. Furthermore, the Commission members placed heavy emphasis on producing a set of rules written in simpler English than many of the current guideline provisions. Although the proposed rules are organized similarly to the existing guidelines, there are some important differences (see the explanation of the format of the rules in the Section by Section Analysis). The Commission therefore decided to recommend the adoption of a chapter 197-11 WAC, rather than awkwardly fitting the changes into the existing chapter 197-10 WAC.

One area of consideration was the relationship between statewide and individual agency rules. One alternative was to adopt a single set of statewide rules, with no individual agency rules. Although this would provide greater uniformity, it would also be excessively rigid. Another alternative was to make the statewide rules shorter and more general, placing greater emphasis on individual agency procedures. Although this might result in better integration between SEPA and an individual agency's decisionmaking process, this more decentralized approach would increase the disparities among agency SEPA practices, making SEPA harder to understand for citizens and business alike.

Consideration was also given to legislating a new set of rules, but this alternative was rejected because it was felt that the act itself should not be forced to assume the detailed administrative role. In addition, future administrative improvements may be necessary or desirable without opening up the statute for amendment.

2. Alternative Frameworks for the SEPA Process

The basic functions of the SEPA process are generally stated in the first three sections of the act. The SEPA process itself has been defined by the rules, as noted earlier. Many variations are possible, and some of those considered are summarized below.

The Commission considered the concept of "functional equivalence": the requirements for analysis, documents, or public participation under another law would substitute for SEPA compliance. This concept currently has limited application in California and, arguably, for certain U.S. Environmental Protection Agency permits. In addition, the state Energy Facility Site Evaluation Council requested the Commission's endorsement to exempt their actions from SEPA, claiming a duplication of requirements. Other state and local laws were

examined as well to determine if these would provide comparable requirements to SEPA. The Commission concluded that they would not.

Rather than adopting the functional equivalent approach or allowing substantial new agency SEPA exemptions, the Commission focused on better ways to achieve SEPA's recognized mandate of integrating the environmental review process with agency planning and decisionmaking. Better integration was a major focus of the federal reforms in coordinating environmental reviews and permit processing and in reducing paperwork, duplication, and delay, as well as a focus of recent state efforts to improve permit processing.

Consideration was also given to prescribing a single EIS, rather than a draft and final document (coupled with requirements to document an agency's response to comments and its decision). There was also considerable sentiment for a "briefing style EIS", which would require the document to be quite short (more on the order of an EIS summary), reserving background analysis for supporting documents. Although such EISs would probably be read and used, it was felt that many writers were not skilled enough to produce a high quality short document and that vital information would be omitted.

Another framework was the "multi-staged" process, where each stage would be confined to discrete issues and provide the agency with the basis for deciding whether the proposal should be considered further or not. There would be an environmental review associated with a proposal's feasibility, a more detailed assessment at the conceptual stage of the decision process, a detailed statement focusing on actual design, and an implementation document covering mitigation and monitoring. Although this would allow the issues to be quite narrow for each stage of the process, it was felt that a multi-staged process was too complicated and would not be flexible enough for the great variety of proposals subject to SEPA.

The creation of a "mini-EIS" was discussed at length. The Commission concluded that the better approach was to require a procedure for identifying the significant impacts to be discussed in a given EIS -- however broad or narrow these might be -- than to create a new label which would be difficult to define and use. The rules therefore plainly allow an EIS to cover one or two impacts, if those are the only significant ones. Likewise, a proposal may have significant impacts for every element of the environment, and the EIS would analyze all of these. The Commission concluded that the descriptive checklist, mitigated DNS, and scoping requirements provided a more logical conceptual basis, greater certainty as to SEPA requirements, and a more practical and flexible approach than creating a formal creature called a "mini-EIS".

It should be emphasized, however, that the Commission applauded those agencies that developed the "mini-EIS" approach as a way of dealing with unnecessarily bulky EISs, and the rules would not preclude an agency from putting any label it wished on its EIS. The Commission concluded that such labels, whether "mini", "focused", "scoped", "programmatic", "generic", and so on, are simply superfluous or confusing. In contrast, the labels "project" and "nonproject" (an EIS on a "policy", "plan", or "program") may be helpful to the reader because they indicate the type of proposal which is the subject of the EIS.

3. Alternative Provisions for the Rules

Many of the alternative provisions for the rules are apparent in reading the intent and considerations discussed in the Section by Section Analysis. The introduction to the Summary of the Commission Meetings, later in this report, may give the reader some helpful insights into this subject as well. One example here may be useful to understand some of the Commission's deliberations.

The concept of scoping has been one of the innovations in the proposed rules most uniformly praised by members of the public ranging from business to environmentalists. There was considerable discussion of the concept and its implementation.

Some people objected to the formality of the scoping process, expressing the view that compliance with this provision in every case would be time consuming, would lead to legal challenges by citizens and private organizations with objections to the agency's way of conducting the process, and would lead to paperwork if every issue raised during the process would have to be addressed to some extent in the environmental impact statement.

Some people stated that agencies themselves were in the best position to determine matters of scope, and that public participation in these decisions was unnecessary because any scoping errors that were made by such agencies could be commented upon when the draft EIS was issued (as is currently done) and corrected in the final EIS. Some urged that scoping at least be more open-ended and flexible and that agencies merely be encouraged rather than required to do scoping.

Other people said that the idea had not gone far enough in imposing uniform requirements and that more stringent requirements were necessary to ensure that agencies did not avoid the responsibility. Some urged that a scoping meeting be held in every case, and that a scoping document be issued reflecting the decisions reached during the process. Some people felt that the benefits of scoping would not be attained without formal appeals of scoping determinations. Others felt that this would delay the process, comments could not be absolutely definitive at this point, and changes were inevitable as a result of studies during the EIS process (finding out the environmental impacts is one of the purposes of preparing an EIS).

The range of concerns and considerations by the technical committees and the Commission reflect many of the creative tensions present in any administrative, planning, and decisionmaking process. Far from indicating that an early scoping process is unworkable or inherently flawed, the Commission was able to design a scoping requirement that is sensitive to these concerns and could substantially improve the existing SEPA process. Scoping will allow shorter, focused EISs and earlier public participation. This will help to identify and resolve problems early in the process before applicants agencies spend a lot of time and money on a proposal and are less interested in considering alternatives. Because of its informality, the success of scoping in each case will depend on the participants' commitment to make it work. This was also viewed as its greatest strength, because ultimately it is the people involved in the SEPA process on any given proposal who can make the process work. The

rules cannot legislate dispute resolution any more than they can legislate good, clear writing. The rules can provide the direction and the tools.

Responding to the Legislative Process and to Comments on the Initial Draft

Many of the concerns about the legislative intent of SSB 3006 have been incorporated into the proposed rules. For example, concern was raised about the meaning of the term "probable" impacts because there might be a situation where severe impacts would occur even though the probability of occurrence would not be high, such as a nuclear reactor meltdown. In addition to defining "probable", the rules plainly state that "the severity of an impact should be weighed along with its likelihood of occurrence" (197-11-060(5)(c) and 970(2)(f)). These rules include helpful language suggested by the League of Women Voters.

Concern was also expressed that scoping provide adequate notice. The idea of simply using the phrase "adequate notice" would engender uncertainty and future controversy over what constitutes adequate notice, which has been one of the problems with the existing SEPA process. The rules not only define scoping as giving notice to agencies and the public, they specify notice requirements, including the SEPA REGISTER, newspaper publication, and posting on site (197-11-510), and encourage additional methods (197-11-520). This is stronger and more certain than the current guidelines for giving notice on EISs.

Another concern was preserving the option for agencies to include information on any impacts, whether or not environmental, in EISs as a result of scoping comments or an agency's own analysis. The rules maintain this option, consistent with the legislative intent that neither agencies nor applicants are required to include such material (197-11-440 and 448).

Some concerns and suggestions were not incorporated into the rules because they were rejected in the legislative process. A few examples include: broadening environmental review to require coverage of non-environmental impacts; opening up categorical exemptions to a proposal-by-proposal consideration of whether impacts may be significant; and extending the existing six month deadline for agencies to prepare their SEPA policies and procedures as a result of the revised rules.

As part of the preparation of the final proposed rules, the Commission solicited and received valuable suggestions and constructive comments from many individuals and groups, in addition to comments received prior to and at the Commission's public hearings and during the legislative process. The Commission had previously stated that it intended to correct any problems identified in the draft rules before proposing them. After the Governor signed SSB 3006, Chairman Bluechel invited suggestions from a wide range of groups and individuals for any needed clarifications, before the Commission made its rule recommendations to DOE.

Public officials representing cities and counties held several workshops to furnish the Commission with detailed comments to ensure the rules would work as intended. Industry representatives, such as the Washington Forest Protec-

tion Association and urban developers, and members of environmental and citizen groups, such as the Washington Environmental Council and League of Women Voters, submitted suggestions for specific clarifications, as did other interested persons. Some groups and individuals stated that they would prefer to reserve their comments for the rulemaking process that would be conducted by DOE after receipt of the Commission's proposed rules. It is expected that many of those who commented to the Commission will also be submitting comments to DOE as part of its rulemaking process.

The Commission's careful consideration of the comments on its initial draft rules is reflected in the fact that some 96 sections of the initial draft rules have been improved, largely in response to comments from government officials and the general public. Before their inclusion, the suggestions were reviewed to ensure that they were consistent with SSB 3006, the recommendations of the technical committees, and the decisions of the Commission which were incorporated into the initial draft rules and into SSB 3006.

The willingness of so many concerned citizens with diverse perspectives to volunteer their time and to work together over the past two years is a remarkable and encouraging precedent.

I. OVERVIEW

Title and Number

Chapter 197-11 WAC, State Environmental Policy Act (SEPA).

Statutory Authority for Proposed Rule

RCW 43.21C.110 and RCW 43.21C.200-204.

Summary of Proposed Rule

This rule would improve the SEPA process by updating and simplifying the procedures for compliance with the act. The rule would replace the current SEPA guidelines (WAC 197-10) adopted nearly 7 years ago. These proposed rules were developed by the Commission on Environmental Policy and are being considered for adoption by the state Department of Ecology (DOE), as required by statute.

Purpose of the Proposed Rule

The purpose of these rules is to provide all agencies of the state, including local governments, with an efficient, uniform procedure for translating the law into practical action.

They were developed after careful study of experience in this state, in other states, and in the federal government, to make the law work better for all concerned. For example, the proposed rules reduce paperwork and costs in a number of areas, and they also improve the public's ability to participate earlier in decisions.

It is important to understand that these rules both strengthen environmental protection and reduce red tape on private and government projects, and that new rules can achieve these goals at the same time. The proposed rules were designed to accomplish the intent of the legislature, which can be summarized as three principal aims:

1. Reducing unnecessary paperwork, duplication, and delay.
2. Simplifying the rules and making the process more predictable.
3. Improving the quality of environmental decision-making, including public involvement.

Meeting these objectives will better accomplish the act's objective, which is to protect and enhance the quality of the environment.

Reasons Supporting the Proposed Action and Legislative Intent

The state 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, and making it difficult for business and industry, citizens and environmental organizations, and state and local officials to comply with the law and to participate effectively in public decisions affecting environmental quality.

The legislature therefore amended SEPA in ESSB 4190 (1981) and SSB 3006 (1983). These proposed rules were developed under those amendments (the process is described at the end of this summary).

In brief, the legislature created a bipartisan Commission on Environmental Policy in 1981 and directed it to review SEPA and propose improvements in the statute and rules, if needed.

In addition to proposing the SEPA amendatory legislation enacted into law this past session, the Commission developed and endorses the rules that follow. The Commission, composed of eight legislators and six citizens representing a broad range of interests, was assisted by an advisory committee of nearly 100 people from widely diverse backgrounds. The Commission believes that the proposed rules further the legislative intent and letter and spirit of SEPA and recommends their adoption by DOE.

II. SUMMARY OF CHANGES

The Commission found that the current SEPA process was basically sound, and that the guidelines needed to be updated, simplified, and improved. The Commission is proposing to retain the basic process of using an environmental checklist and draft and final EISs to analyze environmental impacts.

Although the existing guidelines contain valuable guidance, some of the provisions have not been carried out for fear of challenge. The Commission focused its efforts on developing workable procedures so that the act's objectives are carried out fairly and effectively. Some of the highlights of the proposed rules are described below. Reforms in each of the three areas will help to reinforce one another.

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 decisionmakers (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.

III. BACKGROUND

Synopsis of the Proposed Action

The Commission on Environmental Policy, created in 1981, has completed its statutory responsibilities to review and recommend needed improvements in the SEPA process. These proposed rules have been developed by the Commission as a result of an open public process and comprehensive review of SEPA, directed by the state legislature.

These proposed rules have been forwarded to the state Department of Ecology (DOE), to be considered for adoption. SEPA authorizes DOE to utilize proposed rules developed by the Commission and requires DOE to adopt "uniform rules" for implementing the act. DOE must hold public hearings on proposed rules under the administrative procedure act and consider comments on their merits before final rule adoption.

Basis of the Proposed Rules and Legislative Intent

The legislature established a bipartisan Commission on Environmental Policy in 1981 to review SEPA. 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).)

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 the governor on April 23, 1983. SSB 3006 contains specific direction on the contents of these rules (Section 7, Chapter 117, Laws of 1983 (SSB 3006), RCW 43.21C.110.)

SSB 3006 directed DOE to adopt new SEPA rules and authorized DOE to utilize rules proposed by the Commission. The Commission completed its work 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.

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.

SEPA is intended to help public officials make decisions that are based on an understanding of environmental consequences and to take appropriate actions to protect, restore, and enhance the environment. These rules tell agencies what they must do to comply with SEPA's policies and procedures and to carry out the broad purposes of the act.

The Commission took an extraordinary approach in developing this 1983 amendatory legislation. This approach and the composition of the Commission reflects the close connection between the development of these rules and legislative intent as an overall reform package.

The rule revisions and the proposed statutory amendments were developed simultaneously as part of the Commission's comprehensive two-year review. In this process, the proposed rule changes were developed prior to the proposed legislation, so that the reforms proposed and authorized by SSB 3006 would be publicly known and could be considered before enacting the legislation. In addition, this approach meant that legislative changes could be limited to those amendments which were felt necessary to authorize new rule provisions. It is the Commission's intention that the recent legislative enactments and these rules be read together and implemented consistently.

The purpose of the Commission's final report is to provide important and needed legislative and administrative history on the reforms.

Commission Process.

The Commission was greatly assisted by several hundred people in the past two years who provided suggestions on how to make the SEPA process work better. In public meetings which were held in September 1981, the Commission invited testimony from a broad array of public officials, organizations and private citizens, affirmatively involving SEPA's critics as well as its friends.

Among those represented were the Washington Environmental Council, Sierra Club, League of Women Voters, Washington Forest Protection Association, Association of General Contractors, Washington Association of Realtors, Seattle Master Builders, Chamber of Commerce, Washington Association of Cities, Washington State Association of Counties, and state agencies. Scientists, scholars, and the general public were there.

A second set of hearings was held eighteen months later, after the Commission had recommended legislation and a draft set of rules. Four public hearings were held across the state in January at Seattle, Olympia, Spokane, and Yakima. Again, the range of organizations and individuals testifying was equally broad.

There was consensus at the January 1983 public hearings among widely diverse witnesses. All expressed the view that SEPA benefitted the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be improved. Witness after witness said that the length and detail of EISs made it extremely difficult to distinguish the important from the trivial. The degree of unanimity about the direction of the Commission's recommendations was such that, at its hearings in Spokane, city officials, environmental representatives, and an unusual coalition of some 40 industry and labor groups endorsed each other's comments. A week earlier, at the public hearing in Yakima, county planning directors and attorneys, the League of Women Voters, and realtors and industry groups expressed the same sentiments.

The Commission process is described further in the Commission's report. In addition to the four public meetings in 1981 and the four public hearings in 1983, the Commission held 18 meetings. All of these meetings were open to the public, and every meeting had an opportunity for public comment. The Commission members discussed many of the recommendations in great detail.

Most of the staff work of the Commission was done by the Commission's advisory committee and its drafting committee (composed of members of the Commission and its advisory committee). After the initial meetings, the Commission established a large and diverse advisory committee, as authorized by statute, to develop recommendations to the Commission. The advisory committee was composed of nearly 100 people, and divided into five technical committees. The advisory committee members conducted a line-by-line review of the existing statute and guidelines. These technical committees developed recommendations for the Commission's consideration over a period of a year and a half.

More than 100 meetings were held by the Commission's drafting committee and the technical committees and subcommittees of its advisory committee. All of these were open to the public, and many interested citizens participated.

The Commission published its draft of the rules in January, 1983, after 18 months of detailed review of the SEPA process and consultation with many groups and individuals mentioned, as well as study and consultation on the experience of other states and the federal government. The Commission received further comments during its January hearings and the legislative process on the draft rules. In addition, after the enactment of SSB 3006, the Commission sent another letter of invitation to all of the diverse interests on the Commission's co-chairs committee and major organizations testifying at the legislative hearings to invite further comment on any clarifications which might be needed in the rules as a result of the statutory enactment.

These rules are the result of this two-year study and legislative process.

Source: Final Report of the
Commission on Environmental Policy

SECTION BY SECTION ANALYSIS OF THE
PROPOSED SEPA RULES (WAC 197-11)

INTRODUCTION

The Commission's proposed SEPA rules are found in Appendix B. As described elsewhere in this report, the proposed rules are the result of a two-year comprehensive review and of legislative amendments to SEPA.

A set of rules is, by definition, "generally applicable". Consequently, rules govern a wide range of activities. Because SEPA applies to the activities of all government agencies of Washington state, these rules have a very wide application. People are often curious about how a rule was developed or how it would apply in a particular instance. This section by section summary would be extremely long if it tried to explain the possible applications, variations, or alternative provisions that were considered in the drafting of these rules (some of these are mentioned in the preceding preface to this analysis). At final meeting, as well as at prior meetings, the Commission directed the staff to focus on certain areas in preparing this analysis for the final report.

This section by section analysis highlights some of the factors considered by the Commission in proposing these rules. This section tries to provide additional background on the intent of the provisions. This section analysis treats the first seven Parts of the rules in detail because they represent the main changes. The technical material in the last few parts are very similar to the existing guidelines and are therefore only briefly discussed. The forms, which are new, have been simplified so that they should be readily understandable.

FORMAT OF THE RULES

Often, an applicant for a government approval or a citizen interested in a project wants to know how the SEPA process works. Agency staff may be very helpful in explaining the process, but people may want to read rules for themselves to be sure they understand what is required of them or of other people. Many government officials use the SEPA process every day to make decisions. They too need to have a set of rules that is well-organized and readable.

A great deal of thought was given to organizing and writing the SEPA rules so that the rules could be read, understood, and used by a wide range of people -- from people who are unfamiliar to SEPA to those who work with the law every day.

The reorganization from the existing guidelines reflects this emphasis on making the rules more readable. The rules are divided into 11 "Parts", plus an index included with this report. The Parts and the index are designed to help the reader find the section of interest promptly. Each Part contains a statement of purpose to explain why that Part is relevant to the process.

The first Part generally describes SEPA's purpose and how SEPA works. It is not a regulation. It simply gives the reader an overview of the SEPA process and the rest of the rules. The reader will be able to understand the concepts and terms used in the rules better.

Parts 2 through 7 are the basic procedures for the SEPA process. They comprise about half of the rules. Part 2 contains general requirements that apply to SEPA compliance. Parts 3 - 7 follow the SEPA process roughly in chronological order. Part 3 covers what is sometimes called the "front end" of the SEPA process: the use of SEPA in early planning and the decision whether an environmental impact statement is required. Part 4 covers the environmental impact statement, which is prepared if a proposal has a significant environmental impact. Part 5 deals with agency and public participation in the SEPA process, including notice and comment on environmental documents. Part 6 covers the use of existing environmental documents, including supplemental studies. Part 7 covers agency decisions and appeals.

It would be impossible for the rules to be exactly in chronological order, because the SEPA process is like any planning process: its progress depends on many factors and is not simply a straight line from start to finish. There are often starts and stops, revisions and improvements, as a proposal gets refined. The environmental review process under SEPA is a way of identifying and included environmental factors in the decisions that an agency is making. Generally speaking, an agency's SEPA process is only as good as the decisionmaking process it accompanies.

Also, some decisions about reorganization had to be made. For instance, commenting on EISs would come later chronologically than commenting on DNSs. However, it made more sense to consolidate most of the notice, comment, and consultation procedures in one place (Part 5) than to put the applicable requirements with each environmental document. Not only were there some basic similarities on requirements for commenting (such as commenting specifically and within the time periods), but it is easier for citizens, applicants, and agency staff to look at one place in the rules for this information.

Parts 8 through 11 contain more technical material, such as definitions, lists of specific categorical exemptions, detailed procedures for selecting lead agencies, and a compilation of forms for environmental documents. Although these provisions are very important, they were moved to the back of the rules because, in the existing guidelines, they confront the reader with a discouraging mass of technical material right at the beginning. The rules may contain more cross-references as a result, but the overall effect is to put the kind of technical material that is more appropriate as an appendix in the back of the document.

The forms deserve special note because of the effort made to simplify them. In addition to a new environmental checklist, the other forms have been written in plain English, and each one contains the name, address, and phone of the person responsible for the document. Special effort was made to have the forms as matter of fact as possible. For example, the Commission even debated the signature block on the environmental checklist, concluding that the legalistic jargon in the existing checklist should be replaced by a plain

statement that the person signing the checklist understands that the lead agency is relying on the answers. If anything, the bluntness of the new language in the checklist introduction and signature block may result in better attention than the former legal-sounding 'small print'.

There are a number of other ways the format has been improved. The last two or three digits of each form, for example, correspond with its companion regulatory section. The WAC numbers correspond with the Part numbers for Parts 3 - 7 (this was not possible for all of the Parts) and correspond with the hundred series in the existing guidelines (WAC 197-10) to maintain as much continuity as possible with the existing guidelines and ease the transition to the revised rules (e.g., EISs are in the '400 series' of section numbers).

PART I PREAMBLE

The two sections in this Part are informational in nature and do not have regulatory force. As noted in the introduction, they are included in the rules to assist the reader in understanding SEPA's overall purpose and process.

WAC 197-11-010 Purpose of these Rules.

This section emphasizes SEPA's twin focus: its procedural mandate (considering environmental consequences) and its substantive mandate (taking appropriate actions to protect, restore, and enhance the environment). In short, the act requires public officials to think about environmental impacts, and to act accordingly. The phrase "appropriate actions" is used to indicate that SEPA does mandate a particular substantive result, and that a decision on a given proposal will depend on weighing and balancing relevant factors, including other essential considerations of state policy in addition to environmental concerns. By the same token, this section makes clear that SEPA includes an affirmative mandate to preserve and enhance the environment. (See Section by Section Summary of SSB 3006 and 197-11-030.)

The first sentence states, simply and directly, that SEPA establishes a state environmental policy and means for carrying out that policy. The second sentence informs the reader that SEPA's environmental protection mandate is part of the authority of every agency (SEPA's "supplemental" mandate). The third sentence reminds the reader that SEPA is primarily a government management law: it requires government decisions and actions to reflect attention to environmental values. SEPA regulates the private sector by affecting those private actions requiring government approval. The essential purpose of the rules, therefore, is to tell agencies what they must do to comply with SEPA's policies and procedures. This in turn informs applicants and other interested citizens of SEPA's requirements.

WAC 197-11-020 Overview of the SEPA Process.

This section provides an overview for the reader and the general public on the SEPA process. It explains the basis for SEPA's substantive policy mandate (subsection 2) and its procedural mandate (subsection 3).

This section explains that the focal point of the act's procedural requirements is a question of significant environment effects. This section explains the "threshold determination," including categorical exemptions, the environmental checklist, and determinations of significance or nonsignificance. This section explains the "scoping" process leading to a draft and final "environmental impact statement" (EIS). This section also explains the relationship between environmental documents and an agency's decision.

Consideration was also given to including a graphic illustration of the SEPA process for the reader. Such a figure is included in this report (Figure 1, page 16), and the Department of Ecology may wish to consider its inclusion in the final rules.

PART 2 GENERAL REQUIREMENTS

The regulatory requirements of these rules begin in this Part. Certain basic principles and procedures apply to the SEPA process. The provisions in this Part are generally applicable to the SEPA process. Subsequent parts deal with variations or more detailed direction for different aspects of the SEPA process. For example, Part 3 on threshold determinations contains certain time periods applicable to the preparation of threshold determinations. Similarly, the environmental checklist (197-325 and 1325) specifies the content of environment review for threshold determinations, while Part 4 specifies the content of EISs.

The provisions in this Part are the foundation, or building blocks, of the SEPA process. To use an analogy to SEPA, one can say that Part 2 "overlays" the SEPA process.

The provisions of this Part have been designed to be consistent with the remainder of the rules. Thus, where a cross-reference to another rule is cited in this Part, it should be referred to because it governs the applicability of the requirement noted in this Part (except for references given "for example").

The WAC numbers of key sections in this part are retained to the extent possible (e.g. 055, 060, 100), as they are in other parts (e.g. 440, 444, 660), in order to assist a smooth transition to the new rules. In addition, the '100' and '200 series' of sections numbers are not used in order to reserve room for possible future provisions, and in order to continue the use of the '300 series' for the threshold determination.

WAC 197-11-030 Authority.

This section contains the recitations required by the Administrative Procedure Act, including the authority for issuing the rules. This section makes several other observations essential to interpreting and using the rules.

This section notes that: (1) the statute requires these rules to be given substantial deference interpreting the Act; (2) the rules impose uniform

requirements on all agencies (which, in some cases, allow for local options); (3) each agency must adopt SEPA procedures consistent with these statewide rules; (4) these rules replace the previous guidelines in WAC 197-10 and, unlike the previous guidelines, apply to more than just the environmental impact statement process; and (5) the provisions of these rules and the act must be read together as a whole in order to comply with the spirit and letter of the law. This section also cross-references the section governing the effective date of the rules (197-11-1290), which states that the agencies have 180 days to implement these rules.

These additional points are essential to understand the broadened authority of these rules included in the recent statutory amendments. As noted in the preface to this analysis, there was previously some question whether the term "guidelines" carried an advisory connotation, and whether local agencies were required to follow the statewide administrative procedures for the act. RCW 43.21C.110(1) was amended to add the term "uniform rules" to make clear that one of the important reforms is a consistent set of mandatory regulations applying to all agencies. This amendment still allows the department of ecology to issue other kinds of guidance on SEPA, such as "guidelines" and its annual handbook update.

It should be noted that state and local agency SEPA procedures are still required in order to account for variations in the programs and procedures of individual agencies, so that each agency can develop and implement SEPA in a fashion which is integrated with its own particular missions, and activities. (The term agency "SEPA procedures" is used instead of statewide "SEPA rules" to distinguish between the umbrella statewide rules and each agency's own procedures (see 197-11-1122).)

WAC 197-11-035 Definitions.

This section refers the reader to Part 8 for the definitions used in this chapter. As noted above, the definitions are located at the back of the rules, with the more technical material, in order to improve readability.

This section emphasizes an important reform, namely, that the terminology established in these rules shall be uniform throughout the state as applied to SEPA (some terms may have other specialized meanings under other laws). In an effort to assist the reader to use the various parts of the rules together, there are a number of cross-references throughout the rules. The constant repetition of the acronym "WAC" appeared cumbersome in the text of the rules, and all references in these rules to chapter 197-11 WAC are simply cited to 197-11. The code reviser may determine that it is necessary to reinsert the "WAC" in each cross-reference in the publication of the final rules in order to maintain conformity of style in the code, but it is hoped that this simplified format will assist the reader to review the proposed rules, and might ultimately be an acceptable format for these rules in the code.

WAC 197-11-040 Policy and Mandate.

This section encapsulates SEPA's substantive and procedural policy and mandate, so that agencies and the public better understand and use SEPA in the

decisionmaking process. Although this section notes the policies and purposes set forth by SEPA, it was felt extremely important to have such a concise section in the rules themselves, because the rules tend to be the most frequently used document for SEPA practitioners.

WAC 107-11-050 Lead Agency.

This section, requiring early designation of lead agency, was moved to the front of the rules, because subsequent rules will refer to the lead agency and its responsibilities. The lead agency concept is a key concept in the effective and efficient administration of the SEPA process. There are a number of places where a balance must be struck between the roles and responsibilities of the lead agency and other agencies, and these relationships are discussed at the appropriate points in the rules. In addition, the existing guidelines contain more than a dozen highly technical provisions for designating a lead agency. As with the definitions, categorical exemptions, and forms, these sections have been moved to the latter part of the rules and are cross-referenced in this section.

Subsection 3 makes clear that the lead agency is the only agency responsible for making the threshold determination and preparing and deciding the content of EISs. It is the intention of this section that, in a situation where there are joint lead agencies, the nominal lead agency (197-11-1245) has these responsibilities.

WAC 197-11-055 Timing of the SEPA Process.

This section and the following section (197-11-060) are essential provisions, which were carefully developed to improve the SEPA process and clarify existing ambiguities. A detailed analysis of both of these sections would require considerable space. This analysis highlights aspects of these sections.

Subsection 1 stresses that the basic precept of the SEPA process is its integration with agency activities at the earliest possible time. This ensures that the act's basic purpose and policies are met, and that the SEPA process helps to produce decisions that reflect environmental values, avoid delays later in the process, and try to resolve potential environmental problems early.

Although there is no question that SEPA imposes a specific set of requirements in addition to those which may be specified in other planning or permitting laws, the more SEPA is administered in conjunction with and as an integral part of routine agency activities, the greater likelihood that environmental factors will be incorporated into planning and decisionmaking. One of the problems identified in the Commission's review was that SEPA compliance sometimes became segregated from the normal agency planning and decisionmaking process, resulting in unnecessary paperwork and procedures for their own sake, rather than as a means to better decisions. The theme of integration can be seen throughout these rules, from document preparation to the decisionmaking and appeals process.

As population has grown and resources have become scarcer, government regulation has increased over the past century, and multiple agencies and permits are often involved in a given project. One of SEPA's stated purposes is to "coordinate plans, functions, programs, and resources" to meet environmental policies (RCW 43.21.C.020(2)). This section and the following section are designed to assist in meeting that purpose and in meeting the legislature's direction to "establish methods and means of providing for full implementation of the act in a manner which reduces paperwork and delay, promotes better decisionmaking, establishes effective and uniform procedures, encourages public involvement" (RCW 43.21C.200).

Subsection 2 contains the basic statement on the timing of the SEPA process. It draws heavily from the existing guidelines and, like the new federal rules, places its focus on the concept of a "proposal." The term "proposal" (a proposed action) focuses on the timing of governmental activity. A proposal is defined as that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated.

The three key criteria for a proposal are that: (1) an environmental document is prepared as an integral part of an actual agency decision, not as an abstract, scientific, or general study document or device for public review; (2) the decisionmaking process, and therefore the environmental document, should be reviewed at the onset as a set of options or alternative means of accomplishing a goal or objective (recognizing, of course, the limitations of the approach in the context of a proposal by an applicant for a particular project, e.g., 197-11-440(5)); and (3) environmental review must be early enough to influence decisions, but cannot occur until environmental impacts can be meaningfully evaluated.

Although there may be factual questions of precisely when a proposal exists, this provision helps to provide specific criteria which can resolve many issues regarding the timely application of SEPA requirements. The question is more likely to arise for government proposals where the discrete action of submitting an application may not occur. The criterion of having a goal and options for accomplishing it helps to ensure that consideration is early, before reasonable alternatives have been discarded. The phrase "actively preparing to make a decision" was used rather than, for example, "actively considering" alternatives, because the latter phrase could be interpreted to mean that a proposal exists too early, before there is any reasonable likelihood that the agency will be making a decision on ideas being kicked around in the agency. The section also emphasizes that a "proposal" under SEPA must involve an action whose environmental impacts can be meaningfully evaluated; otherwise, there would be no reason to conduct environmental review because useful information would not be able to be given to decisionmakers.

This provision preserves the distinction drawn by the courts between "proposed actions" which have been described to the point of legally requiring environmental review, and merely "contemplated actions," which have not. This section also requires that appropriate consideration of environmental information be completed before an agency commits to a particular course of action, and references 197-11-070, governing what action may be taken before the

environmental review process is complete. Subsection 3 provides more specific direction on the timing of environmental review for certain common types of proposals, namely, applications to agencies, and rulemaking.

Subsection 4 contains an important concept to promote earlier environmental review, before requiring applicants to prepare detailed project plans and specifications. This section requires agencies to adopt procedures for environmental review and for preparation of EISs on proposals of applicants at the conceptual stage as compared with the final design stage. This approach benefits applicants, citizens, and agencies staff, by providing an earlier environmental review process before so much money is spent on a project that considerations of alternatives or mitigation measures become difficult. The reason that this section requires agencies to specify an appropriate process in their procedures--rather than specifying the details in these rules--is to recognize the diversity of state and local agency permits and to allow each agency to develop and integrate such a procedure with its own licensing activities. In other words, this section does not mandate a particularized procedure, but it does require an agency to provide an applicant with the opportunity for environmental review prior to requiring the submission of detailed project plans and specifications.

This section stresses that agencies with jurisdiction should coordinate their SEPA processes and that environmental documents and analysis be given appropriate consideration along with economic and technical considerations by reviewing them along with planning documents to the fullest extent possible, thus helping to implement all of the procedural provisions of SEPA.

WAC 197-11-060 Content of Environmental Review.

This section states that environmental review consists of three items: the range of proposals, alternatives, and impacts to be analyzed.

The term "range" is used in order to recognize that there are numerous variations to each of these three items, and not every variation need be addressed in the environmental review process.

The prior section (197-11-055) covers when SEPA review occurs. This section covers what is reviewed. Although there is an interrelationship between these two subjects, the SEPA process can be more easily understood and used by initially analyzing these two topics as distinct concepts which complement each other.

This section stresses that the content of any given environmental review will depend on each particular proposal, on an agency's existing planning and decisionmaking process, and on the most useful timing for evaluating alternatives and impacts. As noted earlier, specific cross-references control except when they are given as an example.

Subsection 4 describes what "proposals" consist of (197-11-055 described when proposals exist). This section emphasizes that the way in which the proposal is defined is very important. One of the problems identified with the existing guidelines has been the confusing language on the concept of a "total proposal." The concept was extremely valuable in the early and mid-70's, when

it was more common to "segment" or "piecemeal" a proposal into its constituent parts, to avoid SEPA compliance. The existing guidelines, however, do not provide a clear enough standard to define proposals that require analysis in a single environmental document.

Any action can be viewed as a series or range of human activities that will occur at different times and different places and that are related to one another in any number of ways. Many proposed actions have an obvious or intuitive unity which allows decisionmakers and the public to characterize or comprehend the action. For example, most people would view a proposal to construct a high-rise office tower on a specific downtown block as a "single" proposal, even though its impacts could cover a wide geographic area. Many actions, however, are not so obvious or easy to characterize. For example, some proposals have many facets, such as a hydro-project with energy, irrigation, water supply, and related transmission facilities, or the demolition or closing of a government facility in one part of a city to its relocation or construction someplace else. The proposed rules focus attention, quite directly, on the basic question which must be asked: Are the proposed actions related to one another closely enough they should be discussed in the same document?

The rules conclude that proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. Thus, "single" actions and "connected" actions must be evaluated in the same environmental document (also see 197-11-960(2)(A)). "Similar" actions may be evaluated together if an agency determines that doing so would improve the planning and decisionmaking process.

By recognizing a mandatory category of connected actions, the rules provide specific criteria to: (1) ensure that all facets of a proposed course of action are reviewed, and (2) implement the prohibition against segmenting or piecemealing actions, as has been recognized by the courts. By recognizing a discretionary category of similar actions, the regulations encourage agencies to use the environmental review process creatively in conjunction with planning and decisionmaking, but without broadly expanding SEPA's environmental requirements or imposing unreasonable legal obligations (as has been recognized in several state cases which have been declined to require agencies to consider actions which are merely contemplated or possibly foreseeable, but which were not essentially a single course of action).

Subsection 6(f) also provides guidance on how agencies may wish to define proposals if they are analyzing similar actions in a single environmental document. It should be stressed that this subsection is optional and would not require agencies or applicants to analyze similar actions or to require applicants to prepare environmental documents on proposals other than their own. The Commission felt that it was important to include this provision in the rules, however, in order to encourage agencies to think more broadly about environmental issues, especially for their own governmental plans and projects. This provision on similar actions is much like the provision in the federal rules on this subject.

In addition, subsection 6(g) continues the existing provisions providing additional protection against segmenting actions simply because some or all of

the actions are categorically exempt under the rules. Subsection 6(g) is more specific than subsection 6(e); the criteria for connected actions in 6(e) can assist in carrying out subsection 6(g).

The proposed rules do not include separate category of "cumulative actions" because of the problems in defining that concept. It should be stressed that cumulative impacts must be addressed in EISs (see 197-11-960(2)(c)); this is what the existing guidelines and the state courts have required as well.

The concept of a cumulative "action," in contrast to a cumulative "impact", did not seem to provide either greater certainty or protection to the SEPA process. Virtually any proposal in a given geographic area interacts with other proposals in that area. Efficient permit processing and agency decisions could not occur if every proposal had to wait for every other one to be processed. Objective criteria could not be developed for distinguishing between "similar actions" that would require analysis in a single document and those that would not. It was felt that the definition of "action," which expressly includes nonproject actions such as policies, plans, and programs, and the explicit provisions for connected actions and nonexemption of a series of exempt actions (as well as the prohibition against phased review to segment or avoid cumulative impacts in subsection 7), would be sufficient to cover those situations which, as a matter of law, required environmental review in a single document.

The rules also require related proposals to be identified in the checklist (Part A) and EIS (197-11-440(5)(c)(iii)), so that agencies are alert to these other activities, can identify cumulative impacts if any, and can improve intergovernmental coordination. This record will also help agencies to defend their determinations on the scope of a proposal.

Subsection 5 explains the range of impacts to be considered in environmental reviews. This subsection cross-references certain key definitions to implement with legislative intent. It emphasizes that long-term effects must be considered, including those that are likely to exist at least over the lifetime of a proposal. Subsection 5 emphasizes that indirect effects are covered, such as those resulting from growth caused by a proposal, and that environmental impacts do not necessarily respect political boundaries and that a proposal's impacts may extend beyond an agency's jurisdiction, including beyond state boundaries (such as into another state, country, or the ocean, for example). This subsection explains that the range of impacts analyzed in an EIS may be wider than the impacts for which mitigation measures are required of applicants. One example would be where there is a significant impact and the reasonable mitigation measure may be additional land use plans or regulations by the lead agency, which would be completely beyond the ability of an applicant to legislate, but which the EIS should nonetheless discuss.

Subsection 6 on alternatives provides an overview and highlights key provisions on the treatment of alternatives in the SEPA process, which are generally focused on the EIS process, although the environmental checklist and threshold stage do focus in particular on mitigation measures. As noted in the definition of scope, "mitigation measures" are considered one type of "alternative." For purpose of the environmental checklist, they are the type of alternative that is the focus of environmental consideration. In contrast, one

of the main purposes of an EIS, where there is a significant impact, is to make the effort to analyze and focus on reasonable alternative "courses of action" (a substantially different way of addressing the proposal's objective) in addition to mitigation measures and the no action alternative.

Subsection 7 on phased review assists agencies and the public to focus on issues which are ripe for decision and to exclude from consideration issues already decided or not yet ready to be decided. It enables agencies to tailor the environmental review process to the decisionmaking process, in order to avoid duplication, delay, and paperwork and ensure that the significant environmental issues are considered at the appropriate time in the planning and decisionmaking process. The Commission carefully considered the relationship between the phased review provisions and the possibility of improper segmenting or piecemealing of proposals, and not only designed these provisions to be consistent with the rest of 197-11-055 and 060, but included specific protections in (c) and (d) of this subsection.

One of the problems with the existing guidelines and cases has been that the courts have been increasingly frustrated in figuring out complicated proposals that are implemented over time. Some cases have sanctioned "appropriate piecemealing." The Commission felt that this trend would not only undermine basic SEPA principles, but has become a source of confusion, uncertainty, and ambiguity. In developing this section of the rules, applicants expressed concerns that explicit recognition of phased review might result in agency's prolonging the environmental review process by constantly demanding new and supplemental environmental documents. Concern was also expressed, from the other perspective, that inappropriate piecemealing could occur under this concept. The Commission believes that the protections built into this section, which is similar to NEPA's "tiering" provisions, will help place environmental review in the context of the overall decisionmaking process and will focus attention on the significant environmental issues which are ripe for decision, thus improving the nexus between SEPA and the agency decisionmaking. In addition, phased review can be particularly constructive for all those involved in the environmental process to make nonproject environmental reviews more useful (see, for example, 197-11-443) and to handle areas of special design concerns or multiple permit coordination (see, for example, 197-11-740). As suggested by a recent federal review and guidance on NEPA, those are areas -- along with scoping, format, and appeals -- where the annual SEPA workshops may be very useful for regular exchange of experiences and information among public officials, applicants, and the general public.

WAC 197-11-070 Limitation on Actions During SEPA Process.

This section provides a simple and basic standard for deciding whether governmental actions may occur before the environmental process is complete, namely, whether actions have an adverse environmental impact or limit the choice of reasonable alternatives. This section carefully uses the criterion of "any" adverse impact (rather than "significant", which would be too narrow), and the word "limit" alternatives (rather than "foreclose", which would be too narrow, or "prejudice", which would be too broad). Some actions, such as the securing of options, actually have the effect of maintaining or increasing available options. In addition, this section makes clear that various planning and development activities may nonetheless occur at the planning stage.

WAC 197-11-080 Incomplete or Unavailable Information.

This section provides important direction on the difficult question of what to do when information on significant impacts is unavailable or unknown. The basic requirement is that if information on significant impacts is essential to a reasoned choice among alternatives and is not known, and the cost of obtaining it are not excessive and beyond the ordinary or customary costs of obtaining information for impact analysis, the information must be obtained and included in environmental documents.

Environmental documents must also indicate gaps in information on significant impacts where the information is lacking or substantial uncertainty exists. The rules were drafted with the recognition that there are almost always uncertainties about information and impacts. This section is meant to focus on important gaps and significant impacts.

Sometimes information is not available or is not feasible to obtain, but the agency needs to make a decision in the absence of vital information. In this case, the agency shall weigh the need for the action with the severity of possible adverse impact. If the agency proceeds, it must generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed. The rules use the phrase "generally indicate," recognizing that it is difficult to be very specific at such a level of uncertainty. The requirement for a worst case analysis means that a description is given of how bad things could reasonably be, recognizing that the nature and detail of this description will depend on the extent the information can reasonably be developed. A worst case analysis is intended to be a reasonably probable worst case, and not be an analysis based on an extreme application of Murphy's Law (whatever can go wrong will go wrong).

Neither this section nor any other in these rules is intended to require as a matter of law either a strict numerical probability analysis or a formal risk analysis. The appropriate methodology is intended to be governed by the rule of reason. It should be stressed that the purpose of the SEPA procedures is to help make informed decisions about environmental consequences. An environmental document is meant to serve the difficult job of translating technical analysis, whether in the natural sciences or environmental design arts, into information which can reasonably be understood and used in the public policy arena. Environmental documents are not intended to models of dissertations in predictive physical science, but, rather, an effective way to help public officials and citizens understand the significance of impacts, built upon relevant interdisciplinary analysis.

WAC 197-11-090 Supporting Documents.

The rules emphasize that agencies should use existing studies and incorporate the material by reference in each stage of the environmental review process. This section provides a general authorization to do so, with specific safeguards for ensuring that the material is identified and available for inspection. This section makes clear that such documents are part of the agency's record of compliance with SEPA. This is extremely important in order to reduce unnecessary size in EISs. The Commission firmly believes that SEPA requires

rigorous, high-quality environmental analysis and believes, with equal vigor, that the resulting environmental document should be concise and readable so that the environmental information obtained is in fact used in the decisionmaking process. Thus, the intent of this section and of these rules is to recognize that shorter environmental documents supported by the necessary analysis meets the letter and spirit of SEPA. This section recognizes the length and complexity of an agency's planning and decisionmaking process and recognizes the fact that an adequate record, including consideration by decisionmakers of the salient environmental documents, is what SEPA requires.

WAC 197-11-100 Information Required of Applicants.

This section summarizes the information that may be required of applicants, and essentially follows the existing guidelines. It makes clear that applicants may prepare environmental documents and submit information, and may be required to do so under the safeguards stated in the rules. Although an agency has the option to include additional analysis not required under SEPA in an EIS, an agency cannot require an applicant to furnish (provide or pay for) such information, which is consistent with legislative intent. WAC 197-11-315 and 420 make it clear that the evaluation of a checklist and the content of an EIS are the agency's responsibility.

PART III THRESHOLD DETERMINATION

One change in format should be noted because it reflects a change in semantics, if not concept. Under the existing guidelines, a determination that a proposal is categorically exempt has not been considered part of a "threshold determination". Under the existing guidelines, a "proposed action" is not considered an "action" subject to SEPA compliance if it is categorically exempt (WAC 197-10-040(2)). The Commission felt it was confusing to give such a basic term as agency "action" a highly specialized meaning (sometimes called a "legal fiction"), and that it would be difficult for the general public to understand.

Additional confusion was caused by trying to establish independent meanings for the terms "major" and "significant". Under the existing guidelines, for example, it could be said that proposals that are not categorically exempt are "major actions", and that exempt proposals are simply "actions". The legislative history of NEPA, however, indicates that the terms "major" and "significant" were not intended to have independent meaning, but, rather were intended to reinforce each other (this is the interpretation given to the terms in the federal NEPA Regulations, 40 CFR 1508.18).

The proposed rules would simplify this analysis into one basic statutory test, which is, essentially: does a proposal significantly affect the environment? If so, an EIS is required. (See 197-11-305.)

The determination whether a proposed action fits within a categorical exemption is therefore treated as part of a threshold determination, although documentation is not required (197-11-310(5) and 320(2)). The term "action" is not subject to as many specialized meanings, and the terms "major" and "significant" are not given separate meanings. Although this may require agencies to

revise existing procedures, including being more specific about the "threshold determinations" on which agency appeals will be conducted, agencies would have to revise their procedures in any event to conform to new SEPA rules, and this adopts a more straightforward approach. It should be noted that the definition of "action", while no longer a highly specialized legal fiction, still contains certain criteria and limitations in order to assist the user understand the nature of government activities subject to environmental review.

WAC 197-11-300 Purpose of This Part.

This Part specifies SEPA requirements prior to the preparation of an EIS, or when no EIS is required. It covers the "threshold determination": the decision about whether a proposal crosses the threshold of environmental significance and therefore requires an EIS.

The vast majority of proposed actions do not have significant environmental impacts and thus do not require EISs. This Part establishes a system of categorical exemptions and provides a way to review nonexempt proposals and to mitigate their environmental impacts, thus integrating SEPA into early planning and ensuring appropriate consideration of SEPA policies either before impact statements are prepared or in those instances when they are not required.

WAC 197-11-305 Whether EIS Required.

The proposed rules would simplify the basic test for determining whether an EIS is required by going back to basics: this section directs the user of the rules to determine if the activity under consideration meets the basic terms of the statute itself for requiring an EIS. The section dissects the six components of the statutory phrase and cross-references to the definition of each term. If an activity fits within these components, then an EIS must be prepared. The activity must fit within all of these components, except that it may fit within either legislation (subsection 2) or other major actions (subsection 3).

WAC 197-11-310 Threshold Determination Required.

This section states when the threshold determination must be made, who makes the determination, and how it is documented.

This section continues the existing guideline stating that a threshold determination should be made within 15 days and that an applicant is entitled upon request for a date by which the determination will be made. Unlike the existing guidelines, the rules do not specify how short or long the time may be, because this was not identified as a problem to date.

WAC 197-11-315 Threshold Determination Process.

This section explains the process that the responsible official uses to make a threshold determination. The responsible official may decide that the proposal is categorically exempt under Section 320, may decide that the impacts have previously been analyzed in an existing environmental document and adopt

that document for the threshold determination, or may determine the proper timing for environmental analysis and commit to conducting environmental review at that time.

In making the determination, the responsible official must follow the rules governing the use of the environmental checklist, if one is used (a checklist is not required for categorically exempt proposals and for proposals on which there is agreement that an EIS will be prepared, 197-11-325(1)). It should be emphasized that a checklist is not required to be used, and no documentation is required, for a determination that a proposal is categorically exempt (see 197-11-310(4)). The responsible official applies the criteria in Section 305 and in this section to the facts, to the checklist, if one has been prepared, and to any additional information which may be obtained, and must consider mitigation measures which will be implemented by an agency or an applicant.

This section also states certain qualitative factors to be considered in making threshold determinations. These qualitative considerations essentially provide some additional prose explanation on the meaning of the term "significant" for purposes of deciding whether the impacts warrant the preparation of an EIS.

WAC 197-11-320 Categorical Exemptions.

This section specifies the requirements for "categorical exemptions" (defined by 197-11-835 and expressly authorized by the legislative amendment in 1974 and 1981).

One problem with the existing guideline on categorical exemptions (WAC 197-10-170) is that it appears to provide absolute exemptions, without consideration for extraordinary circumstances, until one reads for several pages and discovers WAC 197-10-190, where additional limitations are explained. (The ambiguities caused by the Downtown Traffic case would not have occurred, for example, if the court had simply applied WAC 197-10-190.) In addition, the current guidelines lack a definition of categorical exemptions, which has led to confusion by agencies and the courts. This section is meant to explain plainly and in a manner consistent with the recent statutory amendments to SEPA and long-standing practice by most agencies what is involved in categorical exemptions. The Section by Section Summary of SSB 3006 and the floor Qs & As on SSB 3006 explain categorical exemptions in more detail.

This section states that if the proposal fits within the provisions of Part 9 of the rules (the specific exemptions themselves), the proposal is categorically exempt except as provided in this section. A categorical exemption is plainly described in the definitions (197-11-835) as a type of action, specified in these rules, which does not significantly affect the environment.

Although documentation is not required for categorical exemptions, agencies may note on applications or other documents that a proposal is exempt and include such information in their files. Given the large number of routine actions to which exemptions apply, imposing new documentation, notice, or circulation requirements (where none have existed since categorical exemptions

were created in this state in the mid-'70s) was viewed as an unnecessary paperwork burden.

This section specifies the circumstances in which a proposal--which would potentially be exempted under these rules--shall not be exempt. In other words, if a proposal fits within these circumstances, it cannot be considered for inclusion under a categorical exemption. In summary, these two circumstances are if a proposal is a segment of a proposal (197-11-060(4)(g)) or is not exempt under the provision for environmentally sensitive areas (197-11-1125). This section continues allowing agencies to petition the Department of Ecology to add or delete exemptions, as in the existing guidelines.

It was felt that these provisions and circumstances are sufficiently broad to provide adequate safeguards, especially considering that the adoption of the categorical exemptions themselves require review under the administrative procedure act (APA), and that the courts can, on a case-by-case basis, review whether proposals actually fit within the scope of a categorical exemption in the rules and whether a particular exemption itself is valid.

WAC 197-11-325 Environmental Checklist.

This section requires agencies to use the environmental checklist to decide if an EIS is required, except in certain situations, such as categorically exempt proposals or proposals in which the agencies and applicants agree that an EIS will be prepared. The agency must follow the instructions in the introduction to the checklist, independently evaluate the checklist responses of applicants, and conduct initial review of the checklist without requiring additional information. By providing for the consideration of mitigation measures, the checklist is a useful means for identifying and avoiding or reducing environmental impacts that are not significant.

This section makes clear that the existence of environmental impacts does not mean that a proposal's impact is significant. One problem with the existing environmental checklist is that people add up the number of questions in which environmental impacts are checked, and, if the number is substantial, conclude that the impacts are significant. This is one of the abuses intended to be corrected by the new checklist and rules. Likewise, a proposal may have a single impact, and that impact may be significant. In short, the number of environmental elements which have environmental impacts is not an indication of a proposal's significance.

WAC 197-11-330 Additional Information.

This section specifies the additional analysis that an agency may conduct based on its initial review of the environmental checklist.

WAC 197-11-340 Mitigated DNS.

This section expressly authorizes agencies to incorporate into its threshold determination mitigation measures that an agency or applicant will implement (also see 197-11-720 on mitigation measures, including the requirement to document any mitigation and monitoring decisions).

Subsection 2 creates an early notice provision, which allows applicants to request lead agencies to indicate whether a determination of significance (DS) appears likely. If so, the applicant may clarify or change features of the proposal to respond to the agency's reasons for such an indication. The section intends for agencies to indicate, if requested, both whether a DS appears likely and for what reasons (what appear to be the significant impact(s) and why). The term "clarify" is used, along with "change," because in many instances information or description provided on a checklist is in summary form, and additional clarification by the applicant or agency proposing the action will reveal that possible environmental impacts may not occur, or that adequate mitigation measures have already been provided for in the proposal or will be included in detailed designs. The lead agency must make a threshold determination based upon the clarifications or changes. The subsection also makes clear that, if a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS must be prepared.

In accordance with other provisions in the rules for incorporation by reference and adoption of other documents, the changes or clarifications must be stated in writing, but the documents may be attached to or incorporated by reference into documents previously submitted, and an entirely new checklist or revision need not be submitted.

The Commission considered specifying the precise documentation or requiring applications and/or checklists themselves to be revised, but concluded that this would not only be impractical, but could also add substantial uncertainty to the SEPA process. Frequently a proposal would simply be clarified rather than revised, and this could be reflected in the project description for the project being approved. In many instances, for example, a variety of licenses may be sought, and a requirement of resubmission may cause time periods for processing applications to start over again, thereby causing delay. Furthermore, the types of proposals that may be mitigated vary so widely, from building permits to direct government projects or plans, that a specific form of documentation could inhibit the goal of integrating the SEPA and decisionmaking processes. On the other hand, some record of compliance is necessary. It was felt that requiring the changes to be attached to or incorporated by reference into the documents previously submitted would provide adequate protection, coupled with the protection that mitigated DNSs issued as a result of early review requested by applicants would have public notice and a 15-day comment/waiting period.

Whether or not an applicant uses the early notice process provided in subsection 2, the lead agency may identify and specify mitigation measures that would allow it to issue a determination of nonsignificance (DNS). If the proposal is clarified, revised or conditioned to include those measures, the lead agency must issue a DNS.

The major reason for this section is a recognition that everyone benefits from proponents being allowed to improve their proposals from an environmental perspective early in the process. Another reason for this provision was fairness: a concern by applicants that, unless there was a formal process subject to scrutiny, agencies could make certain demands upon applicants in exchange for granting a DNS, without the demands being reasonably related to

their proposals' actual impacts. Environmental and citizen groups sought this provision to ensure that mitigation measures were considered and implemented for proposals on which checklists are prepared but EISs are not required.

The procedures for issuing a mitigated DNS are explained in the section on DNSs. This section is located before the section on DNSs because it falls logically and chronologically between the analysis of the checklist and the issuance of a DNS.

WAC 197-11-350 Determination of Nonsignificance (DNS).

The proposed rules substantially simplify the provisions for preparing and issuing DNSs. In addition to authorizing mitigated DNSs (previous section), the section eliminates the "proposed" DNS and, instead, has a single DNS. The DNS has more explicit and better public notice and review.

As in the existing guidelines, the DNS and checklist must be sent to other agencies with jurisdiction, and an agency with jurisdiction may assume lead agency status only within the 15-day period for reviewing the DNS. An agency may not act on a proposal for 15 days after DNS has been issued in four situations: (1) if there is another agency with jurisdiction; (2) the demolition of a structured facility not categorically exempted under certain provisions; (3) the issuance of clearing a grading permit is not exempted under the rules; or (4) a DNS which has been issued after an early notice indicating a DS is likely or as a result of the withdrawal of a DS and the substitution of a DNS (197-11-340(2) or 360(4)).

These four types of DNSs were selected because they involved either interagency coordination, essentially irrevocable decisions (demolition clearing), or protection against potential abuse of certain types of mitigated DNSs. It was felt to be a reasonable balance to encourage mitigated DNSs in order to bring environmental considerations into the process early and reduce red tape, but to provide for a brief period in which the public or other agencies may comment on such DNSs to ensure that careful consideration has been given to a proposal's impacts. In this way, proponents of a project benefit from a faster review time with more emphasis on the pending decision, and members of the public and agencies benefit from having environmental considerations brought into the process early with a focus on substantive matters and the opportunity to review these.

The notice requirements strike a reasonable balance between costly and unnecessary notice for every DNS and criticisms of the current guidelines for failing to require public notice of any DNS. It was considered especially important and fair to have notice for those essentially irrevocable actions and for mitigated DNSs that were at one point considered to have, or likely to have, significant impacts.

The criteria for withdrawing a DNS have been simplified to correspond with the same two basic criteria used for any supplemental review under these rules (197-11-660). It was felt fair to require an applicant to pay an agency for any subsequent checklist to be prepared if the applicant procured a DNS by misrepresentation or lack of material disclosure. This would lend greater

public confidence to the environmental review process. Subsection 4 relates to withdrawal of a DNS.

WAC 197-11-360 Determination of Significance (DS).

As in the previous section, the new rule consolidates the issuance of a DS as well as its withdrawal. In addition, this section covers the scoping notice, because the DS itself serves as a scoping notice in order to reduce paperwork duplication and delay. Not all agencies issue DSs, however, and sometimes an agency or applicant knows from the beginning of a proposal that an EIS will be needed. In these instances, the rules make it clear that the agency may use a similar notice which meets the requirement of this section, whether or not it is termed a "determination of significance." "Determination" is used, rather than "declaration", because the document is a record of the agency's decision on significance, not merely an announcement.

WAC 197-11-390 Effective Threshold Determination; Assumption of Lead Agency Status.

This section makes clear that the responsible official threshold determination is final and binding on all agencies unless it is subsequently changed, reversed, or withdrawn. The exceptions are that the threshold determination is not final for 15 days after being issued for those special circumstances listed in 197-11-350 (3); does not apply if another agency with jurisdiction assumes lead agency status; does not apply if officially withdrawn by the responsible official; and does not apply when reversed on appeal.

Much consideration was given to whether the finality of a threshold determination should be delayed pending any appeal procedures, but the conclusion was reached that such a provision would unduly extend processing time under SEPA, and that proposals should be allowed to proceed at their own risk in the face of appeals (as is typically the case in administrative decisionmaking). In particular, other decisionmaking processes of other agencies with jurisdiction may be delayed a considerable amount of time pending the completion of threshold determination appeals.

PART 4 ENVIRONMENTAL IMPACT STATEMENTS

WAC 197-11-400 Purpose of EIS.

This section sets forth a straightforward statement of the purpose of the environmental impact statement (EIS). It emphasizes the EIS's role as a vehicle for ensuring that SEPA's policies are considered (an "action forcing" mechanism). It stresses the importance of informing decisionmakers and the public of reasonable alternatives and significant environmental impacts through short documents avoiding excessive detail. The intent of the rules is that it cannot be overemphasized that the volume of an EIS does not bear in its adequacy, and large documents may even hinder the decisionmaking process. This section stresses that impact statements are more than merely disclosure documents, but are intended to be used by officials in conjunction with other relevant materials and considerations, to plan actions and make decisions.

WAC 197-11-402 Implementation.

This section contains what might be considered the "Ten Commandments" of impact statement preparation. These ten rules apply to the preparation of all impact statements and emphasize how impact statements can be concise and meet the purposes of the statute at the same time.

WAC 197-11-405 Types of EISs.

This section explains that EISs come in three basic forms: draft, final, and supplemental.

In the past, people have referred to and tried for years to define "programmatic" EISs, "mini" EISs, and any number of other labels applied to impact statements. Most of these labels refer to the subject matter -- the proposed action -- of the impact statement, and do not reflect a different "type" of impact statement. One of the important conceptual reforms in the rules is to refocus attention on determining the proper scope of an EIS, rather than trying to devise artificial labels for impact statements that happen to be broader or narrower, depending on the subject matter.

This section makes clear that all impact statements must follow the scope, content, format, and style for impact statements contained in Parts 4 through 6 of these rules, unless expressly provided otherwise in these rules. This section also explains the basic purpose of each of the types of impact statements, but the reader should refer to the cross-referenced sections for the actual requirements on document preparation.

WAC 197-11-406 EIS Timing.

This section contains a brief statement of the timing of EISs, which essentially reiterates and is intended to be used in conjunction with the section on the timing of the SEPA process, in 197-11-055. It emphasizes that EISs must be prepared early enough to be used in decisionmaking rather than to justify decisions already made.

WAC 197-11-408 Scoping.

This section provides the required procedures for scoping. Scoping means determining the scope of an environmental impact statement, namely the range of actions, alternatives, and impacts to be analyzed in an EIS. A great deal of consideration was given to whether a scoping process should be included in SEPA and, if so, what it should entail. Concern was expressed that the inclusion of a scoping process could add more time to preparation of an EIS. In addition, consulted agencies would have time or budget constraints in responding to scoping requests, and lead agencies would have additional responsibilities to organize the scoping process and to notify participants.

The Commission also identified the following potential advantages to scoping:

1. It should help to eliminate the discussion of irrelevant issues in an EIS and thus shorten the documents and improve their readability and credibility.

2. It should encourage use of previous EISs and existing environmental information and incorporation by reference, and thus avoid duplication.

3. It will improve coordination and integration with other environmental reviews and permit requirements with the EIS process.

4. It should improve communications between project proponents, agencies, and interested persons by providing a form for information exchange. The process of negotiating acceptable solutions to environmental problems should receive more trust, since scoping information and decisions will be discussed openly with more involvement from others.

5. It should provide a means for those who comment on draft EISs to review whether their earlier comments (during scoping) were considered.

6. It should improve the quality of an EIS by obtaining expertise from agencies and interested persons at an early point in the EIS process.

7. It will encourage consulted agencies to study the proposal at an early stage and to provide comments or suggestions which can be more readily considered by the proponent.

8. It would help support the scope of an EIS as determined by the lead agency.

Given these advantages, scoping was made mandatory in the SEPA legislation and rules. The concerns about balancing possible additional time and paperwork requirements, however, were taken very seriously. As a result, the proposed rules take a two-tiered approach. WAC 197-11-408 contains the requirements for scoping. These include (1) inviting agency and public comment; (2) identifying reasonable alternatives and probable significant adverse impacts; (3) eliminating from detailed study those issues which are not significant; (4) working with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

It should be emphasized that meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The lead agency is also directed to integrate the scoping process with its existing planning and decisionmaking process. The reason that special documents are not required in scoping, nor is the agency required to prepare or distribute a "scope of work" for the EIS, is that the agency could end up spending more time trying to comply with a gloss or overlay of procedural requirements on scoping without focusing on the real purpose, which is to decide what goes in an EIS and to write it. This section also requires lead agencies to revise the scope of an EIS if substantial changes are made later in the proposal or if there is significant new information on the proposal's significant impacts.

Because the proposals which are subject to SEPA are generally smaller in scope and size than those federal proposals requiring EISs under NEPA, the SEPA scoping process is somewhat more simplified than the typical federal NEPA scoping process. The point of this scoping process is to allow public and agency comment. The scoping notice or DS specifies the method and time period for commenting.

The Commission intended the scoping provisions to allow the lead agency maximum discretion to decide how to take comments, and this may range from providing a telephone number for an official to take phone calls on comments, to sending out information packets or holding meetings. The method is left to the agency's discretion, and is not intended to impose a minimum procedural requirement, other than ensuring that there is an initial opportunity for comment. The scoping process is also not intended to prevent agencies or applicants from beginning the preparation of an EIS, even while the scoping process is underway, as long as the EIS preparers realize that revisions in the scope may be made as a result of comments (and any contracts for EIS preparation should not impede this).

Extensive consideration was given to whether a time period should be placed on required scoping (197-11-408) and whether appeals should be allowed on the scope prior to issuance of the EIS. In brief, the time period was rejected as being too inflexible. Not only might the time take less than 30 days, but minimum time periods tend to become the maximum, and conversely. Appeals at this point were rejected as likely to cause substantial delay in the process and to make scoping too adversarial, and it was strongly felt that the EIS itself would be a reflection of the agency's treatment of scoping comments. In addition, there is the opportunity for comments on the draft EIS to mention unaddressed scoping concerns, and this would occur prior to a final EIS and decision.

WAC 197-11-410 Expanded Scoping (Optional).

The rules authorize lead agency, on a proposal by proposal basis, to expand the scoping process to include information or methods of consultation that may be helpful in using scoping creatively and effectively in preparing EISs. For example, agencies may wish to use scoping questionnaires, have meetings or workshops, organize a team of agency staff or consultants, develop interagency memoranda integrating the EIS process with other governmental reviews and approvals, or inviting participation from various levels of government. It is expected that agencies will often find it helpful to use one or more of these techniques in scoping.

The rules make clear that expanded scoping is intended to promote inter-agency cooperation, public participation, and innovative ways to streamline the SEPA process, and that there are no specified procedural requirements to be used. This is intended to give the lead agency the maximum discretion to decide when and how the scoping process should be expanded beyond required scoping in 197-11-408. This discretion is given to the lead agency in order to encourage innovation in the SEPA process and discourage second-guessing or imposing penalties on agencies for using the process creatively. As a result, it is the Commission's clear intention that agencies' EIS processes and scoping

should not be found inadequate or an abuse of discretion for deciding whether or not to expand the scoping process or how any expanded scoping is conducted.

In addition, as part of an expanded scoping process, an applicant is entitled to be consulted and have a date by which the lead agency will determine the scope, to the extent permitted by the available information. This provision is included in expanded scoping to strike a balance between maintaining an agency authority to decide whether expanded scoping will occur (since the agency is legally responsible for the adequacy of the EIS), but providing a safeguard to applicants that it will not be used to delay the process.

The intent of scoping is to minimize the formalities (other than those required by the rules). Agencies are not expected to designate their process as "scoping" versus "expanded scoping" (although they may do so), but that they will simply use some of the techniques in this section as may be helpful on a case-by-case bases.

WAC 197-11-420 EIS Preparation.

This section essentially continues the existing section in the guidelines on preparation of environmental impact statements.

WAC 197-11-425 Style and Size.

This section therefore provides the action forcing mechanism to ensure that EISs are in fact concise documents. The existing guidelines contain clear language emphasizing focused, usable impact statements. Unfortunately, fear of challenge has lead to excessively long and detailed documents. The Commission felt very strongly that specific requirements had to be included in the rules to limit the size of environmental impact statements. The rules do not reduce the rigorous analysis needed to back up EISs. This section provides guidance on the normal length of impact statements, as well as a requirement that the text of an EIS (its two main sections) shall not exceed 75 pages in length, except for proposals of unusual scope or complexity, in which case the text shall not exceed 150 pages (as explained further below).

The usefulness of the SEPA process to decisionmakers and the public has been jeopardized in recent years by the length and complexity of environmental impact statements. In accordance with the act, a primary objective of the regulations is to ensure that these documents are clear, concise, and to the point. Numerous provisions in the rules underscore the importance of focusing on the major issues and real choices facing decisionmakers and excluding less important matters from such detailed study. Other sections in the rules provide that certain technical and background materials developed during the environmental review process may be appended but need not be presented in the body of an EIS.

The Commission recognized the tension between the requirement of a thorough review of environmental issues and a limitation on the number of pages that may be devoted to the analysis. The Commission believes that the limits set in the regulations are realistic and will help to achieve the goal of more succinct and useful environmental documents.

Others suggested that page limits might result in conflict with judicial precedents on adequacy of EISs, that the proverbial kitchen sink may have to be included to ensure an adequate document, whatever the length. The Commission trusts and intends that this not be the case, particularly in light of RCW 43.21C.031 and 110(1)(d). Based on its study and wide range of experience of the Commission and Advisory Committee members, the Commission is acutely aware that in many cases bulky EISs are not read and are not used by decisionmakers. An unread and unused document quite simply cannot achieve the purpose the legislature set for it. The only way to give greater assurance that EISs will be used is to make them usable and that means making them shorter. By way of analogy, judicial opinions are themselves often models of compact treatment of complex subjects. Departmental option documents often provide brief coverage of complicated decisions. Without sacrifice of analytical rigor, we see no reason why the material to be covered in a SEPA EIS text cannot be covered in 75 pages (or 150 pages in extraordinary circumstances).

These page limits do not prescribe all of the details on how those page limits may be met. For example, some EISs may be single spaced or double spaced, or some may be printed. The purpose of the rules was not to get bogged down in every conceivable detail of publication, but to require plainly and unequivocally that the document which is circulated to decisionmakers and the public as an EIS is short enough that a public official or member of the public will be inclined to pick up the document and read it. The department of ecology has ample ability to specify further details through its handbook or guidelines if necessary or if abuses result, after experience with the page limit requirement.

Many members of the Commission felt that even 75 pages was long, and that the section must make clear that the length should normally range from 30-50 pages, and may be shorter. The section emphasizes that these are outer limits, and that an EIS text should usually be shorter. This is obviously more feasible for EISs covering fewer impacts, which should become more common. The rules also recognize that useful information may be placed in appendices or separate documents, and that these must be readily available to agencies and the public during the comment periods. Appendices of less than ten pages may be attached to the EIS itself, but longer documents must be bound separately, in order to keep the EIS itself a short, usable document.

WAC 197-11-430 Format.

The proposed rules would vastly simplify the format in the existing guidelines for EISs. The first section of every EIS would be a fact sheet, containing about a dozen items of vital information for agencies and the public, such as the date comments are due and the location of EIS technical reports. A table of contents and summary section would provide an overview to the EIS, followed by its two main sections, a comparison of the environmental impacts of the alternatives, and an analysis of the affected environment, significant impacts, and mitigation measures. The EIS distribution list would follow, as well as any appendices.

Every EIS is preceded by a cover memo which highlights the environmental factors especially noteworthy at the time the document is issued. The cover memo must be less than two pages and is essentially a briefing memorandum for the reader. In addition, a letter from the lead agency may proceed and be included in the EIS, as is often customary.

WAC 197-11-435 Cover Memo.

Commission members felt strongly that a one- to two-page document at the front of the EIS highlighting the options and environmental issues facing the decisionmakers would be one way to ensure that the EIS would be used in decisionmaking. It is intended to focus on key environmental trade-offs among alternatives and be a selective, comparative overview of the environmental factors which the responsible official or agency staff believe are especially noteworthy at the time the document is issued. It differs from the summary in the EIS because of its format, selectivity, and brevity. The cover memo is not considered part of the EIS for adequacy purposes, in order to encourage the responsible official to feel free to highlight issues without being criticized for selecting some subjects rather than others.

WAC 197-11-440 EIS Contents.

This section specifies the required contents of environmental impact statements. The format, or way in which these contents are covered, may vary as allowed in 197-11-430, especially subsection 4.

The "introduction" in the existing guidelines is replaced with a "fact sheet" in the new rules. The fact sheet serves a similar purpose, namely to provide the most basic information about the proposal and the EIS, including various procedural dates such as commenting, hearings, and scheduled decision dates on the proposal.

The table of contents is expected to list documents which are appended, adopted, or serve as technical reports for the EIS, and include the list of elements of the environment, indicating those elements or portions of elements which do not involve significant impacts.

The summary of the EIS describes the content of the particular EIS, briefly stating the proposal's objectives, specifying the purpose and need to which the proposal is responding, and stressing the major conclusions, significant areas of controversy and uncertainty if any, and environmental issues. The summary provides a way to give a more representative description of the impact statement than the cover memo, but may be considerably abbreviated from the text of the EIS itself, which may run as long as 75 pages, or in the case of particularly complex proposals, 150 pages.

The first main section of the EIS, "alternatives including the proposed action" describes and presents the environmental impacts of the proposal and alternative courses of action in comparative form, focusing on the relative importance of the likely environmental consequences in helping to provide a basis for choice among options. This section describes the proposal and reasonable alternatives and presents a comparison of their principal environmental impacts.

Only reasonable alternatives and significant impacts must be discussed, and the section must devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives, including the proposed action. The amount of space devoted to each alternative may vary. One alternative, including the proposed action, may be used as a benchmark for comparing impacts among alternatives. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed. The EIS may briefly indicate the main reasons for eliminating alternatives from detailed study.

Because of the difficulty in second-guessing private development activities, this section continues to interpret the meaning of reasonable alternative for a private project on a specific site, similar to the existing guidelines, where the lead agency is not required to evaluate alternatives other than the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This limitation does not apply to rezones, unless the rezone is for use allowed in an existing comprehensive plan which was adopted after review under SEPA, in which case the environmental impacts of the land use for the site would already have been analyzed in adopting the comprehensive plan. (This does not avoid the need for adequate site specific impact analysis on the proposal.)

The second main section of the EIS -- "affected environment, significant impacts, and other mitigation measures" -- describes the existing environment affected by the proposal and alternatives, the significant impacts of the alternatives including the proposed action, and reasonable mitigation measures not included in the preceding section. This subsection is not intended to duplicate the analysis in the prior section. Although some information on impacts may be repeated, this section is intended to present the significant impacts, while the prior section is intended to compare the impacts.

The second main section of the EIS describes the principal features of the environment, presents the impacts, and indicates the intended environmental benefits of mitigation measures. This section incorporates discussions of the existing land use and shoreline plans applicable to the proposal and how the proposal is consistent and inconsistent with them; energy requirements and conservation potential, including the use of alternate and renewable energy resources; natural or depletable resource requirements and conservation potential; and urban quality, historical and cultural resources, and the design of the built environment, including reuse and conservation. Special emphasis is given to impacts which pose long-term risk to human health of the environment, such as disposal of toxic or hazardous material.

In keeping with the recent statutory amendments, significant impacts on both the natural and built environment must be analyzed, if relevant. Discussion of significant impacts must include the cost of public services that may result from a proposal, as well as significant environmental impacts upon land and shoreline use, which includes housing, physical blight and the significant impacts of projected population on environmental resources.

It is important to understand that population is treated in descriptive terms (as it is in the statute) because population is not an "impacted" environmental medium, such as earth, air, or water. Environmental impacts are the effects that projected population will have on environmental resources. Environmental impacts on people are covered, for example, under the various elements of the environment, such as "environmental health" (which includes the health of all living things, including people), land and shoreline use (which includes noise, aesthetics, housing), and so on. These cover impacts on people through their physical environment (in contrast to impacts on people through the social, political, economic, religious, or other environments). As noted in the earlier section on legislative history, the U.S. Supreme Court has stated that adverse impacts on people are not synonymous with adverse environmental impacts, and this comports with the legislative intent of SEPA.

An EIS may include appendices. The appended material may be bound with the EIS if it is less than ten pages; otherwise, it must be bound separately. Comment letters and responses must be circulated with the final impact statement as specified by 197-11-560, but, may not be bound with an EIS unless the material is less than ten pages. Subsection 8 explicitly recognizes the legislative history in adopting the recent SEPA statutory amendments that the lead agency may, at its option, include in an EIS or appendix the analysis of any impact relevant to the agency's decision, whether or not environmental. Such impacts may be based on comments received during the scoping process, and their inclusion, as with combined documents, does not bear on the adequacy of an EIS under SEPA.

WAC 197-10-442 Contents of EIS on Nonproject Proposals.

This section gives more specific guidance on EISs on nonproject proposals. This section emphasizes that analysis of nonproject proposals should focus on alternatives, although the lead agency is not required to examine all conceivable policies, designations, or implementation measures.

WAC 197-11-443 EIS Contents When Prior Nonproject EIS.

This new section was added to provide additional guidance on the relationship between analyses of nonproject proposals and subsequent project environmental documents. This section emphasizes that material covered by the prior nonproject EIS should not be duplicated in a subsequent project EIS.

This section was viewed as needed to emphasize means to improve the use of environmental analyses on nonproject proposals. An agency often will not know the proposals, or types of proposals, that may later result from a nonproject action. Thus, identifying future project reviews may not be possible when the nonproject analysis is prepared. An agency amending a shoreline management master program in 1983, for instance, cannot predict exactly what projects might be proposed in 1986, but could still use all or part of the EIS on the plan in analyzing future project actions. Subsection 1 is intended to remind the reader that the criteria for phased review and for supplements (197-11-060(7)(b)-(d) and 660(2)) would be applicable, recognizing that the specific identification of subsequent proposals may be impossible (in other words, 197-11-060(7)(e) and 440(4), for example, should not be interpreted too

literally in these situations, since the specific future actions may well not be known when a nonproject EIS is prepared). Subsections 2 and 3 provide direction for using EISs on nonproject proposals. It is intended that the same purpose that is served EISs under this section would be accomplished for other environmental documents by using the adoption provisions of 197-11-640 in conjunction with the phased review provisions of 197-11-060(7).

One of the fundamental issues addressed by the Commission was whether to continue the requirement for EISs on nonproject proposals, and, if so, how to improve the usefulness of such analyses. Some felt that EISs on nonproject proposals were not helpful and did not generate much public interest, resulting in a duplication of effort when a subsequent project was proposed. Some wanted to increase attention to nonproject analyses, and eliminate subsequent project analysis if a project were certified to be consistent with the nonproject proposal.

The Commission found that the types of nonproject actions were quite varied and included many other proposals besides comprehensive plans and zoning codes. The Commission concluded that environmental analysis of nonproject proposals is important, because future actions will be based on them, but also concluded that the focus, format, and use of nonproject analysis needs improvement. The Commission felt that EISs on nonproject proposals could be especially useful if focused on the main alternative approaches under consideration, with more flexibility in format. WAC 197-11-442 was revised to reflect this emphasis. The Commission also felt that the more nonproject EISs could be used in the decisionmaking process, the more attention would be paid to them by all concerned. WAC 197-11-443 was added to encourage the use of nonproject EISs for subsequent project actions, and to help reduce duplication, while ensuring the analysis is valid for the subsequent project proposal. The Commission felt that this would improve decisions and reduce paperwork, duplication, and delay, without some of the cost and bureaucratic problems identified with 'certification' approaches.

WAC 197-10-444 Elements of the Environment.

This section includes the elements of the environment which must be considered under SEPA. These elements correspond with statutory direction and are included in the environmental checklist, as well as the scope of environmental impact statements. They have been substantially simplified by consolidating the more than 20 elements in the existing guidelines into nine major headings, divided into two areas: the natural environment and the built environment. The natural environment means those aspects of the environment typically referred to as natural elements or natural resources, such as air, earth, water, wildlife, and energy. The built environment refers to the elements of the environment which are generally built or made by people as contrasted with natural processes. Further discussion is provided in the analysis of 440, 448, and Section by Section Summary of SSB 3006 and the floor Qs & As on SSB 3006.

The Commission carefully considered the list of elements of the environment, to ensure their being logical and consistent with legislative intent. Although some duplication is possible (for example, between drainage or utili-

ties, and erosion or water quality), EISs preparers are urged to consolidate discussion and to reduce possible duplication of analysis for a given proposal.

In many cases, depending on the number of significant impacts, some or all of these elements of the environment may be consolidated or combined to simplify the EIS format, reduce paperwork and duplication, and improve readability.

WAC 197-10-448 Relationship of EIS to Other Considerations.

This section helps to explain the relationship and difference between the environmental impact statement and the overall balancing mandate of SEPA for decisionmakers to consider environmental factors along with other relevant factors in decisionmaking, such as the general welfare, social, economic, technical, and other considerations. SEPA includes essentially two aspects to the "balancing" mandate: 1) considering the tradeoffs among environmental impacts, such as deciding how to weigh and compare the different environmental impacts of a proposal and alternatives, such as water quality, energy conservation, fishery protection, farmland preservation, and so on, which may sometimes be in conflict with one another on the same proposal; and 2) tradeoffs between environmental considerations and other essential considerations of state policy, such as cost, racial equity, jobs, income, and so on. The Commission decided to maintain the existing distinction between the EIS, which analyzes environmental impacts for decisionmakers, and the decision itself, which involves consideration of broader factors than environmental impacts.

Some courts and citizens have wanted to use the SEPA and EIS process as the only decision tool. This approach blurs the distinction between SEPA's procedural and substantive provisions. In other words, there is a difference between the requirements to "consider" environmental values (procedural) and to "decide" on a proposal (substantive).

The EIS and other environmental documents required by SEPA are part of the act's procedural requirements: they analyze the environmental consequences of reasonable alternatives. Decisionmakers may have other "essential considerations of state policy" to weigh and are required to implement the state's substantive environmental policy set forth in SEPA "in a manner calculated to ... promote the general welfare ... and fulfill the social, economic, and other requirements of present and future generations of Washington citizens" (RCW 43.21C.020). This language was originally included in NEPA to provide for a balancing in decisions so that environmental concerns would not simply override other valid considerations of the general welfare.

Nothing in SEPA's procedural provisions (RCW 43.21C.030) requires a detailed statement on these other considerations. The procedures were enacted as "action-forcing" provisions to ensure that environmental factors received consideration, in light of the emphasis that public agencies traditionally gave to other factors, such as economic and technical considerations. In other words, the preparation of environmental analyses under SEPA provides needed environmental information, so that decisionmakers can then balance any other essential factors in making decisions. As the state courts have observed, an EIS provides the basis for agency officials to apply SEPA's substantive policies (i.e., to make the balancing judgment), because the EIS provides the necessary environmental information.

Local environmental officials stressed the need to clarify this point in the rules, because of concern that the EIS and the environmental review process would become overly politicized if other, non-environmental factors were required to be included in environmental documents. This is especially important for many local agencies in the state, where technical staff may see their role as preparing an impartial EIS for the locally elected officials who are the decisionmakers. Citizens also expressed concern that EISs be impartial and focused on environmental impacts, which is one of SEPA's purposes. Members of the business community were concerned that an environmental impact statement on a proposal not be found inadequate on the basis of discussion of non-environmental considerations.

Some people felt that any consideration of community importance should be required to be discussed in an EIS, but this was rejected by the legislature in considering the Commission's recommendations and SEPA's intent. The U.S. Supreme Court reached a similar conclusion recently in Metropolitan Edison v. People Against Nuclear Power, 51 LW 4371, 103 S. Ct. 1556 (1983) (see page 28 of this report). As noted above, and in subsection 4, agencies have the option to include additional analysis in EIS to assist in making decisions, but this is not required.

In addition, an agency may wish to use SEPA or the EIS process as its only decision document or tool, but doing so would be strictly based on a policy decision by the agency about its planning and decisionmaking process. SEPA does not require the EIS to serve such a role.

The term "socioeconomic" has caused considerable confusion in the implementation of SEPA, as the legislative history indicates. It originally referred to "growth" or "secondary impacts" (now more accurately called "indirect impacts"; see, for example, 197-11-060(5)(e) and 960(2)(c)).

The Commission and many commenters on the draft rules, from citizen groups to legislators, felt strongly that the term "socioeconomic" should be removed from SEPA usage because of the confusion it has caused. It should be noted, for those unfamiliar with the law, that the term was never in the statute or the existing rules. Subsection 2 tries to implement this, and the definitions in Part 8 intentionally do not define the word, in an effort to preclude its future usage.

Considerable effort was given to clarifying how the concept is meant to be applied in the context of SEPA. In addition to the affirmative approach of specifying the elements of the environment, the Commission felt it was important to provide some indication of the type of social and economic information that is not required to be analyzed in environmental impact statements, in order to provide greater certainty concerning SEPA's requirements.

The Commission is aware that certain economic information may be relevant as a backdrop to environmental impacts (for example, the abandonment of a downtown area because of new development outside of town). The legislative history, for example, clarifies but does not reverse the Barrie II case in that it supports the result in Barrie II (EIS required to discuss downtown physical deterioration caused by a proposed regional shopping center outside of town), although the court's reasoning was overbroad and appeared to overstate EIS

content requirements. The Section by Section Summary of SSB 3006 and the proposed rules make clear that urban physical blight caused by a proposal must be considered in preparing EISs.

Unfortunately, there has sometimes been extensive and costly economic forecasting and analysis for purposes of meeting EIS adequacy challenges, when reasonable assumptions of population and land use changes would suffice for purposes of conducting the necessary analysis of impacts upon environmental resources and developing reasonable mitigation measures. The rules require the significant adverse environmental impacts which are reasonably probable to be addressed, rather than being preoccupied with the causes of social change (such as political, economic, religious, legal, or technological conditions) that may have generated the population or land use changes causing impacts upon environmental resources. While such background information might be interesting or desirable for decisionmakers, the Commission concluded, as did the legislature, that an EIS can be required to carry only so much weight before its environmental protection purpose is diluted.

Because of the complexity of human activities and interaction with the environment, the Commission believes that the scoping requirement will serve a valuable role in helping to define the content of each EIS and to deal with remaining "gray areas".

WAC 197-11-450 Cost-Benefit Analysis

This section provides needed direction on the use of quantitative cost-benefit analyses, which have become increasingly popular in administrative decisionmaking. The section makes clear that a cost-benefit analysis is not required by SEPA, and that qualitative considerations must be taken into account if one is prepared and used.

WAC 197-11-455 Issuance of DEIS

This section explains how a DEIS is issued, including notice requirements and consideration of any extension of comment periods. Subsection 1 refers to 197-11-530, which lists the recipients of DEISs. The section shortens the comment period from 35 days in the existing guidelines to 30 days, and allows, but does not require, the lead agency to grant extensions up to 15 days. In adding an express requirement for agencies to consider extension requests, this section intends to continue the current practice of making extensions the exception rather than the rule, in order to ensure a prompt and timely EIS process, and does not affect an agency's discretion to deny extensions from other agencies or the public.

WAC 197-11-460 Issuance of FEIS

This section explains how an FEIS is issued. Subsection 2 allows an agency to issue a notice that an FEIS is available, rather than incurring the expense of sending a copy of the FEIS to agencies and people who received but did not comment on the DEIS. In order to ensure timely notice, subsection 3 ties the official date of issue to the date the notice of availability is given. Subsection 3 also reduces EIS expense by stating that sending an EIS to DOE satisfies the statutory requirement in RCW 43.21C.030(2)(d) to make a copy

of the FEIS available to the ecological commission and the governor (as a practical matter, these copies have usually been sent to DOE in any event).

PART 5 COMMENTING

This Part consolidates the consultation and comment rules under SEPA. The act requires the responsible official to "consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved [in such statement]" (RCW 43.21C.030(2)(d)).

In order to allow this consultation and comment to occur "[p]rior to making any detailed statement", the draft EIS was invented by the initial set of federal NEPA guidelines and incorporated into the subsequent state guidelines. This enabled the "detailed statement" (final EIS) to include "the comments and views of the appropriate ... agencies" (RCW 43.21C.030(2)(d)).

As a result of SSB 3006, SEPA now also requires the rules to include public participation in the "scope and review of draft environmental impact statements"; the act thus officially recognizes the "draft" EIS too (RCW 43.21C.110(1)(c)).

The title "Commenting" is used for this Part as a catch-all phrase for all forms on consultation and comment in the environmental review process.

WAC 197-11-500 Purpose.

This section states the purpose of this Part, which has been broadened to include notice and comment on environmental documents, and not just draft EISs, as in the existing guidelines.

WAC 197-11-502 Inviting Comment.

This section states the requirements to invite comments on environmental documents and public hearings. It should be noted that the notice and other requirements for appeals are included in 197-11-750, rather than this section, because appeals occur after a decision and are not really part of the commenting process; in addition, this section would become too lengthy by including appeals.

Subsection 1 stresses that agency and public involvement should be commensurate with the type and scope of environment document. Thus, notice and review of EISs, for example, is more extensive than for threshold determinations.

Subsection 12 clearly authorizes agencies to combine SEPA notices with other agency notices, as long as the SEPA aspect is identifiable. The preceding subsection notes that agencies are not limited by the required notice provisions -- although it is intended that agencies will always be considered to have given adequate notice by following the required notice provisions --

and that agencies are encouraged to use other reasonable methods to inform the public and other agencies (197-11-520).

WAC 197-11-504 Availability and Cost of Environmental Documents.

This section requires agencies to retain environmental documents and make them available in accordance with the state's public disclosure law. The waiver of fees in these rules may also include reducing fees.

WAC 197-11-508 SEPA REGISTER

Based on widespread comment, the Commission felt strongly that a reliable and uniform system of providing notice for SEPA documents was essential to improving SEPA's administration statewide. The proposed rules would substantially upgrade the SEPA REGISTER published by DOE, so that agencies and applicants would have a definitive and certain means of issuing adequate notice and members of the public would have a way to know about SEPA actions.

The state does not have a statewide document similar to the daily Federal Register or weekly federal "102 Monitor" (for NEPA filings). There is a great deal of interest among established environmental and community organizations, as well as among many jurisdictions and individuals, for a reliable way to receive timely notice of agency actions under SEPA. A revitalized SEPA REGISTER, on a subscription basis in order to enable its publication, was felt to be the most effective and equitable method available. Financial support for such a mechanism is essential.

WAC 197-11-510 Required Form of Notice

This section requires notice to be given in the SEPA REGISTER, in a newspaper of general circulation, and posting on site (if there is one). One of the problems with the existing guidelines is the lack of a definite and certain method of giving adequate notice. Agencies and applicants are frequently challenged for the adequacy of the notice they have given; similarly, citizens often do not receive or have a reliable way of obtaining notice. After considerable discussion, there was consensus that these three techniques would provide an efficient and effective basis for providing notice for the central items in the SEPA process (see 197-11-502 for a compilation of notice requirements). The expense of providing notice might increase somewhat (although newspaper publication and posting are quite common for many local land use actions), but this would be offset by the benefits of increased certainty and reduced costs for defending notice later in the process.

The requirements are meant to be read under the rule of reason. Newspaper publication for statewide proposals, for example, are not required (except for public hearings under 197-11-502(6)(b)), and publication for nonproject proposals is not intended to require publication in numerous newspapers. Similarly, posting on site is required when there is a specific property, and would not be required on a proposal located on many sites or along a linear or corridor route, for example.

WAC 197-11-520 Additional Notice. (OPTIONAL)

This section encourages agencies to use any reasonable method to inform the public, in addition to the previous section, or if the previous section does not apply.

WAC 197-11-530 Circulation of DEISs.

This section specifies the recipients of DEISs. It clearly encourages agencies to send a copy to persons, agencies, or organizations expressing an interest in the proposal or type of proposal being considered, as well as to libraries. Agencies may wish to provide additional specifics in their SEPA procedures.

WAC 197-11-535 Public Hearings and Meetings.

This section states when public hearings are required. Agencies may, but are not required to, hold public hearings unless requested to do so by enough people (subsection 2(b)) or unless their procedures require public hearings. The section also adds explicit sanction to more informal agency public meetings or workshops, which have often proven to be a very useful SEPA practice. In order to encourage meetings and workshops, it was felt inappropriate to place procedural requirements on them.

WAC 197-11-545 Effect of No Comment

This section emphasizes that people, including agencies, must comment within the required or requested time periods for environmental documents (not simply EISs). Subsection 1 is essentially the same as the current guidelines, which has been upheld by the courts. Subsection 2 does not purport to bar a commenter from "alleging any defects" in compliance. It does allow the lead agency to construe lack of comment as lack of objection to the environmental analysis.

A person could conclude that the environmental analysis is adequate, for example, and maintain during the decisionmaking process and on appeal that the proposal should be modified or rejected as a result. It was felt to be important, however, to encourage and receive comments on the adequacy of the environmental process on a timely basis, so that the substantive decisionmaking process could proceed. Subsection 2 makes clear that it depends on other agencies and members of the public having reasonable notice to comment on the documents, proposals, and impacts in question.

WAC 197-11-550 Specificity of Comments

This section consolidates the existing guideline sections (WAC 197-10-500 through 540) in the context of Part 5 and these rules. While it recognizes that the excellent approach of using consulted agencies in a highly structured manner was innovative and should continue, it also recognizes that there have been some problems caused by agency funding and resource limitations. The section emphasizes that comments should be focused on three areas: methodology, additional information, and mitigation measures.

The text of the section differentiates various responsibilities of consulted agencies, as compared with all agencies and with the public. The public is required to comment as specifically as possible.

WAC 197-11-560 FEIS Response to Comments.

This section states how an agency responds to comments in preparing a final impact statement. It streamlines and consolidates the existing guideline sections WAC 197-10-570 and 580, and places on emphasis on doing something in response to comments, rather than simply producing paperwork. It gives agencies greater latitude in the format of their response to comments.

WAC 197-11-570 Consulted Agency Costs to Assist Lead Agency.

This section continues to require the consulted agency to assume the cost of assisting the lead agency. The section makes clear that this requirement does not prevent agencies from agreeing to share resources to develop or provide environmental information in general or for purposes other than a consulted agency role under these rules.

PART 6 USING EXISTING ENVIRONMENTAL DOCUMENTS

This Part is more comprehensive and substantially simpler than the existing rules. WAC 197-11-640 explains the two basic ways to use existing environmental documents -- "adoption" and "incorporation by reference" -- and when and how to use them. Although 197-11-640 could suffice for purposes of using documents prepared under the federal act (NEPA), an explicit section was retained in the rules for purposes of clearly authorizing use of NEPA documents. WAC 197-11-660 explains the two ways to "supplement" existing environmental documents -- a "supplemental EIS" and an "addendum". WAC 197-11-670 allows the SEPA process and SEPA documents to be combined with other agency planning and decisionmaking.

WAC 197-11-640 Use of Existing Environmental Documents.

Although agencies often want to use existing environmental documents, the existing guidelines do not provide a clear way to do this. The Commission concluded that unnecessary paperwork, duplication, and delay could be reduced by encouraging proper use of existing documents.

The section provides procedures for one agency to "adopt" a prior environmental document or another agency's environmental document. Given the comprehensive nature of SEPA review, an environmental document on one proposal may have a great deal of analysis relevant to a subsequent or different proposal. Adoption allows this material to be used. Because of the improved checklist at the state level, and the relatively new requirement at the federal level for environmental assessments, it is essential, to be effective, for adoption to be allowed for all environmental documents, and not just EISs.

The key criteria for adoption are specified in subsection 3, and include an agency determination that the document being adopted has been reviewed and meets the adopting agency's environmental review standards and needs for its current proposal. The adopted document must be readily available to the public during comment periods, along with a brief description of the proposal for which the document is being used.

Agencies are allowed to adopt documents that are not final or may be subject to appeal, because any deficiencies may have no relationship to the parts or purposes for which the document is being adopted. Agencies are required to disclose this information, however.

Subsection 4 makes clear that the adopted document is not required to have gone through precisely the same procedural process as it would have, if the document were being created anew by the adopting agency. This is important to the use of adoption. If there were a few days' difference, for example, between a review period or appeal period of the originating agency and the adopting agency, it would be extremely inefficient to preclude its adoption or to go back to redoing the process at that point. Rather, the protections in subsection 3 were carefully designed to ensure proper SEPA compliance.

Subsection 6 makes it clear that agencies are not required to adopt a lead agency's DNS or FEIS when they act on the same proposal, because it is assumed that the lead agency's document suffices unless supplemental review is required. This subsection also allows an agency with jurisdiction to supplement a lead agency's FEIS, but only if the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action. Concern was expressed that this might undermine the requirement for agencies with jurisdiction, such as wildlife agencies, to avoid participating early and fully in the EIS process. This is not the intent of this provision. This subsection does not relieve an agency of its responsibilities as a consulted agency. In addition, any supplementing under 197-11-640(6)(b) must be done at an agency's own expense and cannot be passed on to applicants, including other agencies.

WAC 197-11-650 Use of NEPA Documents.

This section covers the use of NEPA documents. In addition to using federal EISs, the adoption provisions of the previous section may be used for any environmental documents prepared under NEPA. Because some federal environmental assessments may have the scope and detail of state EISs, the rules allow such documents to be adopted to satisfy state EIS requirements as long as the adoption criteria are met (including circulating the document as an EIS; see 197-11-640(5)(b)).

The Commission determined that legislation was not needed for this section because of the broadened authority for the rules and the fact that the Commission was directed by the legislature to avoid statutory amendments unless necessary (see preface to the proposed rules). In addition, 197-11-650 does not conflict with the existing statutory section on using NEPA EISs (RCW 43.21C.150, which requires EISs to be used in lieu of state EISs). The current federal rules requiring environmental assessments are also different than the federal rules that were in effect when RCW 43.21C.150 was enacted.

WAC 197-11-660 Supplemental Environmental Review.

This section creates a single standard for requiring supplemental review (subsection 2), and establishes two documents that are used (subsections 4 and 5). This is broader than the existing guidelines, which only covered certain situations requiring supplements (WAC 197-10-650 through 695). It also consolidates and simplifies the subject into one section, rather than at least seven in the existing guidelines.

An "addendum" is meant to be a jack-of-all-trades. It is a means of having a document, with an official name and recognition, which can be used for many occasions where some additional environmental analysis may be necessary or desirable, but for which an EIS should not be required. The current guidelines do not provide a suitable vehicle, between the broad-brush checklist and the detailed EIS, for such additional environmental analysis.

WAC 197-11-670 Combining Documents.

This section encourages combining documents and integrating SEPA with existing agency planning, review, and decisionmaking. It remains vitally important for the page limits to be observed, however, or the environmental analysis will become lost in the paperwork and not be used by decisionmakers.

PART 7 SEPA AND AGENCY DECISIONS

This Part adds provisions on SEPA's substantive requirements to the statewide rules. It focuses on the use of environmental documents in decisions, including the exercise of substantive authority and mitigation measures, as well as the appeals process.

WAC 197-11-700 Purpose.

This section states the purpose of this Part.

WAC 197-11-710 Implementation.

This section requires agencies to consider environmental documents and to ensure that the range of alternatives in the EIS are considered by decisionmakers, and, conversely, that the range of alternatives being considered by decisionmakers are included in the EIS. This does not preclude an agency from placing conditions on a proposal differing from those in a checklist or EIS, as the environmental document provides the basis for agencies, applicants, and citizens to negotiate appropriate mitigation measures or conditions. Non-environmental factors may enter into an agency's final decision, for example.

WAC 197-11-720 Substantive Authority and Mitigation

This section, developed over a long period of intense scrutiny, represents a structuring of agency discretion in the exercise of substantive authority under SEPA. It was carefully designed to preserve SEPA's protections and to

further its substantive goals, as well as ensuring fairness to all of the parties involved in the SEPA process.

A number of the provisions have been enacted into statute through SSB 3006. The legislative history above therefore describes substantive authority and many of these provisions in some detail.

The section emphasizes public disclosure of agency SEPA policies and decisions. Agencies are required to prepare a document which contains their SEPA policies (see 197-11-1110), and may list them by reference if the referenced material is readily available for review. The section does not require agencies to predict all future environmental issues or potential mitigation measures or authorize agencies to adopt policies in conflict with SEPA. While this section intentionally does not specify the level of detail of agency SEPA policies -- leaving this to each agency's discretion -- the section is also intended for agencies to have SEPA policies which are more specific than many agencies now have.

The section requires agencies to state their decisions (subsection 1(b)), including any mitigation and monitoring that will be implemented. Public disclosure and SEPA's substantive policies are furthered by requiring agencies to cite the agency SEPA policy which is the basis of any condition or denial under SEPA (agencies may condition or deny projects under other laws, and this section does not regulate such activities).

This section also establishes standards and criteria for mitigation measures, especially those required of public or private applicants. The requirement for agencies to consider whether other local, state, or federal requirements would mitigate an identified significant impact is included to avoid unintended conflicts or duplication. The section requires consideration of whether such requirements will be enforced because of concern about recent federal reduction in environmental enforcement efforts, leading to concern that a requirement may be on the books but not implemented. This provision is not intended to create paperwork for agencies.

WAC 197-11-740 Optional Coordinated Permit Procedures.

This section puts together various techniques in the rules to allow a coordinated permit review when a proposal would require multiple permits from various agencies with jurisdiction. The provision essentially requires completion of environmental analysis at the conceptual stage by the lead agency and allows specific impacts and mitigation measures to be reviewed in the context of specific agency permits for particular environmental media.

WAC 197-11-750 Appeals.

This section provides rules for the appeals process established by RCW 43.21C.075 and other relevant statutory sections. The appeals process is described at some length in Attachment 1 to the Commission's Memorandum to Agencies and Interim Guidance (page 74 of this report).

In terms of appeals forms, it should be noted that the DNS/DS forms (197-11-1350/1360) contain a way to give notice for appeals (the appeals, on

the DS form, are of the determination to prepare an EIS and not of the scoping process). The form for the "notice of action" (191-11-1380) is substantially as set forth in the act and, as noted in parentheses at the bottom of the form, may be used to give "official notice" (subsection 8 of 197-11-750).

PART 8 DEFINITIONS

This Part provides a uniform terminology for SEPA.

WAC 197-11-800 explains the usage of common words in the rules.

WAC 197-11-810 through 990 explain the meaning of specific terms in the SEPA process. Most of these terms have already been explained in context in the preceding material in this section by section analysis.

Part 8 helps to simplify a number of SEPA concepts, for example. Actions can be viewed as four types: project, plan, policy, or program (the latter three are grouped as "nonproject" actions). (197-11-815.)

The "scope" of an EIS consists of three items: proposed actions, impacts, and alternatives. Each of these in turn has three elements: (1) single, connected, and similar actions; (2) direct, indirect, and cumulative impacts; and (3) no action alternative, alternative courses of action, and mitigation measures not in the proposal. (197-11-860.)

The rules include a few important definitions which are not in the existing guidelines, and for which the courts have sought guidance. The term "mitigation" was carefully drafted to cover appropriate ways to avoid or reducing impacts (197-11-920). The term "significant" is explained in terms of the context of a proposal and the intensity of its impacts, including a recognition that it may not be susceptible to a neat formula (197-11-970).

Part 8 has been written and cross-referenced to assist the reader to locate important concepts in the rules.

Part 9 CATEGORICAL EXEMPTIONS

This Part lists the specific categorical exemptions in the rules. WAC 197-11-1000 contains the generally applicable exemptions. WAC 197-11-1010 through 1075 contains the categorical exemptions pertaining to specific agencies. WAC 197-11-1080 covers emergencies, and 197-11-1090 continues the existing guideline (WAC 197-10-150) which allows agencies to petition the Department of Ecology to add or delete exemptions.

Nearly all of the exemptions have been continued from the existing guidelines (WAC 197-10-170 through 180) and do not require discussion in this summary. The main changes have been a more logical organization, the addition of a flexible thresholds provision for minor new construction (197-11-1000(1)), and school closures (197-11-1000(7)), which were otherwise exempted by HB 719).

The minor new construction provision was developed over some several months to limit the number or categories involved (the flexible thresholds apply to 5 out of some 14 types of existing minor new construction exemptions). The amounts were based on quantities which historically resulted in de minimus environmental impact and were consistent with most local land use codes (such as 40 automobiles). The exemption for fill was lowered, not raised, as a result of the Commission's review. Each agency has the option of raising the thresholds in 197-11-1000(1)(b) to the levels specified in 197-11-1000(1)(c) if supported by local conditions. Agencies may raise some or all of these levels in some or all of their jurisdiction. Because these levels will be in agency SEPA procedures, their adoption will be subject to public review. The concern about losing statewide uniformity and certainty as to these exemptions was felt to be offset by the need for greater recognition of flexibility in this area.

A few other minor new exemptions were included in the rules: the installation of impervious underground tanks of 10,000 gallons or less (197-11-1000(2)(g)); the vacation of streets or roads (197-11-1000(2)(h)); the routine release of hatchery fish or the reintroduction of native species into their historical habitat where only minor documented effects on other species will occur (197-11-1035(1)(f)); and a fish/game hydraulic approval where there are no other agencies with jurisdiction, except that proposals involving removal of 50 or more cubic yards of streambed materials or involving realignment of a new channel are not exempt (197-11-1035(1)(c) and 1040(1)(g))(it should be noted that the existing exemption for hydraulic permit approvals for proposals costing \$5000 or less, or for removing \$1000 or more of streambed material, has been dropped from the rules).

PART 10 AGENCY COMPLIANCE

This Part contains a variety of provisions pertaining to agency compliance with SEPA.

Roughly ten sections deal with agency SEPA policies and procedures. WAC 197-11-1110, 1120, and 1122 are the key sections on this subject and tell agencies what policies and procedures they must adopt to be consistent with the act and these rules. Each agency is required to have a set of SEPA "policies" (to exercise of substantive authority) and "procedures" (to carry out the environmental review process). WAC 197-11-1170 allows the statewide guidelines to apply in the absence of agency SEPA procedures. Agencies must formally designate their SEPA policies, however, to ensure that the discretionary actions they take are valid and in compliance with SEPA.

Considerable thought was given to whether agency SEPA policies or procedures should themselves require environmental analysis in a checklist or EIS. Agency procedures, including DOE's adoption of any statewide SEPA rules of a procedural nature (for example, the provisions on substantive authority in these rules are procedural in nature and do not contain environmental control standards), provide the methods for considering environmental impacts, unlike air, water, noise, or land use or shoreline regulations, for example, which govern change or use of the environment. Such procedural rules are not amenable to meaningful environmental analysis. Agency SEPA policies may or may not need review. Most of them will be compilations of existing laws or

or policies, rather than the adoption of new standards, and would therefore not require review. Agency SEPA policies which, for example, limited the height of all buildings or controlled actual use of the environment, rather than being methods, techniques, procedures, or considerations, might well require detailed environmental analysis.

Being sensitive to the relationship between SEPA procedures and environmental quality, however, the Commission has sought through this report to analyze and explain many of the considerations and alternatives considered in the development of the SEPA rules (see, for example, the executive summary, preface to the proposed rules, and this section analysis).

Another dozen sections in this Part specify rules for lead agency designation, including continuing the provision for DOE resolution of lead agency disputes (197-11-1260). Subsection 2 contains criteria for DOE to apply, which are intended to be referred to for guidance by agencies in their efforts to resolve lead agency disputes promptly among themselves.

This Part also specifies agencies with environmental expertise (197-11-1190), and contains the severability and effective date clauses for the rules (197-11-1280 and 1290).

PART 10 FORMS

This Part contains several forms for use in the SEPA process. The key form is the environmental checklist (197-11-1325), which has been discussed in the executive summary and elsewhere in this report. The other forms have also been written in simpler English and provide for greater accountability, as noted in the introductory materials to this section analysis.

It is intended that the forms be used for as many purposes as possible and be integrated with other agency notices and forms. For example, as noted above, the Notice of Action is suitable to use as an adequate form for giving official notice under 197-11-750(8). The Determination of Significance doubles as the scoping notice (unless an agency uses a comparable form for this purpose).

KEY SECTIONS

As may be apparent, the entire organization and content of the rules has been developed as a whole, and changes in one section may affect many others. In general, the most of the provisions reflecting the improvements recommended by the Commission are included in the following sections: 020, 055, 060, 070, 080, 090, 305, 315, 320, 340, 400, 402, 405, 408, 410, 425, 430, 435, 440, 442, 443, 444, 448, 450, 502, 508, 510, 520, 545, 550, 560, 640, 660, 720, 740, 750, Part 8, 1000, 1122, Part 11.

The Process



THE COMMISSION ON ENVIRONMENTAL POLICY

Creation of the Commission

If 1970 and 1971 provided a receptive climate in Olympia for environmental legislation, the same was not entirely the case a decade later. The 1981 legislature, for example, considered a range of bills which would have substantially limited SEPA's jurisdiction and authority. Although the solution to the identified problems was unclear, there was no mistaking that after ten years of controversy about the act's procedural and substantive requirements, the subject needed to be reviewed in a comprehensive manner. A compromise was reached among the environmental, business, and governmental groups resulting in the passage of ESSB 4190, the SEPA study bill.

Commission Responsibilities

As noted in the executive summary and preface to the proposed rules, the legislature mandated a study of ten years' experience with SEPA, directing that amendments to the act and guidelines be proposed by a bipartisan environmental policy commission, if considered necessary:

... in order 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 bill directed the Commission on Environmental Policy to be composed of four members each from the Senate and from the House of Representatives, two representatives each from industry and the environmental community, and one member each from cities and counties, the latter eight members appointed by the Governor. Staffing was provided largely by a diverse 96-member Advisory Committee, special counsel, and personnel loaned from state agencies (all of whom assisted without compensation) and legislative committee staff. An appropriation of \$50,000 was initially provided for operation of the Commission. This was subsequently reduced during the special session in November 1981.

The Commission was required to:

- study SEPA and its administrative rules
- report to the 1983 legislature on the effectiveness of the act and rules
- propose amendments, if necessary, to the act and guidelines

- appoint an Advisory Committee representing various points of view, whose members are knowledgeable or experienced in SEPA principles and practice
- consult with agencies, interest groups, and concerned citizens
- review model ordinances for local government to assure consistency with any changes in the act or guidelines
- use information and advice of agencies, organizations, and individuals, including the federal Council on Environmental Quality

Public Participation

Because public participation has been so central to the Commission's study, it deserves mention at the outset. The Commission was greatly assisted by several hundred people in the past two years who provided suggestions on how to make the SEPA process work better. Interested citizens have contributed well over 10,000 hours to the Commission's study.

In public meetings which were held in September 1981, the Commission invited testimony from a broad array of public officials, organizations and private citizens, affirmatively involving SEPA's critics as well as its friends. Among those represented were the Washington Environmental Council, Sierra Club, League of Women Voters, Washington Forest Protection Association, Association of General Contractors, Washington Association of Realtors, Seattle Master Builders, Chamber of Commerce, Washington Association of Cities, Washington State Association of Counties, and state agencies. Scientists, scholars, and the general public were there.

A second set of public meetings was held eighteen months later, after the Commission had recommended legislation and a draft set of rules. Four public hearings were held across the state in January at Seattle, Olympia, Spokane, and Yakima. Again, the range of organizations and individuals testifying was equally broad.

There was consensus at the January 1983 public hearings among widely diverse witnesses. All expressed the view that SEPA benefitted the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be improved. Witness after witness said that the length and detail of EISs made it extremely difficult to distinguish the important from the trivial.

The degree of unanimity about the direction of the Commission's recommendations was such that, at its hearings in Spokane, city officials, environmental representatives, and an unusual coalition of some 40 industry and labor groups endorsed each other's comments. A week earlier, at the public hearing in Yakima, county planning directors and attorneys, the League of Women Voters, and realtors and industry groups expressed the same sentiments.

The Commission's deliberations are described in more detail elsewhere in this report. In addition to the four public meetings in 1981 and the four public hearings in 1983, the Commission held 17 meetings, plus two meetings with its

Advisory Committee. Because each Technical Committee met frequently and because the Advisory Committee members staffed and participated in every Commission meeting, which is unusual for citizens advisory groups, frequent meetings with the entire 96-member committee were not necessary).

All of these meetings were open to the public, and every meeting had an opportunity for public comment. The Commission members discussed many of the recommendations in great detail.

More than 100 meetings were held by the Commission's drafting committee and the Technical Committees and subcommittees of its Advisory Committee. All of these were open to the public as well, and many interested citizens participated.

The Commission published its draft of the rules in January 1983, after 18 months of detailed review of the SEPA process and consultation with many groups and individuals mentioned, as well as study and consultation on the experience of other states and the federal government. The study included, for example, review of a two-year evaluation by the White House Council on Environmental Quality on the effectiveness of its NEPA Regulations (40 CFR 1500 *et seq.*), which concluded that the new federal rules were working well and should not be amended, although additional guidance would be issued to agencies.

The Commission received further comments on the draft rules during its January hearings and during the legislative process (see legislative history above). In addition, after the enactment of SSB 3006, the Commission sent another letter of invitation to all of the diverse interests on the Commission's Co-Chairs Committee and major organizations testifying at the legislative hearings to invite further comment on any clarifications which might be needed in the rules as a result of the statutory enactment. As a result, additional open meetings and workshops were held in May and June of 1983, as part of preparing the final proposed rules.

Commission Organization

At its August 4 meeting, the members of the Commission unanimously selected Senator Alan Bluechel as Chairman and Yakima County Commissioner Jim Whiteside as Vice Chairman. The Chair requested the Commission to establish an Executive Committee composed of Senator Bluechel, Commissioner Whiteside, and Representative Gene Lux.

The Commission extended an invitation to a wide range of interest groups to submit nominations to serve on the Advisory Committee. The nominees had a broad range of interests and extensive experience and expertise with SEPA. In an effort to encourage public participation, the Commission decided to include nearly 100 people on the Advisory Committee. In order to ensure effective participation, five Technical Committees were established focusing on aspects of SEPA.

The Technical Committees and their initial areas of concern were:

- Guidelines Technical Committee: review of problems in the existing text of the guidelines, focusing on definitions, exemptions, timing and coordination. Ken Kinared and Bob Landau were co-chairs.
- Process Technical Committee: NEPA/SEPA coordination and relationship of SEPA with other environmental regulations. Don Chance and Chuck Mize were co-chairs.
- Contents Technical Committee: goals and policies of SEPA, SEPA's supplemental substantive and authority. Steve Crane and Ellen Peterson were co-chairs.
- EIS Technical Committee: preparation of EISs, including checklist, scoping, format, methodology, consideration of alternatives, and adequacy of EISs. Jim Williams and Vim Wright were co-chairs.
- Legal Technical Committee: review of court cases, SEPA challenges, judicial review and administrative review. John Black and Ralph Thomas were co-chairs.

After appointment of the members of the five Technical Committees, the Commission designated two members of each committee as Co-Chairs (see list on page 3 of this report). These ten people comprised the Co-Chair Committee of the 96 member Advisory Committee, assisted by Special Counsel.

The Commission tried to designate Co-Chairs from diverse perspectives in order to encourage cooperation, if not consensus. The Process Technical Committee was chaired, for example, by two thoughtful and articulate leaders from considerably different constituencies: Don Chance from the Washington Forest Protection Association and Chuck Mize from the Washington Association of Cities, each of whom worked hard to assemble people from related and member organizations to develop and review the recommendations. Similarly, the EIS Technical Committee was co-chaired by two people with considerable knowledge and experience in the administrative and legislative aspects of SEPA and environmental laws, also from quite different points of view: Jim Williams from the Washington Association of Counties, and Crane Wright, a university professor active in many environmental organizations. The task of managing a sizable Technical Committee, as well as focusing on the substance of the recommendations, presented a challenge to each of the Co-Chairs.

The Commission appointed two Special Counsel to advise the Commission, Advisory Committee, and five Technical Committees. At least one Special Counsel attended most Technical Committee meetings and each Commission meeting. Charles Lean, Assistant Attorney General for the Department of Ecology and an author of the existing SEPA guidelines, was appointed as one of the Special Counsel. Kenneth Weiner, a Seattle attorney with the law firm of Preston, Thorgrimson, Ellis & Holman and formerly Counsel and Deputy Executive Director of the White House Council on Environmental Quality and an author of the new NEPA Regulations, was the other Special Counsel.

As the Commission began to act upon specific recommendations and approach the time for drafting any statutory or rule changes, the Commission appointed a Drafting Committee to write the amendments and rules. The Drafting Com-

mittee consisted of Ellen Peterson, a city attorney in Seattle; Judy Runstad, a Commission member representing an industry perspective; Chris Smith, a Commission member representing an environmental perspective (Commissioner Smith left the Drafting Committee when she became a state official); Ralph Thomas, Kirkland city attorney; Norm Winn, a Commission member representing an environmental perspective; and was chaired by Special Counsel Ken Weiner. The Drafting Committee meetings were open to anyone who wished to attend, and various members of the Advisory Committee and the public did so.

Most of the staff work of the Commission was done by the Commission's Advisory Committee and its Drafting Committee (composed of members of the Commission and its Advisory Committee). The Advisory Committee members conducted a line-by-line review of the existing statute and guidelines. These committees developed recommendations for the Commission's consideration over a period of a year and a half.

Commission Procedure

From the information collected at the September 1981 informational meetings, the staff developed a proposed work program for the Commission. The issues were then referred to the Technical Committees for study.

Recommendations came from many sources: the first round of information meetings, members of the Commission and Technical Committees, and concerned citizens. Each issue or area of concern was first reviewed by the appropriate Technical Committee. The recommendation, if any, was then reviewed by the Co-Chairs Committee, which could modify, defer action, refer the recommendation to one or more Technical Committees to ensure a coordinated recommendation, or forwarded the recommendation to the Commission with its vote on the issue. Each Technical Committee had the option to put its original recommendations before the Commission unaltered by the Co-Chairs Committee or other committees.

The Commission then had several alternative courses of action including: return the recommendation to the committee of origin, to another Technical Committee, or to the Co-Chairs Committee; establish an ad hoc Technical Committee or subcommittee of Commission members to consider the recommendation; defer action or adopt or modify the recommended action.

The development of consensus took nearly a year and a half. On December 16, 1982, a draft bill and set of rules was unanimously approved. The draft recommendations were sent to hundreds of people on the Commission's mailing list. Public hearings were held on the proposed legislative and rule revisions during January 1983 in Spokane, Yakima, Olympia and Seattle.

During the beginning of the session, the Commission submitted its report to the legislature, as required, including a draft substitute bill which responded to public hearing comments (see the earlier sections in this report on SEPA's legislative history). After Governor Spellman signed SSB 3006, the Commission turned to the completion of its work, inviting any further comments on its draft rules before transmitting final proposed rules to the Department of Ecology. The Commission held its final meeting on June 20, 1983 and the final

draft of the proposed rules were unanimously endorsed, with some additional revisions, which were incorporated and transmitted to the Department of Ecology shortly thereafter. The bipartisanship of the Commission was demonstrated at Commission's final meeting, when Democratic and Republican legislators commended each other and, in particular, Chairman Bluechel's leadership of the Commission.

Building on the Consensus

While it would be an overstatement to suggest that there is complete unanimity of opinion about either SEPA or the Commission's recommendations throughout the state, the Commission's recommendations have produced an extraordinary consensus among citizens and organizations who have traditionally been at considerable odds over SEPA. In addition, the Commission truly functioned as a bipartisan body, which was also reflected in strong bipartisan leadership and majorities in both houses on the SEPA legislation.

The fact that representatives of the business community, the environmental community, and state and local agencies, each in a complex relationship within their communities and with one another, succeeded in sitting down and reasoning together for two years is a milestone for SEPA and, possibly, for the management of natural resources and the environment in Washington state.

The Commission profoundly hopes that both its process and its proposals will contribute to a better understanding of SEPA and to the ability of diverse groups to work together to resolve common environmental concerns.

SUMMARY OF COMMISSION MEETINGS

Meetings

The Commission held 17 regular meetings and 10 special meetings between August 1981 and July 1983. In addition, the Commission held four early sessions with the major groups concerned about SEPA (environmental and citizen groups, business and industry groups, state and local government officials), two meetings with its full Advisory Committee (one at the inception of its work and a second, 12 months later, on its overall recommendations), and four public hearings throughout the state on its recommendations. The Commission carried out each of its statutorily-mandated responsibilities (RCW 43.21C.202), and gave detailed review to the statute and its administrative rules. In addition, Commission subcommittees and Technical Committees held scores of meetings that led to the Commission deliberations summarized below.

All of the Commission meetings were open to the public, and Advisory Committee members and interested citizens participated in the discussions at the meetings.

Introductory Note

The following summary highlights the major subjects discussed at each meeting of the Commission. Nearly all of the subjects were discussed on the basis of the improvements that were needed, rather than whether the statute or rules would be the vehicle for the changes. The basic assumption, established at the February 18 meeting, was that improvements would be instituted through the rules, unless statutory amendment or authorization was viewed as necessary.

Certain statutory amendments were enacted to make it absolutely clear that the improvements in the recommended rules are authorized by the act.

For example, improvements to simplify the environmental process through the use of better environmental documents -- a new environmental checklist (197-11-1325), a mitigated DNS (197-11-340), a scoping notice (197-11-360 and 1360), adoption and supplemental environmental documents (197-11-640 through 660 and 1340), a documented decision including any mitigation measures (197-11-720(1)(b)), and so on -- were authorized by adding the phrase "and other environmental documents including but not limited to rules for timing of environmental review" to RCW 43.21C.110(1)(c). The existing guidelines and federal regulations currently include requirements for the preparation and use of other environmental documents, but it was felt that express statutory authorization would emphasize that the new rules regulate the entire SEPA process and not just the environmental impact statement (EISs) process.

Since SEPA and NEPA were enacted more than a decade ago, the administrative function of specifying the precise procedures, criteria, documents, and forms has generally been considered unnecessarily detailed for the statute. The important requirement of a "draft environmental impact statement", for exam-

ple, was established by rule, not by statute, and was subsequently supported by the courts.

Because the nature and timing of specific documents can be improved over time, the Department of Ecology should have sufficiently broad authority to make administrative improvements, in keeping with the act's policies, without statutory amendment. The ability to make the SEPA process work better by improving administrative rules has been a major theme of the Commission's work. This will lend greater stability and predictability to SEPA, a goal repeatedly recognized by the legislature and endorsed by major interest groups and concerned citizens.

Highlights of the Process

The topics discussed by the Commission members over a period of nearly two years are far too wide-ranging and complex to be reduced to a list or even to meeting summaries. Those familiar with SEPA know that a discussion of issues in one area is invariably related to many other areas.

A discussion of EISs on land use plans (or other "nonproject" proposals), for instance, tended to involve discussion of the usefulness of the document, the nature and role of alternatives, the timing of the process and use of phased review, the proper use of the statement for subsequent proposals, EIS format and incorporation by reference, public participation, and many other aspects of the SEPA process, from the planning through the implementation stage. Different Commissioners and Technical Committees approached the subject from different perspectives. The problems themselves usually involved a difficult judgment about which paperwork requirements will produce better environmental decisions. These abstract concepts then had to be translated into practical procedures for each part of the process. The procedures had to be readable and general enough to cover an extraordinarily diverse type of government activity, yet specific enough to provide adequate direction and, ultimately, produce useful documents.

The Commission process also involved substantial give-and-take to arrive at a consensus. In order to build consensus and focus the issues for the Commission, the recommendations formally presented at the Commission's meetings generally reflected a consensus of the diverse members of the Technical Committees (see the section of this report describing the Commission process). In addition, individual Commission and committee members suggested approaches and recommendations in the course of reviewing drafts and debating the texts. Hundreds of recommendations, from major changes to minor variations, were discussed over a two-year period. The Commission directed its drafting committee to ensure that the actual text of the proposed legislation and rules incorporated its recommendations and corresponded to its intent. The Commission's responsiveness to public comment is evident in the changes from initial to final drafts (for example, from SB 3006 to SSB 3006, or from the initial draft rules to the final proposed rules).

The Technical Committees of the advisory committees and the Commission tried to use a standard format to develop and present recommendations and focus debate. These documents are lengthy and available for inspection in the

Commission's archives; they indicate the major recommendations under consideration, although they generally do not provide a precise account of the discussions at each level of the Commission process. Even with utilizing legislative and agency staff assistance and voluntary contributions as much as possible, limited staff resources meant that the Commission's written products would be focused on four items: (1) proposed legislation (SSB 3006) and legislative history; (2) proposed rules (WAC 197-11) and general explanation of their intent; (3) an initial report (January 1983); and (4) a final report (June 1983).

These four items, consolidated in the final report, reflect a detailed study process and represent the most comprehensive study prepared on SEPA. They are also among the most detailed analyses prepared on our nation's environmental impact laws, whether of the federal government or of other states, and are being used as a model by other governmental bodies.

The list below tries to highlight for the reader the major subjects discussed at each Commission meeting.

1981

- August 4 organizational meeting
 presentation on SEPA case law by Charles Lean
- September 24 summary of issues identified by the four informational
 meetings with interest groups
 presentation on NEPA and federal rules by Kenneth S.
 Weiner
 presentation on SEPA guidelines by Charles Lean
 industry presentation on LEAFs by John Schneider,
 Chamber of Commerce
 presentation on local planning and SEPA by Tom
 Fitzpatrick
- November 4 Advisory Committee appointments
 city and county panels on SEPA use and experience
 Cities: Chuck Mize (AWC), Diane White (Bellevue), Kay
 Shoudy (Redmond), Bob Landles (Everett), Katie Mills
 (Tacoma), Jan Arntz (Seattle), Sam Jacobs (Kirkland)
 Counties: Jim Williams (WACo), Pat Lambert (Snohomish),
 Robert Hansen (Spokane), Tom Fitzpatrick (King), Sydney
 Glover (Island)

1982

- January 6 organizational matters
 Technical Committee co-chair reports
 special district panel (schools, PUDs, ports, Metro)
 on SEPA use and experience

February 18	RCW 43.21C.010-.030. SEPA-NEPA relationship lead agency
March 25	purpose of rules right to a healthful environment indirect impacts descriptive environmental checklist school closure, EFSEC exemptions agency staff competence and certification; DOE workshops and handbook
April 20	environmental checklist flexible thresholds for minor new construction EFSEC
May 19	environmental checklist categorical exemptions and school closures lead agency "socioeconomic" impacts
June 9	scoping threshold determinations, including proposed and mitigated DNSs
July 15	threshold determinations "socioeconomic" impacts forest practices exemption
July 27	scoping forest practices exemption
August 26	threshold determinations nonproject proposals forms appeals
September 21	nonproject proposals consultation and commenting environmentally sensitive areas EFSEC substantive authority and mitigation
September 30	substantive authority and mitigation agency SEPA policies and procedures functional equivalence integration, coordinating permit procedures scope, content, timing of environmental review EIS format use of existing documents and supplements appeals

November 30 attorneys fees
 drafting committee report on recommended rules
 and statutory changes, including format,
 definitions, etc.
 rulemaking authority
 public hearings on recommendations

December 13 approval of draft bill and rule recommendations

1983

June 20 approval of proposed rules and content of final report

OTHER COMMISSION PUBLIC MEETINGS AND HEARINGS

1981

September 1 Information meeting with state agencies
 September 2 Informational meeting with environmental groups
 September 3 Informational meeting with development community
 September 4 Informational meeting with local government

1981

December 1 Full Advisory Committee meeting and panel discussion from
 different interest group perspectives on SEPA

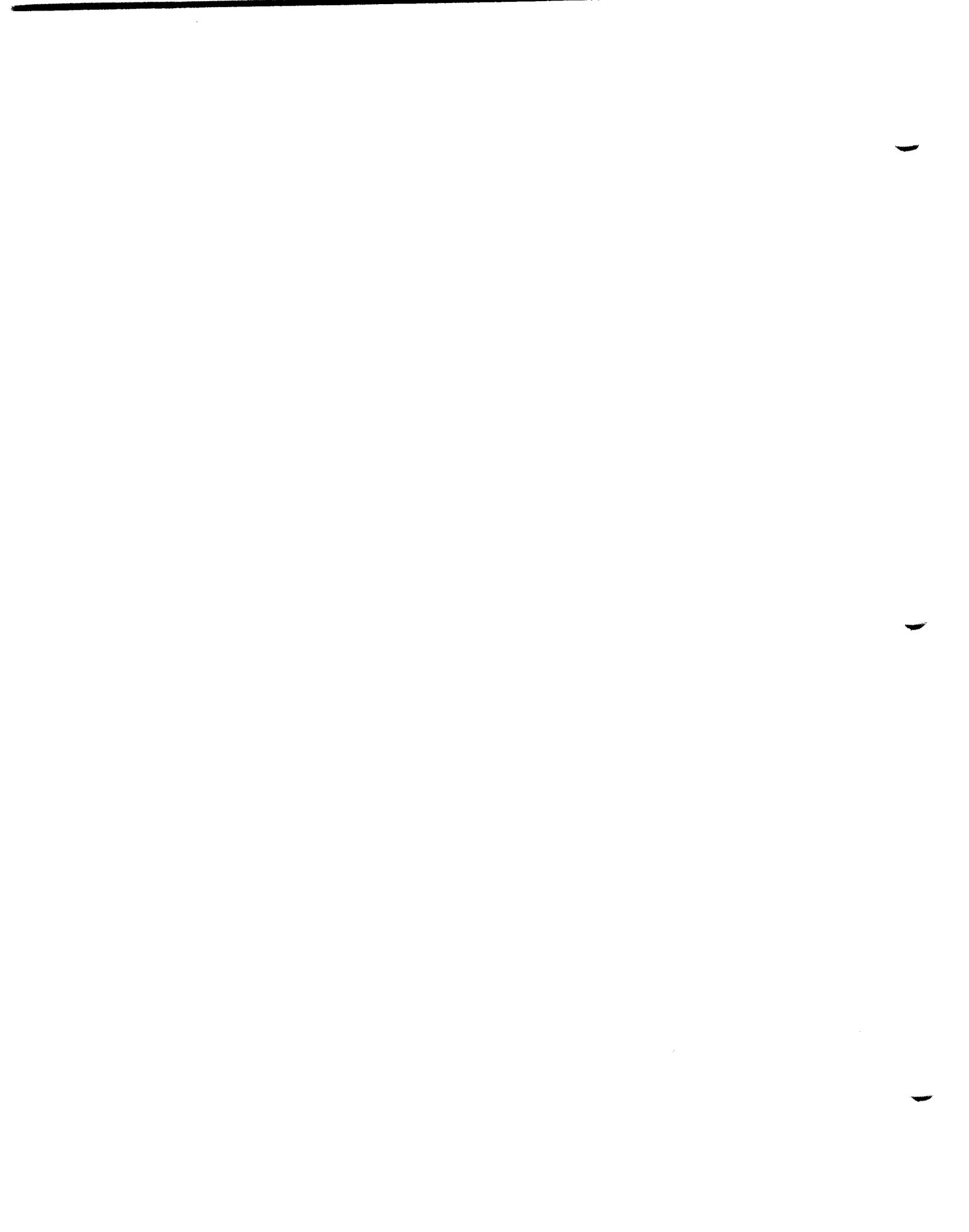
1982

December 16 Full Advisory Committee meeting on Commission
 recommendations

1983

January 5 Public hearing in Seattle at Port of Seattle
 January 6 Public hearing in Olympia at Public Lands Building
 January 18 Public hearing in Yakima at County Courthouse
 January 25 Public hearing in Spokane at Public Health Center

This list does not include well over 100 meetings by the five Technical Committees of the Commission's Advisory Committee (each of which had numerous subcommittees), the Advisory Committee's Co-Chair Committee, the Commission's Drafting Committee, and Commission Ad Hoc Committees assigned to specific issues.



Appendices



IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE SENATE BILL NO. 3006

Chapter 117, Laws of 1983

48th Legislature
Regular Session

EFFECTIVE DATE: April 23, 1983
Except: Section 3 which becomes
effective on October 20, 1983.

Passed the Senate March 24, 1983

Yeas 42 Nays 6

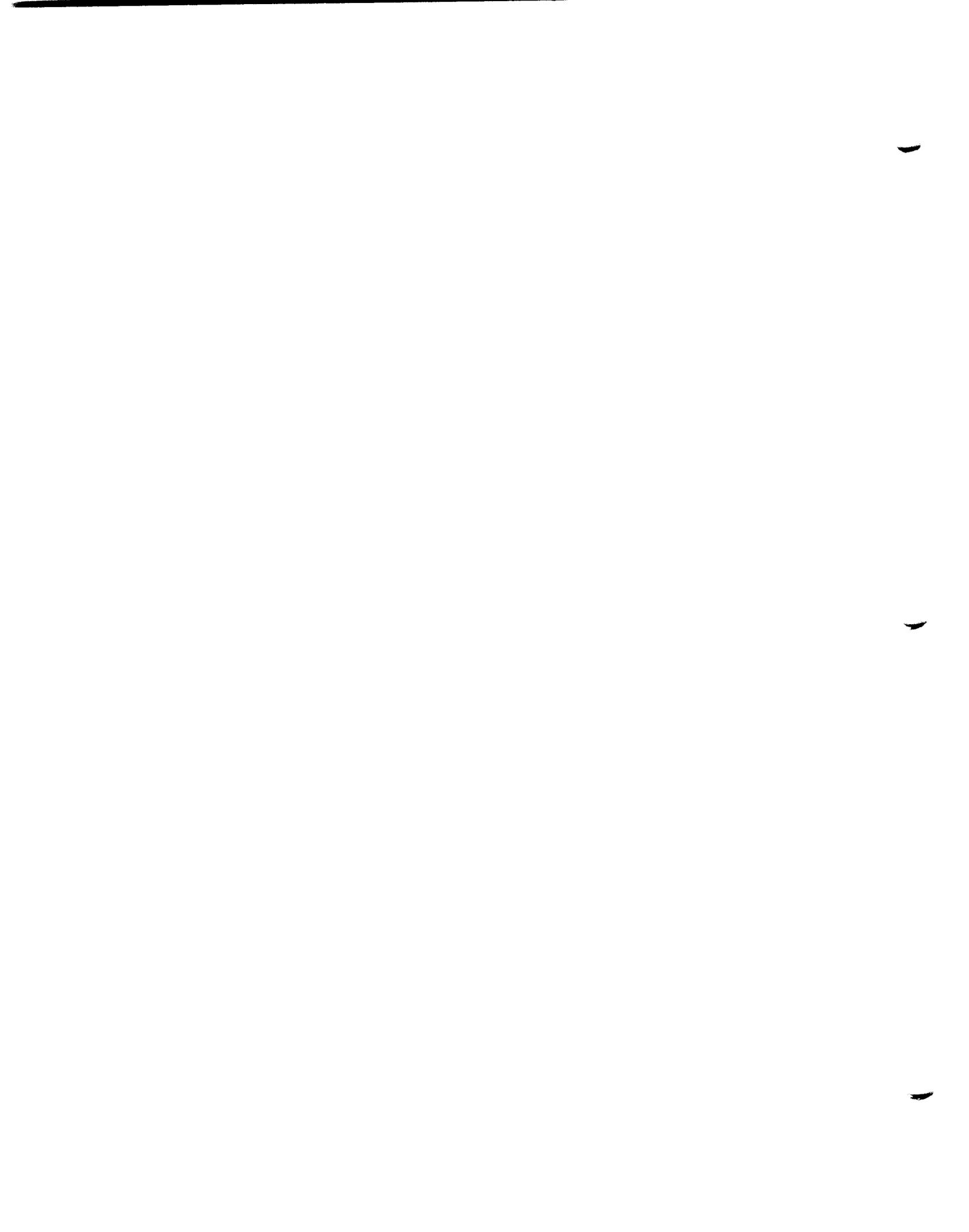
Passed the House April 18, 1983

Yeas 85 Nays 13

CERTIFICATE

I, Sidney R. Snyder, Secretary of the Senate of the State of Washington do hereby certify that the attached is enrolled Substitute Senate Bill No. 3006 as passed by the Senate and the House of Representatives on the dates hereon set forth.


Secretary of the Senate



ENGROSSED SUBSTITUTE SENATE BILL NO. 3006

State of Washington 48th Legislature 1983 Regular Session
by Committee on Parks and Ecology (Originally sponsored by Senators
Bluechel, Williams, Fuller and Hurley)

Filed by Committee February 23, 1983, and ordered printed.

1 AN ACT Relating to environmental policy; amending section 1,
2 chapter 290, Laws of 1981 and RCW 43.21C.037; amending section 6,
3 chapter 109, Laws of 1971 ex. sess. as amended by section 2, chapter
4 278, Laws of 1977 ex. sess. and RCW 43.21C.060; amending section 4,
5 chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.100; amending
6 section 6, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.110;
7 amending section 8, chapter 179, Laws of 1974 ex. sess. and RCW
8 43.21C.120; adding new sections to chapter 43.21C RCW; creating new
9 sections; recodifying RCW 43.21C.100; recodifying RCW 43.21C.105;
10 decodifying RCW 43.21C.070; decodifying RCW 43.21C.200; decodifying
11 RCW 43.21C.202; decodifying RCW 43.21C.204; repealing section 2,
12 chapter 84, Laws of 1979 ex. sess., section 2, chapter 2, Laws of
13 1980 and RCW 43.21C.032; repealing section 3, chapter 179, Laws of
14 1974 ex. sess. and RCW 43.21C.085; repealing section 11, chapter 179,
15 Laws of 1974 ex. sess., section 107, chapter 151, Laws of 1979 and
16 RCW 43.21C.140; providing an effective date; and declaring an
17 emergency.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

19 NEW SECTION. Sec. 1. There is added to chapter 43.21C RCW a new
20 section to be codified as RCW 43.21C.031 with the section heading of
21 "SIGNIFICANT IMPACTS" to read as follows:

22 An environmental impact statement (the detailed statement
23 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
24 legislation and other major actions having a probable significant,
25 adverse environmental impact. Actions categorically exempt under RCW
26 43.21C.110(1)(a) do not require environmental review or the
27 preparation of an environmental impact statement under this chapter.

28 An environmental impact statement is required to analyze only
29 those probable adverse environmental impacts which are significant.

Sec. 1

1 Beneficial environmental impacts may be discussed. The responsible
2 official shall consult with agencies and the public to identify such
3 impacts and limit the scope of an environmental impact statement.
4 The subjects listed in RCW 43.21C.030(2)(c) need not be treated as
5 separate sections of an environmental impact statement. Discussions
6 of significant short-term and long-term environmental impacts,
7 significant irrevocable commitments of natural resources, significant
8 alternatives including mitigation measures, and significant
9 environmental impacts which cannot be mitigated should be
10 consolidated or included, as applicable, in those sections of an
11 environmental impact statement where the responsible official decides
12 they logically belong.

13 Sec. 2. Section 1, chapter 290, Laws of 1981 and RCW 43.21C.037
14 are each amended to read as follows:

15 (1) Decisions pertaining to applications for Class I, II, and III
16 forest practices, as defined by rule of the forest practices board
17 under RCW 76.09.050, are not subject to the requirements of RCW
18 43.21C.030(2)(c) as now or hereafter amended.

19 (2) When the applicable county, city, or town requires a license
20 in connection with any proposal involving forest practices (a) on
21 lands platted after January 1, 1960, (b) on lands being converted to
22 another use, or (c) on lands which, pursuant to RCW 76.09.070 as now
23 or hereafter amended, are not to be reforested because of the
24 likelihood of future conversion to urban development, then the local
25 government, rather than the department of natural resources, is
26 responsible for any detailed statement required under RCW
27 43.21C.030(2)(c).

28 (3) Those forest practices determined by rule of the forest
29 practices board to have a potential for a substantial impact on the
30 environment, and thus to be Class IV practices, require an evaluation
31 by the department of natural resources as to whether or not a
32 detailed statement must be prepared pursuant to this chapter. The
33 evaluation shall be made within ten days from the date the department
34 receives the application. A Class IV forest practice application
35 must be approved or disapproved by the department within thirty
36 calendar days from the date the department receives the application,

1 unless the department determines that a detailed statement must be
 2 made, in which case the application must be approved or disapproved
 3 by the department within sixty days from the date the department
 4 receives the application, unless the commissioner of public lands,
 5 through the promulgation of a formal order, determines that the
 6 process cannot be completed within such period. This section shall
 7 not be construed to prevent any local or regional governmental entity
 8 from determining that a detailed statement must be prepared for an
 9 action regarding a Class IV forest practice taken by that
 10 governmental entity concerning the land on which forest practices
 11 will be conducted.

12 ~~((This section shall cease to exist on June 30, 1983, unless
 13 extended by law for an additional period of time))~~

14 Sec. 3. Section 6, chapter 109, Laws of 1971 ex. sess. as
 15 amended by section 2, chapter 278, Laws of 1977 ex. sess. and RCW
 16 43.21C.060 are each amended to read as follows:

17 The policies and goals set forth in this chapter are
 18 supplementary to those set forth in existing authorizations of all
 19 branches of government of this state, including state agencies,
 20 municipal and public corporations, and counties ~~((PROVIDED,
 21 HOWEVER, THAT))~~. Any governmental action ~~((not requiring a
 22 legislative decision))~~ may be conditioned or denied pursuant to this
 23 chapter ~~((only on the basis of))~~: PROVIDED, That such conditions or
 24 denials shall be based upon policies identified by the appropriate
 25 governmental authority and incorporated into regulations, plans, or
 26 codes which are formally designated by the agency (or appropriate
 27 legislative body, in the case of local government) as possible bases
 28 for the exercise of authority pursuant to this chapter. Such
 29 designation shall occur at the time specified by RCW 43.21C.120.
 30 Such action may be conditioned only to mitigate specific adverse
 31 environmental impacts which are ((both)) identified in the
 32 environmental documents prepared ((pursuant to the)) under this
 33 chapter ((end)). These conditions shall be stated in writing by the
 34 ~~((responsible official of the acting governmental agency in the~~
 35 ~~case of counties with a population of more than seventy thousand~~
 36 ~~people and cities with a population of more than thirty seven~~

Sec. 3

1 thousand--people--such-conditions-or-denials-made-more-than-one-year
2 from-September-24-1977-shall-also-be-based-upon-policies-developed
3 by-the-appropriate-local-governmental-authority-and-incorporated-into
4 resolutions--regulations--ordinances--plans-or-codes--in-the-case
5 of-counties-with-a-population-of-less-than-seventy-thousand-people
6 and-cities-with-a-population-of-less-than-thirty-seven-thousand
7 people--such-conditions-or-denials-made-more-than-three-years--from
8 September-24-1977-shall-also-be-based-upon-policies-developed-by-the
9 appropriate--local--governmental--authority--and--incorporated--into
10 resolutions--regulations--ordinances--plans--or--codes--PROVIDED
11 FURTHER--that)) decisionmaker. Mitigation measures shall be
12 reasonable and capable of being accomplished. In order to deny a
13 proposal under this chapter, an agency must find that (1) The
14 proposal would result in significant adverse impacts identified in a
15 final or supplemental environmental impact statement prepared under
16 this chapter and (2) reasonable mitigation measures are insufficient
17 to mitigate the identified impact. Except for permits and variances
18 issued pursuant to chapter 90.58 RCW, when such a governmental
19 action, not requiring a legislative decision, is conditioned or
20 denied by a nonelected official of a local governmental agency, the
21 decision shall be appealable to the legislative authority of the
22 acting local governmental agency unless that legislative authority
23 formally eliminates such appeals. Such appeals shall be in
24 accordance with procedures established for such appeals by the
25 legislative authority of the acting local governmental agency.

26 NEW SECTION. Sec. 4. There is added to chapter 43.21C RCW a new
27 section to be codified as RCW 43.21C.075 with a section heading of
28 "APPEALS" to read as follows:

29 (1) Because a major purpose of this chapter is to combine
30 environmental considerations with public decisions, any appeal
31 brought under this chapter shall be linked to a specific governmental
32 action. The State Environmental Policy Act provides a basis for
33 challenging whether governmental action is in compliance with the
34 substantive and procedural provisions of this chapter. The State
35 Environmental Policy Act is not intended to create a cause of action
36 unrelated to a specific governmental action.

1 (2) Unless otherwise provided by this section:

2 (a) Appeals under this chapter shall be of the governmental
3 action together with its accompanying environmental determinations.

4 (b) Appeals of environmental determinations made (or lacking)
5 under this chapter shall be commenced within the time required to
6 appeal the governmental action, which is subject to environmental
7 review.

8 (3) If an agency has a procedure for appeals of agency
9 environmental determinations made under this chapter, such procedure:

10 (a) Shall not allow more than one agency appeal proceeding on a
11 procedural determination (the adequacy of a determination of
12 significance/nonsignificance or of a final environmental impact
13 statement), consistent with any state statutory requirements for
14 appeals to local legislative bodies. The appeal proceeding on a
15 determination of significance/nonsignificance may occur before the
16 agency's final decision on a proposed action. Such an appeal shall
17 also be allowed for a determination of significance/nonsignificance
18 which may be issued by the agency after supplemental review;

19 (b) Shall consolidate appeal of procedural issues and of
20 substantive determinations made under this chapter (such as a
21 decision to require particular mitigation measures or to deny a
22 proposal) by providing for simultaneous appeal of an agency decision
23 on a proposal and any environmental determinations made under this
24 chapter, with the exception of the threshold determination appeal as
25 provided in (a) of this subsection or an appeal to the local
26 legislative authority under RCW 43.21C.060 or other applicable state
27 statutes;

28 (c) Shall provide for the preparation of a record for use in any
29 subsequent appeal proceedings, and shall provide for any subsequent
30 appeal proceedings to be conducted on the record, consistent with
31 other applicable law. An adequate record consists of findings and
32 conclusions, testimony under oath, and taped or written transcript.
33 An electronically recorded transcript will suffice for purposes of
34 review under this paragraph; and

35 (d) Shall provide that procedural determinations made by the
36 responsible official shall be entitled to substantial weight.

Sec. 4

1 (4) If a person aggrieved by an agency action has the right to
2 judicial appeal and if an agency has an appeal procedure, such person
3 shall, prior to seeking any judicial review, use such procedure if
4 any such procedure is available, unless expressly provided otherwise
5 by state statute.

6 (5) RCW 43.21C.080 establishes an optional "notice of action"
7 procedure which, if used, imposes a time period for appealing
8 decisions under this chapter. Some statutes and ordinances contain
9 time periods for challenging governmental actions which are subject
10 to review under this chapter, such as various local land use
11 approvals (the "underlying governmental action"). This section does
12 not modify any such time periods. This section governs when a
13 judicial appeal must be brought under this chapter where a "notice of
14 action" is used, and/or where there is another time period which is
15 required by statute or ordinance for challenging the underlying
16 governmental action. In this subsection, the term "appeal" refers to
17 a judicial appeal only.

18 (a) If there is a time period for appealing the underlying
19 governmental action, appeals under this chapter shall be commenced
20 within thirty days. The agency shall give official notice stating
21 the date and place for commencing an appeal. If there is an agency
22 proceeding under subsection (3) of this section, the appellant shall,
23 prior to commencing a judicial appeal, submit to the responsible
24 official a notice of intent to commence a judicial appeal. This
25 notice of intent shall be given within the time period for commencing
26 a judicial appeal on the underlying governmental action.

27 (b) A notice of action under RCW 43.21C.080 may be used. If a
28 notice of action is used, judicial appeals shall be commenced within
29 the time period specified by RCW 43.21C.080, unless there is a time
30 period for appealing the underlying governmental action in which case
31 (a) of this subsection shall apply.

32 (c) Notwithstanding RCW 43.21C.080(1), if there is a time period
33 for appealing the underlying governmental action, a notice of action
34 may be published within such time period.

35 (6)(a) Judicial review of an appeal decision made by an agency
36 under RCW 43.21C.075(5) shall be on the record, consistent with other

1 applicable law.

2 (b) A taped or written transcript may be used. If a taped
3 transcript is to be reviewed, a record shall identify the location on
4 the taped transcript of testimony and evidence to be reviewed.
5 Parties are encouraged to designate only those portions of the
6 testimony necessary to present the issues raised on review, but if a
7 party alleges that a finding of fact is not supported by evidence,
8 the party should include in the record all evidence relevant to the
9 disputed finding. Any other party may designate additional portions
10 of the taped transcript relating to issues raised on review. A party
11 may provide a written transcript of portions of the testimony at the
12 party's own expense or apply to that court for an order requiring the
13 party seeking review to pay for additional portions of the written
14 transcript.

15 (c) Judicial review under this chapter shall without exception be
16 of the governmental action together with its accompanying
17 environmental determinations.

18 (7) Jurisdiction over the review of determinations under this
19 chapter in an appeal before an agency or superior court shall upon
20 consent of the parties be transferred in whole or part to the
21 shorelines hearings board. The shorelines hearings board shall hear
22 the matter and sign the final order expeditiously. The superior
23 court shall certify the final order of the shorelines hearings board
24 and said certified final order may only be appealed to an appellate
25 court.

26 (8) For purposes of this section and RCW 43.21C.080, the words
27 "action", "decision", and "determination" mean substantive agency
28 action including any accompanying procedural determinations under
29 this chapter (except where the word "action" means "appeal" in RCW
30 43.21C.080(2) and (3)). The word "action" in this section and RCW
31 43.21C.080 does not mean a procedural determination by itself made
32 under this chapter. The word "determination" includes any
33 environmental document required by this chapter and state or local
34 implementing rules. The word "agency" refers to any state or local
35 unit of government. The word "appeal" refers to administrative,
36 legislative, or judicial appeals.

Sec. 4

1 (9) The court in its discretion may award reasonable attorney's
2 fees of up to one thousand dollars in the aggregate to the prevailing
3 party, including a governmental agency, on issues arising out of this
4 chapter if the court makes specific findings that the legal position
5 of a party is frivolous and without reasonable basis.

6 NEW SECTION. Sec. 5. There is added to chapter 43.21C RCW a new
7 section to be codified as RCW 43.21C.095 with a section heading of
8 "STATE ENVIRONMENTAL POLICY ACT RULES TO BE ACCORDED SUBSTANTIAL
9 DEFERENCE" to read as follows:

10 .The rules promulgated under RCW 43.21C.110 shall be accorded
11 substantial deference in the interpretation of this chapter.

12 Sec. 6. Section 4, chapter 179, Laws of 1974 ex. sess. and RCW
13 43.21C.100 are each amended to read as follows:

14 ~~((There is hereby established the))~~ The legislature may establish
15 a council on environmental policy ~~((which shall be composed of the~~
16 ~~members of the pollution control hearings board~~

17 ~~The council shall be abolished and shall cease to exist at~~
18 ~~midnight, June 30, 1976. The guidelines established by the council~~
19 ~~prior to midnight, June 30, 1976, shall continue to be valid and of~~
20 ~~force and effect, except as they are thereafter amended by further~~
21 ~~guidelines promulgated by the department of ecology, in accord with~~
22 ~~chapter 34.04 RCW.~~

23 ~~Upon the abolishment of the council on June 30, 1976, all powers~~
24 ~~and functions of the council are transferred to the department~~
25 ~~of ecology))~~ to review and assist in the implementation of this
26 chapter.

27 Sec. 7. Section 6, chapter 179, Laws of 1974 ex. sess. and RCW
28 43.21C.110 are each amended to read as follows and shall be given the
29 section heading "CONTENT OF STATE ENVIRONMENTAL POLICY ACT RULES":

30 It shall be the duty and function of the ~~((council))~~ department
31 of ecology, which may utilize proposed rules developed by the
32 environmental policy commission:

33 (1) To adopt ~~((intert))~~ and amend thereafter rules of
34 interpretation and implementation of this chapter (the state
35 environmental policy act of 1971), subject to the requirements of

1 chapter 34.04 RCW, for the purpose of providing uniform rules and
2 guidelines to all branches of government including state agencies,
3 political subdivisions, public and municipal corporations, and
4 counties. ~~The proposed rules shall be subject to full public~~
5 hearings requirements associated with rule promulgation. Suggestions
6 for modifications of the proposed rules shall be considered on their
7 merits, and the department shall have the authority and
8 responsibility for full and appropriate independent promulgation and
9 adoption of rules, assuring consistency with this chapter as amended
10 and with the preservation of protections afforded by this chapter.
11 The rule making powers authorized in this section shall include, but
12 shall not be limited to, the following phases of interpretation and
13 implementation of this chapter (the state environmental policy act of
14 1971):

15 (a) Categories of governmental actions which ~~((normally))~~ are not
16 to be considered as potential major actions significantly affecting
17 the quality of the environment ~~((as well as categories of actions~~
18 exempt from such classification)), including categories pertaining to
19 applications for water right permits pursuant to chapters 90.03 and
20 90.44 RCW. The types of actions included as categorical exemptions
21 in the rules shall be limited to those types which are not major
22 actions significantly affecting the quality of the environment. The
23 rules shall provide for certain circumstances where actions which
24 potentially are categorically exempt require environmental review.

25 (b) Rules for criteria and procedures applicable to the
26 determination of when an act of a branch of government is a major
27 action significantly affecting the quality of the environment for
28 which a detailed statement is required to be prepared pursuant to RCW
29 43.21C.030.

30 (c) Rules and procedures applicable to the preparation of
31 detailed statements and other environmental documents, including but
32 not limited to rules for timing of environmental review, obtaining
33 comments, data and other information, and providing for and
34 determining areas of public participation which shall include the
35 scope and review of draft environmental impact statements.

36 (d) Scope of coverage and contents of detailed statements

Sec. 7

1 assuring that such statements are simple, uniform, and as short as
2 practicable; statements are required to analyze only reasonable
3 alternatives and probable adverse environmental impacts which are
4 significant, and may analyze beneficial impacts.

5 (e) Rules and procedures for public notification of actions taken
6 and documents prepared.

7 (f) Definition of terms relevant to the implementation of this
8 chapter including the establishment of a list of elements of the
9 environment. Analysis of environmental considerations under RCW
10 43.21C.030(2) may be required only for those subjects listed as
11 elements of the environment (or portions thereof). The list of
12 elements of the environment shall consist of the "natural" and
13 "built" environment. The elements of the built environment shall
14 consist of public services and utilities (such as water, sewer,
15 schools, fire and police protection), transportation, environmental
16 health (such as explosive materials and toxic waste), and land and
17 shoreline use (including housing, and a description of the
18 relationships with land use and shoreline plans and designations,
19 including population).

20 (g) ((Guidelines)) Rules for determining the obligations and
21 powers under this chapter of two or more branches of government
22 involved in the same project significantly affecting the quality of
23 the environment.

24 (h) Methods to assure adequate public awareness of the
25 preparation and issuance of detailed statements required by RCW
26 43.21C.030(2)(c).

27 (i) To prepare ((guidelines)) rules for projects setting forth
28 the time limits within which the governmental entity responsible for
29 the action shall comply with the provisions of this chapter.

30 (j) ((Guidelines)) Rules for utilization of a detailed statement
31 for more than one action and rules improving environmental analysis
32 of nonproject proposals and encouraging better interagency
33 coordination and integration between this chapter and other
34 environmental laws.

35 (k) ((Guidelines)) Rules relating to actions which shall be
36 exempt from the provisions of this chapter in situations of

1 emergency.

2 (1) Rules relating to the use of environmental documents in
 3 planning and decisionmaking and the implementation of the substantive
 4 policies and requirements of this chapter, including procedures for
 5 appeals under this chapter.

6 (2) In exercising its powers, functions, and duties under this
 7 section, the ~~((council))~~ department may:

8 (a) Consult with the state agencies and with representatives of
 9 science, industry, agriculture, labor, conservation organizations,
 10 state and local governments and other groups, as it deems advisable;
 11 and

12 (b) Utilize, to the fullest extent possible, the services,
 13 facilities, and information (including statistical information) of
 14 public and private agencies, organizations, and individuals, in order
 15 to avoid duplication of effort and expense, overlap, or conflict with
 16 similar activities authorized by law and performed by established
 17 agencies.

18 (3) Rules adopted pursuant to this section shall be subject to
 19 the review procedures of RCW 34.04.070 and 34.04.080.

20 Sec. 8. Section 8, chapter 179, Laws of 1974 ex. sess. and RCW
 21 43.21C.120 are each amended to read as follows:

22 (1) All agencies of government of this state are directed,
 23 consistent with rules and guidelines adopted under RCW 43.21C.110,
 24 including any revisions, to adopt rules pertaining to the integration
 25 of the policies and procedures of this chapter (the state
 26 environmental policy act of 1971), into the various programs under
 27 their jurisdiction for implementation. Designation of polices under
 28 RCW 43.21C.060 and adoption of ~~((the-intert))~~ rules required under
 29 this section shall take place not later than one hundred ~~((twenty))~~
 30 eighty days after the effective date of rules and guidelines adopted
 31 pursuant to RCW 43.21C.110, or after the establishment of an agency,
 32 whichever shall occur later.

33 (2) Rules adopted by state agencies under subsection (1) of this
 34 section shall be adopted in accordance with the provisions of chapter
 35 34.04 RCW and shall be subject to the review procedures of RCW
 36 34.04.070 and 34.04.080.

Sec. 8

1 (3) All public and municipal corporations, political
2 subdivisions, and counties of this state are directed, consistent
3 with rules and guidelines adopted under RCW 43.21C.110, including any
4 revisions, to adopt rules, ordinances, or resolutions pertaining to
5 the integration of the policies and procedures of this chapter (the
6 state environmental policy act of 1971), into the various programs
7 under their jurisdiction for implementation. Designation of policies
8 under RCW 43.21C.060 and adoption of the ((+ + + +)) rules required
9 under this section shall take place not later than one hundred eighty
10 days after the effective date of rules and guidelines adopted
11 pursuant to RCW 43.21C.110, or after the establishment of the
12 governmental entity, whichever shall occur later.

13 (4) ~~Ordinances or regulations adopted prior to the effective date~~
14 ~~of rules and guidelines adopted pursuant to RCW 43.21C.110 shall~~
15 ~~continue to be effective until the adoption of any new or revised~~
16 ~~ordinances or regulations which may be required: PROVIDED, That~~
17 ~~revisions required by this section as a result of rule changes under~~
18 ~~RCW 43.21C.110 are made within the time limits specified by this~~
19 ~~section.~~

20 NEW SECTION. Sec. 9. There is added to chapter 43.21C RCW a new
21 section to read as follows:

22 The department of ecology shall conduct annual state-wide
23 workshops and publish an annual state environmental policy act
24 handbook or supplement to assist persons in complying with the
25 provisions of this chapter and the implementing rules. The workshops
26 and handbook shall include, but not be limited to, measures to assist
27 in preparation, processing, and review of environmental documents,
28 relevant court decisions affecting this chapter or rules adopted
29 under this chapter, legislative changes to this chapter,
30 administrative changes to the rules, and any other information which
31 will assist in orderly implementation of this chapter and rules.

32 The department shall develop the handbook and conduct the
33 workshops in cooperation with, but not limited to, state agencies,
34 the association of Washington cities, the Washington association of
35 counties, educational institutions, and other groups or associations
36 interested in the state environmental policy act.

1 NEW SECTION. Sec. 10. The following acts or parts of acts are
2 each repealed:

3 (1) Section 2, chapter 84, Laws of 1979 ex. sess., section 2,
4 chapter 2, Laws of 1980 and RCW 43.21C.032;

5 (2) Section 3, chapter 179, Laws of 1974 ex. sess. and RCW
6 43.21C.085; and

7 (3) Section 11, chapter 179, Laws of 1974 ex. sess., section 107,
8 chapter 151, Laws of 1979 and RCW 43.21C.140.

9 NEW SECTION. Sec. 11. RCW 43.21C.070, 43.21C.200, 43.21C.202,
10 and 43.21C.204 are each decodified.

11 NEW SECTION. Sec. 12. RCW 43.21C.100 is recodified as RCW
12 43.21C.170.

13 NEW SECTION. Sec. 13. RCW 43.21C.105 is recodified as RCW
14 43.21C.175.

15 NEW SECTION. Sec. 14. Section headings as used in this act do
16 not constitute any part of the law.

17 NEW SECTION. Sec. 15. Sections 3 and 4 of this act apply to
18 agency decisions and to appeal proceedings prospectively only and not
19 retrospectively. Sections 1, 5, 6, 7, and 8 of this act may be
20 applied by agencies retrospectively.

21 NEW SECTION. Sec. 16. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. Sec. 17. (1) Sections 1, 2, and 4 through 16 of
26 this act are necessary for the immediate preservation of the public
27 peace, health, and safety, the support of the state government and
28 its existing public institutions, and shall take effect immediately.

29 (2) Section 3 of this act shall take effect one hundred eighty
30 days after the remainder of this act goes into effect under
31 subsection (1) of this section.

Passed the Senate March 24, 1983.

John A. Cherberg
President of the Senate.

Passed the House April 18, 1983.

Wayne Olson
Speaker of the House.

Approved April 23, 1983

John Spilhaus
Governor of the State of Washington

FILED

APR 23 1983

SECRETARY OF STATE
STATE OF WASHINGTON

10:35 am

Chapter 197-11 WAC

PROPOSED SEPA RULES

PART 1	010-020	Preamble
PART 2	030-200	General Requirements
PART 3	300-400	Threshold Determination
PART 4	400-500	EIS
PART 5	500-600	Commenting
PART 6	600-700	Using Existing Environmental Documents
PART 7	700-800	SEPA and Agency Decisions
PART 8	800-1000	Definitions
PART 9	1000-1100	Categorical Exemptions
PART 10	1100-1300	Agency Compliance
PART 11	1300-1400	Forms

[Note to readers: The section numbers of the final three Parts will be different when the rules are printed in the Washington State Register, but the content and order of the Parts and sections will be the same as in this report (the state computer apparently cannot use section numbers in the 1000 series).]

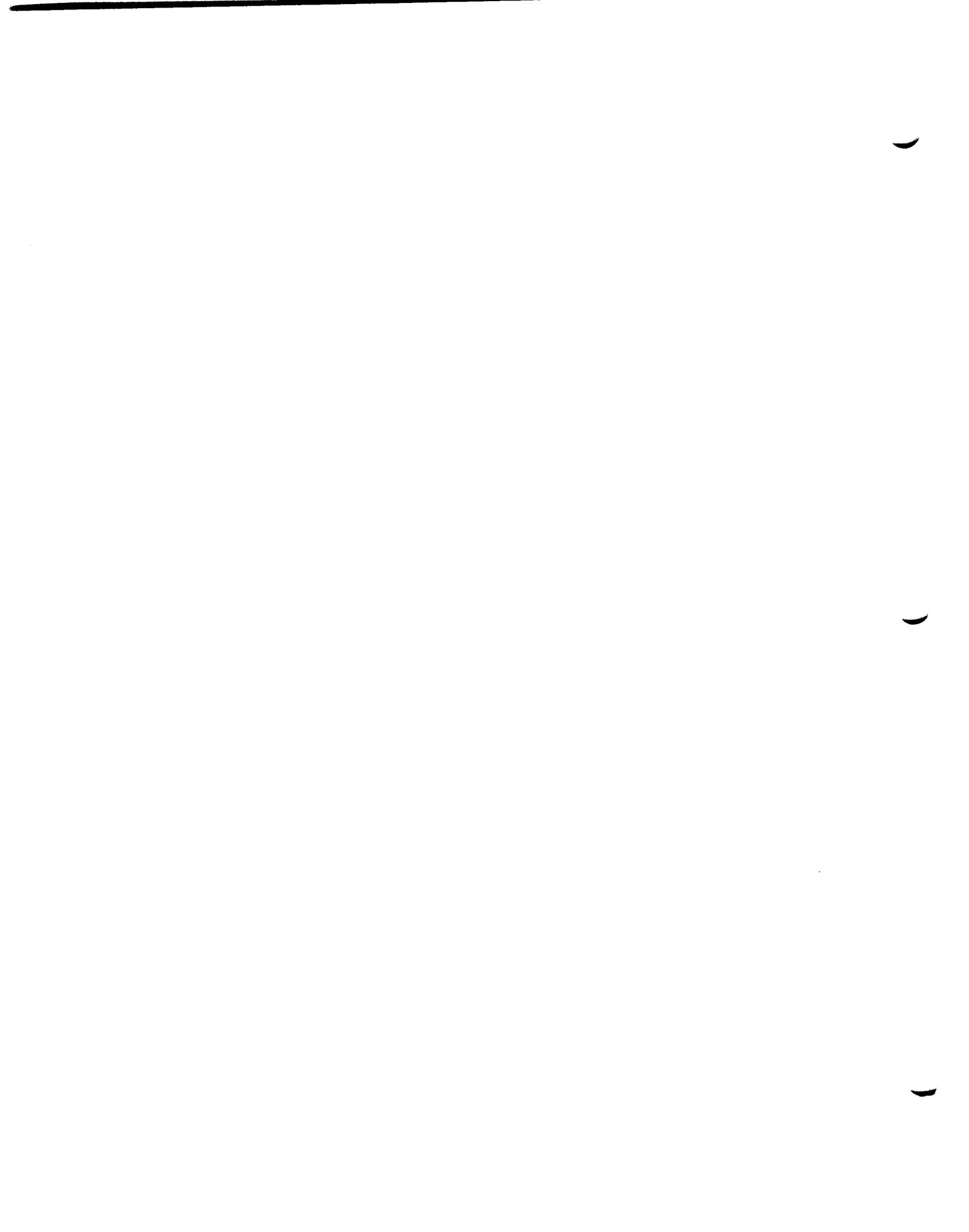


TABLE OF CONTENTS

<u>PART ONE</u>	<u>PREAMBLE</u>
WAC 197-11-010	Purpose of these Rules
WAC 197-11-020	Overview of the SEPA Process
<u>PART TWO</u>	<u>GENERAL REQUIREMENTS</u>
WAC 197-11-030	Authority
WAC 197-11-035	Definitions
WAC 197-11-040	Policy and Mandate
WAC 197-11-050	Lead Agency
WAC 197-11-055	Timing of the SEPA Process
WAC 197-11-060	Content of Environmental Review
WAC 197-11-070	Limitations on Actions During SEPA Process
WAC 197-11-080	Incomplete or Unavailable Information
WAC 197-11-090	Supporting Documents
WAC 197-11-100	Information Required of Applicants
<u>PART THREE</u>	<u>THRESHOLD DETERMINATION</u>
WAC 197-11-300	Purpose of this Part
WAC 197-11-305	Whether EIS Required
WAC 197-11-310	Threshold Determination Required
WAC 197-11-315	Threshold Determination Process
WAC 197-11-320	Categorical Exemptions
WAC 197-11-325	Environmental Checklist
WAC 197-11-330	Additional Information
WAC 197-11-340	Mitigated DNS
WAC 197-11-350	Determination of Nonsignificance (DNS)
WAC 197-11-360	Determination of Significance (DS)
WAC 197-11-390	Effect of Threshold Determination; Assumption of Lead Agency Status
<u>PART FOUR</u>	<u>ENVIRONMENTAL IMPACT STATEMENT (EIS)</u>
WAC 197-11-400	Purpose of EIS
WAC 197-11-402	Implementation
WAC 197-11-405	Types of EISs
WAC 197-11-406	EIS Timing
WAC 197-11-408	Scoping
WAC 197-11-410	Expanded Scoping

WAC 197-11-420	EIS Preparation
WAC 197-11-425	Style and Size
WAC 197-11-430	Format
WAC 197-11-435	Cover Memo
WAC 197-11-440	EIS Contents
WAC 197-11-442	Contents of EIS on Nonproject Proposals
WAC 197-11-443	EIS Contents When Prior Nonproject EIS
WAC 197-11-444	Elements of the Environment
WAC 197-11-448	Relationship of EIS to Other Considerations
WAC 197-11-450	Cost-Benefit Analysis
WAC 197-11-455	Issuance of DEIS
WAC 197-11-460	Issuance of FEIS

PART FIVE

COMMENTING

WAC 197-11-500	Purpose of this Part
WAC 197-11-502	Inviting Comment
WAC 197-11-504	Availability and Cost of Environmental Documents
WAC 197-11-508	SEPA REGISTER
WAC 197-11-510	Required Form of Notice
WAC 197-11-520	Additional Notice
WAC 197-11-530	Circulation of DEIS
WAC 197-11-535	Public Hearings and Meetings
WAC 197-11-545	Effect of No Comment
WAC 197-11-550	Specificity of Comments
WAC 197-11-560	FEIS Response to Comments
WAC 197-11-570	Consulted Agency Costs to Assist Lead Agency

PART SIX

USING EXISTING ENVIRONMENTAL DOCUMENTS

WAC 197-11-640	Use of Existing Environmental Documents
WAC 197-11-650	Use of NEPA Documents
WAC 197-11-660	Supplemental Environmental Review
WAC 197-11-670	Combining Documents

PART SEVEN

SEPA AND AGENCY DECISIONS

WAC 197-11-700	Purpose of this Part
WAC 197-11-710	Implementation
WAC 197-11-720	Substantive Authority and Mitigation
WAC 197-11-740	Optional Coordinated Permit Procedures
WAC 197-11-750	Appeals

PART EIGHTDEFINITIONS

WAC 197-11-800	Definitions
WAC 197-11-810	Act
WAC 197-11-815	Action
WAC 197-11-818	Addendum
WAC 197-11-819	Adoption
WAC 197-11-820	Affecting
WAC 197-11-825	Agency
WAC 197-11-830	Applicant
WAC 197-11-832	Built Environment
WAC 197-11-835	Categorical Exemption
WAC 197-11-837	Consolidated Appeal
WAC 197-11-840	Consulted Agency
WAC 197-11-842	Cost-Benefit Analysis
WAC 197-11-845	County/city
WAC 197-11-847	Decisionmaker
WAC 197-11-849	Department
WAC 197-11-850	Determination of Nonsignificance (DNS)
WAC 197-11-855	Determination of Significance (DS)
WAC 197-11-860	EIS
WAC 197-11-865	Environment
WAC 197-11-870	Environmental Checklist
WAC 197-11-875	Environmental Document
WAC 197-11-876	Environmental Review
WAC 197-11-877	Environmentally Sensitive Area
WAC 197-11-879	Expanded Scoping
WAC 197-11-880	Impacts
WAC 197-11-885	Incorporation by Reference
WAC 197-11-890	Lands Covered by Water
WAC 197-11-895	Lead Agency
WAC 197-11-900	Legislation
WAC 197-11-905	License
WAC 197-11-910	Local Agency
WAC 197-11-915	Major Action
WAC 197-11-918	Mitigated DNS
WAC 197-11-920	Mitigation
WAC 197-11-922	Natural Environment
WAC 197-11-925	NEPA
WAC 197-11-930	Nonproject
WAC 197-11-935	Phased Review
WAC 197-11-937	Preferred Alternative
WAC 197-11-938	Preparation
WAC 197-11-940	Private Project
WAC 197-11-942	Probable
WAC 197-11-945	Proposal
WAC 197-11-947	Reasonable Alternative

WAC 197-11-950	Responsible Official
WAC 197-11-955	SEPA
WAC 197-11-960	Scope
WAC 197-11-965	Scoping
WAC 197-11-970	Significant
WAC 197-11-975	State Agency
WAC 197-11-980	Supplemental Review
WAC 197-11-985	Threshold Determination
WAC 197-11-990	Underlying Government Action

PART NINE

CATEGORICAL EXEMPTIONS

WAC 197-11-1000	Categorical Exemptions
WAC 197-11-1010	Exemptions and Nonexemptions Applicable to Specific State Agencies
WAC 197-11-1020	Department of Licensing
WAC 197-11-1025	Department of Labor and Industries
WAC 197-11-1130	Department of Natural Resources
WAC 197-11-1135	Department of Fisheries
WAC 197-11-1140	Department of Game
WAC 197-11-1045	Department of Social and Health Services
WAC 197-11-1050	Department of Agriculture
WAC 197-11-1055	Department of Ecology
WAC 197-11-1060	Department of Transportation
WAC 197-11-1065	Utilities and Transportation Commission
WAC 197-11-1070	Department of Commerce and Economic Development
WAC 197-11-1075	Other Agencies
WAC 197-11-1080	Emergencies
WAC 197-11-1090	Petitioning DOE to Change Exemptions

PART TEN

AGENCY COMPLIANCE

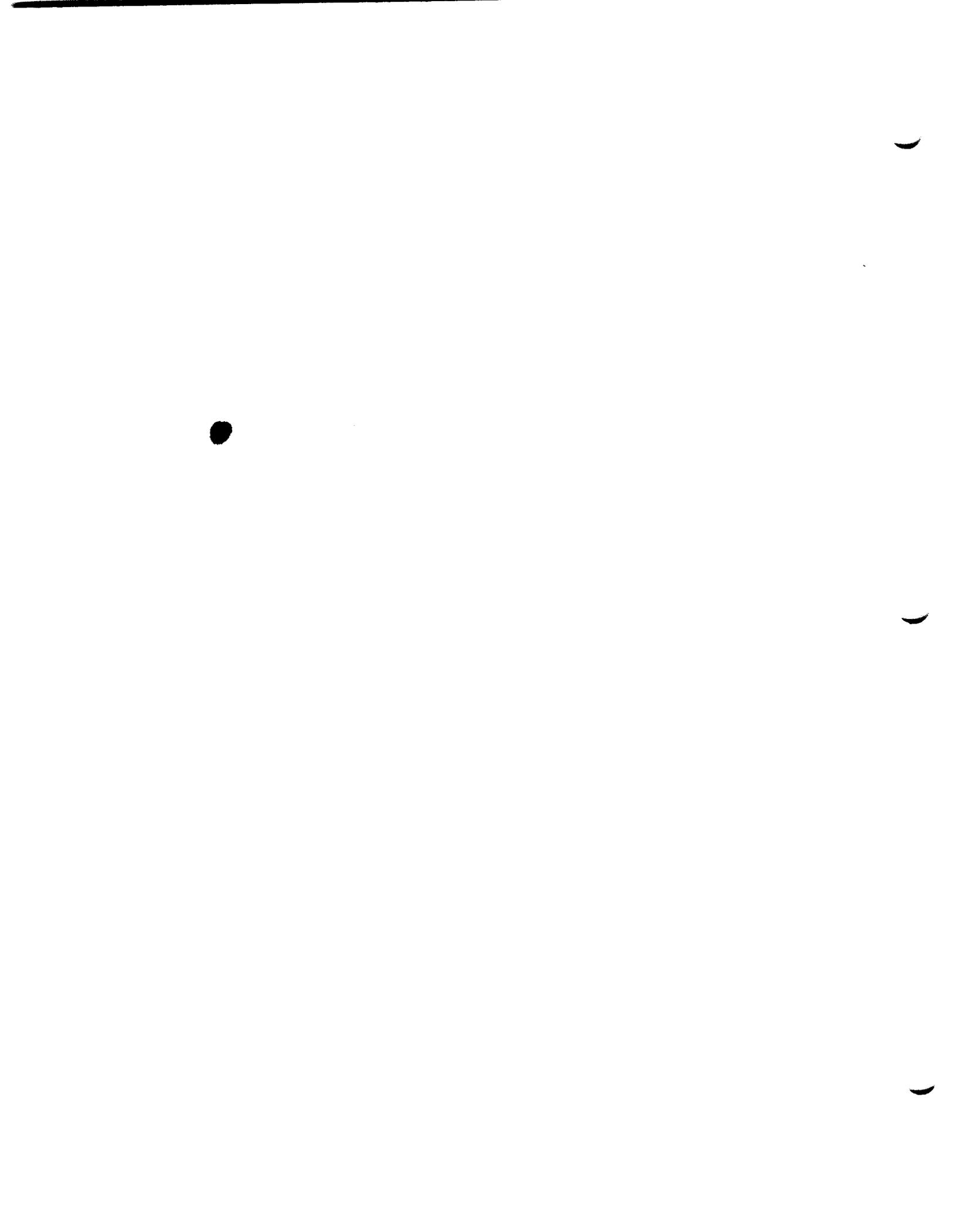
WAC 197-11-1100	Purpose
WAC 197-11-1110	Agency SEPA Policies
WAC 197-11-1120	Agency SEPA Procedures
WAC 197-11-1122	Content and Consistency of Agency Procedures
WAC 197-11-1125	Environmentally Sensitive Areas
WAC 197-11-1130	Designation of Responsible Official
WAC 197-11-1140	Procedures for Consulted Agencies
WAC 197-11-1150	SEPA Fees and Costs
WAC 197-11-1160	Application to Ongoing Actions
WAC 197-11-1170	Lack of Agency Procedures
WAC 197-11-1190	Agencies with Environmental Expertise
WAC 197-11-1200	Lead Agency Rules
WAC 197-11-1203	Determining the Lead Agency
WAC 197-11-1205	Lead Agency for Governmental Proposals

WAC 197-11-1210	Lead Agency for Public and Private Proposals
WAC 197-11-1215	Lead Agency for Private Projects with One Agency with Jurisdiction
WAC 197-11-1220	Lead Agency for Private Projects Requiring Licenses from More than One Agency, When One of the Agencies is a County/city
WAC-197-11-1222	Lead Agency for Private Proposals Requiring Licenses from a Local Special District (not City/County) and One or More State Agency
WAC 197-11-1225	Lead Agency for Private Projects Requiring Licenses from More than One State Agency
WAC 197-11-1230	Lead Agencies for Specific Proposals
WAC 197-11-1235	Transfer of Lead Agency Status to a State Agency
WAC 197-11-1240	Agreements as to Lead Agency Status
WAC 197-11-1245	Agreements on Division of Lead Agency Duties
WAC 197-11-1260	DOE Resolution of Lead Agency Disputes
WAC 197-11-1270	Assumption of Lead Agency Status
WAC 197-11-1280	Severability
WAC 197-11-1290	Effective Date

PART ELEVEN

FORMS

WAC 197-11-1325	Environmental Checklist
WAC 197-11-1340	Adoption Notice
WAC 197-11-1350	Determination of Nonsignificance (DNS)
WAC 197-11-1360	Determination of Significance (DS)
WAC 197-11-1370	Notice of Assumption of Lead Agency Status
WAC 197-11-1380	Notice of Action
WAC 197-11-444	List of Elements of the Environment



PART ONE

PREAMBLE

WAC 197-11-010
WAC 197-11-020

Purpose of these Rules
Overview of the SEPA Process

WAC 197-11-010 Purpose of these Rules.

(1) The State Environmental Policy Act (SEPA) establishes a state environmental policy and provides means for carrying out the policy.

(2) SEPA makes environmental protection part of the authority of every unit of government (agency) in the state. SEPA is intended to help public officials make decisions that are based on an understanding of environmental consequences and take appropriate actions to protect, restore, and enhance the environment. The purpose of these rules is to tell agencies what they must do to comply with SEPA's policies and procedures.

WAC 197-11-020 Overview of the SEPA Process.

(1) Information. This section is intended to help the reader and the general public understand how SEPA works and what is in these rules. This section broadly describes the SEPA process and is included for information purposes only. This section is not regulatory and shall not be used to impose legal requirements or responsibilities. Some cross-references are given in this section to assist the reader. The regulatory requirements of these rules begin in Part 2 below.

(2) Substantive Policy Mandate. SEPA is intended to help everyone make better environmental decisions. SEPA contains broad, yet specific substantive policies and goals which apply to all actions of the entire state government. (RCW 43.21C.020; RCW 43.21C.030(1).) SEPA works together with other laws to accomplish its mandate. (RCW 43.21C.050; RCW 43.21C.060.)

(3) Procedural Mandate. The act requires all agencies (including local governments but not the judiciary or state legislature) that take certain actions to follow certain procedures to assure that appropriate consideration is given to environmental factors and that the act's substantive policies are carried out. (RCW 43.21C.030(2).)

(4) Environmental Significance. The act's procedural provisions distinguish between actions that are likely to have "significant" environmental effects, and actions that are not. (RCW 43.21C.030(2)(c); RCW 43.21C.031; RCW 43.21C-.110.) Actions likely to have significant adverse impacts are analyzed in an environmental impact statement (EIS).

(5) Threshold Determination. The environmental review process under SEPA generally begins with a proposal by, or to, an agency (197-11-945.) A "lead

agency" has principal responsibility for implementing SEPA procedures. (197-11-050.) The agency decides whether a proposal is likely to have a significant adverse environmental impact, even if the proposal is designed to improve the environment. (197-11-305 and 315.) The agency's decision is called a threshold determination, because the agency must decide whether the proposal's impacts would cross the threshold of environmental significance. (See Part 3 of these rules.)

(6) Categorical Exemptions. Experience has shown that many proposed actions -- or categories of actions -- are not likely to have significant adverse environmental impacts, even though they may have some environmental impacts. Rather than requiring agencies to review the potential impacts of every proposal, SEPA requires, and these rules contain a list of, "categorical exemptions". (197-11-320 and Part 9 of these rules.) If a proposal falls within the scope of a categorical exemption, the agency is not required to prepare any environmental documents on the proposal or on the agency's decision that the proposal is exempt (RCW 43.21C.031; 197-11-310). Categorical exemptions in the rules do not apply, however, in certain circumstances (RCW 43.21C.110-1)(a); namely, to certain proposals in environmentally sensitive areas (197-11-1125) or to certain proposals that include a series of categorically exempt actions (197-11-060(4)(g)).

(7) Environmental Checklist. If a proposal is not exempt, and if it is uncertain whether an EIS is required, agencies use an "environmental checklist" to identify environmental impacts and decide if the impacts are significant. (197-11-325 and 1325.) Use of the checklist process also provides the means to carry out the act's procedural requirements for proposals that are not exempt and do not have significant environmental impacts.

(8) Determination of Significance/Nonsignificance. If an agency decides that a proposal would not have a significant impact, the agency issues a determination of nonsignificance (DNS), and no EIS is prepared. (197-11-310 and 350.) If an agency decides that a proposal would have a significant impact, the agency issues a determination of significance (DS) or similar notice. (197-11-310 and 360.) If a proposal is not exempt and has some environmental impact, agencies may consider whether mitigation measures will reduce or eliminate impacts. If so, agencies may issue a mitigated DNS (197-11-340). An environmental checklist and DNS may document mitigation measures which will be implemented. (197-11-340 and 350.)

(9) Scoping, Draft and Final EIS. If an EIS will be prepared, the agency must decide what to put in it. The scope of an EIS means the range of actions, alternatives, and impacts discussed in the statement (197-11-408 and 960). EISs must discuss a proposal's probable significant adverse environmental impacts (RCW 43.21C.031; 197-11-440). The agency will announce that an EIS is being prepared and invite agency and public comment on its scope. The scoping process leads to a draft EIS, which is circulated for a 30-day review and comment period. (See Parts 4 and 5 of these rules.) After considering the comments and revising the draft EIS accordingly, the agency issues a final EIS and waits 7 days before acting on the proposal (197-11-460).

(10) Agency Decision. After considering the appropriate environmental concerns and documents, along with other relevant factors, the agency may act upon a proposal. SEPA does not require an EIS or other environmental document to be an agency's only decisionmaking document. An agency may condition or deny proposals of applicants under certain rules (RCW 43.21C.060; 197-11-720). An agency may rely on the environmental documents of other agencies to avoid duplication and delay. (197-11-640.) An agency must supplement its environmental review under certain conditions (Part 6 of these rules). Since a major purpose of SEPA is to link meaningful environmental review with government activities, agencies must decide when and how best to integrate the SEPA process with their existing planning and decisionmaking. (See, for example, 197-11-055, 060, 670, 740.) Challenges or appeals to agency SEPA compliance must be linked to a government action and be brought in a timely manner. (RCW 43.21C.075; 197-11-750).

PART TWO

GENERAL REQUIREMENTS

WAC 197-11-030	Authority
WAC 197-11-035	Definitions
WAC 197-11-040	Policy and Mandate
WAC 197-11-050	Lead Agency
WAC 197-11-055	Timing of the SEPA Process
WAC 197-11-060	Content of Environmental Review
WAC 197-11-070	Limitations on Actions During SEPA Process
WAC 197-11-080	Incomplete or Unavailable Information
WAC 197-11-090	Supporting Documents
WAC 197-11-100	Information Required of Applicants

WAC 197-11-030 Authority.

(1) These rules are issued under SEPA, which is chapter 43.21C of the Revised Code of Washington. RCW 43.21C.110 specifies the content of these rules. These rules are promulgated under the authority granted in RCW 43.21C.110 and are intended to administratively implement that statute. RCW 43.21C.095 requires that these rules be given substantial deference in the interpretation of SEPA.

(2) These rules impose uniform requirements on all agencies. Each agency must have its own SEPA procedures which apply to the agency's activities. Agency SEPA procedures must be consistent with these statewide rules. The effective date of these rules is stated in 197-11-1290.

(3) These rules replace the previous guidelines in WAC 197-10. Unlike the previous guidelines, these rules apply to more than just the environmental impact statement and related procedures.

(4) The provisions of these rules and the act must be read together as a whole in order to comply with the spirit and letter of the law.

WAC 197-11-035 Definitions.

The terms used in these rules are explained in Part 8, Definitions, 197-11-800 to 197-11-1000. This terminology shall be uniform throughout the state as applied to SEPA, RCW 43.21C. References in these rules to 197-11 refer to WAC 197-11.

WAC 197-11-040 Policy and Mandate.

- (1) Each agency and each person in Washington State has a responsibility to work toward achieving productive harmony between people and nature.
- (2) Each agency shall use all practicable means, consistent with other essential considerations of state policy, to preserve and enhance environmental quality. Each person has a responsibility to contribute to the preservation and enhancement of the environment.
- (3) The policies and goals set forth in SEPA supplement, or "overlay", agencies' existing authority.
- (4) Agencies shall to the fullest extent possible:
 - (a) Interpret and administer the policies, regulations, and laws of the state of Washington in accordance with the policies set forth in SEPA and these rules.
 - (b) Find ways to make the SEPA process more useful to decisionmakers and the public; promote certainty regarding the requirements of the act; reduce paperwork and the accumulation of extraneous background data; and emphasize important environmental impacts and alternatives.
 - (c) Prepare environmental documents that are concise, clear, and to the point, and are supported by evidence that the necessary environmental analyses have been made.
 - (d) Initiate the SEPA process early in conjunction with other agency operations to avoid delay and duplication.
 - (e) Integrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such procedures run concurrently rather than consecutively.
 - (f) Encourage public involvement in decisions that significantly affect environmental quality.
 - (g) Identify, evaluate, and implement, where required by the act and these rules, reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.

WAC 197-11-050 Lead Agency.

- (1) A lead agency shall be designated when an agency is developing or is presented with a proposal.
- (2) The lead agency shall be the agency with main responsibility for complying with SEPA's procedural requirements.
- (3) The lead agency shall be the only agency responsible for:

- (a) the threshold determination (Part 3 of these rules); and
- (b) preparation and content of environmental impact statements (Parts 4-6 of these rules).

(4) The specific rules for deciding upon a lead agency can be found in Part 10 of these rules beginning at 197-11-1200.

WAC 197-11-055 Timing of the SEPA Process.

(1) Integrating SEPA and Agency Activities. The SEPA process shall be integrated with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.

(2) Timing of Review of Proposals. The lead agency shall prepare its threshold determination and EIS, if required, at the earliest possible point in the planning and decisionmaking process when the principal features of a proposal and its environmental impacts can be reasonably identified. A proposal exists at that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated. The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts. Preliminary steps or decisions are sometimes needed before an action is sufficiently definite to allow meaningful environmental analysis. Agencies shall identify the times at which the environmental review shall be conducted either in their procedures or on a case by case basis. Agencies may also organize environmental review in phases, as specified in 197-11-060(7). Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action. Any required environmental documents shall be completed before implementing proposals, as specified in 197-11-070.

(3) Applications and Rulemaking. The timing of environmental review for certain common types of proposals shall be as follows:

- (a) For applications, agencies shall commence environmental review, if required, when an application is complete. Agencies may initiate review earlier and may have informal conferences with applicants. A final threshold determination or FEIS shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on an application. Agency procedures shall specify the type and timing of environmental documents that shall be submitted to planning commissions and similar advisory bodies (197-11-1122).
- (b) For rulemaking, the DNS or DEIS shall normally accompany the proposed rule. An FEIS if any shall be issued at least seven days before adoption of a final rule (197-11-460(4)).

(4) Applicant Review at Conceptual Stage. In general, agencies should adopt procedures for environmental review and for preparation of EISs on proposals by applicants at the conceptual stage as compared with the final detailed design stage.

- (a) If an agency's only SEPA action is a decision on a building permit or other license that requires detailed project plans and specifications, agencies shall provide applicants with the opportunity for environmental review under SEPA prior to requiring applicants to submit such detailed project plans and specifications.
- (b) Agencies may specify the amount of detail needed from applicants for such early environmental review, consistent with 197-11-100 and 330, in their SEPA or permit procedures.
- (c) This subsection does not preclude agencies or applicants from preliminary discussions or exploration of ideas and options prior to commencing formal environmental review.

(5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible.

(6) To meet the requirement to insure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analyses shall be circulated and reviewed with other planning documents to the fullest extent possible.

(7) For their own public proposals, lead agencies may extend the time limits prescribed in these rules.

WAC 197-11-060 Content of Environmental Review.

(1) ~~For purposes of agency compliance with RCW 43.21C.030(2),~~ environmental review consists of the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document, in light of SEPA's goals and policies.

(2) The content of environmental review depends on each particular proposal, on an agency's existing planning and decisionmaking processes, and on the time when alternatives and impacts can be most meaningfully evaluated.

(3) The content of environmental review for the purpose of deciding whether an EIS is required is specified in the environmental checklist and in 197-11-315. The content of environmental review for an environmental impact statement consists of its "scope" (197-11-960 and Part 4 of these rules). The content of any supplemental environmental review is specified in 197-11-660. This section specifies the content of environmental review common to all environmental documents required under SEPA.

(4) Proposals.

- (a) Agencies shall make certain that the proposal which is the subject of environmental review is properly defined.
- (b) Proposals include public projects or proposals by agencies. Proposals also include proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

- (c) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.
- (d) Proposals should be described in ways which encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following means: (i) building a new dam; (ii) maintenance dredging; (iii) use of shoreline and land use controls; (iv) purchase of floodprone areas; or (v) relocation assistance."
- (e) Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (7).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:
 - (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
 - (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification.
- (f) (OPTIONAL) Agencies may wish to analyze "similar actions" in a single environmental document. Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects which provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography. This section does not require agencies or applicants to analyze similar actions in a single environmental document or require applicants to prepare environmental documents on proposals other than their own.
 - (i) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.
- (g) A proposal shall not be categorically exempt under these rules if it:
 - (i) includes a series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or
 - (ii) includes a series of exempt actions that are physically or functionally related to each other, and that together may have a significant adverse environmental impact in the judgment of the lead agency.

For such proposals,, the agency or applicant may proceed with the exempt aspects of the proposals, prior to conducting environmental review, if the requirements of 197-11-070 are met.

(5) Impacts.

- (a) SEPA's procedural provisions require the consideration of "environmental" impacts. (See definition of "environment" in 197-11-865 and of "impacts" in 197-11-880.)
- (b) SEPA requires attention to impacts which are likely, not merely speculative. (See definition of "probable" in 197-11-942 and 197-11-080 on incomplete or unavailable information.)
- (c) In assessing the significance of an impact, the severity of an impact should be weighed along with its likelihood of occurrence. (See definition of "significant" in 197-11-970.)
- (d) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.
- (e) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects.
- (f) A lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries.
- (g) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, 197-11-960) may be wider than the impacts for which mitigation measures are required of applicants (197-11-720). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant's proposal, and the capability of applicants or agencies to control the impacts in each situation.

(6) Alternatives.

- (a) Reasonable alternatives shall include any actions which could feasibly attain the objectives of a proposal but at a lower environmental cost or decreased level of environmental degradation. (See 197-11-440(5)(b) and 947.)
- (b) Agencies and applicants are encouraged to include mitigation measures that will be implemented in the description of the proposal rather than as alternatives.
- (c) The environmental impacts of mitigation measures shall not require detailed environmental analysis in an EIS, except as provided in 197-11-440(6) and 720(2).
- (d) Environmental analysis of reasonable alternatives should be developed in sufficient detail to allow comparison of the alternatives including the proposed action and to be used with economic and technical analyses. Analysis of alternatives need not be discussed in the same length or detail as discussion of a proposed action or preferred alternative, if any (see 197-11-440(5)).

(7) Phased Review.

- (a) Lead agencies shall determine the appropriate scope and level of detail of environmental review to coincide with meaningful points in

- their planning and decisionmaking processes. (See 197-11-055 on timing of environmental review.)
- (b) Environmental review may be phased. Phased review shall assist agencies and the public to focus on issues which are ripe for decision and exclude from consideration issues already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, which incorporate prior general discussion by reference and concentrate solely on the issues specific to that phase of the proposal.
 - (c) Phased review is appropriate when:
 - (i) the sequence is from a nonproject document to a document of narrower scope such as a site specific analysis (see, for example, 197-11-443);
 - (ii) the sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts); or
 - (iii) the optional coordinated permit procedures are used (197-11-740).
 - (d) Phased review is not appropriate when:
 - (i) the sequence is from a narrow project document to a broad policy document;
 - (ii) it would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or
 - (iii) it would segment and avoid present consideration of proposals and their impacts which are required to be evaluated in a single environmental document under 197-11-060(4)(e) or (g); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.
 - (e) Lead agencies using phased review should so state in their environmental documents.
 - (f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental review, as appropriate, to define the scope of phased review and to avoid duplication and excess paperwork.
 - (g) Where proposals are related to a large existing or planned network, such as highways, streets, pipelines, or utility lines or systems, the lead agency may analyze in detail the overall network as the present proposal or may select some of the future elements for present detailed consideration. Any phased review shall be logical in relation to the design of the overall system or network, and shall be consistent with this section and 197-11-070.

WAC 197-11-070 Limitation on Actions During SEPA Process.

- (1) Until the responsible official issues a final threshold determination or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:
- (a) have an adverse environmental impact; or
 - (b) limit the choice of reasonable alternatives.

(2) In addition, certain DNSs require a 15-day period prior to agency action (197-11-350(3)), and FEISs require a 7-day period prior to agency action (197-11-460(4)).

(3) In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under 197-11-1000(18), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude the development of plans or designs, issuing of requests for proposals (RFPs), securing of options, or performance of other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

WAC 197-11-080 Incomplete or Unavailable Information.

(1) If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.

(2) When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists.

(3) Agencies may proceed in the absence of vital information as follows:

- (a) if information relevant to adverse impacts is essential to a reasoned choice among alternatives, but is not known, and the costs of obtaining it are exorbitant; or
- (b) if information relevant to adverse impacts is important to the decision and the means to obtain it are speculative or not known; then
- (c) the agency shall weigh the need for the action with the severity of possible adverse impacts which would occur if the agency were to decide to proceed in the face of uncertainty. If the agency proceeds, it shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed.

(4) Agencies may rely upon applicants to provide information as allowed in 197-11-100.

WAC 197-11-090 Supporting Documents.

(1) Agencies should use existing studies and incorporate material by reference whenever appropriate (see, for example, 197-11-425, 443, 640). Material incorporated by reference (197-11-885) shall be cited and its relevant content briefly described. Material may not be incorporated by reference unless its location is identified, and it is reasonably available for inspection by potentially interested persons within any time period allowed for comments.

(2) If an agency prepares background or supporting analyses, studies, or technical reports, such material shall be considered part of the agency's

record of compliance with SEPA, as long as the preparation and circulation of such material complies with the requirements in these rules for incorporation by reference and the use of supporting documents.

WAC 197-11-100 Information Required of Applicants.

(1) There are three areas of these rules where an agency is allowed to require information from an applicant. These are:

- (a) Environmental checklist;
- (b) Threshold determination; and
- (c) Environmental impact statement.

Further information may be required if the responsible official determines that the information initially supplied is not reasonably adequate to fulfill the purposes for which it is required. An applicant may, at any time, voluntarily submit information beyond that which may be required under these rules.

(2) Environmental checklist. An applicant may be required to complete the environmental checklist in 197-11-1325 in connection with filing an application. Additional information may be required at an applicant's expense, but not until after initial agency review of the checklist (197-11-325 and 330).

(3) Threshold determination. Any additional information required by an agency after its initial review of the checklist shall be limited to those elements on the checklist for which the lead agency has determined that information accessible to the agency is not reasonably sufficient to evaluate the environmental impacts of the proposal. The lead agency may require field investigations or research by the applicant reasonably related to determining a proposal's environmental impacts (197-11-330). An applicant may clarify or revise the checklist at any time prior to a threshold determination. Revision of a checklist after a threshold determination is issued shall be made under 197-11-350 or 360.

(4) Environmental impact statements. An EIS may be prepared by an applicant under the direction of the responsible official if allowed by the lead agency's SEPA procedures (197-11-420 and 1122). Alternatively, the responsible official may require an applicant to provide relevant information which is not in the possession of the lead agency. Although an agency may at its option include additional analysis not required under SEPA in an EIS (197-11-440(8), 448(4) and 670), an applicant shall not be required to furnish such information. An applicant shall not be required to provide information requested of a consulted agency until the agency has responded or the time allowed for its response has elapsed, whichever is earlier.

PART THREE

THRESHOLD DETERMINATION

WAC 197-11-300	Purpose of this Part
WAC 197-11-305	Whether EIS Required
WAC 197-11-310	Threshold Determination Required
WAC 197-11-315	Threshold Determination Process
WAC 197-11-320	Categorical Exemptions
WAC 197-11-325	Environmental Checklist
WAC 197-11-330	Additional Information
WAC 197-11-340	Mitigated DNS
WAC 197-11-350	Determination of Nonsignificance (DNS)
WAC 197-11-360	Determination of Significance (DS)
WAC 197-11-390	Effect of Threshold Determination; Assumption of Lead Agency Status

WAC 197-11-300 Purpose of this Part.

The purpose of this Part is to provide rules for:

- (1) Administering categorical exemptions for proposals which would not have probable significant adverse impacts;
- (2) Deciding whether a proposal has a significant adverse impact and thus requires an EIS;
- (3) Providing a way to review and mitigate nonexempt proposals; and
- (4) Integrating SEPA into early planning to ensure appropriate consideration of SEPA's policies and to eliminate duplication and delay.

WAC 197-11-305 Whether EIS Required.

As required by RCW 43.21C.030(2)(c), environmental impact statements are to be included in recommendations or reports:

- (1) On proposals, as defined by 197-11-945;
- (2) For legislation, as defined by 197-11-900 and ;
- (3) Other major actions, as defined by 197-11-815 and 915;
- (4) Significantly, as defined by 197-11-970;
- (5) Affecting, as defined by 197-11-820, 880, and 942;
- (6) The quality of the environment, as defined by 197-11-865.

WAC 197-11-310 Threshold Determination Required.

- (1) A threshold determination shall be made as close as possible to the time an agency is developing or is presented with a proposal (197-11-945).
- (2) The lead agency's responsible official shall make the threshold determination.
- (3) In most cases, the time to complete a threshold determination should not exceed 15 days. Upon request by an applicant, the responsible official shall

select a date for making the threshold determination and notify the applicant of such date in writing.

- (4) An agency is not required to document its threshold determination when the agency decides that a proposal is categorically exempt (197-11-320(2)).
- (5) All other threshold determinations shall be documented in:
 - (a) a determination of nonsignificance (DNS), when the responsible official decides a significant adverse impact is not likely (197-11-350); or
 - (b) a determination of significance (DS), when the responsible official decides a significant adverse impact is likely (197-11-360);

WAC 197-11-315 Threshold Determination Process.

- (1) In making a threshold determination, the responsible official shall:
 - (a) Follow the rules in 197-11-325 if a checklist is used;
 - (b) Determine if the proposal is likely to have a significant adverse environmental impact by applying the criteria in 197-11-305 and in this section to the facts, to the checklist (197-11-1325), and to any additional information furnished under 197-11-330 and 340; and
 - (c) Consider mitigation measures which an agency or applicant will implement.
- (2) In making a threshold determination, the responsible official may:
 - (a) Determine that a proposal is categorically exempt (197-11-320);
 - (b) Determine that all or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document and adopt such document under the rules in 197-11-640; or
 - (c) Determine that environmental analysis would be more useful or appropriate in the future and commit to timely, subsequent environmental review, consistent with 197-11-055 through 070 and 660.
- (3) In determining an impact's significance (197-11-970), the nature of the existing environment is an important factor. The same proposal may have a significant adverse impact in one location but not in another location. The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment. The responsible official shall also be alert to the possibility that several marginal impacts when taken together will result in a significant adverse impact. For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified. If after following 197-11-080 and 330 the lead agency reasonably believes that a proposal would be likely to have a significant adverse impact, an EIS is required.
- (4) A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve

the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

WAC 197-11-320 Categorical Exemptions.

(1) If a proposal fits within any of the provisions in Part 9 of these rules, the proposal shall be categorically exempt (197-11-835) except as provided in this section.

(2) Although documentation is not required (197-11-310(4)), agencies may note on an application that a proposal is categorically exempt or simply place such a determination in agency files.

(3) In the following circumstances, a proposal which would potentially be categorically exempt under these rules shall not be determined to be exempt:

- (a) The proposal is a segment of a proposal under 197-11-060(4)(g); or
- (b) The proposal is not exempt under 197-11-1125 for environmentally sensitive areas.

(4) Agencies may petition the department of ecology to add or delete exemptions under 197-11-1090.

WAC 197-11-325 Environmental Checklist.

(1) Agencies:

- (a) Shall use the environmental checklist substantially in the form found in 197-11-1325 to assist in making threshold determinations for proposals, except for: categorically exempt proposals, public proposals on which the lead agency has decided to prepare its own EIS, or proposals on which the lead agency and applicant agree an EIS will be prepared.
- (b) May use an environmental checklist whenever it would assist in their planning and decisionmaking.
- (c) Shall not require an applicant to prepare a checklist under SEPA if a checklist is not required by (1)(a) of this section.

(2) The lead agency shall:

- (a) Prepare the checklist, or require an applicant to prepare the checklist and follow the instructions in the introduction to the checklist in 197-11-1325;
- (b) Independently evaluate the checklist responses of any applicant and indicate the result of its evaluation in the DS, in the DNS, or on the checklist;
- (c) Conduct its initial review of the checklist and any supporting documents without requiring additional information from an applicant.

(3) The items in the checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant.

WAC 197-11-330 Additional Information.

(1) The lead agency shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal (197-11-055(2) and 060(4)). The lead agency may take one or more of the following actions if, after reviewing the checklist, the agency concludes that there is insufficient information to make its threshold determination:

- (a) Require an applicant to submit more information on subjects in the checklist;
- (b) Make its own further study, including physical investigations on a proposed site;
- (c) Consult with other agencies, requesting information on the proposal's potential impacts which lie within the other agencies' jurisdiction or expertise (agencies shall respond in accordance with 197-11-550); or
- (d) Decide that all or part of the action or its impacts is not sufficiently definite to allow meaningful environmental analysis and commit to timely, subsequent environmental analysis, consistent with 197-11-055 through 070.

WAC 197-11-340 Mitigated DNS.

(1) In making threshold determinations, an agency may consider mitigation measures which the agency or applicant will implement.

(2) Prior to the lead agency's threshold determination on a proposal, an applicant may request the lead agency to indicate whether a DS appears likely. If the lead agency indicates a DS is likely, the applicant may clarify or change features of the proposal to respond to the agency's reasons for such an indication. Applicants clarifying or changing features of a proposal shall revise the environmental checklist as may be necessary to describe the clarifications or changes. The lead agency shall make its threshold determination based upon the clarifications or changes. If a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.

(3) Whether or not an applicant requests early notice under subsection (2), if the lead agency specifies mitigation measures that would allow it to issue a DNS, and the proposal is clarified, revised, or conditioned to include those measures, the lead agency shall issue a DNS.

(4) Environmental documents need not be revised and resubmitted if the clarifications or changes are stated in writing in documents that are attachments to, or incorporated by reference into, the documents previously submitted. An addendum may be used (197-11-660).

(5) The procedures of this section may be used by agencies for their own proposals in order to clarify or change features of a proposal as a result of comments by other agencies or the public or as a result of additional agency planning.

(6) An agency's preliminary indication under this section that a DS appears likely shall not be construed as a determination that a proposal has a probable

significant adverse environmental impact. The purpose of this section is to allow clarifications or changes prior to making a final threshold determination.

(7) The procedures for issuing a DNS are in 197-11-350.

WAC 197-11-350 Determination of Nonsignificance (DNS).

(1) The responsible official shall prepare and issue its determination of non-significance (DNS), if required, substantially in the form provided in 197-11-1350. If an agency adopts another agency's environmental document for a threshold determination (197-11-640), the notice of adoption (197-11-1340) and the DNS shall be combined or attached to each other.

(2) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction.

(3) (a) An agency shall not act upon a proposal for 15 days after the date of issuance of a DNS if the proposal involves:

- (i) another agency with jurisdiction;
- (ii) demolition of any structure or facility not exempted by 197-11-1000(2)(f) or 1080;
- (iii) issuance of clearing or grading permits not exempted in Part 9 of these rules; or
- (iv) a DNS under WAC 197-11-340(2) or 360(4).

(b) Notice of a DNS under (3)(a) of this section shall be given under 197-11-510 and additional methods to inform the public may be used, such as those indicated in 197-11-520.

(c) Any person or agency may submit comments to the lead agency within 15 days of the date of issuance of a DNS on the proposals listed in (3)(a) of this section.

(d) The responsible official shall reconsider the DNS based on timely comments. The responsible official may retain, modify, or withdraw the DNS or supporting documents if the responsible official determines that significant adverse impacts are likely.

(e) An agency with jurisdiction may assume lead agency status only within this 15-day period (197-11-1270).

(4) (a) The lead agency shall withdraw a DNS if:

- (i) There are substantial changes to a proposal which are likely to have significant environmental impacts;
- (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
- (iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

(b) Subsection 4(a)(ii) shall not apply when a nonexempt license has been issued on a private project.

(c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued,

each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also 197-11-070).

WAC 197-11-360 Determination of Significance (DS).

(1) The responsible official shall prepare and issue its determination of significance (DS), if required, substantially in the form provided in 197-11-1360, unless the agency uses a similar notice which meets the requirements of this section. References in these rules to the DS refer to the DS or such similar notice.

(2) If an agency adopts another agency's environmental document for a threshold determination (197-11-640), the notice of adoption (197-11-1340) and the DS shall be combined or attached to each other.

(3) The responsible official shall put the DS in the lead agency's file and shall commence scoping (197-11-408) by circulating copies of the DS to an applicant and agencies with jurisdiction and expertise, if any, and to the public. Notice shall be given under 197-11-510 and additional methods to inform the public may be used, such as those indicated in 197-11-520.

(4) If at any time after the issuance of a DS a proposal is changed so that, in the judgment of the lead agency, all probable significant adverse environmental impacts which might exist are eliminated, the DS shall be withdrawn and a DNS issued instead. A proposal shall not be considered changed until all license applications for the proposal are revised to reflect the changes or other binding commitments are made by lead agencies or by applicants.

WAC 197-11-390 Effect of Threshold Determination; Assumption of Lead Agency Status.

(1) When the responsible official makes a threshold determination, it is final and binding on all agencies, subject to the provisions of this section and 197-11-660.

(2) The responsible official's threshold determination:

- (a) Shall not be final until 15 days after issuance for proposals listed in 197-11-350(3).
- (b) Shall not apply if another agency with jurisdiction assumes lead agency status under 197-11-1270.
- (c) Shall not apply when withdrawn by the responsible official under 197-11-350 or 360.
- (d) Shall not apply when reversed on appeal.

(3) Regardless of any appeals, a DS or DNS issued by the responsible official shall be considered final for purposes of all agencies' planning and decision-making until subsequently changed, reversed, or withdrawn.

PART FOURENVIRONMENTAL IMPACT STATEMENT (EIS)

WAC 197-11-400	Purpose of EIS
WAC 197-11-402	Implementation
WAC 197-11-405	Types of EISs
WAC 197-11-406	EIS Timing
WAC 197-11-408	Scoping
WAC 197-11-410	Expanded Scoping
WAC 197-11-420	EIS Preparation
WAC 197-11-425	Style and Size
WAC 197-11-430	Format
WAC 197-11-435	Cover Memo
WAC 197-11-440	EIS Contents
WAC 197-11-442	Contents of EIS on Nonproject Proposals
WAC 197-11-443	EIS Contents When Prior Nonproject EIS
WAC 197-11-444	Elements of the Environment
WAC 197-11-448	Relationship of EIS to Other Considerations
WAC 197-11-450	Cost-Benefit Analysis
WAC 197-11-455	Issuance of DEIS
WAC 197-11-460	Issuance of FEIS

WAC 197-11-400 Purpose of EIS.

The primary purpose of an environmental impact statement is to ensure that SEPA's policies are part and parcel of the ongoing programs and actions of state and local government.

An EIS shall provide impartial discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.

Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis. The purpose of an EIS is best served by short documents containing summaries of, or reference to, technical data, and by avoiding excessively detailed and overly technical information. The volume of an EIS does not bear on its adequacy. Larger documents may even hinder the decisionmaking process.

The EIS process enables government agencies and interested citizens to review and comment on proposed government actions, including government approval of private projects and their environmental effects. This process is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

WAC 197-11-402 Implementation.

To achieve the purposes set forth in 197-11-400 and as further specified in this Part, agencies shall prepare environmental impact statements as follows:

- (1) EISs are required to analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.
- (2) The inclusion and level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.
- (3) Discussion of insignificant impacts is not required; if included, such discussion shall be brief and limited to summarizing impacts or noting why more study is not warranted.
- (4) Description of the existing environment and the nature of environmental impacts shall be limited to the affected environment and shall be no longer than is necessary to understand the environmental consequences of the alternatives, including the proposal.
- (5) EISs shall be no longer than necessary to comply with SEPA and these rules. Length should relate first to potential environmental problems and then to the size or complexity of the alternatives including the proposal.
- (6) The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be capable of being generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal, and may be supplemented by appendices, reports, or other documents in the agency's record.
- (7) Agencies shall reduce paperwork and the accumulation of background data in EISs and shall adopt or incorporate by reference, existing, publicly available environmental documents, wherever possible.
- (8) Agencies shall prepare EISs concurrently with and coordinated with environmental studies and related surveys that may be required for the proposal under other laws, where such timing and preparation are feasible.
- (9) The range of alternative courses of action discussed in EISs shall encompass those to be considered by the decisionmaker.
- (10) EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.

WAC 197-11-405 Types of EISs.

- (1) Environmental impact statements (EISs) shall be prepared in draft and final and may be supplemented.
- (2) EISs shall follow the scope, content, format, and style specified by Parts 4-6, unless expressly provided otherwise in these rules.
- (3) A draft EIS (DEIS) allows the lead agency to consult with members of the public and agencies with jurisdiction and expertise. The lead agency shall issue a DEIS (197-11-455) and shall initiate and consider comments as stated in 197-11-500 through 600. A DEIS shall be prepared according to the scope decided upon by the lead agency in its scoping process.

(4) A final EIS (FEIS) shall revise the DEIS as appropriate and respond to comments as required in 197-11-560. An FEIS shall respond to opposing views on significant adverse environmental impacts and reasonable alternatives which the lead agency determines were not adequately discussed in the DEIS. The lead agency shall issue an FEIS as specified by 197-11-460.

(5) A supplemental EIS (SEIS) shall be prepared as an addition to either a draft or final statement if an agency decides that:

- (a) there are substantial changes to a proposal which are likely to have significant adverse environmental impacts; or
- (b) there is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts.

(6) Preparation of an SEIS or addendum shall be carried out as stated in 197-11-660.

(7) Agencies may use federal EISs, as stated in 197-11-640 through 660.

WAC 197-11-406 EIS Timing.

The lead agency shall commence preparation of the environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal, so that preparation can be completed in time for the final statement to be included in appropriate recommendations or reports on the proposal. (197-11-055.) The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made. EISs may be "phased" in appropriate situations (197-11-060(7) and 740).

WAC 197-11-408 Scoping.

(1) The lead agency shall narrow the scope of every EIS to the significant issue or issues. If there are only two or three significant issues or alternatives, for example, the EIS shall be focused on those.

(2) To ensure that every EIS is concise and addresses the significant environmental issues, the lead agency shall:

- (a) Invite agency and public comment on the DS, or, if there is no DS, equivalent notification (197-11-360).
- (b) Identify reasonable alternatives and probable significant adverse environmental impacts.
- (c) Eliminate from detailed study those issues which are not significant.
- (d) Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

(3) Agencies and the public should comment promptly and as specifically as possible, to the extent permitted by the details available on the proposal.

(4) Meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The lead agency shall integrate

the scoping process with its existing planning and decisionmaking process in order to avoid duplication and delay.

(5) The lead agency shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise which bear on the proposal and its significant impacts.

WAC 197-11-410 Expanded Scoping. (OPTIONAL)

(1) At its option, the lead agency may expand the scoping process to include any or all of the following, which may be applied on a proposal-by-proposal basis:

- (a) Using scoping questionnaires or information packets.
- (b) Using scoping meetings or workshops, which may be combined with any other early planning meetings of the agency.
- (c) Using a scoping coordinator or team from inside or outside the agency;
- (d) Developing cooperative consultation and exchange of information among agencies before the EIS is prepared, rather than awaiting submission of comments on a completed document.
- (e) Coordinating and integrating other government reviews and approvals with the EIS process through memoranda or other methods.
- (f) Inviting participation of agencies with jurisdiction or expertise from various levels of government, such as regional or federal agencies.
- (g) Using other methods of predraft consultation as the lead agency may find helpful.

(2) Use of expanded scoping is intended to promote interagency cooperation, public participation, and innovative ways to streamline the SEPA process. Steps shall be taken, as the lead agency determines appropriate, to encourage and assist public participation. There are no specified procedural requirements for the methods, techniques, or documents which may be used in an expanded scoping process, in order to provide maximum flexibility to meet these purposes.

(3) The lead agency shall consult with an applicant prior to deciding the method and schedule for an expanded scoping process.

(4) As part of an expanded scoping process, an applicant may request, and the lead agency shall set, a date by which the lead agency shall determine the scope of the EIS, including the need for any field investigations (to the extent permitted by the details available on the proposal). The date shall normally occur less than 30 days after the DS is issued, unless the lead agency and applicant agree upon a later date.

WAC 197-11-420 EIS Preparation.

(1) Preparation of the EIS is the responsibility of the lead agency, by or under the direction of its responsible official, as specified by the lead agency's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the responsible official of the lead agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and the procedures of the lead agency.

(2) An EIS may be prepared by an applicant or its agent, or by an outside consultant retained by either an applicant or the lead agency. The responsible official within the lead agency shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the lead agency is preparing the EIS, the responsible official will coordinate any scoping procedures so that the individual preparing the EIS immediately receives all substantive information submitted by any agency or person. The responsible official shall also assist in obtaining any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any party preparing an EIS access to all public records of the lead agency which relate to the subject of the EIS, under chapter 42.17 RCW (Public Disclosure and Public Records Law).

(4) Every agency shall specifically provide in its own procedures those situations in which an applicant may be required or authorized to help prepare an EIS. Agency procedures may not require more information of an applicant than allowed by 197-11-100, but may authorize less participation. An applicant may volunteer to provide any information or effort desired, as long as the EIS is supervised and approved by the responsible official. These rules do not prevent an agency from charging any fee of an applicant which the agency is otherwise allowed to charge (197-11-1170).

(5) The provisions of this section apply to draft, final, and supplemental EISs.

WAC 197-11-425 Style and Size.

(1) Environmental impact statements shall be readable reports, which allow the reader to understand the most significant and vital information concerning the proposed action, alternatives, and impacts, without turning to other documents, as provided below and in 197-11-402.

(2) Environmental impact statements shall be concise and written in plain language. EISs shall not be excessively detailed or overly technical. EISs shall include a glossary to explain plainly the meaning of technical terms not generally understood by the general public. EISs may include an index for ease in using the statement.

(3) The text of an environmental impact statement should normally range from 30-50 pages and may be shorter. The text of an EIS consists of the two main sections (see 197-11-430(2)(d) and (e); 440(5) and (6)). Most of the text of an environmental impact statement shall discuss and compare the environmental impacts and their significance, rather than describe the proposal and the environmental setting. The description of the proposal, including alternatives, and the description of the existing environment, including the summary of existing plans and policies, should not exceed roughly one-third of the EIS text. More detailed descriptions may be included in appendices or supporting documents.

(4) In all cases, the EIS text shall not exceed 75 pages in length, except for proposals of unusual scope or complexity, in which case the EIS text shall not exceed 150 pages.

(5) If the lead agency decides that descriptive material or supporting documentation may be helpful for readers, this background information shall be clipped or bound separately from the EIS (unless it is less than ten pages). This information may be placed in appendices or separate documents, and shall be readily available to agencies and the public during the comment period and at approximately the same time as the EIS.

(6) Agencies shall incorporate material into an environmental impact statement by reference in order to cut down on bulk, if an agency can do so without impeding agency and public review of the action. The incorporated material shall be cited in the EIS and its relevant content briefly described. Material may not be incorporated by reference unless its location is identified (197-11-440(2)(1)), and it is reasonably available to inspection by potentially interested persons within the time allowed for comments.

WAC 197-11-430 Format.

(1) A letter from the lead agency may precede and be included in the EIS. Every EIS shall be preceded by a cover memo (197-11-435). The cover memo shall be not be considered part of the EIS for adequacy purposes (197-11-435-(1)). A fact sheet (197-11-440(2)) shall be the first section of every EIS, and shall follow the cover memo.

(2) The following standard format should be used unless the lead agency determines that a different format would improve clear presentation of alternatives and environmental analysis for a particular proposal (except that the fact sheet shall always be the first section of an EIS):

- (a) Fact sheet.
- (b) Table of contents (including the list of elements of the environment).
- (c) Summary.
- (d) Alternatives including the proposed action.*
- (e) Affected environment, significant impacts, and mitigation measures (other than those included in the proposed action).*
- (f) Distribution list.
- (g) Appendices, if any (including, for an FEIS, comment letters and any separate responses).

* The page limits in 197-11-425 apply only to this material.

(3) This simplified standard format puts the EIS text into two sections: (d) and (e) above. Agencies have wide latitude to organize and present material as they see fit within these two basic sections. Agencies are not required to

discuss each subject in 197-11-440 and RCW 43.21C.030(2)(c) in a separate section. (See also RCW 43.21C.031, 197-11-440(6)(e), 444(3).)

(4) Additional Format Considerations.

- (a) The contents of the EIS are specified in 197-11-440 and shall be included, where relevant to the alternatives and impacts, regardless of the format of a particular statement.
- (b) The format of an FEIS may be different, as specified by 197-11-560.
- (c) Additional flexibility is provided in 197-11-442 and 443 for environmental impact statements related to nonproject proposals.
- (d) The elements of the environment for purposes of analyzing environmental impacts are stated in 197-11-444.
- (e) Additional guidance on the distinction between environmental and other considerations is given in 197-11-448 and 450.
- (f) EISs may be combined with other documents (197-11-670).

WAC 197-11-435 Cover Memo.

(1) Every EIS shall be preceded by a cover memo. The cover memo shall not exceed two pages. The cover memo shall not be considered part of the EIS for adequacy purposes.

(2) The cover memo provides a way for the responsible official or agency staff to highlight environmental factors which, in their judgment, are especially noteworthy at the time the document is issued. It shall be a selective, comparative overview highlighting the options and environmental issues facing the lead agency's decisionmakers. It should be written in the style of a concise "decision/options" briefing memorandum. It is intended to focus on key environmental tradeoffs among alternatives, and may include environmentally beneficial as well as adverse impacts. It may mention other relevant considerations for decisionmakers.

WAC 197-10-440 EIS Contents.

(1) An EIS shall contain the following contents, in the style and format prescribed in the preceding sections. The EIS contents shall conform to the rules stated in 197-11-402.

(2) Fact Sheet. The fact sheet shall include the following information in this order:

- (a) A title and brief description (a few sentences) of the nature and location (by street address if applicable) of the proposal, including principal alternatives.
- (b) The name of the person or entity making the proposal(s) and the proposed or tentative date for implementation.
- (c) The responsible official's preferred alternative if any.
- (d) The name and address of the lead agency, responsible official, and contact person for questions, comments, and information.
- (e) A list of all licenses which the proposal is known to require. The licenses shall be listed by name and agency; the list shall be as complete and specific as possible.

- (f) Authors and principal contributors to the EIS and the nature or subject area of their contributions.
 - (g) The date of issue of the EIS.
 - (h) The date comments are due (for DEISs).
 - (i) The time and place of public hearings or meetings, if any and if known.
 - (j) The date final agency action is planned or scheduled, if known. Agencies may indicate that the date is subject to change. The nature or type of final agency action should be stated unless covered in subsection (a) above.
 - (k) The type and timing of any subsequent environmental review to which the lead agency or other agencies have made commitments.
 - (l) The location of EIS technical reports, background data, adopted documents, and materials incorporated by reference for this EIS, if any.
 - (m) The cost to the public for a copy of the EIS.
- (3) Table of Contents (including the list of elements of the environment).
- (a) In addition to the EIS itself, the table of contents should list if possible any documents which are appended, adopted, or serve as technical reports for this EIS (but need not list each comment letter).
 - (b) The table of contents shall include the list of elements of the environment (197-11-444). The list shall indicate those elements or portions of elements which do not involve significant impacts.
- (4) Summary. Each EIS shall contain a section which summarizes the statement. The summary should not merely be an expanded table of contents. The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding. The summary shall stress the major conclusions, significant areas of controversy and uncertainty, if any (including issues raised by the public), and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS. The summary should state when the EIS is part of a phased review or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency should make the summary sufficiently broad to be useful to the other agencies with jurisdiction. Although an EIS might not be an agency's only decision document, the summary may generally indicate if known those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision and weighed along with environmental factors. The summary is normally 5-15 pages, but may be shorter or longer depending on the EIS.
- (5) Alternatives Including the Proposed Action.
- (a) This section should describe and present the environmental impacts of the proposal and alternative courses of action in comparative form, focusing on the relative importance of the likely environmental consequences and helping to provide a basis for choice among options by decisionmakers and the public.

- (b) Reasonable alternatives shall include any action which could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives are those which are capable of being effected by the lead agency or another agency with jurisdiction. The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.
- (c) This section shall:
 - (i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives including the proposed action, except that the description of mitigation measures is normally included in the next section (see subsection 6).
 - (ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address if any, and legal description (unless long or in metes and bounds).
 - (iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals.
 - (iv) Tailor the level of detail of description to the significance of environmental impacts. Any detailed engineering drawings and technical data which have been submitted should be retained in agency files and be available on request.
 - (v) Objectively compare the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.
 - (vi) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative including the proposed action may be used as a benchmark for comparing impacts among alternatives. The EIS may briefly indicate the main reasons for eliminating alternatives from detailed study.
 - (vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.
 - (viii) Identify the preferred alternative(s) of the responsible official or agency, if one or more exist.
- (d) When a proposal is for a private project on a specific site, the lead agency shall not be required to evaluate alternatives other than the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. The limitations in this subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan which was adopted after review under SEPA.

(6) Affected Environment, Significant Impacts, and Other Mitigation Measures.

- (a) This section shall describe the affected environment, analyze significant impacts of alternatives including the proposal action, and discuss reasonable mitigation measures that would significantly mitigate these impacts. Elements of the environment that are not significantly affected need not be discussed. Separate sections are not required for each subject (see 197-11-430(3)).
- (b) This section shall:
 - (i) Succinctly describe the principal features of the environment that would be affected or created by the alternatives including the proposal under consideration. Inventories of species should be avoided.
 - (ii) Be written in a way that is as nontechnical and easily understandable to lay persons as possible, with the discussion commensurate with the importance of the impacts. Only significant impacts are required to be discussed; other impacts may be discussed.
 - (iii) Give special attention to significant impacts that will narrow the range or degree of beneficial uses of the environment or pose long term risks to human health or the environment, such as disposal of toxic or hazardous material.
 - (iv) Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that an agency or applicant will implement or that the lead agency proposes to require as a condition of a license, if known.
 - (v) Indicate the intended environmental benefits of mitigation measures for significant impacts, and their technical feasibility and economic practicability. The EIS need not analyze mitigation measures in detail unless they involve substantial changes with significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see 197-11-720(2)). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements in the same document (197-11-402(8) and 670).
 - (vi) Summarize significant adverse impacts that cannot or will not be mitigated.
- (c) This section shall incorporate discussions of:
 - (i) A summary of existing land use and shoreline plans and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.
 - (ii) Energy requirements and conservation potential of various alternatives and mitigation measures, including more efficient use of energy, such as insulating, as well as the use of alternate and renewable energy resources
 - (iii) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
 - (iv) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

- (d) Significant impacts on the both the natural environment and on the built environment must be analyzed, if relevant (197-11-444). This includes impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. Discussion of significant impacts shall include the cost of public services, such as utilities, roads, fire, and police protection, that may result from a proposal. EISs shall also discuss significant environmental impacts upon land and shoreline use, which includes housing, physical blight, and significant impacts of projected population on environmental resources, as specified by RCW 43.21C.110(1)(d) and (f), as listed in 197-11-444.
- (e) Although the lead agency should discuss the affected environment, environmental consequences, and other mitigation measures together for each element of the environment where there is a significant impact, the responsible official shall have the flexibility to organize this section in any manner useful to decisionmakers and the public (see 197-11-430(3)).
- (f) This subsection is not intended to duplicate the analysis in subsection (5) and shall avoid doing so to the fullest extent possible. Although some information on impacts may be repeated, subsection (6) is intended to present the significant impacts, while subsection (5) is intended to compare the salient differences among the significant environmental impacts of the reasonable alternatives.

(7) Appendices. Any comment letters and responses to be attached to an FEIS under 197-11-560 shall be attached and bound separately from the FEIS, unless the appended material is less than 10 pages (197-11-425(5)). Comment letters and reponses shall be circulated with the FEIS as specified by 197-11-560. Technical reports and supporting documents need not be circulated with an EIS (197-11-425(5) and 440(2)(1)).

(8) (OPTIONAL) The lead agency may at its option include in an EIS, or appendix, the analysis of any impact relevant to the agency's decision, whether or not environmental. The inclusion of such analysis may be based upon comments received during the scoping process. The provision for combining documents may be used (197-11-670). The EIS shall comply with the page limits and format requirements of this Part. The decision whether to include such information and the adequacy of any such additional analysis should not be used in determining whether an EIS meets the requirements of SEPA.

WAC 197-10-442 Contents of EIS on Nonproject Proposals.

(1) The lead agency shall have more flexibility in preparing EISs on non-project proposals because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals, and the EIS may be combined with other planning documents.

(2) The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and its timing in the agency decisionmaking process. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see 197-11-060(4)). Alter-

natives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).

(3) If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern identified by the lead agency. Subsequent actions by other agencies which may result from the nonproject proposal, such as transportation and utility systems, should be identified.

(4) The lead agency's consideration of alternatives for a comprehensive or community plan or for other areawide zoning, shoreline, or land use plans or requirements shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

WAC 197-11-443 EIS Contents When Prior Nonproject EIS.

(1) The provisions for phased review (197-11-060(7)) and supplemental review (197-11-660) apply to EISs on nonproject proposals. This section provides additional guidance and examples especially common to local land use decisions.

(2) A nonproject proposal may be approved based on an EIS assessing its broad impacts. A project may then be proposed which is consistent with the approved nonproject action. An EIS on such a project need not readdress those impacts analyzed in the previous nonproject EIS. These will often include elements of the built environment (197-11-444(2)). The subsequent project EIS need only briefly summarize the issues discussed in the broader statement and incorporate the discussion by reference. The subsequent project EIS shall focus on the impacts and alternatives specific to the subsequent project and shall limit the scope accordingly.

(3) When preparing a project EIS under the preceding subsection, the lead agency shall review the nonproject EIS to ensure that the analysis is still valid. If analysis relevant to the project EIS is inadequate as a result of changed circumstances, the analysis shall be reanalyzed in the project EIS.

WAC 197-10-444 Elements of the Environment.

(1) Natural Environment

- (a) Earth
 - (i) Geology
 - (ii) Soils
 - (iii) Topography
 - (iv) Unique physical features
 - (v) Erosion/enlargement of land area

- (b) Air
 - (i) Air quality
 - (ii) Odor
 - (iii) Climate

 - (c) Water
 - (i) Surface water movement/quantity/quality
 - (ii) Runoff/absorption
 - (iii) Floods
 - (iv) Ground water movement/quantity/quality
 - (v) Public water supplies

 - (d) Wildlife (Plants and Animals)
 - (i) Habitat and numbers or diversity of species of plants, fish, or other wildlife
 - (ii) Unique species
 - (iii) Agricultural crops
 - (iv) Fish or wildlife migration routes

 - (e) Energy and Natural Resources
 - (i) Amount required/rate of use
 - (ii) Source/availability
 - (iii) Nonrenewable resources
 - (iv) Conservation and renewable resources
- (2) Built Environment
- (a) Environmental Health
 - (i) Risk of explosion
 - (ii) Toxic emissions and hazardous waste disposal

 - (b) Land and Shoreline Use
 - (i) Description of relationship to plans and designations, and projected population
 - (ii) Housing
 - (iii) Noise
 - (iv) Aesthetics/light and glare
 - (v) Recreation
 - (vi) Historic and cultural preservation

 - (c) Transportation
 - (i) Transportation systems
 - (ii) Vehicular traffic
 - (iii) Waterborne, rail, and air traffic
 - (iv) Parking
 - (v) Movement/circulation of people or goods
 - (vi) Traffic hazards

 - (d) Public Services and Utilities
 - (i) Fire
 - (ii) Police
 - (iii) Schools
 - (iv) Parks or other recreational facilities
 - (v) Maintenance

- (vi) Communications
- (vii) Water/storm water
- (viii) Sewer/solid waste
- (ix) Other governmental services or utilities

(3) In order to simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in 197-10-444(1) may be combined and discussed as the natural environment, and the elements in (2) may be treated as the built environment.

WAC 197-10-448 Relationship of EIS to Other Considerations.

(1) Although SEPA contemplates that the general welfare, social, economic, and other requirements, and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions, the environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments which must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental consequences and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA because it provides information on the environmental costs and impacts. SEPA does not require an EIS to be an agency's only decisionmaking document.

(2) The term "socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban "environmental" concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (197-11-1325) and 197-11-440 and 444.

(3) The method of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as fiscal and welfare policies and nonconstruction aspects of education and communications), are examples of information not required to be analyzed in environmental impact statements.

(4) Agencies have the option to combine EISs with other documents or to include additional analysis in EISs which will assist in making decisions (197-11-440(8) and 670). Agencies may use the scoping process to help identify issues of concern to citizens.

WAC 197-11-450 Cost-Benefit Analysis.

A cost-benefit analysis (197-11- 842) is not required by SEPA. If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered by an agency for the proposal, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To comply with RCW 43.21C.030(2)(b), when a cost-benefit analysis is being considered by the agency, the EIS shall dis-

cuss the relationship between that analysis and unquantified environmental impacts, values, and amenities. For purposes of complying with SEPA, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.

WAC 197-11-455 Issuance of DEIS.

- (1) A draft EIS shall be issued by the responsible official and sent to the persons and agencies specified in 197-11-530.
- (2) The date of issue is the date the DEIS is publicly available and sent to the department of ecology and other agencies with jurisdiction.
- (3) Notice of a DEIS shall be given under 197-11-510. Additional methods may be used to inform the public, such as those indicated in 197-11-520.
- (4) Any person or agency shall have 30 days from the date of issue in which to review and comment upon the DEIS.
- (5) If the lead agency receives a request before the comment period has ended for an extension of time to comment, the lead agency:
 - (a) May grant a 15-day extension to an agency with jurisdiction or expertise.
 - (b) Shall consider and may grant requests for extensions up to 15 days by other agencies and members of the public. The lead agency shall give due consideration to any request from a public interest organization, consistent with the obligation to encourage public participation.
- (5) The rules for notice, costs, commenting, and response to comments on EISs are stated in Part 5 of these rules.

WAC 197-11-460 Issuance of FEIS.

- (1) A final EIS shall be issued by the responsible official and sent to the department of ecology, to all persons or agencies on the DEIS distribution list who commented on the DEIS, and to anyone requesting a copy of the FEIS.
- (2) In addition to subsection (1), the responsible official shall send the FEIS, or a notice that the FEIS is available, to anyone who commented on the DEIS and to those who received but did not comment on the DEIS.
- (3) The date of issue is the date the FEIS, or notice of availability, is sent to the persons and agencies as specified in the preceding subsections, and the FEIS is publicly available. Sending an EIS to the department of ecology shall satisfy the statutory requirement of availability to the governor and to the ecological commission.
- (4) No agency shall act on a proposal for which an EIS has been required prior to seven days from issuing the FEIS.

PART FIVE

COMMENTING

WAC 197-11-500	Purpose
WAC 197-11-502	Inviting Comment
WAC 197-11-504	Availability and Cost of Environmental Documents
WAC 197-11-508	SEPA REGISTER
WAC 197-11-510	Required Form of Notice
WAC 197-11-520	Additional Notice
WAC 197-11-530	Circulation of DEIS
WAC 197-11-535	Public Hearings and Meetings
WAC 197-11-545	Effect of No Comment
WAC 197-11-550	Specificity of Comments
WAC 197-11-560	FEIS Response to Comments
WAC 197-11-570	Consulted Agency Costs to Assist Lead Agency

WAC 197-11-500 Purpose.

The purpose of this Part is to provide rules for:

- (1) Notice and public availability of environmental documents, especially environmental impact statements;
- (2) Consultation and comment by agencies and members of the public on environmental documents;
- (3) Public hearings and meetings; and
- (4) Lead agency response to comments and preparation of final environmental impact statements. Review, comment, and responsiveness to comments on a draft EIS are the focal point of the act's commenting process because the DEIS is developed as a result of scoping and serves as the basis for the final statement.

WAC 197-11-502 Inviting Comment.

(1) Agency efforts to involve other agencies and the public in the SEPA process should be commensurate with the type and scope of environmental document.

(2) Consulted Agency. An agency with jurisdiction or expertise that is requested by the lead agency during the environmental review process to consult or comment is a consulted agency (197-11-840). Consulted agencies have a particular responsibility to respond in a timely and specific manner (197-11-545 and 550).

(3) Threshold Determinations.

- (a) Agencies shall send DNSs to other agencies with jurisdiction, as required by 197-11-350(2).
- (b) Agencies shall provide public notice under 197-11-510 and receive comments for 15 days on DNSs issued under 197-11-350(3).

(4) Scoping.

- (a) Agencies shall circulate the DS and invite comments on the scope of an EIS, as required by 197-11-360, 408 and 510.
- (b) Agencies may use other reasonable methods to inform agencies and the public, such as those indicated in 197-11-410 and 520.
- (c) The lead agency determines the method and time period for commenting (197-11-408 and 410).

(5) DEIS.

- (a) Agencies shall invite comments on and circulate DEISs as required by 197-11-510 and 530.
- (b) The commenting period shall be 30 days unless extended by the lead agency (197-11-455).
- (c) Agencies shall comment and respond as stated in this part. This meets the act's formal consultation and comment requirement in RCW 43.21C.030(2)(d).

(6) Public Hearings.

- (a) Public hearings or meetings may be held (197-11-535). Notice of such public hearings shall be given under 197-11-510 and may be combined with other agency notice.
- (b) In conjunction with the requirements of 197-11-510, notice of public hearings on nonproject proposals shall be published no later than five days before the hearing, in a newspaper of general circulation in the general area where the lead agency has its principal offices. In addition to 197-11-510, for nonproject proposals having a regional or statewide applicability, copies of the notice shall be given to the Olympia bureaus of the associated press and united press international.

(7) FEIS. Agencies shall circulate FEISs as required by 197-11-460.

(8) Supplements.

- (a) Notice and circulation of draft and final SEISs shall be in the same manner as other draft and final EISs.
- (b) Agencies shall give notice under 197-11-510 and receive comments for 15 days on a DNS issued after a DS has been withdrawn (197-11-350(3)).
- (c) An addendum need not be circulated unless required under 197-11-660(6).

(9) Appeals. Notice provisions for appeals are in 197-11-750.

(10) Agencies may circulate any other environmental documents for the purpose of providing information or seeking comment, as an agency deems appropriate.

(11) In addition to any required notice or circulation, agencies may use any other reasonable methods, such as those indicated in 197-11-520, to inform agencies and the public that environmental documents are available or that hearings will occur.

(12) Agencies may combine SEPA notices with other agency notices. The SEPA aspect should be identifiable in a combined notice.

WAC 197-11-504 Availability and Cost of Environmental Documents.

(1) SEPA documents required by these rules shall be retained by the lead agency and made available in accordance with RCW 42.17.

(2) The lead agency shall provide a copy of any environmental document, in accordance with chapter 42.17 RCW, charging only those costs allowed plus mailing costs. However, no charge shall be levied for circulation of documents to other agencies as required by these rules. Agencies are encouraged, if requested, to waive the charge for an environmental document (not including the SEPA REGISTER) provided to a statewide public interest organization. If an agency requires an applicant to pay for printing environmental documents circulated under SEPA, the applicant shall be entitled to be reimbursed for applicant's printing costs for documents furnished by the agency beyond the initial distribution list and beyond those agencies or special organizations for which charges are reduced or waived under this subsection.

WAC 197-11-508 SEPA REGISTER

(1) A "SEPA REGISTER" shall be published and mailed each week which shall give notice of all environmental documents required to be sent to the department of ecology under these rules, including:

- (a) DNSs under 197-11-350(3);
- (b) DSs (scoping notices) under 197-11-408;
- (c) EISs under 197-11-455, 460, and 660;
- (d) Notices of public hearings held under 197-11-535; and
- (e) Notices of Action under RCW 43.21C.080 and .087.

(2) In conjunction with the other requirements of 197-11-510, publication in the SEPA REGISTER shall constitute adequate notice under SEPA.

(3) All agencies shall:

- (a) Submit the environmental documents listed in subsection (1) to the department promptly and in accordance with procedures established by the department; and
- (b) Subscribe to the SEPA REGISTER and maintain a copy for public inspection (for the current and, if available, for the prior year).

(4) The department:

- (a) Need not publish the notices verbatim but may establish a reasonable format for publishing the required notices in the SEPA REGISTER;
- (b) May charge a reasonable fee as allowed by law, in at least the amount allowed by RCW 42.17, for the SEPA REGISTER from agencies and members of the public and interested organizations.

(5) Members of the public, citizen and community groups, education institutions are encouraged to subscribe and refer to the SEPA REGISTER for notice of SEPA actions which may affect them.

WAC 197-11-510 Required Form of Notice.

When these rules require notice under this section, agencies shall give notice by:

- (1) Sending a notice to the department of ecology, which shall publish notice in the SEPA REGISTER;
- (2) Publishing notice in a newspaper of general circulation in the geographic area where the proposal is located (statewide proposals do not require newspaper publication except under 197-11-502(6)(b)); and
- (3) Posting on the site, if the proposal is located on a specific property.

WAC 197-11-520 Additional Notice. (OPTIONAL)

The lead agency is encouraged, but not required, to use any reasonable method to inform the public that an environmental document is available and of the time and place of a public hearing if any. Examples of such methods are: publishing a notice in agency newsletters or sending to agency mailing lists for specific proposals or subject areas; publishing notice in a newspaper of general circulation in the county, city or general geographic area where the proposal is located (if not otherwise required); notifying public or private groups that are known to be interested in a certain proposal or in the type of proposal being considered; contacting news media personnel and encouraging news coverage; and, placing notices in appropriate regional, neighborhood, ethnic, or trade periodicals.

WAC 197-11-530 Circulation of DEISs.

- (1) DEISs shall be sent to all of the following:
 - (a) The department of ecology.
 - (b) Each federal agency with jurisdiction over the proposal.
 - (c) Each state agency with jurisdiction or environmental expertise on the proposal.
 - (d) Each city/county in which adverse environmental impacts identified in the EIS may occur if the proposal is implemented.
 - (e) Each local agency or political subdivision whose public services will be changed as a result of implementation of the proposal.
 - (f) The applicable local, areawide, or regional agency, if any, that has been designated under federal law to conduct intergovernmental review and coordinate federal activities with state or local planning.
 - (g) Any person requesting a copy from the lead agency.
- (2) The lead agency is encouraged to send a copy to any person, organization or governmental agency that has expressed an interest in the proposal, is known by the lead agency to have an interest in the type of proposal being

considered, or receives governmental documents (for example, local and regional libraries).

WAC 197-11-535 Public Hearings and Meetings.

(1) If a public hearing on the proposal is held under some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any environmental document which is available.

(2) In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

- (a) The lead agency determines, in its sole discretion, that a public hearing would assist it in meeting its responsibility to implement the purposes and policies of SEPA and these rules; or,
- (b) When fifty or more persons residing within the jurisdiction of the lead agency, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within 30 days of issuance of the draft EIS; or,
- (c) When two or more agencies with jurisdiction over a proposal make written request to the lead agency within 30 days of the issuance of the draft EIS.

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no earlier than 15 days from the date an EIS is issued, nor later than 45 days from its issuance. Notice shall be given under 197-11-502(6) and 510 and may be combined with other agency notice.

(4) If a public hearing is required under this chapter, it shall be open to discussion of all environmental documents and any written comments that have been received by the lead agency prior to the hearing. A copy of the draft EIS shall be at the public hearing.

(5) Comments at public hearings should be encouraged to be as specific as possible (see 197-11-550).

(6) Agencies and their designees may have informal public meetings or workshops, and such gatherings may be more flexible than public hearings and are not subject to the above notice and similar requirements for public hearings.

WAC 197-11-545 Effect of No Comment.

(1) Consulted agencies. If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, including commenting within 30 days of the date of the DEIS or within any extension granted by the lead agency, the lead agency may properly assume that the consulted agency has no information relating to the potential impact of the proposal upon the subject area of the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part 4 of these rules.

(2) Other agencies and the public. Because each person has a responsibility to contribute to the preservation of the environment, it is the intention of these rules that lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, be construed as lack of objection to the environmental analysis. This assumes that other agencies and members of the public have had reasonable notice to comment on the documents, proposals, and impacts in question.

WAC 197-11-550 Specificity of Comments.

(1) Comments on an EIS or proposal shall be as specific as possible and may address either the adequacy of the environmental document or the merits of the alternatives discussed or both.

(2) Commenters shall briefly describe the nature of any documents referenced in their comments and indicate the material's relevance.

(3) Methodology. When an agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(4) Additional information. A consulted agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs, to the extent permitted by the details available on the proposal. In particular, it shall specify any additional information it needs to comment adequately on the DEIS's analysis of significant site specific impacts associated with that consulted agency's action on the proposal or its area of expertise.

(5) Mitigation measures. When an agency with jurisdiction objects to, or expresses concerns about, a proposal on grounds of environmental impacts, the agency expressing the concerns shall specify the mitigation measures it considers necessary to allow an agency to grant or approve applicable licenses, to the extent permitted by the details available on the proposal.

(6) Comments by Other Agencies. Agencies which are not consulted agencies shall specify any additional information or mitigation measures the commenting agency believes are necessary or desirable to satisfy its concerns.

(7) Citizen comments. It is expected that citizen comments may be more general or personal than agency comments. Recognizing their generally more limited resources, members of the public shall make their comments as specific as possible and are encouraged to comment on methodology, additional information, and mitigation measures in the manner indicated in this section.

(8) An agency shall consider and may respond to comments as the agency deems appropriate, except that the requirements for responding in an FEIS are specified in the next section.

WAC 197-11-560

FEIS Response to Comments.

(1) An agency preparing a final environmental impact statement shall consider comments on the proposal and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (a) Modify alternatives including the proposed action.
- (b) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (c) Supplement, improve, or modify the analysis.
- (d) Make factual corrections.
- (e) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's response and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(2) All substantive comments received on the draft statement (or summaries where the comments are repetitive or voluminous) should be appended to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. If a summary of the comments is used, the name of each commenter shall be appended (except for petitions).

(3) In carrying out subsection (1), the lead agency may respond to each comment individually, respond to a group of comments, cross-reference comments and corresponding changes in the EIS, or use other reasonable means to indicate an appropriate response to comments.

(4) If the lead agency does not receive any comments critical of the scope or content of the DEIS, the lead agency may so state in an addendum, which shall consist of an updated fact sheet (197-11-440(2)). The addendum shall be circulated under 197-11-460. The FEIS shall consist of the DEIS and addendum.

(5) If changes in response to comments are minor and are largely confined to the responses described in paragraphs (1)(d) and (e) of this section, agencies may prepare and attach an addendum. In such cases only the comments, the responses, the changes, and an updated fact sheet, and not the rest of the EIS, need be issued under 197-11-460. The FEIS shall consist of the DEIS and the addendum.

(6) An FEIS shall be issued and circulated under 197-11-460.

WAC 197-11-570

Consulted Agency Costs to Assist Lead Agency.

A consulted agency shall not charge the lead agency for any costs incurred in complying with 197-11-550, including providing relevant data to the lead agency and copying documents for the lead agency. This section shall not prohibit a consulted agency from charging those costs allowed by RCW 42.17 for copying any environmental document requested by an agency other than the lead agency or by an individual or private organization. This section does not prohibit agencies from making interagency agreements on cost or personnel sharing for providing environmental information to each other.

PART SIX

USING EXISTING ENVIRONMENTAL DOCUMENTS

WAC 197-11-640	Use of Existing Environmental Documents
WAC 197-11-650	Use of NEPA Documents
WAC 197-11-660	Supplemental Environmental Review
WAC 197-11-670	Combining Documents

WAC 197-11-640 Use of Existing Environmental Documents.

(1) An agency may use environmental documents which have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts. The proposals may be the same as, or different than, those analyzed in the existing documents.

(2) Existing documents may be used by adoption or by incorporation by reference.

- (a) In "adoption", an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA.
- (b) "Incorporation by reference" refers to the inclusion of all or part of any existing document in an agency's environmental documentation (see 197-11-090, 425, 443).
- (c) Existing documents may include documents which are in the process of being prepared on another proposal or by another agency.

(3) The adopting agency must:

- (a) clearly identify the document (or portions) being adopted;
- (b) independently review the content of the document and determine that it meets the adopting agency's environmental review standards and needs for its current proposal;
- (c) make sure that the document is readily available to the public and other agencies during applicable comment periods, if any, along with a brief description of the current proposal; and
- (d) have the document accompany the current proposal to the decisionmaker.

(4) Subject to the requirements in subsection (3), an adopted document is not required to meet the adopting agency's own rules or requirements for the preparation of environmental documents (including circulation, commenting, or hearing requirements) to be "adopted." A document is not required to be final or declared adequate prior to adoption. For example, an adopted document might not be adequate or final for the proposal on which it was written, but it may adequately analyze impacts related to the current proposal. The adopting agency shall disclose when:

- (a) The agency is adopting a document which is not final for the agency that prepared it.
- (b) The document or proposal it addresses is the subject of a pending appeal.
- (c) All or part of the document has been found inadequate by the preparing agency or on appeal.

- (5) (a) An agency shall adopt an environmental document by identifying the document and stating why it is being adopted. The statement of adoption may be included in agency planning and decisionmaking documents. An optional adoption notice form is in 197-11-1340, although an agency may develop its own form.
 - (b) If an existing EIS is adopted for the purpose of fully satisfying an agency's compliance with RCW 43.21C.030(2)(c), and a supplemental environmental document is not being prepared, the agency shall circulate its statement of adoption in the same manner as an FEIS under 197-11-460 (also see 197-11-650 on NEPA EISs).
- (6) Adoption of environmental documents by other agencies acting on the same proposal is not required when a lead agency or its responsible official issues a DNS or FEIS. For a DNS, an agency with jurisdiction may assume lead agency status if the agency is dissatisfied with the DNS (197-11-350(3)(e) and 1270). For an EIS, an agency with jurisdiction shall use a lead agency's FEIS unchanged unless:
- (a) supplemental review is required under 197-11-660; or
 - (b) the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may conduct supplemental review at its own expense under 197-11-660).

WAC 197-11-650 Use of NEPA Documents.

- (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following 197-10-640.
- (2) A NEPA environmental assessment may be adopted to satisfy SEPA's threshold determination or EIS requirements if the requirements of 197-11-640 are met.
- (3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:
 - (a) The requirements of 197-11-640(3) through (6) are met (in which case the procedures in Parts 3-5 of these rules for preparing an EIS shall not apply); and
 - (b) The federal EIS is not found inadequate: (i) by a court; (ii) by the Council on Environmental Quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the U.S. Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.
- (4) Subsequent use by another agency of a federal EIS, adopted under subsection (3), for the same (or substantially the same) proposal does not require adoption, unless the agency conducts supplemental review under 197-11-640(6).
- (5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within 30 days of circulating its statement of adoption, a

written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

WAC 197-11-660 Supplemental Environmental Review.

(1) "Supplemental review" refers to:

- (a) a new threshold determination made under 197-11-350(4) or 360(4);
- (b) an SEIS; or
- (c) an addendum (any other supplemental environmental document).

(2) Preparation of a new threshold determination or SEIS is required only if:

- (a) There are substantial changes to a proposal which are likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
- (b) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts. "Significant new information" includes discovering of misrepresentation or lack of material disclosure.

(3) Supplemental review is not required if probable significant adverse impacts are covered by the range of alternatives and impacts analyzed in existing environmental documents.

(4) SEIS.

- (a) When the criteria in subsection (2) are met, a supplemental EIS shall be prepared (197-11-405), except as provided in (4)(b) below. An SEIS shall be prepared in the same way as a draft and final EIS (197-11-400 to 600), except that scoping is optional. The scope of an SEIS need not include actions, alternatives, or impacts which have been analyzed in the previously prepared EIS. Unless the SEPA lead agency wants to prepare the SEIS, an agency with jurisdiction which needs the SEIS for its action shall be responsible for SEIS preparation.
- (b) An agency may use an addendum rather than an SEIS to add analysis which does not significantly change the analysis of significant impacts and alternatives in the EIS (for example, to discuss an additional impact or alternative). If so, an addendum shall be prepared and circulated to those who received the EIS (see subsection 5(e) and 6 below). The entire EIS need not be recirculated.

(5) Addendum. An agency may use an addendum to:

- (a) update information in an environmental document;
- (b) conduct an additional or subsequent environmental assessment or analysis on one or more environmental impacts;
- (c) monitor impacts or analyze additional mitigation measures (see, for example, 197-11-340(4) and 720);
- (d) satisfy the optional coordinated permit procedures under 197-11-740;

- (e) modify or add to a lead agency's environmental document, including doing so for purposes of adoption (see, for example, 197-11-640-6)(b)); or
- (f) assist the agency in carrying out the act.

(6) An agency is not required to prepare a draft addendum. An addendum for a DEIS shall be circulated to recipients of the initial DEIS under 197-11-455 (see 4(b) above). If an addendum is prepared for a final EIS prior to agency action on a proposal, the addendum shall be circulated to the recipients of the final EIS, and the seven day waiting period in 197-11-460(4) shall apply to the addendum. Agencies are encouraged to circulate addenda to interested persons. Unless otherwise provided in these rules, however, agencies are not required to circulate an addendum.

WAC 197-11-670 Combining Documents.

The SEPA process shall be combined with the existing planning, review, and project approval processes being used by each agency with jurisdiction. When environmental documents are required, they shall accompany a proposal through the existing agency review processes. Any environmental document in compliance with SEPA may be combined with any other agency documents to reduce duplication and paperwork and improve decisionmaking. The page limits in these rules shall be met, or the combined document shall contain, at or near the beginning of the document, a separate summary of environmental considerations, as specified by 197-11-440(4). SEPA page limits need not be met for joint state-federal EISs prepared under both SEPA and NEPA, in which case the NEPA page restrictions (40 CFR 1502.7) shall apply.

PART SEVEN SEPA AND AGENCY DECISIONS

WAC 197-11-700	Purpose of this Part
WAC 197-11-710	Implementation
WAC 197-11-720	Substantive Authority and Mitigation
WAC 197-11-740	Optional Coordinated Permit Procedures
WAC 197-11-750	Appeals

WAC 197-11-700 Purpose of this Part.

The purpose of this Part is to:

- (1) Ensure the use of concise, high quality environmental documents and information in making decisions.
- (2) Integrate the SEPA process with other laws and decisions.
- (3) Encourage actions which preserve and enhance environmental quality, consistent with other essential considerations of state policy.
- (4) Provide basic, uniform principles for the exercise of substantive authority and appeals under SEPA.

WAC 197-11-710 Implementation.

- (1) Agencies should be alert to the requirements of RCW 43.21C.020, .030(1), .060, .075, and .080.
- (2) Relevant environmental documents, comments, and responses shall accompany proposals through existing agency review processes, as determined by agency practice and procedure, so that agency officials use them in making decisions.
- (3) When a decisionmaker considers a final decision on a proposal:
 - (a) The alternatives in the relevant environmental documents shall be considered.
 - (b) The range of alternative courses of action considered by decisionmakers shall be within the range of alternatives discussed in the relevant environmental documents. However, mitigation measures adopted need not be identical to those discussed in the EIS.
 - (c) If information about alternatives is contained in another decision document which accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make that information available to the public before the decision is made.

WAC 197-11-720 Substantive Authority and Mitigation.

- (1) Any governmental action on public or private proposals, that is not exempt, may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:
 - (a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations which are or have been formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority, and which are in effect at the time that a DNS or DEIS is issued.
 - (b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and stated in writing by the decisionmaker. The decisionmaker shall cite the agency SEPA policy which is the basis of any condition or denial under this chapter. After its decision, each agency shall make available to the public a document which states the decision. The document shall state the mitigation measures, if any, which will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.
 - (c) Mitigation measures shall be reasonable and capable of being accomplished.
 - (d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

- (e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact (to the extent allowed by the detail of the proposal and environmental documents, including comments by agencies with jurisdiction).
- (f) In order to deny a proposal under SEPA, an agency must find that:
 - (i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and
 - (ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(2) Decisionmakers should carefully judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (see 197-11-060(6) and 440(6)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

- (a) Represent substantial changes in the proposal which are likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and
- (b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document which contains agency SEPA policies (197-11-1110), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

WAC 197-11-740 Optional Coordinated Permit Procedures.

(1) Purpose. As an optional procedure, lead agencies may use phased review (197-11-060(7) and 935) to allow agencies with jurisdiction to conduct detailed analysis of impacts and identify mitigation measures, under the rules in this section. This procedure is designed to provide appropriate consideration of environmental factors while reducing duplication of licensing requirements and paperwork, encouraging the proper level of detail in environmental documents, integrating the timing of development planning and the SEPA process, improving interagency coordination, and eliminating unnecessary detailed design costs in the early planning of proposals with significant impacts.

(2) Identifying Mitigation Through Phased Review. Under the optional procedures in this section, the lead agency may issue an FEIS and complete its decisionmaking process, subject to subsequent examination of detailed design

elements by other agencies with jurisdiction and by the lead agency at a later date.

(3) EIS Procedures. Upon request by a lead agency or applicant, an agency with jurisdiction shall inform the lead agency whether the agency with jurisdiction may be making a decision to condition or deny a proposal on specific environmental elements or known significant impacts identified in the lead agency's EIS. If so, the lead agency is not required to analyze those impacts in detail or to develop or consider mitigation measures for those impacts in its EIS if all of the following occurs:

- (a) The lead agency's EIS identifies the specific impacts, agencies, and permits or other requirements which are the basis of the phased EIS (197-11-440(2)(k), 4, and 5(c)(iii)).
- (b) Another agency with jurisdiction will require more detailed information on the proposal to make its decision and will issue an SEIS or addendum to the lead agency's EIS on the impact in question. An addendum shall be used unless the criteria for an SEIS apply (197-11-660). Such supplemental review shall have the effect of completing the EIS process. (In addition, 197-11-720(2)(b) shall not apply to the supplemental review by an agency with jurisdiction under this section.)
- (c) The lead agency's EIS has analyzed the impacts in question in sufficient detail for the lead agency to develop and describe reasonable alternative courses of action and to make a decision to approve or reject the proposal, subject to possible additional mitigation measures. An agency may allow an appeal under SEPA at this stage of the process, as long as the impacts and mitigation measures which are the subject of the phased review under this section are not eliminated from being appealed subsequently.

(4) Mitigation Decisions.

- (a) If requested by the lead agency, the agency with jurisdiction shall allow the lead agency to participate in the review and development of mitigation measures.
- (b) The lead agency may require additional mitigation measures on the proposal if it determines that the conditions placed by the agency with jurisdiction are insufficient to mitigate impacts of concern to the lead agency. The lead agency shall inform the agency with jurisdiction and any applicant of the lead agency's determination that additional mitigation is needed as soon as possible in this phased review process.

WAC 197-11-750

Appeals.

(1) Statutory Requirements. Appeals provisions in the act are found in RCW 43.21C.060, .075, and .080.

(2) RCW 43.21C.060 allows an appeal to a local legislative body, such as a county council, from a decision to condition or deny a proposal by a nonelec-

ted official, such as a planning director or hearing examiner. Appeals under RCW 43.21C.060 shall occur in accordance with local agency procedures. The local legislative body may eliminate this kind of agency SEPA appeal.

(3) RCW 43.21C.075 is the principal section governing appeals and consists of:

- (a) The right to challenge compliance with SEPA - subsection 1.
- (b) Two general rules for appeal - subsection 2.
- (c) Appeals to agencies - subsection 3.
- (d) Required use of agency appeals before going to court - subsection 4.
- (e) Appeals to court - subsections 5 and 6.
- (f) Optional appeal to shorelines hearings board instead of appealing to agencies or court - subsection 7.
- (g) Definitions for appeals - subsection 8.
- (h) Limited attorneys fees provisions - subsection 9.

(4) RCW 43.21C.080 allows agencies or applicants to publish a "notice of action" which, if used, requires SEPA appeals to be filed within certain time periods. RCW 43.21C.080 must be read along with RCW 43.21C.075 to understand when and how a notice of action is used.

(5) General Rule for All SEPA Appeals and Major Exceptions.

- (a) When challenging SEPA compliance, the underlying government action (such as a permit decision) and any environmental determination (such as the adequacy or lack of an EIS) shall be appealed together. In other words, appeal on the underlying government action and any SEPA determination shall be filed at the same time, and both shall be the subject of the appeal.
- (b) The exceptions to the general rule stated in 5(a) of this section are:
 - (i) Agency procedures may allow a threshold determination to be appealed to the agency separately from and before a decision is made on the underlying government action.
 - (ii) Appeals to agencies of procedural and substantive determinations may be separated in certain circumstances (see subsection 6 below).
 - (iii) The SEPA portion of a judicial appeal shall be filed no later than 30 days after the agency gives official notice of its decision on the underlying government action, if there is a time period in statute or ordinance for challenging the underlying action (see subsection 7 below).

(6) Agency Appeals.

- (a) Agencies are not required to have any agency appeals (except for any appeals under RCW 43.21C.060 which have not been eliminated by a local legislative body).
- (b) Agencies may have appeals to administrative or legislative officials. Any such appeals shall follow the requirements of RCW 43.21C.075 and this section. Agency SEPA procedures (197-11-1120) shall include those items specified in RCW 43.21C.075(3) and any procedures for appeal under this subsection.

- (c) Agencies may decide which SEPA determinations are subject to agency appeals, and who will hear such appeals. Agencies may provide for appeals on substantive or procedural determinations or both.
- (d) Agencies are not required to have an agency appeal for every aspect of procedural or substantive determinations. For example, agencies may have agency appeals for certain aspects of SEPA determinations, such as DNSs, but not others, such as categorical exemptions or DSs.
- (e) Although opportunity for comment is required and encouraged, agencies shall not provide for an appeal proceeding for scoping determinations, DEIS adequacy, or similar procedural requirements in the midst of the environmental review process prior to the issuance of an FEIS.
- (f) Agencies shall have only one appeal proceeding on a procedural determination. Such a determination shall consist of the adequacy of a final threshold determination or final environmental impact statement (and may include a final supplemental threshold determination or final SEIS). An appeal is allowed for successive procedural determinations, for example, the existence of a threshold determination and, later, the adequacy of a final EIS. Because this single appeal requirement must be administered consistent with other state statutes, an additional level of appeal on a procedural determination may occur only if another statute requires that an appeal be allowed to a local legislative body.
- (g) Agencies shall consolidate appeals of SEPA procedural issues and substantive determinations, except that a separate appeal may occur for a threshold determination ((b)(i) of this section), or for an appeal to a local legislative body under RCW 43.21C.060 or other applicable state statute (such as an appeal to a county council from a hearing examiner's decision on a proposal). A consolidated appeal (197-11-837) cannot occur, and therefore is not required, when an agency does not have an appeal proceeding for both substantive and procedural decisions.
- (h) Agency "determination" under RCW 43.21C.075 refers to final agency action and not to recommendations to decisionmakers.

(7) Judicial Appeals.

- (a) Neither the act nor these rules create a mandatory statute of limitations on SEPA appeals. Rather, they provide for:
 - (i) An optional notice of action which, if used, triggers a mandatory time period for filing an appeal; and
 - (ii) The filing of a SEPA portion of a lawsuit no later than 30 days after official notice of agency action if another statute or ordinance contains a time period for filing a lawsuit on the underlying government action. Thus, the SEPA portion of a lawsuit may be filed later than the time required to file an appeal on the underlying government action. For example, if a statute requires an agency action to be appealed to court within 15 days, and that appeal is duly filed, a challenge to the agency's SEPA compliance on the underlying government action need not be filed in court for another 15 days. This additional time is provided in part to allow review of final environmental

- documents and to maintain general consistency with the basic 30 day period under the notice of action.
- (b) Filing of the SEPA portion of a lawsuit within 30 days shall not be considered as a challenge to the underlying government action if a timely appeal under statute or ordinance was not filed on such underlying action.
 - (c) Agencies or applicants may continue to use the notice of action in RCW 43.21C.080. If so:
 - (i) The newspaper publication may be accomplished in the same manner as, and within the period for, appealing the underlying government action, which may be shorter than the period otherwise needed to meet RCW 43.21C.080.
 - (ii) The time period for appeal will continue to be 30 days for private proposals and 90 days for public proposals, unless 7(a)(ii) of this section applies, in which case the time period for filing a lawsuit shall be 30 days.
 - (iii) The term "action" cannot simply refer to a SEPA procedural determination.
 - (d) An appellant shall file a "notice of intent" to file a SEPA lawsuit with the responsible official (RCW 43.21C.075(5)(a)) only if:
 - (i) there is a period required by statute or ordinance to appeal the underlying government action; and
 - (ii) there has been an agency SEPA appeal under this section, and the agency has given the required notice to the parties of record of the result of such appeal.
 - (e) If there is more than one underlying government action that has an appeal period, any required notice of intent shall be filed no later than the latest of such other appeal periods.
 - (f) If deadlines for appealing the underlying government action are not contained in statute or ordinance (for example, if they are contained in rules), the time period for challenging SEPA compliance shall be governed by the notice of action, if any, or by the common law doctrine of laches.
 - (g) Neither SEPA nor these rules prohibits judicial review of the implementation of mitigation measures (which may occur later in time than final decisions on proposals) or of categorical exemptions.
- (8) Official Notice for Appeals.
- (a) Official notice of the time to commence an appeal shall not be given prior to final agency action.
 - (b) For a notice of action, the time period to file an appeal runs from the date of second newspaper publication (RCW 43.21C.080) or of concurrent publication with notice for the underlying government action (RCW 43.21C.075(5)(c)).
 - (c) For judicial appeals following agency appeals under RCW 43.21C.-075(3), the time period to file a judicial appeal shall run from five days after an agency has mailed or otherwise given notice under its procedures to the parties of record.
 - (d) For all other appeals, the time period to file an appeal shall run from five days after an agency has given notice under its procedures, or from the date of publication in a newspaper of general circulation in the geographic area in which the proposal is located, whichever is sooner.

- (e) "Official notice" refers to publication in a newspaper of general circulation in the geographic area in which the proposal is located or any other reasonable method under agency procedures for giving formal notice of its actions. Official notice under this section shall substantially include the information in 197-11-1380 and may be combined with other agency notice as long as the SEPA aspect is identifiable.

PART EIGHTDEFINITIONS

WAC 197-11-800	Definitions
WAC 197-11-810	Act
WAC 197-11-815	Action
WAC 197-11-818	Addendum
WAC 197-11-819	Adoption
WAC 197-11-820	Affecting
WAC 197-11-825	Agency
WAC 197-11-830	Applicant
WAC 197-11-832	Built Environment
WAC 197-11-835	Categorical Exemption
WAC 197-11-837	Consolidated Appeal
WAC 197-11-840	Consulted Agency
WAC 197-11-842	Cost-Benefit Analysis
WAC 197-11-845	County/city
WAC 197-11-847	Decisionmaker
WAC 197-11-849	Department
WAC 197-11-850	Determination of Nonsignificance (DNS)
WAC 197-11-855	Determination of Significance (DS)
WAC 197-11-860	EIS
WAC 197-11-865	Environment
WAC 197-11-870	Environmental Checklist
WAC 197-11-875	Environmental Document
WAC 197-11-876	Environmental Review
WAC 197-11-877	Environmentally Sensitive Area
WAC 197-11-879	Expanded Scoping
WAC 197-11-880	Impacts
WAC 197-11-885	Incorporation by Reference
WAC 197-11-890	Lands Covered by Water
WAC 197-11-895	Lead Agency
WAC 197-11-900	Legislation
WAC 197-11-905	License
WAC 197-11-910	Local Agency
WAC 197-11-915	Major Action
WAC 197-11-918	Mitigated DNS
WAC 197-11-920	Mitigation
WAC 197-11-922	Natural Environment
WAC 197-11-925	NEPA
WAC 197-11-930	Nonproject
WAC 197-11-935	Phased Review
WAC 197-11-937	Preferred Alternative
WAC 197-11-939	Preparation

WAC 197-11-940	Private Project
WAC 197-11-942	Probable
WAC 197-11-945	Proposal
WAC 197-11-947	Reasonable Alternative
WAC 197-11-950	Responsible Official
WAC 197-11-955	SEPA
WAC 197-11-960	Scope
WAC 197-11-965	Scoping
WAC 197-11-970	Significant
WAC 197-11-975	State Agency
WAC 197-11-980	Supplemental Review
WAC 197-11-985	Threshold Determination
WAC 197-11-990	Underlying Government Action

WAC 197-11-800 Definitions.

(1) The terms used in these rules shall be uniform throughout the state as applied to SEPA (197-11-035). Agencies may add to certain of these definitions in their procedures, to help explain how they carry out SEPA, but shall not change these definitions (197-11-1122).

(2) Unless the context clearly requires otherwise:

- (a) Use of the singular shall include the plural and conversely.
- (b) "Preparation" of environmental documents refers to preparing or supervising the preparation of documents, including issuing, filing, printing, circulating, and related requirements.
- (c) "Impact" refers to environmental impact.
- (d) "Permit" means "license" (197-11-905).
- (e) "Commenting" includes but is not synonymous with "consultation" (Part 5).
- (f) "Environmental cost" refers to adverse environmental impact and may or may not be quantified.
- (g) "EIS" refers to draft, final, and supplemental EISs (197-11-405 and 860).
- (h) "Under" includes pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

(3) In these rules:

- (a) "Shall" is mandatory.
- (b) "May" is optional and permissive and does not impose a requirement.
- (c) "Include" means "include but not limited to".

(3) The following terms are synonymous:

- (a) Effect and impact (197-11-880).
- (b) Environment and environmental quality (197-11-865).
- (c) Major and significant (197-11-915 and 970).
- (d) Proposal and proposed action (197-11-945).
- (e) Probable and likely (197-11-942).

KSW5636/83

(4) If a specific agency has been named in these rules, and the functions of that agency have changed or been transferred to another agency, the term shall mean any successor agency.

WAC 197-11-830 Applicant.

"Applicant" means any person or entity, including an agency, applying for a license from an agency. Application means a request for a license.

WAC 197-11-832 Built Environment.

"Built environment" means the the elements of the environment as specified by RCW 43.21C.110(1)(f) and 197-11-444(2), which are generally built or made by people as contrasted with natural processes.

WAC 197-11-835 Categorical Exemption.

"Categorical exemption" means a type of action, specified in these rules, which does not significantly affect the environment (RCW 43.21C.110(1)(a)); categorical exemptions are found in Part 9 of these rules. Neither a threshold determination nor any environmental document, including an environmental checklist or environmental impact statement, is required for any categorically exempt action (RCW 43.21C.031). These rules specifically provide for those extraordinary circumstances when an action with normally nonsignificant effects shall not be considered categorically exempt (197-11-320).

WAC 197-11-837 Consolidated Appeal.

"Consolidated appeal" means the procedure requiring a person to file an agency appeal challenging both procedural and substantive compliance with SEPA at the same time, as provided under RCW 43.21C.075(3)(b) and the exceptions therein. If an agency does not have an appeal procedure for challenging either the agency's procedural or its substantive SEPA determinations, the appeal cannot be consolidated prior to any judicial review (see 197-11-750). The requirement for a consolidated appeal does not preclude agencies from bifurcating appeal proceedings and allowing different agency officials to hear different aspects of the appeal (197-11-750(6)).

WAC 197-11-840 Consulted Agency.

"Consulted agency" means any agency with jurisdiction or expertise that is requested by the lead agency to provide information during the SEPA process.

WAC 197-11-842 Cost-Benefit Analysis.

"Cost-benefit analysis" means a quantified comparison of costs and benefits generally expressed in monetary or numerical terms. It is not synonymous with the weighing or balancing of environmental and other impacts or benefits of a proposal.

WAC 197-11-845 County/city.

"County/city" means a county, city, or town. In this chapter, duties and

left to the legislative or charter authority of the individual counties, cities, or towns.

WAC 197-11-847 Decisionmaker.

"Decisionmaker" means the agency official or officials who make the agency's decision on a proposal. The decisionmaker and responsible official are not necessarily synonymous, depending on the agency and its SEPA procedures (197-11-1122 and 1130).

WAC 197-11-849 Department.

"Department" means the Washington State Department of Ecology.

WAC 197-11-850 Determination of Nonsignificance (DNS).

"Determination of Nonsignificance" (DNS) means the written decision by the responsible official of the lead agency that a proposal is not likely to have a significant adverse environmental impact, and therefore an EIS is not required (197-11-310 and 350). The DNS form is in 197-11-1350.

WAC 197-11-855 Determination of Significance (DS).

"Determination of Significance" (DS) means the written decision by the responsible official of the lead agency that a proposal is likely to have a significant adverse environmental impact, and therefore an EIS is required (197-11-310 and 360). The DS form is in 197-11-1360. Agencies may use a similar notice instead of a DS to commence scoping, as allowed in 197-11-360 and 408.

WAC 197-11-860 EIS.

"EIS" means environmental impact statement, which is the detailed statement required by RCW 43.21C.030(2)(c). Although the term "detailed statement" in the statute literally refers to a final EIS, the term "EIS" in these rules shall refer to draft, final, or supplemental EISs (197-11-405).

WAC 197-11-865 Environment.

"Environment" means, and is limited to, those elements listed in 197-11-444, as required by RCW 43.21C.110(1)(f). Environment and environmental quality refer to the state of the environment and are synonymous as used in these rules and refer basically to physical environmental quality.

WAC 197-11-870 Environmental Checklist.

"Environmental checklist" means the form in 197-11-1325. Rules for its use are in 197-11-325.

WAC 197-11-875 Environmental Document.

"Environmental document" means any written public document prepared under this chapter. Under SEPA, the terms environmental analysis, environmental study, environmental report, and environmental assessment do not have specialized meanings and do not refer to particular documents or processes (unlike various other state or federal environmental impact procedures). Rather, these

terms refer generally to efforts to understand and consider environmental factors, and are often used interchangeably.

WAC 197-11-876 Environmental Review.

"Environmental review" means the consideration of environmental factors under SEPA. The "environmental review process" is the procedure used by agencies and others under SEPA for giving appropriate consideration to the environment in agency decisionmaking.

WAC 197-11-877 Environmentally Sensitive Area.

"Environmentally sensitive area" means an area designated and mapped by a county/city under 197-11-1125. Certain categorical exemptions do not apply within environmentally sensitive areas (197-11-320(3), 1125, and Part 9 of these rules).

WAC 197-11-879 Expanded Scoping.

"Expanding scoping" is an optional process which may be used by agencies to go beyond minimum scoping requirements. In order to promote the purposes of scoping and efforts by agencies, applicants, and the public to work together early in the environmental review process, great latitude is given to agencies in how they wish to conduct any expanded scoping process under 197-11-410, so that agencies will not be penalized for using the process creatively.

WAC 197-11-880 Impacts.

"Impacts" are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in 197-11-444.

WAC 197-11-885 Incorporation by Reference.

"Incorporation by reference" means the inclusion of all or part of any existing document in an agency's environmental documentation (197-11-090).

WAC 197-11-890 Lands Covered By Water.

"Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes, and swamps. Certain categorical exemptions do not apply to lands covered by water, as specified in Part 9.

WAC 197-11-895 Lead Agency.

"Lead Agency" means the agency with the main responsibility for complying with SEPA's procedural requirements (197-11-050 and 1200). The procedures for determining lead agencies are in Part 10 of these rules. "Lead agency" may be read as "responsible official" (197-11-950 and 1130) unless the context clearly requires otherwise. Depending on the agency and type of proposal, for example, there may be a difference between the lead agency's responsible official, who is at a minimum responsible for procedural determinations

(such as 197-11-315, 455, 460) and its decisionmaker, who is at a minimum responsible for substantive determinations (such as 197-11-448, 710, and 720).

WAC 197-11-900 Legislation.

"Legislation" means agency adoption or amendment of legislation or ordinances which contain standards controlling use or modification of the environment. Proposals for legislation means legislation proposed by agencies.

WAC 197-11-905 License.

"License" means any form of written permission given to any person, organization, or agency to engage in any activity, as required by law or agency rule. A license includes all or part of an agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular proposal. The term does not include a license required solely for revenue purposes.

WAC 197-11-910 Local Agency.

"Local agency" or "local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties and their legislative bodies. The term encompasses but does not refer specifically to the departments within a city or county.

WAC 197-11-915 Major Action.

"Major action" means an action which is likely to have significant adverse environmental impacts. "Major" reinforces but does not have a meaning independent of "significantly" (197-11-970). Action is defined in 197-11-815.

WAC 197-11-918 Mitigated DNS.

"Mitigated DNS" means a DNS which includes mitigation measures and is issued as a result of the process specified in 197-11-340.

WAC 197-11-920 Mitigation.

"Mitigation" means:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (f) Monitoring the impact and taking appropriate corrective measures.

WAC 197-11-922 Natural Environment.

"Natural environment" means those aspects of the environment contained in 197-11-444(1), frequently referred to as natural elements, or resources, such as earth, air, water, wildlife, and energy.

WAC 197-11-925 NEPA.

"NEPA" means the National Environmental Policy Act of 1969 (42 USCA 4321 et seq.; P.L. 91-190), which is like SEPA at the federal level. The federal NEPA regulations are located at 40 CFR 1500 et seq.

WAC 197-11-930 Nonproject.

"Nonproject" means actions which are different or broader than a single site specific project, such as plans, policies, and programs (197-11-815).

WAC 197-11-935 Phased Review.

"Phased review" means the coverage of general matters in broader environmental documents, with subsequent narrower documents concentrating solely on the issues specific to the later analysis (197-11-060(7)). Phased review may be used for a single proposal or EIS (197-11-060 and 740).

WAC 197-11-937 Preferred Alternative.

"Preferred alternative" means a preference for a particular alternative course of action, at the time the preference is expressed. A preferred alternative is not a decision, and may be no more than an expression that a responsible official or decisionmaker is tentatively inclined toward a certain direction.

WAC 197-11-939 Preparation.

"Preparation" of an environmental document means preparing or supervising the preparation of documents, including issuing, filing, printing, circulating, and related requirements (see 197-11-800(2)).

WAC 197-11-940 Private Project.

"Private project" means any proposal primarily initiated or sponsored by an individual or entity other than an agency.

WAC 197-11-942 Probable.

"Probable" means likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment" (see 197-11-970). Probable is used to distinguish likely impacts from those which merely have a possibility of occurring, but are remote or speculative.

WAC 197-11-945 Proposal.

"Proposal" means a proposed action. A proposal includes both actions and regulatory decisions of agencies as well as any actions proposed by applicants. A proposal exists at that stage in the development of an action when an agency is presented with an application, or has a goal and is actively prepar-

ing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated. (See 197-11-055 and 060(4).) A proposal may therefore be a particular or preferred course of action or several alternatives. For this reason, these rules use the phrase "alternatives including the proposed action". The term "proposal" may therefore include "other reasonable courses of action", if there is no preferred alternative and if it is appropriate to do so in the particular context.

WAC 197-11-947 Reasonable Alternative.

"Reasonable alternative" means an action which: (1) could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation, and (2) is capable of being effected by the lead agency or another agency with jurisdiction (in other words, such agencies have the authority to control impacts directly or through mitigation requirements). (See 197-11-060(6), 440(5), and 720). Also see the definition of "scope" for the three types of alternatives to be analyzed in EISs (197-11-960).

WAC 197-11-950 Responsible Official.

"Responsible official" means that officer or officers, committee, department, or section of the lead agency designated by agency SEPA procedures to undertake its procedural responsibilities as lead agency (197-11-1130).

WAC 197-11-955 SEPA.

"SEPA" means the State Environmental Policy Act of 1971 (Chapter 43.21C RCW), which is also referred to as the act. The "SEPA process" means all measures necessary for compliance with the act's requirements.

WAC 197-11-960 Scope.

(1) "Scope" means the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document (197-11-060(3)). "Scoping" means determining the scope of an EIS and identifying and narrowing the scope to significant impacts (197-11-965).

(2) To determine the scope of environmental impact statements, agencies consider three types of actions, three types of impacts, and three types of alternatives.

- (a) Actions may be:
 - (i) single (a specific action which is not related to other proposals or parts of proposals);
 - (ii) connected (proposals or parts of proposals which are closely related under 197-11-060(4)(e) or (g)); or
 - (iii) similar (proposals that have common aspects and may be analyzed together under 197-11-060(4)(f)).
- (b) Alternatives may be:
 - (i) no action;
 - (ii) other reasonable courses of action; or
 - (iii) mitigation measures (not in the proposed action).

- (c) Impacts may be:
- (i) direct;
 - (ii) indirect; or
 - (iii) cumulative.

(3) 197-11-060 provides general rules for the content of any environmental review under SEPA; Part 4 and 197-11-440 provide specific rules for the content of EISs. The scope of an individual statement may depend on its relationship with other EISs or on phased review.

WAC 197-11-965 Scoping.

"Scoping" means determining the range of proposed actions, alternatives, and impacts to be discussed in an EIS. Because an EIS is required to analyze significant environmental impacts only, scoping is intended to identify and narrow the EIS to the significant issues. The required scoping process (197-11-408) provides interagency and public notice of a DS, or equivalent notification, and opportunity to comment. The lead agency has the option of expanding the scoping process (197-11-410), but shall not be required to do so. Scoping is used to encourage cooperation and early resolution of potential conflicts, to improve decisions, and to reduce paperwork and delay.

WAC 197-11-970 Significant.

(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (197-11-315(3)) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The following should be considered in evaluating intensity, as is appropriate for specific proposals:

- (a) Impacts may be both beneficial and adverse. A significant impact may exist even if the agency believes that on balance the effect of the proposal will be beneficial.
- (b) The degree to which a proposal may adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness.
- (c) The degree to which a proposal may adversely affect endangered or threatened species or their habitat.
- (d) The degree to which a proposal threatens a violation of local, state, or federal laws or requirements for the protection of the environment.
- (e) The degree to which the action may establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or affects public health or safety.
- (f) The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

(3) Environmental effects are not normally significant if they meet existing environmental standards governing such impacts; however, an agency may

determine that such impacts are significant, based upon the particular environmental setting and analysis in environmental documents or information (or lack of information) on a proposal or its impacts. An agency may require mitigation in accordance with SEPA and these rules even if an impact is not significant.

(4) 197-11-315 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

WAC 197-11-975 State Agency.

"State agency" means any state board, commission, department, or officer, including state universities, colleges, and community colleges, that is authorized by law to make rules, hear contested cases, or otherwise take the actions stated in 197-11-815, except the judiciary and state legislature.

WAC 197-11-980 Supplemental Review.

"Supplemental review" means an environmental document that is done in addition to existing environmental analysis and refers to: (1) a new threshold determination made under 197-11-350(4) or 360(4); (2) a supplemental environmental impact statement; or (3) an addendum. (197-11-660.)

WAC 197-11-985 Threshold Determination.

"Threshold determination" means the decision by the responsible official of the lead agency whether or not an EIS is required for a proposal (197-11-310).

WAC 197-11-990 Underlying Government Action.

"Underlying government action" means the governmental action, such as zoning or permit approvals, that is the subject of SEPA compliance.

PART NINE

CATEGORICAL EXEMPTIONS

WAC 197-11-1000	Categorical Exemptions
WAC 197-11-1010	Exemptions and Nonexemptions Applicable to Specific State Agencies
WAC 197-11-1020	Department of Licensing
WAC 197-11-1025	Department of Labor and Industries
WAC 197-11-1130	Department of Natural Resources
WAC 197-11-1135	Department of Fisheries
WAC 197-11-1140	Department of Game
WAC 197-11-1045	Department of Social and Health Services
WAC 197-11-1050	Department of Agriculture
WAC 197-11-1055	Department of Ecology
WAC 197-11-1060	Department of Transportation
WAC 197-11-1065	Utilities and Transportation Commission
WAC 197-11-1070	Department of Commerce and Economic Development
WAC 197-11-1075	Other Agencies

WAC 197-11-1080
WAC 197-11-1090

Emergencies
Petitioning DOE to Change Exemptions

WAC 197-11-1000 Categorical Exemptions.

The proposed actions contained in Part 9 are categorically exempt (197-11-835), subject to the rules and limitations on categorical exemptions contained in 197-11-320. If a proposal fits within any of the provisions of this Part, the proposal shall be categorically exempt, except as provided in 197-11-320.

(1) Minor new construction: flexible thresholds.

- (a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. If an agency does not establish an exempt level under (c) of this subsection, the level in (b) of this subsection shall control. If there is more than one agency with jurisdiction, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.
- (b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:
- (i) The construction or location of any residential structures of four dwelling units.
 - (ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.
 - (iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles.
 - (iv) The construction of a parking lot designed for 20 automobiles.
 - (v) Any land fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, III forest practice under RCW 76.09.050 or regulations thereunder.
- (c) Agencies may raise the exempt levels to the maximum specified below by implementing ordinance or resolution, or, for state agencies, by rulemaking. Such levels shall be specified in the agency's SEPA or procedures (197-11-1120). A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

- (i) 20 dwelling units.
- (ii) 30,000 square feet.
- (iii) 12,000 square feet; 40 automobiles.
- (iv) 40 automobiles.
- (v) 500 cubic yards.

(2) Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or water is required:

- (a) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.
- (b) The construction and/or installation of commercial on-premise signs, and public signs and signals.
- (c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington State department of agriculture approved herbicides by licensed personnel for right-of-way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights-of-way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right-of-way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right-of-way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.
- (d) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by this subsection, as well as fencing and the construction of small structures and minor facilities accessory thereto.
- (e) Additions or modifications to or replacement of any building or facility exempted by this subsection when such addition, modification or replacement will not change the character of the building or facility in a way which would remove it from an exempt class.
- (f) The demolition of any structure or facility, the construction of which would be exempted by this subsection, except for structures or facilities with recognized historical significance.
- (g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.
- (h) The vacation of streets or roads.

- (i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.
- (j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt: The repair, remodeling, maintenance or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing.

(4) Water rights. The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

- (a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.
- (b) Appropriations of one cubic foot per second or less of surface water, or of ten cubic feet per second or less of ground water, for any purpose.

(5) Purchase or sale of real property. The following real property transactions by an agency shall be exempt:

- (a) The purchase or acquisition of any right to real property.
- (b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.
- (c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(6) Minor land use decisions. The following land use decisions shall be exempt:

- (a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.
- (b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, slope, topography, location or surroundings and not resulting in any change in land use or density.
- (c) Classifications of land for current use taxation under RCW 84.34, and classification and grading of forest land under RCW 84.33.

(7) School closures. The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.

(8) Open burning. Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or

regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(9) Variations under Clean Air Act. The granting of variations under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(10) Water quality certifications. The granting or denial of water quality certifications under the federal clean water act (Federal Water Pollution Control Act Amendments of 1972, 33 USC 1341) shall be exempt.

(11) Activities of the state legislature. All actions of the state legislature are exempted. This subsection does not exempt the proposing of legislation by an agency (197-11-900).

(12) Judicial activity. The following shall be exempt:

- (a) All adjudicatory actions of the judicial branch.
- (b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(13) Enforcement and inspections. The following enforcement and inspection activities shall be exempt:

- (a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.
- (b) All inspections conducted by an agency of either private or public property for any purpose.
- (c) All activities of fire departments and law enforcement agencies except physical construction activity.
- (d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.
- (e) Any suspension or revocation of a license for any purpose.

(14) Business and other regulatory licenses. The following business and other regulatory licenses are exempt:

- (a) All licenses to undertake an occupation, trade or profession.
- (b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.
- (c) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including

licenses or permits required for permanent construction of any of the above.

- (d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.
- (e) All licenses for private security services, including but not limited to detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.
- (f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: provided that regulation of common carriers by the utilities and transportation commission shall be not considered exempt under this subsection.
- (g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.
- (h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.
- (i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(15) Activities of agencies. The following administrative, fiscal and personnel activities of agencies shall be exempt:

- (a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.
- (b) The assessment and collection of taxes.
- (c) The adoption of all budgets and agency requests for appropriation: Provided that if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.
- (d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.
- (e) The review and payment of vouchers and claims.
- (f) The establishment and collection of liens and service billings.
- (g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.
- (h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.
- (i) Adoptions or approvals of utility, transportation and solid waste disposal rates.
- (j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy plan or program for such construction of real property transaction shall not be considered exempt under this subsection (see also 197-11-1000(7)).

(16) Financial assistance grants. The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or

construction of a project. This exemption includes agencies taking nonproject actions which are necessary to apply for federal or other financial assistance.

(17) Local improvement districts. The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under 197-11-1000 and 1080.

(18) Information collection and research. Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be for strictly information-gathering purposes, or as part of a study leading to a proposal which has not yet been approved, adopted or funded; this exemption does not include any agency action which commits the agency to proceed with such a proposal. (Also see 197-11-070.)

(19) Acceptance of filings. The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(20) Procedural actions. The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

(21) Building codes. The adoption by ordinance of all codes as required by the state building code act (RCW 19.27).

(22) Adoption of noise ordinances. The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under RCW 70.107. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations.

(23) Review and comment actions. Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(24) Utilities. The utility-related actions listed below shall be exempt; however, installation or construction on or alteration of lands covered by water shall not be exempt for actions listed below. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration which does not change the action from an exempt class.

- (a) All communications lines, including cable TV, but not including microwave towers or relay stations.
- (b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.
- (c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or

less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

- (d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.
- (e) All developments within the confines of any existing electric sub-station, reservoir, pump station or well: Provided that additional appropriations of water are not exempted by this subsection.
- (f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided that chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds which are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.
- (g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.
- (h) All grants of franchises by agencies to utilities.
- (i) All disposals of rights of way by utilities.

(25) Natural resources management. In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

- (a) All class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.
- (b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land which has been subject to a grazing lease within the previous ten years.
- (c) Licenses or approvals to remove firewood.
- (d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.
- (e) Issuance of leases for Christmas tree harvesting or brush picking.
- (f) Issuance of leases for school sites.
- (g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.
- (h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.
- (i) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided that chemicals used are approved by the Washington State department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds which are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.
- (j) Issuance of rights of way, easements and use permits to use existing public roads in nonresidential areas.

WAC 197-11-1010

Exemptions and Nonexemptions Applicable to Specific State Agencies.

(1) The exemptions in 197-11-1020 through 1075 relate only to the specific activities identified within the named agencies. These exemptions are in addition to the preceding sections of this part and are subject to the rules and limitations of 197-11-320. The categorical exemptions in 197-11-1000 apply to all agencies, including those named in 197-11-1020 through 1075 unless the

general exemptions are specifically made inapplicable by one of the following exemptions.

WAC 197-11-1020 Department of Licensing.

- (1) All licenses required under programs administered by the department of licensing as of December 12, 1975 are exempted, except the following:
- (a) Camping club promotional permits under RCW 19.105.
 - (b) Motor vehicle wrecker licenses under RCW 46.80. 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

WAC 197-11-1025 Department of Labor and Industries.

All licenses required under programs administered by the department of labor and industries as of December 12, 1975 are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under RCW 70.74. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

WAC 197-11-1030 Department of Natural Resources.

- (1) The following actions and licenses of the department of natural resources are exempted.
- (a) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.
 - (b) Operating permits to use power equipment on forest land.
 - (c) Permits to use fuse on forest land.
 - (d) Log patrol licenses.
 - (e) Permits for drilling for which no public hearing required under RCW 79.76.070 (geothermal test drilling).
 - (f) Permits for the dumping of forest debris and wood waste in forested areas.
 - (g) All timber sales.
 - (h) Leases for mineral prospecting under RCW 79.01.616 or RCW 79.-01.652, but not including issuance of subsequent contracts for mining.

WAC 197-11-1035 Department of Fisheries.

- (1) The following activities of the department of fisheries are exempted.
- (a) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.
 - (b) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a class I, II, III forest practice as defined in RCW 76.-09.050 or regulations thereunder.
 - (c) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of game) requiring a nonexempt permit, except for proposals involving removal of fifty (50) or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally

- abandoned within the twelve months previous to the hydraulic permit application.
- (d) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.
 - (e) All other licenses (other than those excepted in (b) and (c) above) authorized to be issued by the department as of December 12, 1975 except the following:
 - (i) fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;
 - (ii) licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and,
 - (iii) any license authorizing the discharge of explosives in water.
 WAC 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of the above licenses.
 - (f) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

WAC 197-11-1040 Department of Game.

- (1) The following activities of the department of game are exempted:
 - (a) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.
 - (b) The issuance of falconry permits.
 - (c) The issuance of all hunting or fishing licenses, permits or tags.
 - (d) Artificial game feeding.
 - (e) The issuance of scientific collector permits.
 - (f) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a class I, II, III forest practice as defined in RCW 76.09.050 and regulations thereunder.
 - (g) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of fisheries) requiring a nonexempt permit, except for proposals involving removal of fifty (50) or more cubic yards of streambed materials involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.
 - (h) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat, where only minor documented affects on other species will occur.

WAC 197-11-1045 Department of Social and Health Services.

- (1) All actions under programs administered by the department of social and health services as of December 12, 1975, are exempted, except the following:
 - (a) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70.98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand

- beyond design capacity, mineral processing facilities or their tailings areas whose products or byproducts have concentrations of naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.
- (b) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-580.
 - (c) The approval of engineering reports or plans and specifications under WAC 248-54-590 and 248-54-600, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.
 - (d) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service capacity of such institutions.
 - (e) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.
 - (f) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.
 - (g) The construction of any building, facility or other installation not exempt by 197-11-1000 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (e.g., prisons).
 - (h) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

WAC 197-11-1050

Department of Agriculture.

- (1) All actions under programs administered by the department of agriculture as of December 12, 1975 are exempted, except for the following:
- (a) The approval of any application for a commercial registered feedlot under RCW 16.58.040 or WAC 16-28 and 16-30.
 - (b) The issuance or amendment of any regulation respecting restricted-use pesticides under RCW 15.58, that would have the effect of allowing the use of a previously prohibited use pesticide.
 - (c) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users.
 - (d) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license.
 - (e) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license.
 - (f) The approval of any use of the pesticide DDT or DDD.
 - (g) The issuance of a license to operate a public livestock market under RCW 16.65.030.
 - (h) The provisions of WAC 197-11-1000(14)(i) shall apply to allow possible exemption of renewals of the licenses in (a) through (g) above.

WAC 197-11-1055 Department of Ecology.

- (1) The following activities of the department of ecology shall be exempt:
- (a) The issuance, reissuance or modification of any waste discharge permit which contains conditions no less stringent than federal effluent limitations and state rules and regulations. This exemption shall apply to existing discharges only and shall not apply to any new source discharges.
 - (b) Review of comprehensive solid waste management plans under RCW 70.95.100 and 70.95.110.

WAC 197-11-1060 Department of Transportation.

- (1) The following activities of the department of transportation shall be exempt:
- (a) Approval of the Annual Highway Safety Work Program involving the highway-related safety standards pursuant to 23 USC 402.
 - (b) Issuance of road approach permits and right-of-way rental agreements.
 - (c) Establishment and changing of speed limits of 55 miles per hour or less;
 - (d) Revisions of existing access control involving a single property owner;
 - (e) Issuance of a "Motorist Information Signing Permit," granting a private business person the privilege of having a sign on highway right-of-way which informs the public of the availability of his or her services;
 - (f) Issuance of permits for special units relative to state highways;
 - (g) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;
 - (h) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; and
 - (i) Issuance of permits for utility occupancy of highway rights-of-way for use for distribution (as opposed to transmission).

WAC 197-11-1065 Utilities and Transportation Commission.

- (1) All actions of the utilities and transportation commission under programs administered as of December 12, 1975, are exempted, except the following:
- (a) Issuance of common carrier motor freight authority under RCW 81.80, which would authorize a new service, or extend an existing transportation service in the fields of general freight (other than local cartage), petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives or corrosives;
 - (b) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;
 - (c) Regulation of oil and gas pipelines under RCW 81.88; and
 - (d) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under 197-11-1000, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

WAC 197-11-1070

Department of Commerce and Economic Development.

(1) The following activities of the department of commerce and economic development shall be exempt:

- (a) The provisions of business consulting and advisory services which shall include tourist promotion under RCW 43.31.050.
- (b) The promotion and development of foreign trade under RCW 43.-31.370.
- (c) The furnishing of technical and information services under RCW 43.31.060.
- (d) The provision of technical assistance to applicants for grants and aid and/or loans and for tax deferrals by the Economic Assistance Authority under RCW 43.31A.
- (e) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.

WAC 197-11-1075

Other Agencies.

Except for building construction (the majority of which is undertaken through the department of general administration), all activities of the following state agencies under programs they administer as of December 12, 1975, are exempted:

- (1) Office of the attorney general.
- (2) Office of the auditor.
- (3) Department of employment security.
- (4) Office of the insurance commissioner and state fire marshall.
- (5) Department of personnel.
- (6) Department of printing.
- (7) Department of revenue.
- (8) Office of the secretary of state.
- (9) Office of the treasurer.
- (10) Arts commission.
- (11) Washington state patrol.
- (12) Interagency committee for outdoor recreation.
- (13) Department of emergency services.
- (14) Department of general administration, division of banking and division of savings and loan associations.
- (15) Forest practices appeals board.
- (16) Public employees retirement system.
- (17) Law enforcement officers and fire fighters' retirement board.
- (18) Volunteer fireman's retirement system board.
- (19) State department of retirement systems.
- (20) Teachers' retirement system board.
- (21) Higher education personnel board.
- (22) Commission for vocational education.

WAC 197-11-1080

Emergencies.

Actions which must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property,

or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.

WAC 197-11-1090. Petitioning DOE to Change Exemptions.

(1) Except for the preceding section, agencies may create additional exemptions in their procedures only after receiving approval from the department of ecology under this section.

(2) An agency may petition the department to adopt additional exemptions or to delete existing exemptions by amending these rules. The petition shall be made under RCW 34.04.060. The petition shall state the language of the requested amendment, the petitioning agency's views on the environmental impacts of the activities covered by the proposed amendment, and the approximate number of actions of this type which have come before the petitioning agency over a particular period of time. The department shall consider and decide upon a petition within 30 days of receipt. If the determination is favorable, the department shall begin rulemaking under RCW 34.04. Any resulting amendments will apply either generally or to specified classes of agencies. Affected agencies shall amend their procedures accordingly.

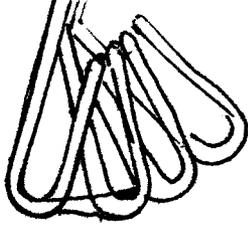
(3) An agency may also petition the department for an immediate ruling upon any request to add, delete, or change an exemption. If such a petition is granted, the department will notify the petitioning agency, which may immediately include the change approved by the department in its own procedures. The department may thereafter begin rulemaking proceedings to amend these rules. Until these rules are amended, any change granted under this subsection shall apply only to the petitioning agency or agencies.

(4) The department will provide public notice of any proposed amendments to these rules in the manner required by the administrative procedure act, RCW 34.04. A copy of all approvals by the department under the preceding subsection shall be given to any person requesting the department for advance notice of rulemaking.

PART TEN

AGENCY COMPLIANCE

WAC 197-11-1100	Purpose of this Part
WAC 197-11-1110	Agency SEPA Policies
WAC 197-11-1120	Agency SEPA Procedures
WAC 197-11-1122	Content and Consistency of Agency Procedures
WAC 197-11-1125	Environmentally Sensitive Areas
WAC 197-11-1130	Designation of Responsible Official
WAC 197-11-1140	Procedures for Consulted Agencies
WAC 197-11-1150	SEPA Fees and Costs
WAC 197-11-1160	Application to Ongoing Actions
WAC 197-11-1170	Lack of Agency Procedures
WAC 197-11-1190	Agencies with Environmental Expertise
WAC 197-11-1200	Lead Agency Rules
WAC 197-11-1203	Determining the Lead Agency
WAC 197-11-1205	Lead Agency for Governmental Proposals



- WAC 197-11-1210 Lead Agency for Public and Private Proposals
- WAC 197-11-1215 Lead Agency for Private Projects with One Agency with Jurisdiction
- WAC 197-11-1220 Lead Agency for Private Projects Requiring Licenses from More than One Agency, When One of the Agencies is a County/City
- WAC 197-11-1222 Lead Agency for Private Proposals Requiring Licenses from a Local Special District (not a City/County) and One or More State Agency
- WAC 197-11-1225 Lead Agency for Private Projects Requiring Licenses from More than One State Agency
- WAC 197-11-1230 Lead Agencies for Specific Proposals
- WAC 197-11-1235 Transfer of Lead Agency Status to a State Agency
- WAC 197-11-1240 Agreements on Lead Agency Status
- WAC 197-11-1245 Agreements on Division of Lead Agency Duties
- WAC 197-11-1260 DOE Resolution of Lead Agency Disputes
- WAC 197-11-1270 Assumption of Lead Agency Status
- WAC 197-11-1280 Severability
- WAC 197-11-1290 Effective Date

WAC 197-11-1100 Purpose of this Part.

The purpose of this Part is to:

- (a) Require each agency to adopt its own rules and procedures to carry out SEPA and ensure that agency rules and procedures shall have the force and effect of law and shall be consistent with these uniform statewide rules.
- (b) Require agencies to include certain items in their rules.
- (c) Ensure the documents prepared under the act are available to the public.
- (d) Identify agencies with environmental expertise.
- (e) Provide rules for determining the lead agency.

WAC 197-11-1110 Agency SEPA Policies.

(1) The act and these rules allow agencies to condition or deny proposals if such action is based upon policies identified by the appropriate governmental authority. These policies must be incorporated into regulations, plans, or codes formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of substantive authority under SEPA. (RCW 43.21C.060; 197-11-720.) State and local policies so designated are called "agency SEPA policies" in these rules.

(2) Agencies are required to designate their SEPA policies within 180 days after the effective date of these rules (or the creation of the agency). In order to condition or deny a proposal, an agency must comply with the provisions of RCW 43.21C.060 and 197-11-720. If an agency has already formally designated agency SEPA policies that meet the requirements of the act and these rules, the agency is not required to adopt them again. Agencies may revise or add to their SEPA policies at any time. Although agency SEPA

procedures cannot change the provisions of these rules concerning substantive authority and mitigation (197-11-1122(2)), agency SEPA policies are encouraged to identify specific mitigation measures or techniques.

(3) Agencies are required by these rules to prepare a document which includes or references by citation their agency SEPA policies (197-11-720(3)). This document may be included in agency SEPA procedures (197-11-1120). Public notice and opportunity for public comment shall be provided as part of the agency process for formally designating its SEPA policies.

(4) Depending on their content, the formal designation of agency SEPA policies will not necessarily require any environmental review and will normally be categorically exempt as a procedural action under 197-11-1000(20). For example, the policies may merely compile, reorganize, or reference laws or policies currently on the books, or may otherwise be procedural in nature, such as requiring decisionmakers to consider certain factors.

WAC 197-11-1120

Agency SEPA Procedures.

(1) Each agency is required by the act and this section to adopt its own rules and procedures for implementing SEPA. (RCW 43.21C.120.) Agencies may revise or add to their SEPA procedures at any time. Agencies may adopt these rules (WAC 197-11) by reference, and shall meet the requirements of 197-11-1122 concerning the content of their procedures. State and local rules for carrying out SEPA procedures are called "agency SEPA procedures".

(2) State agencies shall adopt or amend their procedures within 180 days of the effective date of this chapter or subsequent revisions, or within 180 days of the establishment of an agency, whichever shall occur later. State agencies shall adopt their procedures by rulemaking under the state administrative procedure act, RCW 34.04. If a state agency does not have rulemaking authority under RCW 34.04, the agency shall adopt procedures under whatever authority it has, and public notice and opportunity for public comment shall be provided. Adoption shall be deemed to have taken place at the time the transmittal of adopted rules is filed with the code reviser. Universities, colleges, and community colleges shall use the procedures of RCW 28B.19 in adopting procedures.

(3) Local agencies shall adopt or amend their procedures within 180 days of the effective date of this chapter or subsequent revisions, or within 180 days of the establishment of the local governmental entity, whichever shall occur later. Local agencies shall adopt their procedures by rule, ordinance, or resolution, whichever is appropriate, to ensure that the procedures have the full force and effect of law. Public notice and opportunity for public comment shall be provided as part of the agency's process for adopting its SEPA procedures.

(4) Any agency determining that all actions it is authorized to take are exempt under Part 9 of these rules may adopt a statement to the effect that it has reviewed its authorized activities and found them all to be exempt under this chapter. Adoption of such a statement under the procedures in subsections (2) and (3) shall be deemed to be in compliance with the requirement that the agency adopt procedures under this chapter.

(5) The adoption of agency procedures is procedural and shall be categorically exempt under this chapter (197-11-1000(20)).

WAC 197-11-1122

Content and Consistency of Agency Procedures.

- (1)
 - (a) Agency SEPA policies and procedures shall implement and be consistent with the rules in this chapter. Unless optional or permissive (see 197-11-815), all of the provisions of this chapter are mandatory, and agency procedures shall incorporate these rules and criteria.
 - (b) Permissive and optional rules shall not be construed as mandatory requirements. Rules giving encouragement or guidance shall also not be construed as mandatory. The decision on whether to apply an optional provision rests with the responsible official.
 - (c) Except as stated in the next subsection, the rules in this chapter are not exclusive, and agencies may add procedures and criteria. However, any additional material shall not be inconsistent with, contradict, or make compliance with any provision of these rules a practical impossibility. Any additional material shall be consistent with SEPA.
 - (d) Agency procedures shall also include the procedures required by sections 055(3)(a), 055(4), 420(1), 420(4), 950, and 1130.
 - (e) Agency procedures may include procedures under 055(2), 055(7), 100(4), 750(6), 750(8), 825(2), 1000(1), and 1125. Any such procedures shall include the content required by those rules.
- (2) The following provisions of this chapter are exclusive and may not be added to or changed in agency procedures:
 - (a) The definition of terms referred to in 197-11-305;
 - (b) The definitions of "categorical exemption", "agencies with jurisdiction", "lands covered by water", "built environment", "natural environment", "license", "licensing", "mitigation", and "scope";
 - (c) The criteria for lead agency determination (Part 10 of these rules);
 - (d) The categorical exemptions in Part 9 of these rules, unless expressly allowed under Part 9;
 - (e) The information allowed to be required of applicants under 197-11-080, 100, 320, 330, and 420;
 - (f) The requirements for the style and size of an EIS (197-11-425);
 - (g) The list of elements of the environment (197-11-444); and
 - (h) The provision on substantive authority and mitigation in 197-11-720.
- (3) The following provisions of this chapter may not be changed, but may be added to; any additions shall meet the criteria for additional material stated in (1)(c) of this section:
 - (a) All other definitions in Part 8 of these rules;
 - (b) The provisions in Parts 4 and 5 of these rules, except as necessary to be grammatically incorporated into agency procedures;
 - (c) The contents of agency SEPA procedures (197-11-1122); and
 - (d) The list of agencies with environmental expertise (197-11-1190);
- (4) The forms in Part 11 shall be used substantially as set forth. Minor changes are allowed to make the forms more useful to agencies, applicants, and

the public, as long as the changes do not eliminate requested information or impose burdens on applicants. The questions in part two of the environmental checklist shall not be altered.

WAC 197-11-1125 Environmentally Sensitive Areas.

(1) Each county/city may at its option designate areas within its jurisdiction which are environmentally sensitive areas, and shall adopt such designation in its agency SEPA procedures (197-11-1122). Environmentally sensitive areas shall be those within which the exemptions listed in the next subsection could have a significant adverse environmental impact, including but not limited to areas with unstable soils, steep slopes, unusual or unique plants or animals, or areas which lie within floodplains. The location and extent of all environmentally sensitive areas shall be clearly indicated on a map which shall be adopted by reference as part of the SEPA procedures of the county/city.

(2) Each county/city which designates and maps an environmentally sensitive area may select certain categorical exemptions which do not apply within the area. The selection of exemptions that will not apply may be made from the following subsections of 197-11-1000: (1); (2)(a)-(h); (3); (5); (6)(a); (14)(c); (24)(a)-(g); and (25)(d), (f), (h), (i). All other categorical exemptions apply whether or not the proposal will be located within an environmentally sensitive area. Exemptions selected by an agency which do not apply within the various environmentally sensitive areas shall be listed within the SEPA procedures of any county/city adopting such areas.

(3) Proposals which will be located within environmentally sensitive areas are to be treated no differently than other proposals under this chapter, except as stated in the prior subsection. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in an environmentally sensitive area.

(4) Certain categorical exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

WAC 197-11-1130 Designation of Responsible Official.

Agency SEPA procedures shall designate or provide a method of designating the responsible official with speed and certainty (197-11-1122(1)(d)). This designation may vary depending upon the nature of the proposal. The responsible official shall carry out the duties and functions of the agency when it is acting as the lead agency under these guidelines. Since it is possible under these rules for an agency to be acting as a lead agency prior to actually receiving an application for a license to undertake a private project, designation of the first department within the agency to receive an application as the responsible official will not be sufficient.

WAC 197-11-1140 Procedures on Consulted Agencies.

Each agency shall develop internal procedures, manuals, or guidance for providing responses to consultation requests from other agencies pertaining to threshold investigations, the scoping process, or EISs. Such procedures shall ensure that the agency will comply with the requirements of Part 4 of these rules. It is recommended that these procedures be integrated within existing

procedures of investigating license applications when the consulted agency is also an acting agency.

WAC 197-11-1150 SEPA Fees and Costs.

Except for the costs allowed by this chapter (see, for example, sections 197-11-080, 100, 350(4)(a), 420(4), 440(2)(m), 504, 508, 570, 640(6)(b) pertaining to the cost of preparing environmental documents), these rules neither authorize nor prohibit the imposition of fees to cover the costs of SEPA compliance.

WAC 197-11-1160 Application to Ongoing Actions.

(1) Agency SEPA procedures shall apply to any proposal made after the effective date of the agency SEPA procedures of the lead agency or the agency proposing the action. Agencies are required to adopt SEPA procedures no later than 180 days after the effective date of these rules or subsequent revisions (197-11-1120), and these rules apply if agencies fail to do so (197-11-1170).

(2) For proposals made before the effective date of revised agency SEPA procedures, agency SEPA procedures shall apply to those elements of SEPA compliance to be initiated after the procedures went into effect. Agency procedures adopted under RCW 43.21C.120 and these rules shall not be applied to invalidate or require modification of any threshold determination, EIS or other element of SEPA compliance undertaken or completed before the effective date of the procedures of the lead agency or of the agency proposing the action.

(3) Agencies are responsible for compliance with any statutory requirements that went into effect before the adoption of these rules and agency SEPA procedures (for example, the statutory requirements for appeals).

WAC 197-11-1170 Lack of Agency Procedures.

If an agency fails to adopt rules, ordinances, resolutions, or regulations implementing SEPA within the time periods required by RCW 43.21C.120, the rules in this chapter shall be applied as practicable to the actions of such agency.

WAC 197-11-1190 Agencies with Environmental Expertise.

The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

- (1) Air quality.
 - (a) Department of ecology.
 - (b) Department of natural resources (only for burning in forest areas).
 - (c) Department of social and health services.
 - (d) Regional air pollution control authority or agency.
- (2) Water resources and water quality.
 - (a) Department of game.
 - (b) Department of ecology.

- (c) Department of natural resources (state-owned tidelands, harbor areas or beds of navigable waters).
 - (d) Department of social and health services (public water supplies, sewer systems, shellfish habitats).
 - (e) Department of fisheries.
- (3) Hazardous and toxic substances (including radiation).
- (a) Department of ecology.
 - (b) Department of social and health services.
 - (c) Department of agriculture (foods or pesticides).
 - (d) Department of fisheries (introduction into waters).
- (4) Solid and hazardous waste.
- (a) Department of ecology.
 - (b) Department of fisheries (dredge spoils).
 - (c) Department of social and health services.
- (5) Fish and wildlife.
- (a) Department of game.
 - (b) Department of fisheries.
- (6) Natural resources development.
- (a) Department of commerce and economic development.
 - (b) Department of ecology.
 - (c) Department of natural resources.
 - (d) Department of fisheries.
 - (e) Department of game.
- (7) Energy production, transmission and consumption.
- (a) Department of commerce and economic development (office of nuclear energy development--nuclear).
 - (b) Department of ecology.
 - (c) Department of natural resources (geothermal, coal, uranium).
 - (d) State energy office.
 - (e) Energy facility site evaluation council (thermal power plants).
 - (f) Utilities and transportation commission.
- (8) Land use and management.
- (a) Department of commerce and economic development.
 - (b) Department of ecology.
 - (c) Department of fisheries (affecting surface or marine waters).
 - (d) Department of natural resources (tidelands or state-owned or managed lands).
 - (e) Planning and community affairs agency.
- (9) Noise.
- (a) Department of ecology.
 - (b) Department of social and health services.
- (10) Recreation.
- (a) Department of commerce and economic development.
 - (b) Department of game.
 - (c) Department of fisheries.
 - (d) Parks and recreation commission.
 - (e) Department of natural resources.

- (11) Archaeological/historical.
 - (a) Office of archaeology and historic preservation.
 - (b) Washington state university at Pullman (Washington archaeological research center).
- (12) Transportation.
 - (a) Department of transportation.
 - (b) Utilities and transportation commission.

WAC 197-11-1200 Lead Agency Rules.

The rules for deciding when and how an agency is the lead agency (197-11-050) are contained in this part. The method and criteria for lead agency selection are in 197-11-1203. Lead agency rules for different types of proposals as well as for specific proposals are in 197-11-1205 through 1235. Rules for interagency agreements are in 197-11-1240 through 1245. Rules for asking the department of ecology to resolve lead agency disputes are in 197-11-1260. Rules for the assumption of lead agency status by another agency with jurisdiction are in 197-11-1270.

WAC 197-11-1203 Determining the Lead Agency.

- (1) The first agency receiving or initiating a nonexempt proposal shall determine the lead agency for that proposal, unless the lead agency has been previously determined, or the agency receiving the proposal is aware that another agency is determining the lead agency. The lead agency shall be determined by using the criteria in 197-11-1205 through 197-11-1245.
- (2) If an agency determines that another agency is the lead agency, it shall mail to such lead agency a copy of the application it received, together with its determination of lead agency and an explanation. If the agency receiving this determination agrees that it is the lead agency, it shall notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition the department of ecology for a lead agency determination under 197-11-1260.
- (3) Any agency receiving a lead agency determination to which it objects shall either resolve the dispute, withdraw its objection, or petition the department for a lead agency determination within 15 days of receiving the determination.
- (4) An applicant may also petition the department to resolve the lead agency dispute under 197-11-1260.
- (5) To make the lead agency determination, an acting agency must determine to the best of its ability the scope of the proposal and other agencies with jurisdiction over some or all of the proposal. This can be done by:
 - (a) Describing or requiring an applicant to describe the main features of the proposal;
 - (b) Reviewing the list of agencies with expertise;
 - (c) Contacting potential agencies with jurisdiction either orally or in writing.

WAC 197-11-1205 Lead Agency for Governmental Proposals.

(1) The lead agency for all proposals initiated by an agency shall be the agency making that proposal. In the event that two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency. For the purposes of this section, a proposal by an agency does not include proposals to license private activity.

(2) Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.

WAC 197-11-1210 Lead Agency for Public and Private Proposals.

When the proposal involves both private and public activities, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is an agency or from the private sector. Any project in which agency and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined under 197-11-1205.

WAC 197-11-1215 Lead Agency for Private Projects with One Agency with Jurisdiction.

For proposed private projects for which there is only one agency with jurisdiction, the lead agency shall be the agency with jurisdiction.

WAC 197-11-1220 Lead Agency for Private Projects Requiring Licenses from More than One Agency, when One of the Agencies is a County/city.

For proposals for private projects which require nonexempt licenses from more than one agency, when at least one of the agencies requiring such a license is a county/city, the lead agency shall be that county/city within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet. For the purposes of this section, the jurisdiction of a county shall not include the areas within the limits of cities or towns within such county.

WAC 197-11-1222 Lead Agency for Private Projects Requiring Licenses from a Local Special District (not a City/County) and One or More State Agency. ⁴³

When a proposed private project requires nonexempt licenses only from a local special district and one or more state agencies, the lead agency shall be the local special district.

WAC 197-11-1225 Lead Agency for Private Projects Requiring Licenses from More than One State Agency.

(1) For private projects which require licenses from more than one state agency, but require no license from a county/city, the lead agency shall be

one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Utilities and transportation commission.
- (g) Department of motor vehicles.
- (h) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency which has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.

WAC 197-11-1230

Lead Agencies for Specific Proposals.

Notwithstanding the lead agency designation criteria contained in 197-11-1205 through 197-11-1125, the lead agency for proposals within the areas listed below shall be as follows:

- (1) For all governmental actions relating to energy facilities for which certification is required under RCW 80.50, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.
- (2) For all private projects relating to the use of geothermal resources under RCW 79.76, the lead agency shall be the department of natural resources.
- (3) For all private projects requiring a license or other approval from the oil and gas conservation committee under RCW 78.52, the lead agency shall be the department of natural resources; however, for projects under RCW 78.52.125, the EIS shall be prepared in accordance with that section.
- (4) For all private activity requiring a license or approval under the Forest Practices Act of 1974, RCW 76.09, the lead agency shall be the department of natural resources; however, for any proposal which will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the lead agency shall be the county/city requiring the license.
- (5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For all proposals which are being processed under the Environmental Coordination Procedures Act of 1973 (ECPA), RCW 90.62, the lead agency shall be determined under the standards of these rules.

(7) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 USC 1342).

(8) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(9) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

(10) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(11) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(12) For proposals to construct any new metallic mineral processing plant, or to expand any such existing plant by ten percent or more of design capacity, the lead agency shall be the department of ecology.

(13) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level radioactive waste burial facilities, the lead agency shall be the department of social and health services.

WAC 197-11-1235

Transfer of Lead Agency Status to a State Agency.

For any proposal for a private project where a city or town with a population of under five thousand or a county of fifth through ninth class would be the lead agency under 197-11-1210 through 197-11-1230, and when one or more state agencies are agencies with jurisdiction over the proposal, such local agency may at its option transfer the lead agency duties to that state agency with jurisdiction appearing first on the priority listing in 197-11-1225. In such event, the state agency so determined shall be the lead agency and the agency making the transfer shall be an agency with jurisdiction. Transfer is accomplished by the county, city or town transmitting a notice of the transfer together with any relevant information it may have on the proposal to the appropriate state agency with jurisdiction. The local agency making the transfer shall also give notice of the transfer to any private applicant and other agencies with jurisdiction involved in the proposal.

WAC 197-11-1240

Agreements on Lead Agency Status.

Any agency may assume lead agency status if all agencies with jurisdiction agree.

WAC 197-11-1245

Agreements on Division of Lead Agency Duties.

Two or more agencies may by agreement share or divide the responsibilities of lead agency through any arrangement agreed upon. In such event, however, the agencies involved shall designate one of them as the nominal lead agency, which shall be responsible for complying with the duties of the lead agency under these rules. Other agencies with jurisdiction shall be notified of the agreement and determination of the nominal lead agency.

WAC 197-11-1260

DOE Resolution of Lead Agency Disputes.

(1) If the agencies with jurisdiction are unable to determine which agency is the lead agency under the rules, any agency with jurisdiction may petition the department for a determination. The petition shall clearly describe the proposal in question, and include a list of all licenses and approvals required for the proposal. The petition shall be filed with the department within 15 days after receipt by the petitioning agency of the determination to which it objects. Copies of the petition shall be mailed to any applicant involved, as well as to all other agencies with jurisdiction over the proposal. The applicant and agencies with jurisdiction may file with the department a written response to the petition within 10 days of the date of the initial filing.

(2) Within 15 days of receipt of a petition, the department shall make a written determination of the lead agency, which shall be mailed to the applicant and all agencies with jurisdiction. The department shall make its determination in accordance with these rules and considering the following factors (which are listed in order of descending importance):

- (a) Magnitude of an agency's involvement.
- (b) Approval/disapproval authority over the proposal.
- (c) Expertise concerning the proposal's impacts.
- (d) Duration of an agency's involvement.
- (e) Sequence of an agency's involvement.

WAC 197-11-1270

Assumption of Lead Agency Status.

(1) An agency with jurisdiction over a proposal, upon review of a DNS (197-11-350) may transmit to the initial lead agency a completed "Notice of Assumption of Lead Agency Status." This notice shall be substantially similar to the form in 197-11-1370. Assumption of lead agency status shall occur only within 15 days of issuance of a DNS.

(2) The DS by the new lead agency shall be based only upon information contained in the environmental checklist attached to the DNS transmitted by the first lead agency and any other information the new lead agency has on the matters contained in the environmental checklist.

(3) Upon transmitting the DS and notice of assumption of lead agency status, the consulted agency with jurisdiction shall become the "new" lead agency and shall expeditiously prepare an EIS. In addition, all other responsibilities and

authority of a lead agency under this chapter shall be transferred to the new lead agency.

WAC 197-11-1280 Severability.

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

WAC 197-11-1290 Effective Date.

- (1) These rules shall become effective 30 days after the date of adoption by the department.
- (2) These rules shall not apply to agency decisionmaking under SEPA, however, on their effective date. Rather, agencies are allowed six months after the effective date of these rules to conform their policies, procedures, and practices to this chapter (197-11-1110 and 1120). This chapter and agency policies and procedures adopted under it shall govern agency compliance with SEPA, as specified in 197-11-1160 and 1170, no later than 180 days after the effective date of these rules.
- (3) Nothing in these rules shall delay agency compliance with any requirement in RCW 43.21C, as amended, such as RCW 43.21C.031 and .075 (as noted in 197-11-1160(3)).

PART ELEVEN

FORMS

WAC 197-11-1325	Environmental Checklist
WAC 197-11-1340	Adoption Notice
WAC 197-11-1350	Determination of Nonsignificance (DNS)
WAC 197-11-1360	Determination of Significance (DS)
WAC 197-11-1370	Notice of Assumption of Lead Agency Status
WAC 197-11-1380	Notice of Action
WAC 197-11-444	List of Elements of the Environment

ENVIRONMENTAL CHECKLIST

Instructions for Private Applicants. This "environmental checklist" asks you to describe some basic information about what you intend to do ("your proposal"). Government agencies use the checklist to learn about the effects your proposal might have on our environment.

The checklist is looking for general answers and descriptions in plain English. Whenever questions ask about the amount or type of something, please give the precise information if you know it. If you don't, you should give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. This checklist is designed so that you can answer the questions from your own observations or project plans, without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, please write "do not know" or "does not apply".

Some questions ask about permits or governmental matters, such as zoning, shoreline, and landmark designations. Please answer these questions if you can. Although it will be appreciated if you can answer these questions, the government agencies should know the answers to these questions and will assist you, if requested.

The questions on the checklist apply to all of the various parts of your proposal, even if you plan to do them over a period of time or on different parcels of property. Please feel free to attach additional information which will help to describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you, within reason, to explain your answers or provide additional information.

Instructions for Public Officials. Agencies should follow the instructions above when requesting information from private applicants. As noted, private applicants are not required to supply information on governmental matters. Requests to private applicants should be limited to those areas for which the agency has reason to believe that there may be a significant adverse environmental effect. These requests should be limited to the appropriate level of detail for a threshold determination.

The instructions for private applicants apply to public proposals as well. When government agencies fill out the checklist for their own proposals, however, the answers should normally be precise regarding the type and magnitude of impact, unless the information is not available, is very costly to obtain, or will be obtained in a subsequent SEPA environmental document on the proposal. Agencies should evaluate checklist answers and should decide whether a proposal is likely to have significant environmental effects (space is provided to the right of the checklist questions for agency use).

Nonproject Actions. Please refer to the supplemental sheet at the conclusion of the checklist for "nonproject" proposals (proposals on general policies and plans, for example, rather than projects on specific sites).

Background and Purpose of the Checklist. The State Environmental Policy Act (SEPA) requires all government agencies and citizens to do their share in protecting our environment for present and future generations. One purpose of this checklist is to help you think about some of the environmental aspects of the proposal.

This checklist will also help the government agencies consider your proposal's environmental "impact" -- to help them work with you to avoid or reduce any environmental damage, if this can be done. If your proposal might significantly affect the environment, a more detailed environmental analysis may be required.

For further information, please see the State SEPA Guidelines (WAC 197-10) and the Act (RCW 43.21C), or contact the agency listed below in question A.5, or your local planning department or the state Department of Ecology.

A. BACKGROUND

1. Name of proposed project, if applicable:
2. Name of applicant:
3. Address and phone number of applicant and contact person:
4. Date checklist prepared:
5. Agency requesting checklist:
6. Proposed timing or schedule (including phasing, if applicable):
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
9. Do you know of pending applications for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
10. List any government approvals or permits that will be needed for your proposal, if known.
11. Give complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist which ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description, consistent with the instructions at the beginning of this checklist.)
12. Location of the proposal. Please give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any. If a proposal would occur over a range of area, please provide the range or boundaries of the site(s). Please provide, if you have them, a legal description, site plan, vicinity map, and topographic map if possible. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): flat, rolling, hilly, steep slopes, mountainous, other _____
- b. What is the steepest slope on the site (approximate % slope)? _____
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, please specify and note any prime farmland.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe _____

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed _____

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe _____

- g. Proposed measures to reduce or control erosion, or other impacts, if any: _____

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction, and when the project is completed? If any, generally describe and give approximate quantities if known. _____

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- b. Are there any off-site sources of emissions or odor which may affect your proposal? If so, generally describe _____

- c. Proposed measures to reduce or control emissions or other impacts, if any: _____

3. Watera. Surface:

- 1) Is there any surface water on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, associated wetlands)? If yes, describe type, provide names, and, if known, state what stream or river it flows into. _____

- 2) Will the project require any work over or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. _____

- 3) Estimate the amount of fill and dredge that would be placed in or removed from surface water. _____

- 4) Will surface water withdrawals or diversions be required by the proposal? Give general description, purpose, and approximate quantities if known. _____

- 5) Does the proposal lie within a 100-year floodplain? Note location on the site plan, if any. _____

EVALUATION
FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- b. Ground:
 - 1) Will ground water be withdrawn or recharged? Give general description, purpose, and approximate quantities if known.
 - 2) If waste material will be placed into the ground (from septic tanks or other sources), generally describe.
- c. Storm and Runoff:
 - 1) Describe the source of runoff and storm water and method of collection and disposal, if any (include quantities, if known). Will this waste flow into other waters? If so, please describe.
 - 2) Could waste materials leak into ground or surface waters? If so, generally describe.
- d. Proposed measures to reduce or control surface, ground, storm and runoff water impacts, if any:

4. Plants

- a. Check or circle types of vegetation found on the site:
 - deciduous tree: alder, maple, aspen, other
 - evergreen tree: fir, cedar, pine, other
 - shrubs
 - grass
 - pasture
 - crop or grain
 - wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
 - water plants: water lily, eelgrass, milfoil, other
 - other types of vegetation
- b. What kind and amount of vegetation will be removed or altered?

EVALUATION
FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- c. List threatened or endangered species known to be on or near the site.
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

5. Animals

- a. Circle any birds and animals which have been observed on or known to be on or near the site:
 - birds: hawk, heron, eagle, songbirds, other
 - mammals: deer, bear, elk, beaver, other
 - fish: bass, salmon, trout, shellfish, other
- b. List any threatened or endangered species known to be on or near the site.
- c. Proposed measures to preserve or enhance wildlife, if any:

6. Energy and Natural Resources

- a. Circle applicable on-site energy use for completed project: electricity for heating, electricity for manufacturing, natural gas heating, oil heating, wood stove heating, solar heating, other.
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
- c. What kinds of energy conservation features are included in the plans of this proposal?
- d. Proposed measures to reduce or control energy impacts, if any:

EVALUATION
FOR AGENCY USE ONLY

EVALUATION
FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

7. Environmental Health

- a. Are there any environmental health hazards, including risk of fire and explosion, spill, or hazardous waste, that occur as a result of this proposal? If so, describe.
- b. Describe special emergency services that might be required.
- c. Proposed measures to reduce or control environmental health hazards, if any:

8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties?
- b. Has the site been used for agricultural purposes? If so, describe

c. Describe any structures on the site

d. Will any structures be demolished? If so, what?

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program environment designation of the site?
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures so that the proposal is compatible with existing and projected land uses and plans, if any:

9. Housing

- a. Approximately how many units would be provided?
- b. Approximately how many units would be eliminated?
- c. Proposed measures to reduce or control housing impacts, if any:

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

10. Noise

- a. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
- b. What types of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)?
- c. Proposed measures to reduce or control noise impacts, if any:

11. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?
- c. Proposed measures to reduce or control aesthetic impacts, if any:

12. Light and Glare

- a. What type of light or glare will the proposal produce?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
- c. What existing off-site sources of light or glare may affect your proposal?
- d. Proposed measures to reduce or control light and glare impacts, if any:

EVALUATION FOR AGENCY USE ONLY

TO BE COMPLETED BY APPLICANT

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

13. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?
- b. Would the proposed project displace any existing recreational uses? If so, describe.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

14. Historic Preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on the site? If so, generally describe.
- b. Generally describe any landmarks or evidence of historic, archeological, scientific, or cultural importance known to be on the site.
- c. Proposed measures to reduce or control impacts, if any:

EVALUATION FOR AGENCY USE ONLY

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

15. Transportation

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

c. How many parking spaces would the completed project have?

d. Will any new road or street, not including drive-ways, be required? If so, generally describe (indicate whether public or private).

e. Will the project use or occur in the immediate vicinity of water rail, or air transportation? If so, generally describe.

f. How many vehicular trips per day would be generated by the completed project?

g. Proposed measures to reduce or control transportation impacts, if any:

If you do not know the answer or if a question does not apply to your proposal, please write "do not know" or "does not apply".

16. Public Services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

18. Utilities

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities which are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Date Submitted: _____

INSTRUCTIONS

Nonproject actions. Nonproject actions involve decisions on policies, plans, or programs; they may occur in a specific geographic area and may involve project actions as well (197-11-815(4)).

Use of the main checklist. Many questions on the main checklist may apply to a nonproject proposal. The checklist must be filled out along with this supplemental sheet, even though questions may be answered "does not apply." For nonproject actions, the references to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively. The signature on the main checklist (Part C) covers this supplemental sheet.

Site impacts. The fact that a nonproject proposal applies to a given jurisdiction does not necessarily mean that the proposal would affect a given geographic area. Questions about site conditions should be answered "does not apply" if specific site impacts or types of impacts cannot be reasonably identified (for example, the description of the existing environment of an entire county is not required for an amendment to a comprehensive plan).

Filling out Part A of the main checklist. In filling out Part A, particular attention should be given to the way a proposal is defined and described, making sure to consider if this is a connected action or series of actions (197-11-060(4)). If phased review is involved, the answer to question 6 should identify and commit to the type and timing of subsequent review (197-11-055(2)).

Filling out Part B of the main checklist and this supplemental sheet. The following considerations should be kept in mind:

- The proposal may serve as a precedent for future actions. For example, the proposal may encourage or tend to cause particular types of projects. Although future proposals may not be known, you should consider whether such future activities are likely to cause significant pollution or natural resource use (197-11-055(2), 060(5), 315(3), and 970(2)). The specific questions below provide a way to make this evaluation for nonproposal proposals.

- The elements of the environment may be consolidated into two categories: the natural and the built environment. This will help to write concise answers. If a single element of the environment stands out, of course, it should be identified. If answers overlap, such as impacts on wildlife (in question 2 below) and on endangered species habitat (in question 4 below), they may be answered under one question to avoid repetition.

- Agencies shall use 197-11-305 through 340 to determine whether the impacts identified are "significant" and require an EIS.

- The use of "or" in this supplemental sheet includes "and" and means that each item mentioned must be considered if relevant.

D. ADDITIONAL QUESTIONS

The following questions should be answered to the extent the proposal, or the types of activities likely to result from the proposal, would do the following at a greater intensity or at a faster rate than if the proposal were not implemented.

Summarize in general terms how the proposal, and the types of activities likely to result from the proposal, would be likely to:

1. Increase pollution (air, water, toxic or hazardous substances, noise):

Proposed measures to avoid or reduce such pollution:

2. Affect wildlife (plants, animals, fish, marine life):

Proposed measures to protect or conserve wildlife:

3. Deplete energy or natural resources:

Proposed measures to protect or conserve energy and natural resources:

4. Use or affect environmentally sensitive areas or areas designated, eligible, or under study for protection (parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, prime farmlands):

Proposed measures to protect such resources or avoid or reduce impacts:

5. Affect land and shoreline use, or allow or encourage land or shoreline uses incompatible with existing plans (the second part of this item need not be answered for proposals to modify existing plans):

Proposed measures to avoid or reduce shoreline and land use impacts:

6. Increase demands on transportation or public services and utilities:

Proposed measures to reduce or respond to such demand:

7. Would the proposal be likely to violate local, state, or federal laws or requirements for the protection of the environment? If so, explain.

ADOPTION NOTICE

Name of agency adopting the document _____

Name of document being adopted _____

Agency that prepared document being adopted _____

Date adopted document was prepared _____

Description of document (or portion) being adopted _____

Description and location of current proposal _____

If the document being adopted is not a final document or has been challenged (WAC 197-11-640(4)), please describe:

The document is available to be read at (place/time) _____

[If there is a commenting period, add:] Any comments are due by _____

This document has been clearly identified and adopted after independent review by this agency. The document meets the agency's environmental review needs for its current proposal. The adopted document will accompany the proposal to the decisionmaker. The document is readily available to the public and other agencies during applicable comment periods, if any, along with a brief description of the current proposal for which it is being used.

Responsible official _____

Position/title _____

Address/telephone _____

Date _____ Signature _____

DETERMINATION OF NONSIGNIFICANCE

Description of proposal _____

Proponent _____

Location of proposal _____

Lead agency _____

This proposal has been determined not to have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.020(c). This decision was made after review by the lead agency of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

[For DNSs under WAC 197-11-350(3), the following paragraph shall be added:

The lead agency will not act on this proposal for 15 days from the date below. Anyone may comment on this DNS, but comments must be received within these 15 days.]

Responsible official _____

Position/title _____

Address and phone _____

Date _____ Signature _____

[If there is an agency appeal for DNSs, the DNS shall state or attached a notice stating the time and place for such appeal, for example:

You may appeal this determination to (name) _____
at (location) _____
no later than (date) _____
by (method) _____

You should be prepared to make specific factual objections and should read or ask about an agency's procedures for SEPA appeals first.]

DETERMINATION OF SIGNIFICANCE
AND SCOPING NOTICE

Description of proposal _____

Proponent _____

Location of proposal _____

Lead agency _____

EIS Required. This proposal has been determined to be likely to have a significant adverse impact on the environment. An environmental impact statement (EIS) is required under RCW 43.21C.020(c) and is now being prepared. An environmental checklist or other materials indicating likely environmental impacts can be reviewed at our offices.

Scoping. Agencies and members of the public are invited to comment on the scope of the EIS. The method and deadline for giving us your comments is:

Responsible official _____

Position/title _____

Address and phone _____

Date _____ Signature _____

[If there is an agency appeal for DSs, the DS shall state or attach a notice stating the time and place for appealing the agency's decision that an EIS is required; see DNS form in 197-11-1350.]

NOTICE OF ASSUMPTION OF LEAD AGENCY STATUS

Description of proposal _____

Proponent _____

Location of proposal _____

Initial lead agency _____

New lead agency _____

The initial lead agency concluded that this proposal was not likely to have a significant adverse impact on the environment, according to its determination of nonsignificance dated _____.

We have reviewed the environmental checklist and related information. In our opinion, an environmental impact statement (EIS) is required on the proposal.

You are being notified that we assume the responsibility of lead agency under SEPA, including the duty to prepare an EIS on the proposal.

Responsible official _____

Position/title _____

Address/telephone _____

Date _____ Signature _____

NOTICE OF ACTION AND DEADLINE FOR APPEAL

Notice is given under SEPA, RCW 42.21C.080, that (name of agency or entity)

_____ took the following action on (date) _____

1. An appeal must be filed with (name person or entity hearing the appeal)

_____ on or before (date) _____

2. Description of agency action: _____

3. Description of proposal (if not covered by (2)):

4. Location of proposal (a sufficient description should be given to locate the site, if any, but a complete legal description is not required):

5. Type of environmental review under SEPA (include name and date of any environmental documents):

6. Documents may be examined during regular business hours at (location, including room number, if any):

7. Name of agency, proponent, or applicant giving notice:

8. This notice is filed by (signature of individual and capacity in which the person is signing):

_____ Date _____

[Note: This form may be used for any SEPA notice of appeal under RCW 43.21C.075, WAC 197-11-750, or agency procedures, by changing the title and the cite in the first line.]

ELEMENTS OF THE ENVIRONMENT

(1) Natural Environment

- (a) Earth
 - (i) Geology
 - (ii) Soils
 - (iii) Topography
 - (iv) Unique physical features
 - (v) Erosion/enlargement of land area

- (b) Air
 - (i) Air quality
 - (ii) Odor
 - (iii) Climate

- (c) Water
 - (i) Surface water movement/quantity/quality
 - (ii) Runoff/absorption
 - (iii) Floods
 - (iv) Ground water movement/quantity/quality
 - (v) Public water supplies

- (d) Wildlife (Plants and Animals)
 - (i) Habitat and numbers or diversity of species of plants, fish, or other wildlife
 - (ii) Unique species
 - (iii) Agricultural crops
 - (iv) Fish or wildlife migration routes

- (e) Energy and Natural Resources
 - (i) Amount required/rate of use
 - (ii) Source/availability
 - (iii) Nonrenewable resources
 - (iv) Conservation and renewable resources

(2) Built Environment

(a) Environmental Health

- (i) Risk of explosion
- (ii) Toxic emissions and hazardous waste disposal

(b) Land and Shoreline Use

- (i) Description of relationship to plans and designations, and projected population
- (ii) Housing
- (iii) Noise
- (iv) Aesthetics/light and glare
- (v) Recreation
- (vi) Historic and cultural preservation

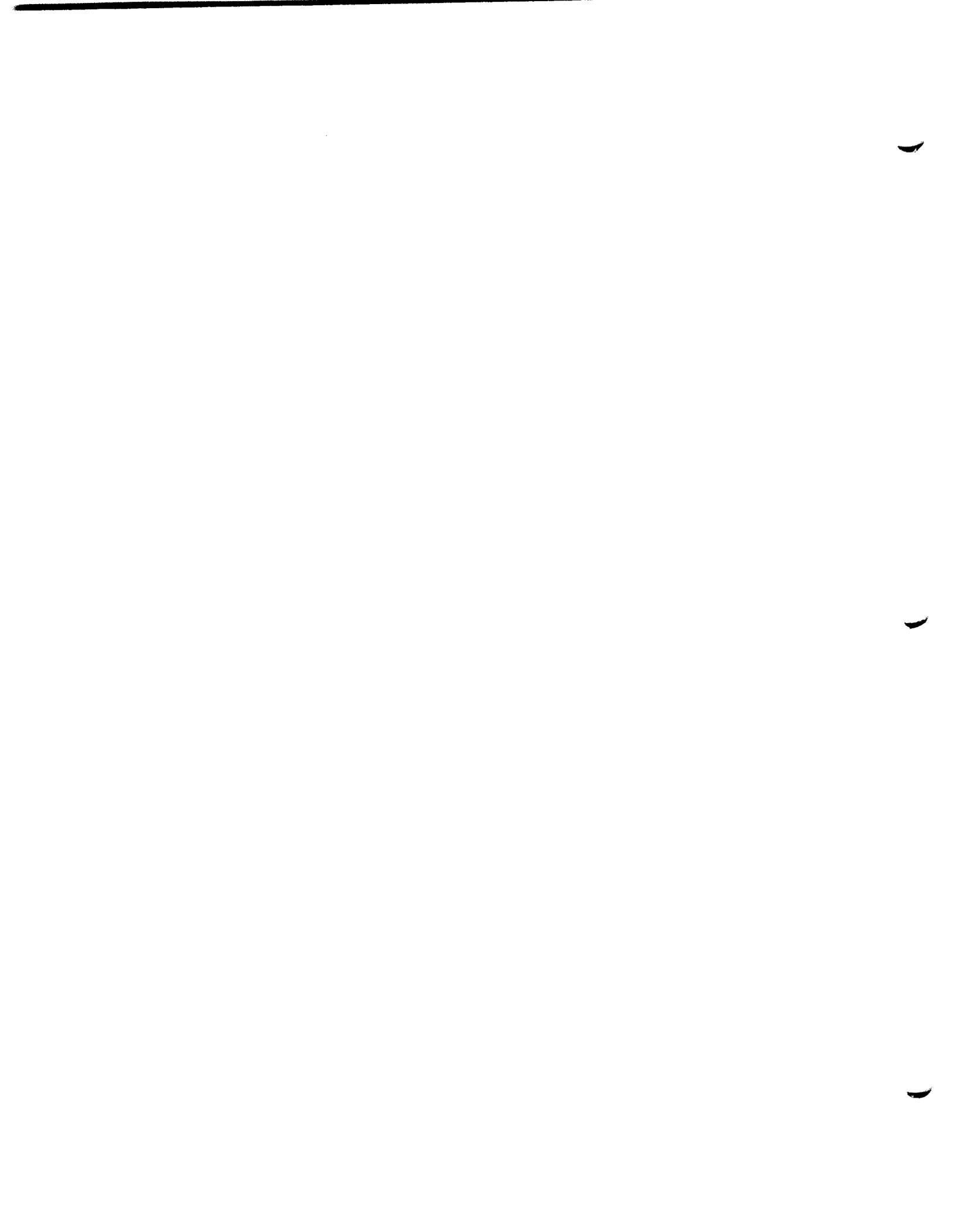
(c) Transportation

- (i) Transportation systems
- (ii) Vehicular traffic
- (iii) Waterborne, rail, and air traffic
- (iv) Parking
- (v) Movement/circulation of people or goods
- (vi) Traffic hazards

(d) Public Services and Utilities

- (i) Fire
- (ii) Police
- (iii) Schools
- (iv) Parks or other recreational facilities
- (v) Maintenance
- (vi) Communications
- (vii) Water/storm water
- (viii) Sewer/solid waste
- (ix) Other governmental services or utilities

(3) In order to simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in 197-10-444(1) may be combined and discussed as the natural environment, and the elements in (2) may be treated as the built environment.



INDEX TO PROPOSED RULES

Please note: This index is provided to assist you in locating common topics in the SEPA process. It is not a complete list of all subjects, nor does it list every section in which the topic appears. It is intended to highlight the sections containing the most direct or extensive discussion of the term or topic. Words such as action, alternatives, impacts, and proposal are in virtually every major section of the rules, for example. In order to be useful, only the main sections on such topics are included in the index.

The numbers refer to sections in WAC 197-11. The emphasized numbers refer to a section which defines or is the basic section in the rules for that topic. You should be aware that other sections or cross-references may deal with the topics below. Part 8 (Definitions) explains many of these terms. The section headings and Table of Contents to the rules are also designed to be a handy reference to SEPA usage.

Action: 815, 060, 750, 990
 Addendum: 660, 818
 Adoption: 315(2), 350(1), 360(2), 640, 819, 1340
 Affected Environment: 315, 402(9), 440(6), 1325
 Affecting: 305(5), 820
 Agency: 825
 Agency procedures: 055(2)-(4), 055(7), 100(4), 420(1), 420(4), 750, 825(2), 950, 1000(1), 1000(20), 1110(3), 1120, 1122, 1125, 1130, 1140, 1160, 1170
 Agency record: 090
 Agencies with jurisdiction: 055(5), 330, 350, 390(2)(b), 402(8), 408, 410, 440(2)(e), 440(4), 455, 502, 530, 545, 550, 570, 640(6), 740, 835(3), 1270
 Agencies with special expertise: 330, 402(8), 410, 502, 530, 545, 550, 570, 825(2), 1190
 Agriculture and farmlands: 444, 960, 1050, 1325
 Alternatives: 040, 055(2), 060(6), 070, 402, 440, 442, 720, 920, 937, 947, 960(2)
 Appeals: 390, 750
 Appendices: 090, 425(5), 430(g), 440(7)
 Applicant: 055, 060, 100, 325, 330, 340, 350, 360, 410(3) and (4), 420, 504, 720, 740, 750, 830, 1325
 Availability of documents: 090, 425(5) and (6), 502, 504, 570, 720(3), 1110, 1120, 1150
 Assumption of lead agency status: 350, 390(2)(b), 1270, 1370

Beneficial impacts: 315(4), 402(1), 440, 450, 720(2), 842, 970(2)(a)
 Built environment: 440(6), 443(2), 444(2), 832, 1325

Categorical exemption: 060(4)(g), 310(4), 315(2), 320, 325(1), 835, Part 9 (specific exemptions)
 Challenge to SEPA compliance: see appeals.
 Checklist: see environmental checklist.
 Circulating environmental documents: 055, 350 (DNS), 360 (DS), 455 and 530 (DEIS), 460 (FEIS), 502, 640-670 (SEIS, addenda, other)
 Circumstances where potentially exempt proposal is not exempt: 060(4)(g), 320(3), 1000, 1010(1), 1125
 Combining documents: 350(1), 360(2), 430(4), 440(8), 442(1), 448(4), 502(11), 670, 750(8)(e),
 Comprehensive and land use plans: 060(5)(e), 440(5)(d), 440(6)(c), 442, 443, 444(2)(b), 815(4), 1325
 Conceptual stage: 055
 Conditions on proposals: see mitigation.
 Connected actions: 060(4), 960(2)
 Consolidated appeal: 750, 837
 Consultation and comment: see Part 5
 Consulted agency: 840, see agency with jurisdiction, and agency with expertise
 Content of EIS: Part 4, 440
 Content of environmental review: 060
 Cost and fees: 100, 350(4), 420, 440(2)(m), 504, 1150; also see environmental costs
 Cost-benefit analysis: 450, 842
 Council on environmental quality (federal): 650
 Cover letter: 430(1)
 Cover memo: 430(1), 435
 Cumulative impact: 060(5)(g), 060(7)(d), 315(3), 960(2)(c)
 Definitions: 035, 1122, Part 8
 Determination of Nonsignificance (DNS): 055, 310, 340, 350, 390, 750, 850, 918, 1350
 Determination of Significance (DS): 055, 310, 360, 390, 408, 750, 855, 1360
 Draft EIS: 055, 405, 455, 502, 530, 750(6)(e), 860
 Ecology, Department of (DOE): 455, 460, 508, 530, 849, 1000(22), 1055, 1090, 1190, 1230, 1260, 1325
 Economic considerations: 055(6), 440(6)(b)(v) and 6(d), 448, 450, 842
 Effective date: 1110, 1120, 1160, 1290
 EIS: see environmental impact statement
 Energy: 440(6), 444, 1325
 Environment: 305(6), 444, 448, 832, 865, 922
 Environmental assessment: 650(2), 875
 Environmental checklist: 060, 070(3), 100, 310, 315, 320, 325, 330, 340, 350, 870, 1122(4), 1325
 Environmental cost: 060(6)(a), 440(5), 448(1), 800(2)(f), 842, 947
 Environmental documents: 055, 060, 090, 640, 720, 875
 Environmental impact statement (EIS): 305, 405, 860
 Environmental review: 060, 876
 Environmentally sensitive area: 320(3), 1125

EPA (federal): 650
Existing environment: see affected environment
Expanded scoping: 410, 879

Federal EIS: 405(7), 650, 670
Final EIS: 405(4), 460, 560, 860
Fish: 444, 1035, 1040, 1325
Format for EIS: 402, 405, 408, 425, 430
Forms for SEPA compliance: Part 11

Hazardous material: 440(6), 444, 1325
Health: 440(6), 444, 970(2), 1325
Historic and cultural preservation: 440(6), 444, 970, 1325

Impacts: 060(5), 315, 440(6), 820, 880
Implementing the decision: 720
Incomplete information: 080, 100, 330, 660
Incorporation by reference: 090, 885
Integration: 040, 055, 300, 402(8), 408(2), 410, 670, 700, 740, 750

Joint lead agency: 1245
Judicial review: 750
Jurisdiction: 060(5)(f); see agency with jurisdiction

Lead agency: 050, 895, 1200-1270
Legislation: 815, 900
Limitation on actions during SEPA process: 055, 060(4)(g), 070, 350(3), 460(4)
Local agency: 825, 910, 1120(3)
Long term: 060(5)(d), 440(6)(b)(iii)

Major action: 815, 915, 970
Mandate: 040
Mitigation: 040(4), 060(6), 070(3), 315, 340, 400, 440, 550, 660(5), 720, 740, 920, 960(2)(b)
Monitoring: 720(1)(b), 920(f)

Natural environment: 440(6), 444(1), 922, 1325
Natural or depletable resources: 440(6), 1325
Need and purpose of action: 440(4)
NEPA (National Environmental Policy Act): 650, 925
No action alternative: 440(5)(c)(v), 960(2)
No comment: 455(5), 545, 550
Nonproject: 060(4) and (7), 442, 443, 502(6)(b), 815(4), 930
Notice of intent (appeals): 750(7)(d)

Official notice (appeals): 750(8)

Page limits: 425, 435(1), 440, 670
Phased review: 055, 060(7), 315, 330, 440, 443, 935
Piecemealing: see segmenting
Precedent: 060(5)(e), 440(5)(c)(vii), 970(2)(e)
Preferred alternative: 440(5), 937
Preparation of EISs: 100, 402, 420, 800(2), 939
Probable: 060(5), 942, 970(2)(f)
Program: 815(4)
Project: 815(3), 940

Proposal: 055, 060, 945
Public disclosure law: 420, 504, 508, 1150; also see availability of documents
Public hearings: 502(6), 535, 650(6)
Public involvement: 040, 350(3), 360(3), 408, 410, 455(5), 500, 502, 535-550, Part 5 generally, 650(5), 1110(3), 1120(2) and (3)
Public notice: 502, 508(5), 510, 520, 750, 1110, 1120

Quantifying impacts: 315(3), 450, 842, 970(2)

Recording a decision: 720
Response to comments: 350(3)(d), 560, 640(6)(b)
Responsible official: 950
RFP (request for proposals): 070(4), 1000(18)

SEPA process: 020, 955
Scope: 060, 408, 410, 960, 965
Scoping: 408, 410, 440(8), 502(4), 550, 750(6)(e), 965
Segmenting: 055(2), 060(4)(e) and (g), 060(7)(d) and (g)
Shoreline: 440(5)(c), 442(4), 444(2)(b), 890, 1325

Significant: 305, 970
Similar: 060(4)(f)
Socioeconomic: 448(2)
Special expertise: see agency with special expertise
Species: see wildlife Specificity of comments: 502(2), 550
State agency: 825, 975, 1010-1090 (specific agencies), 1120(2)
Summary of EIS: 440(4)
Supplements: 350(4), 405(5), 640(6), 660, 740, 980

Threshold determination: 310, 315, 985, Part 3 generally
Time limits: 055, 070(2), 310(3), 350(3), 410(4), 455, 460(4), 502, 535, 545, 650(3), 750, 1110, 1120, 1160, 1290
Timing: 055, 406
Toxics: see hazardous material
Transboundary impact: 060(5)(f)

Underlying government action: 750, 990
Urban environment: 440(6)(c) and (d), 444, 448(2), 1325; also see built environment
Usage in the rules: 800

Wetlands: 970(2), 1325
When to prepare an EIS: 055, 305, 405, 406
Wildlife (plants and animals): 444(1), 970(2), 1325
Wilderness, wild and scenic rivers, etc: 970(2)
Writing EISs: 402, 425