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ENVIRONS

Greenhouse Gas Inventory – State and Local Governments Want to Know Your Project’s Carbon Footprint

Breaking Developments In Environmental Law

10/22/07

A June 2007 Executive Order issued by King County Executive Ron Sims requiring all public and private development projects to quantify greenhouse gas (“GHG”) emissions during project review under Washington’s State Environmental Policy Act (“SEPA”) became effective on October 15, 2007. As part of the implementation of this new requirement, King County released a revised SEPA checklist (<http://www.metrokc.gov/ddes/forms/lc-ckl-SEPA.pdf>) and new SEPA GHG Emissions Worksheet (<http://www.metrokc.gov/ddes/acrobat/cib/26SEPA-GHG-EmissionsWorksheet.xls>) to assist developers in calculating their projects’ GHG emissions. Currently, King County does not expressly require mitigation of GHG emissions as part of the SEPA process, but such requirements are not far behind. Representatives from the County have suggested they will be using the Comprehensive Plan update process to develop mitigation requirements, which is anticipated to be released in late 2008.

King County provides some guidance regarding its new GHG calculation requirement in the recently released Information Bulletin #26 (<http://www.metrokc.gov/ddes/acrobat/cib/26.pdf>) regarding the SEPA process. The Bulletin warns that climate change impacts are not limited to automobile trips generated by a project. It suggests that development can contribute to climate change in the following ways:

- The manufacture and transportation of materials used in construction;
- The use of machinery during construction that burns gasoline and diesel;
- The use of energy to heat and light completed structures;
- The use of gasoline and diesel for transportation of people and goods to and from the development.

The SEPA GHG Emissions Worksheet attempts to quantify the GHG emissions associated with each of these components.

In addition to King County’s revised SEPA analysis, the City of Seattle and Governor Christine Gregoire are both pursuing GHG regulations. Seattle City Council member Peter Steinbrueck recently proposed an ordinance that would require developers to prepare an analysis of the GHG emissions of their projects. The City’s Urban Development and Planning Committee will

consider the proposed ordinance on November 28, 2007. Likewise, the Climate Advisory Team created by Governor Gregoire will likely recommend the adoption of an analysis similar to King County's that will be applicable to all projects statewide that require review under Washington's State Environmental Policy Act.

How will these new climate change regulations impact your project? Developers of projects in King County (and, in the near future, anywhere in Washington) will have to quantify and disclose GHG emissions for proposed projects. For now, there are not any mitigation requirements attached to the disclosure, but that does not mean disclosing GHG emissions is an innocuous exercise. In California, an environmental group and the State of California recently sued San Bernardino County for failing to account for how the development anticipated by the County's revised comprehensive plan would contribute to climate change. The basis for the claim was California's adoption of statewide emission-reduction targets. In 2007, the Washington legislature passed SB 6001, which, among other things, adopted emission reduction targets similar to California's, laying the groundwork for litigation in Washington.

In addition to the possibility for litigation, there are several other ramifications associated with the disclosure of GHG emissions in the SEPA review process. First, the GHG disclosure may be utilized in future cap and trade programs being considered by the Western Climate Initiative. Second, now that potential GHG emissions are quantifiable, it may constitute a liability or an uncertainty that must be disclosed in SEC reports for publicly traded corporations.

The bottom line is the climate change issue is gaining momentum at both the state and local level, and the regulations being implemented are creating an additional hurdle for developers to consider when evaluating new projects.

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