

Land Use & Climate Change Advisory Committee

Potential Recommendation: Encourage Compact Development Through the Use of the State Environmental Policy Act (SEPA)

Encouraging more focused compact development in urban growth areas will result in a reduction of greenhouse gas emissions, a reduction in per capita vehicle miles traveled, help to reduce our state's dependence on foreign oil, and help to conserve resource lands.

Idea:

Encouraging local governments to utilize SEPA programmatically, at the comprehensive planning or subarea planning level (through a Planned Action ordinance or other detailed SEPA analysis), would result in efficiencies at the project level. Encouragement would include support for additional funding to better enable this type of upfront SEPA analysis.

As part of an amendment to the Growth Management Act, the legislature created the Planning and Environmental Review Fund (PERF) in RCW 36.70A.490 and .500. The intent was to help fund efforts of jurisdictions to perform these integrated reviews under SEPA as part of the comprehensive planning process. PERF has not been funded since 1997. The LUCC may wish to consider a recommendation for PERF to be funded for the purposes outlined above or for modifications to statute that would allow local governments to charge a proportionate share of those costs to developers at the time of project review.

In February 2003, CTED published SEPA and the Promise of the GMA: Reducing the Cost of Development. The report describes 15 case studies on SEPA/GMA integration. It is available (by clicking on the link to the PDF at the bottom of the page) on the CTED website at:
http://www.cted.wa.gov/portal/alias_CTED/lang_en/tabID_399/DesktopDefault.aspx

Intent of the Idea:

Jurisdictions would be able to identify potential impacts and required mitigation measures early in the process, either at a sub-area plan level or within a defined boundary. Mitigation measures could then be adopted in development regulations. Developments proposed that demonstrate compliance with the earlier SEPA work and are subject to the pre-determined mitigation measures, would be deemed to be substantively and procedurally compliant with the existing environmental review and mitigation, and therefore would not be subject to additional SEPA reviews and appeals at the project level.

Perhaps the greatest way in which a local government can incentivize development is to complete as much of the planning work upfront as is possible. This could include the comprehensive plan and a detailed Environmental Impact Statement, clear and concise development regulations, infrastructure

needs assessment, and a Planned Action. This shifts costs from developers to a local government and requires a higher financial investment from the local government upfront. However, once completed, it is almost a “turn key” development opportunity for developers and has been demonstrated to leverage significant private investment in many cases. Months are shaved off of the permitting timeframe and a high degree of certainty is provided because the infrastructure needs, any critical areas protection areas are identified, and development regulations and design standards are known in advance of an application even being submitted.

Intended Outcome/Purpose:

The intent of completing the SEPA review and analysis at the comprehensive planning or subarea planning level would be to provide greater certainty to the development community and the public. Mitigation measures would already be in place, thus protecting the environment comprehensively and at a level equal to the project level review used more commonly today. This would encourage/incentivize development in these areas. In addition, any appeals of the environmental impacts and proposed mitigation measures would have already been vetted and settled.

Draft Language:

A change in statute may not be required. This type of up-front environmental analysis and mitigation planning is already enabled and addressed in state statute. The Land Use and Climate Change Advisory Committee (LUCC) could consider clarifications and amendments, if deemed necessary, to make RCW 43.21C.240 more appealing or cost-effective for local governments. This tool, which was developed in the last 10 years, is not used as often as it could be. The LUCC could consider modest refinements to encourage broader use in the future, specifically in centers or certain urban growth areas where compact development is targeted, which could help promote the land use patterns desired to influence climate change and VMT objectives.

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One idea suggested was that a local government deciding to use this approach could establish a system within which developers who benefit by this type of upfront analysis and choose to develop within the pre-determined boundary of the area included, could essentially pay-back the costs associated with the work. The developer still benefits from the predictability and streamlined permitting process, and the jurisdiction can recoup a pro-rata share of the costs associated with the environmental review, analysis, and mitigation work. This is essentially a “latecomers” agreement, similar to cities and counties can currently do for costs associated with upfront infrastructure improvement installations.

EXISTING RCW 43.21C.240 – Project Review Under the Growth Management Act.

(1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter [36.70A](#) RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW [43.21C.110](#) regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter [36.70A](#) RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

(2) A county, city, or town shall make the determination provided for in subsection (1) of this section if:

(a) In the course of project review, including any required environmental analysis, the local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, or other local, state, or federal rules or laws; and

(b) The local government bases or conditions its approval on compliance with these requirements or mitigation measures.

(3) If a county, city, or town's comprehensive plans, subarea plans, and development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the county, city, or town shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter.

(4) A comprehensive plan, subarea plan, or development regulation shall be considered to adequately address an impact if the county, city, or town, through the planning and environmental review process under chapter [36.70A](#) RCW and this chapter, has identified the specific adverse environmental impacts and:

(a) The impacts have been avoided or otherwise mitigated; or

(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter [36.70A](#) RCW.

(5) In deciding whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the county, city, or town shall consult orally or in writing with that

agency and may expressly defer to that agency. In making this deferral, the county, city, or town shall base or condition its project approval on compliance with these other existing rules or laws.

(6) Nothing in this section limits the authority of an agency in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by this chapter.

(7) This section shall apply only to a county, city, or town planning under RCW [36.70A.040](#).