

SEPA 101 in the 21st Century -SEPA Substantive Authority-

WPPA Environmental Seminar, September 26, 2019
Pam Xander, Director of Community Development, ESA

Context

- Speaking generally about EIS preparation.
- Some permit agencies will not be reasonable.
- We know it is problematic. Raising the cost of doing business for fossil fuels by using SEPA is bad policy.
- Keep producing excellent EISs.



Overview

Tips for Port SEPA Lead Agencies from a SEPA practitioner for:

1. Writing an EIS To Anticipate SEPA Substantive Authority
2. Proactive Management of Permit Conditions
3. GHG Analysis and Significance





Writing an EIS to Anticipate SEPA Substantive Authority

EIS Impacts and Mitigation Section

Table 1-1. Summary of Potential Construction Impacts and Measures to Reduce Impacts

	Alternative 1: OVG Proposal	Alternative 2: Modified Proposal
Land Use		
Impacts	<ul style="list-style-type: none"> • Demolition of existing structures, skate park, and surface parking in the project site. • Temporary displacement of some existing uses from the project site. • Temporary street closures. • Variance requests for curb cuts, signage, and night-time construction work. • Indirect impacts during construction to nearby businesses/ properties due to construction-related loss of parking, noise, and congestion. • Intermittent inconveniences to residents and businesses could contribute to some residents or businesses deciding to relocate. 	Same as Alternative 1, except fewer variance requests.
Measures to reduce or eliminate impacts	<ul style="list-style-type: none"> • Advance notice to existing tenants of the construction period. • Coordination with displaced tenants. Assistance in identifying alternative locations to hold games, concerts, and other events. Assistance in working with Seattle Center event schedulers to determine whether the displaced tenants could return to the arena once construction is completed. • Assistance in publicizing the relocation of programming to the potential attendees. • Close coordination with residents and businesses in the area to provide advance notice of construction schedules and potential detour routes. • Robust marketing plan to ensure that the public knows Seattle Center and its resident organizations are open for business during construction. • Provide an OVG Community Liaison as described in the Arena at Seattle Center MOU (City of Seattle and OVG, 2017). • Follow design guidelines prescribed by the City and follow the City procedures for variances. 	Same as Alternative 1.



Make the Connection Between the EIS and Potential Permit Conditions

-Permitting agencies often pull the mitigation measures from your EIS to impose SEPA substantive conditions and mitigation as part of your permit.

-Expect that agencies will do this and only provide text that you are willing to live with as a permit condition.



Review the SEPA Policies of the Permit Agencies Prior to Release of the EIS

-The EIS lists permits that may be required for the project. Use this list for your research.



Research Permit Agency SEPA Policies

-Focus on how a permit agency that chooses to exercise its substantive SEPA authority must point to a specific “SEPA policy,” and they must explain how that policy supports the mitigation it is imposing.

-Review the SEPA policies of each permit agency prior to issuance of the EIS.



Examples and Expectations





Proactive Management of Permit Conditions

<input checked="" type="checkbox"/>	Pursuant to SEPA substantive authority provided in SMC 25.06.660, the proposal has been conditioned to mitigate environmental impacts.
-------------------------------------	--

SEPA DETERMINATION:

Determination of Non-significance

No mitigating conditions of approval are imposed.



Ask To See a Draft of the Permit Decision Prior to Formal Issuance

- Many Different Interpretations
- New and Transitioning Permit Staff
- Fairly Normal Request
- Review and Negotiate Conditions



Tips When Reviewing Conditions and Mitigation:

-Be consistent and transparent about what you are doing and try to understand what they are trying to accomplish.

-If it's consistent with your own port goals, or you can come up with other ways to mitigate, there will be nothing left for them to apply substantive authority for.



Tips When Reviewing Conditions and Mitigation, cont.

- Show us similar projects with the same conditions or mitigation imposed.
- Just because it is port property, you should not be subject to different rules.



Tips When Reviewing Conditions and Mitigation, cont.

-Ask them to point to the SEPA policy they are using for substantive authority. If it is not a related SEPA policy, show them how it is inconsistent.

-Show better ways to mitigate. Present alternatives. Ex. Safety instead of parks.



SEPA Substantive Authority Limited by Fifth Amendment

-Remember, when denying or conditioning a permit, the permit agency must also demonstrate that its action:

- (a) has an “essential nexus” to the permit, and
- (b) that the action is “roughly proportional” to the project’s impacts.



Summary

- Provide good disclosure and try and work out conditions.
- There may always be some tension between agencies.



GHG Analysis and Significance

What is significant?

There is no GHG analysis guidance from Ecology.



“Figuring it Out” Appropriate GHG Analysis

The Life of the SEPA Practitioner:

- Scale of projects – which require quantitative analysis?
- Are GHG Emissions significant under SEPA?
(Right now, it is a total guess)
- What resources, studies, tools, or guidance are available to measure significance?
- If they are significant, what is the appropriate mitigation?

Drivers for the Scope of GHG Analysis

Attempt to answer the following questions:

1. Are GHG emissions significant under SEPA?
2. What is the appropriate framework and scale of analysis?
3. What guidance is available to use?
4. What existing modelling can assist?

Thank you!

- Pam Xander
- Environmental Science Associates (ESA)
- 5309 Shilshole Ave NW, Suite 200
- Seattle, WA 98107
- 206-789-9658
- pxander@esassoc.com

Work That Matters

