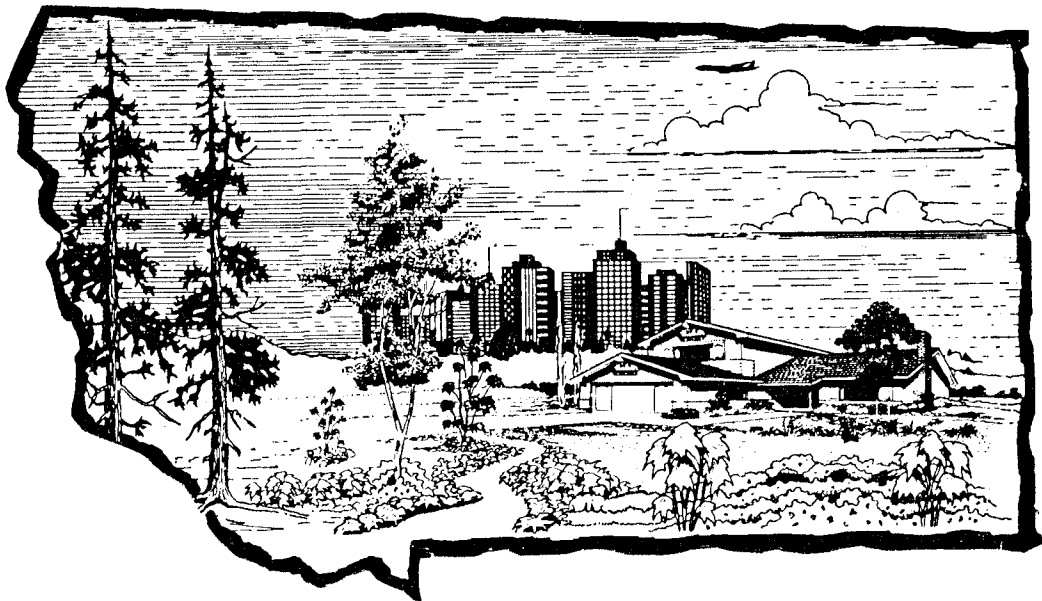


A CITIZENS GUIDE TO

E N V I R O N M E N T A L
I M P A C T R E V I E W
A N D S T A T E M E N T S



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F O R E W A R D

This brochure was prepared in response to numerous inquiries about the environmental review process and environmental impact statements. Citizens taking an interest in a proposed project, and wanting to evaluate it, must understand the environmental review process in order to participate in the decision-making process. The questions usually raised are (1) what is the environmental review process, (2) what is an environmental impact statement, (3) what does it contain, and (4) how should it be read? This is especially relevant to people who, for the first time, want to read an environmental impact statement and gain as much as possible from it.

Because of the lack of awareness of the review process, this brochure attempts to help answer the above questions and give the reader a general perspective of Montana's concept of environmental assessment and impact statements. It must be noted that the process is constantly evolving. As those involved gain more expertise, and as new laws and guidelines are enacted, the process may be changed and refined from time to time.

Finally, the public benefits from informing itself about a project so that it may deal successfully with disclosed impacts. Public participation is vital to the enforcement of the environmental law, and awareness increases the democratic utility of impact analysis. It is hoped that the information enclosed will serve to both inform and encourage citizen involvement.

"Prudent men should judge of future events by what has taken place in the past, and what is taking place in the present."

Miguel de Cervantes (1547-1616)

S U M M A R Y

The environmental review process is one of many legislative efforts to preserve environmental quality. Its goal is to assemble fragmented data about a proposed action into comprehensive and coherent statements of overall impact. Such an approach allows the study of side effects of proposed actions and is a means of evaluating the effects of our actions. In short, it creates a tool for problem solving.

Man's history of altering the natural environment for his benefit has been accompanied by serious costs in environmental problems. The purpose of impact assessment is to identify, disclose, and measure those costs, and incorporate them into the decision-making process.

An environmental impact statement informs both the decision-maker and the public. It explores all known consequences of, and alternatives to, a planned major action. It allows a more complete idea of the effects of a choice before the cost is incurred, and whether or not a proposed action and its alleged benefits are worth their price.

Impact assessment serves as an action-forcing device to insure that the policies and goals defined in current environmental laws are incorporated in the programs and actions of government agencies. It also encourages public participation and provides a vehicle for citizen challenge to government decisions.

Clearly, the greater the public interest and participation, the greater the force exerted through the law and the courts on administrative agencies.

ORIGINS OF ENVIRONMENTAL LAW

Contemporary environmental awareness and impact assessment has its origins in the concept of preserving land from destructive human activities. Setting aside Yellowstone Park in 1872 was the first such land reserve. At the turn of the century, millions of acres of land were closed to private development by the Forest Service. This was followed by the activities of agencies like the Civilian Conservation Corps and Soil Conservation Service. These actions started a conservation and management tradition.

Wildlife conservation followed the same trend as land and resource preservation. Game laws and refuges evolved, as did efforts to acquire and manage land for wildlife habitat. As environmental awareness and concern grew, so did regulation and control.

Concern for ecological problems accelerated during the 1960's as a result of books like Rachel Carson's Silent Spring, Paul Ehrlich's Population Bomb, and Science and Survival by Barry Commoner. Concern about rapid human population growth and what it may mean for the future proliferated. Perspectives were formed regarding the faulty use of specific technologies. The waste and misuse of resources and energy resulted in the careful examination of unpaid costs, as did the destruction of life support systems. *A good background in these issues and continued homework in current literature insures an understanding of the meaningfulness of impact assessment.*

The resulting ethic became the basis for federal and state programs concerning the environment. Environmental impact assessment did appear in some of the earlier pollution laws, but it was carefully confined and constrained. *Identification* and full *disclosure* of impacts was lacking, as was a *holistic approach* of considering more than one kind of impact from a single cause. Cost/benefit analysis did not include *intangible values (unquantified amenities)* and were therefore not part of the accounting system. Exploration of *alternatives* to an impact was missing and thus was not part of the *decision-making process*. Conspicuously missing was *public involvement*.

The emphasized words in the preceding paragraph are concepts that are incorporated in today's environmental review process. It is an attempt *to subject the true costs of environmental destruction to proper accounting*. Attainment of this objective has been difficult to assess, and only time will reveal the usefulness of the idea as it is applied to environmental protection.

T H E L A W S

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) 1969.

This legislation is the basic national charter concerning impact assessment of federal actions. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA procedures must insure that environmental information is available to governmental officials and the public before decisions are made and before actions are taken. This then, is the fundamental mandate for environmental review and the environmental impact statement.

Implementing the procedural provisions of the act is the responsibility of the Council on Environmental Quality (CEQ).

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) 1971.

Montana, like many other states, followed suit by passing the Montana Environmental Policy Act in 1971. Its language concerning impact assessment differs (in general) little from NEPA, but exists independent of federal involvement. The Uniform Rules implementing this act are administered by the Montana Commission on Environmental Quality (MCEQ). It requires that every major action of state government having a significant impact on the quality of the human environment be preceded by a "detailed statement" discussing the environmental impact of the proposed actions.

MAJOR FACILITY SITING ACT (MFSA) 1973.

This act provides for the comprehensive review of the siting and construction of major facilities engaged in the generation, distribution, or conversion of energy. Such facilities must receive a certificate of environmental compatibility and public need from the Board of Natural Resources and Conservation.

MONTANA ADMINISTRATIVE PROCEDURE ACT (MAPA) 1971.

This act provides for public participation in the operation of governmental agencies prior to the final decision of an agency. It permits and encourages public comments, data, arguments, and responses. The act also provides judicial review of agency decisions and is thus an action-forcing device of environmental law.

E I S - - "The Detailed Statement" - - GENERAL CONTENTS

Impact assessment is usually done as a one-time procedure in response to a specific land use or development proposal. In its general directions, the Montana legislature authorizes and directs that state agencies include in every report on proposals for major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

- (1) the environmental impact of the proposed action,
- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (3) alternatives to the proposed action,
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

SOME MEPA DEFINITIONS

LEAD AGENCY -- The state agency that has primary authority for committing the government to a course of action having significant environmental impact or is the agency designated by the governor to supervise the preparation of a joint EIS.

HUMAN ENVIRONMENT -- Includes, but is not limited to, biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment.

CUMULATIVE IMPACT -- The impact on the environment which results from the incremental impact of the action when added to other past and present actions, and feasible and reasonably foreseeable future actions.

JOINT E I S -- Is an EIS prepared jointly by more than one agency, either state or federal, when the agencies are involved in the same or closely related proposed action.

THE E I S MAY TAKE SEVERAL FORMS

(Preliminary Environmental Review, Draft EIS, Final EIS)

PRELIMINARY ENVIRONMENTAL REVIEW (PER)

A PER is a *brief* written statement on a proposed land use or development to determine whether the action will significantly affect the quality of the human environment and therefore requires a draft EIS. It is a public document and may be inspected or obtained upon request. If the PER shows a significant impact on the human environment, and EIS will be prepared.

PRELIMINARY ENVIRONMENTAL REVIEW--CONTENTS

- (1) A *description* of the *proposed action*, including maps and graphs if appropriate.
- (2) An *evaluation* of immediate and cumulative impact on the *physical environment*.

ecology	land	unique, endangered and fragile
geology	air	historical and archeological
aesthetics	water	resources and energy
- (3) an *evaluation* of the immediate and cumulative impact on the *human population*.

social and cultural	tax base
employment and income	transportation networks
agricultural and industrial	population and housing
tax revenues	government services
recreational and wilderness	environmental planning
- (4) a *listing* of other *agencies* or groups that have been contracted or which may have overlapping *jurisdiction*.
- (5) the *names* of those individuals or groups contributing to and *responsible* for *compiling* the PER.

ACTIONS WHICH NORMALLY REQUIRE
THE PREPARATION OF AN EIS

THE ACTION:

- * may significantly affect environmental attributes recognized as being *endangered, fragile, or in severely short supply*
- * may be either significantly *growth inducing* or *growth inhibiting*
- * may substantially *alter* environmental conditions in terms of *quality or availability*
- * will *result in* substantial *cumulative impacts*

E I S FEE SCHEDULES

If a land use or development proposal requires an agency to compile an E I S, the agency must notify the applicant within 30 days after the completed application is filed. If the proposed facility requires action by more than one agency, the governor designates a lead agency to coordinate the preparation of the E I S.

The lead agency adopts and prescribes fee schedules for the E I S preparation. They are paid by the applicant and adjusted to the size and complexity of the project. Fees are not assessed unless the permit will result in the agency incurring expenses in excess of \$2500 or when the application is filed under the provision of the Major Facility Siting Act. Fees collected are deposited in the state earmarked revenue fund.

The lead agency then allocates and disburses money to other participating agencies which require funds for the completion of the necessary work. All unexpended fees are refunded without interest together with a proper accounting of expenditures.

DRAFT ENVIRONMENTAL IMPACT STATEMENT

A draft EIS is a *comprehensive* identification and disclosure of impacts of a proposed land use or development. It includes an analysis of unquantified amenities and an exploration of alternatives to a proposed action. Specifically, it contains those items listed below and is as complete and accurate as possible.

Upon completion of the draft EIS, the lead agency distributes copies to appropriate state, local, and federal agencies, the applicant whose project is being evaluated, and citizens who request it. This circulation is utilized for consultation with other governmental agencies and commenting from the public.

Public hearings are held after the draft EIS is circulated and prior to the preparation of the final EIS. Written and oral comments are obtained in accordance with established procedures.

THE DRAFT EIS -- CONTENTS

A DRAFT EIS INCLUDES:

- (a) the nature and objectives of the proposed action
- (b) current environmental conditions in the area
- (c) impacts on the human environment and physical environment
 - i. primary, secondary, and cumulative
 - ii. growth inducing or inhibiting
 - iii. irreversible and irretrievable commitments of resources
 - iv. economic and environmental benefits and costs
 - v. local short-term uses vs long-term productivity
- (d) reasonable alternative actions
- (e) proposed agency decision, if appropriate
- (f) source material used in preparation of the draft EIS
- (g) names of individuals or groups responsible for, and contributing to, the EIS.

PUBLIC HEARINGS

State agencies have adopted coordinated guidelines which permit and encourage public participation in the operation of government agencies prior to final decisions of significant interest. The environmental review process utilizes the public hearing for this purpose.

Public meetings are conducted under the contested case provisions of the Montana Administrative Procedures Act. Opportunity is afforded all parties to respond and present evidence and argument on issues presented in the draft EIS. In addition, a record is compiled to support the decisions made.

The comments received at the hearings are then addressed in the final EIS.

JUDICIAL REVIEW

Equally important as the decision-making process itself is a mechanism for assuring that the process is carried out fairly and in accordance with established policies, plans, standards, and procedures. The right of a party who is aggrieved by the decision of an agency to appeal to a higher authority is an integral part of the legal system.

A party who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision, is entitled to judicial review. Proceedings for review may be instituted by filing a petition in district court within 30 days after service of the final decision of the agency.

Another action-forcing device may be utilized by appealing the final judgement of a district court to the supreme court. This must be done within 60 days after entry of judgement by the lower court.

The appellate review process thus provides some assurance that an agency does not act arbitrarily or capriciously and that it follows the designated procedures in reaching a decision.

FINAL ENVIRONMENTAL IMPACT STATEMENT

The final EIS addresses the comments of reviewers and the agencies' responses to the draft EIS. The comments are treated properly (in accordance with procedures) and accompanies the proposal through existing review processes.

The final EIS may also include supplements if the agency or the applicant makes substantial changes in the proposed action or there are significant new circumstances, including information bearing on the proposed action or its impacts.

It is distributed to appropriate state, local and federal agencies, the applicant, the Governor, Environmental Quality Council, persons who submitted comments on or received a copy of the draft EIS, and other members of the public upon request.

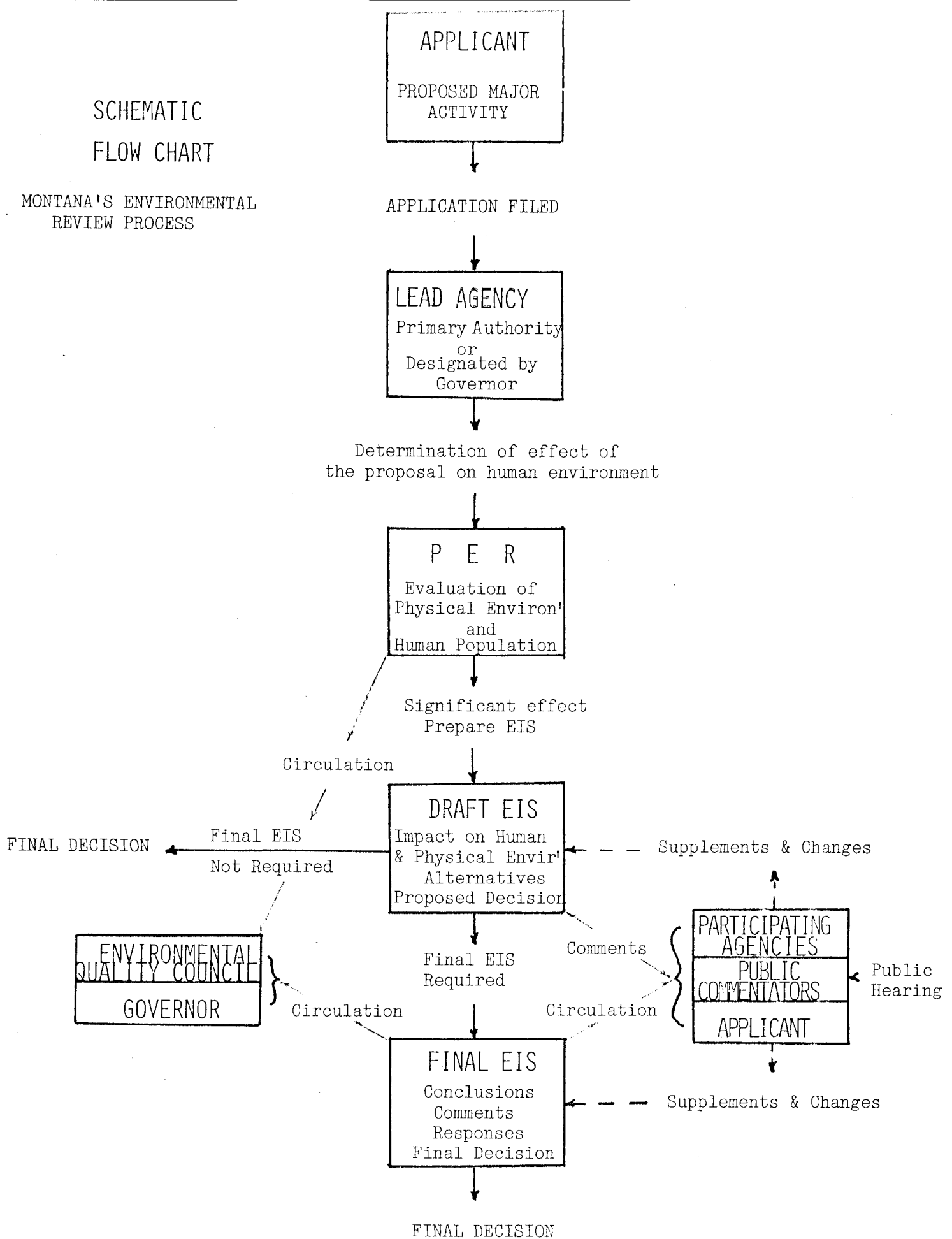
FINAL EIS CONTENTS

A FINAL EIS INCLUDES:

- (1) A summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft.
- (2) A list of all sources of written and oral comments on the draft EIS including those obtained at public hearings, and unless impractical, the text of comments received by the state agency. In all cases, a representative sample of comments or a summary of a representative sample of comments is included.
- (3) The state agency's responses to substantive comments, including an evaluation of the comments and a disposition of the issues involved.
- (4) Data, information, and explanations obtained subsequent to circulation of the draft.
- (5) The final agency decision on the proposed action, where appropriate.

SCHEMATIC
FLOW CHART

MONTANA'S ENVIRONMENTAL
REVIEW PROCESS



DECISION MAKING

Certainly important in any effective implementation of environmental controls is a commitment to the protection of environmental amenities. Land use and developments, because of their nature or size, fall under the permit jurisdiction of numerous state agencies having permit requirements and standards. Agency decisions regarding particular development proposals are thus subject to state environmental quality standards.

The procedures for issuing permits may vary somewhat from one agency to another. The environmental review process attempts to insure that land use and environmental decisions be made in a manner that provides a holistic consideration of environmental issues relative to a particular proposal. It provides some consistency and similar ground rules for permit proceedings.

A final decision may be made on a proposed action being evaluated in an EIS after 15 days have expired from the date of transmittal of the final EIS to the Governor and the Environmental Quality Council. At the time of its decision, an agency makes a written record of the decision stating how the final EIS was considered and used in its decision making.

Until an agency reaches its final decision on a proposed land use or development, no action concerning the proposal can be taken which would have an adverse environmental impact or would limit the choice of reasonable alternatives, including the no-action alternative.

Environmental review along with permit jurisdiction, is an attempt to improve the quality of development, increase the efficiency of the use of private and public resources, and increase the fairness of the land use and development decision-making process.

R E F E R E N C E S

For those readers interested in a more complete (or legal) coverage of Montana's environmental review process, the following references are suggested.

Montana Environmental Policy Act (Chapter 65, Title 69 R.C.M. 1947)

Major Facility Siting Act (70-801 through 829, R.C.M. 1947;
Regulations: MAC36-2.8(1)-S800 through
2.8(14)-S8050)

Montana Administrative Procedure Act (82-4201 through 4229
R.C.M. 1947)

SEE ALSO:

Revised Rules Implementing The Montana Environmental Policy Act
Montana Commission on Environmental Quality

"Appendix C" List of Activities, Actions and Programs
Administered by the Board and Department of Health and
Environmental Sciences That Fall Within the P E R and
E I S Requirements of MAC 16-2.2(2)-P2020 (Rule III)
of the M E P A Rules

FEDERAL:

National Environmental Policy Act (Public Law 91-190)

Regulations For Implementing The Procedural Provisions of
the N E P A.

Council on Environmental Quality, Executive Office of the
President. Reprint 43 FR 55978-56007, November 29, 1978.
40 CFR Parts 1500-1508.