

SEPA Implementation Working Group Draft Scope of Work

Goal

The purpose of the SEPA working group is to provide a forum for members of the Climate Advisory Team and other stakeholders and government representatives to develop recommendations to ensure that consideration of climate change is included in the State Environmental Policy Act processes and documents. The recommendations would clarify how, where, and when to best address climate change in the state and local government (referred to as agencies) SEPA processes.

While not completely certain, the Department of Ecology believes, and the co-chairs of this SEPA IWG concur, that SEPA already requires an assessment of a proposal's potential impact on climate change. This includes a description of the proposal's likely affect on emissions of greenhouse gases and how environmental change that has already occurred or is likely to occur in the future as a result of climate change might impact the proposal.

SEPA requires agencies to act "to the fullest extent possible" when assessing the environmental impact of a proposed action. The current SEPA rules include "climate" as an element of the environment that should be included in assessing a proposal's environmental impact. Yet, environmental review documents rarely, if ever, discuss climate change. In other states and nationally, litigation has been initiated challenging SEPA like environmental review documents and, to our knowledge, every court that has reviewed the question has ruled that NEPA and state equivalents do, in fact, require an assessment of the climate change impacts and implications raised by the proposed project. This kind of litigation has now been initiated in Washington.

Rather than leave this issue to the Courts, the CAT has recommended that a committee of stakeholders be formed to prepare recommendations on changes to SEPA rules, guidance and/or environmental review documents (EIS's; environmental checklist; DNS; MDNS, etc.) to provide clarity and predictability to project proponents and administering agencies regarding how climate change is to be addressed through the environmental review process.

Tasks

There is currently no guidance on how to address climate change under SEPA. The SEPA working group should focus initially on the following questions:

- 1) What is needed, in terms of SEPA rule amendments, including possible changes to the environmental checklist, threshold determination and/or Environmental Impact Statements, policy statements of guidance to provide clarity and predictability in appropriately addressing climate change in the environmental review of project or non-project actions?
- 2) What information (guidance?) can be provided to help administering agencies quantify and analyze the impacts of greenhouse gas emissions from their actions, as well as the impact of climate change on their actions?
- 3) What guidance should be provided to agencies and project applicants to determine possible mitigation for the effects of the proposal on climate, as well as the impacts of climate change on the proposal?
- 4) What guidance should be provided to agencies and local governments to help determine when substantive SEPA authority might impact the approval or placement of conditions on projects?

- 5) Should the SEPA environmental review process itself be used as an incentive to promote climate friendly actions. For example, should residential development that is consistent with approved GMA comprehensive plans and development regulations and that promote density, infilling and avoid sprawl and commute dependant communities be exempted from or otherwise expedited under SEPA? ?

The SEPA working group will produce:

- Recommended policy direction, new agency guidance, proposed revisions to SEPA forms and other appropriate direction regarding how, where and when to identify, quantify, evaluate and mitigate impacts of GHG emissions from actions and projects and impacts of climate change on proposed actions/projects.
- Recommended changes to the SEPA rules, and draft amendment language;
- Other policy recommendations crafted to better utilize SEPA itself and SEPA as it applies to land use and transportation decisions in particular to improve its use as a tool to reduce emissions of greenhouse gases.

Ecology currently intends to file the draft rule amendment with the state Code Reviser by January 2009, with adoption by May or June 2009

Existing work that the IWG may draw from

- With the passage of ESSB 6001 'Climate change – Mitigating Impacts', and E2SHB 2815 'Creating Framework for Reducing Greenhouse Gases Emissions in the Washington Economy' the legislature acknowledged the environmental impacts of climate change and directed the State to reduce WA's contribution to greenhouse gas emissions.
- The Climate Advisory Team (CAT) and the Technical Working Groups (TWGs) recommended that SEPA be used as a tool for identifying greenhouse gas emissions and mitigation options in decision making, planning processes, and development projects.
- The Preparation and Adaptation Working Groups (PAWGs) recommended that SEPA be used to analyze and address the impacts of climate change on governmental actions and public and private projects.
- Director Manning's Letter to lead Agencies
- Across the nation many states and local governments are developing environmental policies, regulations and guidance to address climate change through their SEPA like statutes. Some of these actions arose from court challenges. Ecology has determined it is in everyone's best interests to act now to avoid a "policy by litigation" scenario in WA State.

Connectivity to other efforts/legislation

- *ESSB 6580, Addressing the impacts of climate change through the Growth Management Act:* Section 2 of ESSB 6580 directs the Department of Community Trade and Economic Development to work with the WSDOT to reduce VMT through land use modeling and planning strategies. This IWG will not work on those issues, but will keep track of ESSB 6580 activities and products.

Co-Leads

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