



Climate Change: Emerging Trends Under SEPA

Dustin T. Till
Marten Law Group PLLC
**Creating Cooler Communities:
Municipal Responses to Climate Change**
April 16, 2008 – Tacoma, WA



Environmental law is what we do. ™

1191 Second Avenue
Suite 2200
Seattle, WA 98101 www.martenlaw.com

Why SEPA?

- **Economy-Wide Emission Reduction Targets**
 - **HB 2815**
 - **1990 levels by 2020**
 - **Requires economy-wide reductions**
 - **Reductions from land use sector required**
 - **RCI = 20%**
 - **Transportation = 47%**
- **Along with GMA and building codes, SEPA can influence how, when, and where development occurs**

Why SEPA?

- **How SEPA can help local jurisdictions**
 - Quantification – identifying GHG emissions
 - Mitigation – reducing GHG emissions
 - Adaptation – a changing environment
- **SEPA identified by CAT as a mitigation option (RCI-9)**
- **Authority Already Exists**
 - “Climate” is explicitly identified as an element of the environment in Ecology’s SEPA rules

King County Executive Order PUT 7-10-1

- First County to require GHG analyses
- Applies to all private and public projects subject to SEPA review
- Requires quantification of:
 - Embodied emissions
 - Energy emissions
 - Transportation emissions
- Effective October 15, 2007

King County Greenhouse Gas Worksheet

Type (Residential) or Principal Activity (Commercial)	# Units	Square Feet (in thousands of square feet)	Emissions Per Unit or Per Thousand Square Feet (MTCO2e)			Lifespan Emissions (MTCO2e)
			Embodied	Energy	Transportation	
Single-Family Home.....	0		98	672	792	0
Multi-Family Unit in Large Building	0		33	357	766	0
Multi-Family Unit in Small Building	0		54	681	766	0
Lodging		0.0	39	777	117	0
Retail (Other Than Mall).....		0.0	39	577	247	0
Office		0.0	39	723	588	0
Total Project Emissions:						0

Seattle, Washington Ordinance 122574

- **Modeled after King County's Policy**
 - Currently limited to emission quantification
 - Permits use of County's worksheet
 - Effective March 31, 2008
 - City will develop further regulations, including thresholds and mitigation requirements

Challenges – Establishing the “Significance” Threshold

- **No Threshold**

- Would result in case-by-case determinations and regulatory uncertainty

- **Zero Threshold**

- Any increase in emissions is significant in light of reduction requirements

- **Non-Zero Threshold**

- Massachusetts

Massachusetts – A “Non-Zero” Threshold Approach

Applies to specific project types:

- ❑ State agency is the proponent or funding the project;
- ❑ Project requires a state air permit;
- ❑ Office projects generating 3,000+ new vehicle trips;
- ❑ Mixed use projects with 25% office space generating 6,000+ new vehicle trips; or
- ❑ Projects creating 10,000+ new vehicle trips per day

Mitigation requirement

- ❑ Mitigation efficacy evaluated on a case-by-case basis
- ❑ Proponent must justify reasons for rejecting alternatives with greater GHG reduction potential

Challenges – Mitigation

- **Mitigating transportation emissions**

- Transportation sector = 47% of Washington's emissions
- Limited options for mitigating project-specific emissions
- SEPA should be used in conjunction with other planning tools – GMA

- **Mitigating energy emissions**

- Does energy efficiency = emission reductions?

- **Offsets/Trading?**

Establishing Thresholds & Mitigation in King Co.

- **Establishing Significance Threshold & Mitigation Options**
 - Stakeholder working group
 - Proposed ordinance and administrative regulations expected in May 2008
- **2008 Comprehensive Plan Update**
 - E-207 – County may “exercise its substantive authority under SEPA to condition or deny development proposals in order to mitigate associated individual or cumulative impacts to global warming.”
- **Jurisdictional Consistency?**

Litigation in California

- Planning Documents

- *California v. San Bernardino County*
- Settlement required County to prepare a climate action plan

- Private Developments

- *Center for Biological Diversity v. Banning*
- 1500 unit residential development

- Adaptation

- *Natural Resource Defense Counsel v. Reclamation Bd.*
- Rising sea levels

Recommendations

- **Private Project Proponents**

- Quantify emissions for all projects
- Consider feasible mitigation options
- Hire a qualified consultant and work closely with local planning jurisdictions

- **Local Planning Jurisdictions**

- Incorporate climate change into planning documents
- Develop regulations clarifying SEPA requirements
- Work with stakeholders to develop mitigation options

Climate Change: Emerging Trends under SEPA

Dustin T. Till, Esq.
Marten Law Group PLLC
1191 Second Avenue, Suite 2200
Seattle, WA 98101
(206) 292-2600

dtill@martenlaw.com
www.martenlaw.com

