

Earthjustice

Please see attached comment letter.



March 30, 2021

Via Public Comment Portal, ecology.wa.gov

Fran Sant
Rulemaking Lead, GAP Rule
Department of Ecology
PO Box 47600
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RE: Comments on Chapter 173-445 WAC, Greenhouse Gas Assessment for Projects (GAP) Rule.

Dear Ms. Sant:

Thank you for the opportunity to participate in the development of Ecology's Greenhouse Gas Assessment for Projects (GAP) Rulemaking. This comment letter responds to three documents released by Ecology in March 2020 for public comment: the GAP Rule Framework, draft GAP Rule Language for the definitions and applicability sections, and Questions on mitigation for the GAP Rule. Ecology has taken several important steps toward ensuring thorough and analytically sound analysis in these draft documents.

As we have stressed in our prior comment letters, we must reduce our greenhouse gas emissions dramatically, and as quickly as possible, to avoid climate catastrophe. The large fossil fuel and industrial projects covered by the GAP Rule would dramatically increase greenhouse gas emissions in Washington and beyond. Most would also increase emissions of other pollutants that harm human health, often in communities that already bear a disproportionate share of pollution. These projects must be subject to the most complete and rigorous analysis and mitigation requirements to ensure that they lead to reductions in both greenhouse gas emissions and environmental inequities.

We urge Ecology to retain the core rule elements outlined in the rule framework and build on them by clarifying the requirements of the environmental assessment. Most importantly, we urge Ecology to pair strong analytical requirements with complete and equitable mitigation requirements. We cannot allow our carbon footprint to increase at this critical moment. And we cannot equitably address our climate crisis without addressing in tandem existing health disparities and other inequities that our largest climate polluters cause.

This comment letter principally addresses three topics: (1), the no action alternative and its role in the environmental assessment; (2) the energy analysis, and (3) mitigation requirements.

I. THE LOW CARBON NO ACTION ALTERNATIVE MUST DRIVE THE ENVIRONMENTAL ASSESSMENT.

Ecology's draft GAP Rule Framework provides that the no action alternative must "include state and federal GHG reduction limits and international goals approved by the U.S. government." This low carbon no action alternative will be used to assess the impacts of a proposed project relative to future conditions without the project. We agree that the no action alternative must incorporate the assumption that state, national, and approved international goals will be met. Incorporating this assumption is the only way for Ecology and other decisionmakers to assess whether a given project will help or hinder Washington's efforts to reduce our climate pollution to a sustainable level. It is critical that Ecology retain this requirement to ensure the final rule requires sound analysis and aids sound decisions.

A. Ecology should require assumptions as to how we meet the goals incorporated in the no action alternative to standardize analysis of specific projects.

The low carbon no action alternative is a critical baseline for the analysis of individual projects under the GAP Rule. The environmental assessment, in turn, should show the impacts of a proposed project relative to the no action alternative. This assessment should help decisionmakers understand whether a given project is consistent with the climate pollution reductions we need.

It is not clear from the Rule Framework how the assessment of a proposed project in comparison to the no action alternative will work in practice. We recommend Ecology spell out requirements for this comparison in the GAP Rule.

Specifically, Ecology should adopt a set of requirements surrounding assumptions as to how we meet the state, national, and approved international targets in the no action alternative. To understand whether a given project is consistent with the no action alternative, the no action alternative and/or the environmental assessment must incorporate some information about how our climate goals are met. Deep reductions in climate pollution will happen differently in different sectors, and it can be difficult to assess whether a given project is consistent with our climate goals without more specific reference points than state, national, and approved international targets.¹

As noted in the SEI comment letter dated January 14, 2021, it can be helpful to consider activity and carbon intensity separately when evaluating pathways to meet the reduction targets in the no action alternative. As we transition to a low carbon future, some activities will have to decrease or be eliminated entirely—such as burning coal to generate electricity. Other activities will likely continue, but their carbon intensity must decrease dramatically—for example, manufacturing aluminum.

Ecology should require the environmental assessment to address both the role of the project's activity in a low carbon future, and the project's carbon intensity relative to the cleanest available

¹ In our prior comments we referred to this analysis as a climate test. However titled, we believe the fundamental question is the same: is the proposed project consistent with a world in which we meet our greenhouse gas reduction goals.

technology for any given product. Additionally, Ecology should include two requirements that will help standardize and ensure the credibility of this analysis of specific proposed projects.

First, as to activity, Ecology should specify that any new use of fossil fuels is presumptively inconsistent with the no action alternative. It is abundantly clear that the activity of burning fossil fuels, whether to generate electricity or propel transportation, must decrease to zero under any credible scenario that is consistent with the targets embedded in the no action alternative. Ecology should consider whether there are additional activities that should be included in this presumption of inconsistency.

Second, as to carbon intensity, Ecology should require that the environmental assessment discuss whether the proposed new project is consistent with the cleanest available technologies and lowest possible carbon intensity processes for that specific product. Ecology should require that this analysis rely on the best available science. At a minimum, this analysis should consider the processes and technologies identified in the International Energy Agency's Energy Technology Perspectives Reports ("IEA Technology Reports"). These reports, produced by an independent expert international agency and updated regularly, examine which technologies are part of a viable pathway to meet our international climate goals. For some projects, other sources on the cleanest available technologies and lowest possible carbon intensity processes may also constitute the best available science. A project that fails to use the cleanest possible processes identified in the best available science should be presumptively inconsistent with the no action alternative.

Expert reports on lowest carbon intensity processes such as the IEA Technology Reports provide a critical reference point for manufacturing and industrial projects. While Washington must reduce its climate pollution, we also must continue to use and produce commodities such as aluminum and steel. Understanding whether a new manufacturing or industrial project is consistent with a low carbon future is more complex than for the energy sector, and low carbon technologies evolve rapidly. Requiring use of the best available science, including reference to external expert reports, will provide context for a new proposed project. For example, a new project producing aluminum that incorporates the lowest energy intensity processes for production and relies on the cleanest energy available may increase in-state emissions. Such a project may nonetheless be consistent with our state, national, and international climate pollution reduction goals.

Incorporating these two requirements – new fossil fuel use is presumptively inconsistent with the no action alternative, and projects that fail to use the cleanest possible technology to reduce carbon intensity identified by the best available science are presumptively inconsistent with the no action alternative – will help standardize the environmental assessment required by the GAP Rule. Absent these requirements, it may be difficult to tell whether a project is consistent with the no action alternative, particularly for manufacturing and industrial projects. These requirements ensure the use of credible information on how each sector must reduce its emissions to meet our global reduction goals, as the relevant standard for proposed new projects.

B. Ecology should eliminate use of the term “baseline,” and clarify the definitions and uses of “actual emissions,” “facility emissions,” and “lifecycle emissions.”

In the draft rule framework, Ecology assigns different meaning to the “baseline” used to calculate emissions and the “no action alternative.” *See* Framework at p.18. We recommend that Ecology eliminate the use of the term “baseline” when developing the draft rule language. Because the baseline and the no action alternative are sometimes used interchangeably in SEPA analyses, defining them differently for purposes of the GAP Rule may create confusion.

We understand Ecology to be defining a project’s “actual emissions” as emissions measured against current conditions, without incorporating any assumptions about market shifts or other changes in emissions from other sources that might result from the proposed project. We agree that a project’s actual emissions should be measured relative to current conditions and without incorporating market assumptions. We recommend Ecology amend the definition of “actual emissions” to clarify this requirement, and eliminate use of the “baseline.”

Specifically, we recommend Ecology modify the proposed definition of “actual emissions” as follows (additions in italics):

(2) “Actual emissions” means the actual rate of emissions in metric tons per year of any greenhouse gas emitted from a project over the preceding calendar year. ~~Actual emissions shall be calculated using each emissions unit’s actual operating hours, production rates, and types of emissions during the preceding calendar year.~~ *Actual emissions include facility emissions and lifecycle emissions attributable to the project. Actual emissions do not include any potential changes in emissions from other sources due to market or other impacts of the project.*

These changes will reduce potential confusion caused by introducing a “baseline” that differs from the “no action alternative.”

Ecology should also clarify the relationship of “actual emissions” to “facility emissions” and “lifecycle emissions,” and should define all of those terms. One portion of the definition of actual emissions – in strikethrough, above – seems more relevant to a definition of “facility emissions” and we recommend including it in that definition.

We also recommend that Ecology define the term “lifecycle emissions” to clarify which emissions are included in that calculation – specifically, whether a project’s lifecycle emissions include facility emissions or are the additional lifecycle emissions that would not be included in the facility emissions calculation.

C. Significance should be set at the level of the GAP Rule applicability threshold.

Ecology should clarify that a project that meets the applicability threshold for the GAP Rule due to its greenhouse gas emissions has a probable, significant adverse environmental

impact due to those emissions. This significance determination is key, as it triggers the requirement for a full environmental impact statement. RCW 43.21C.031. In our earlier comments, we recommended that the significance determination be based on a proposed project's consistency with a low carbon future. However, this determination is complex and properly the subject of a full EIS, in which a proposed project can be compared with the no action alternative. While a full analysis might lead to the conclusion that a project is in fact consistent with the low carbon no action alternative, at the DNS/DS stage, any project that meets the GAP Rule's applicability standard should be deemed significant.

Ecology's draft rule framework discusses the development of mitigation plans for GAP Rule projects that have significant adverse environmental impacts due to their greenhouse gas emissions. In addition to these provisions on mitigation (discussed in greater detail below), Ecology should note in the GAP Rule that agencies retain their authority to deny a permit for a project that has significant adverse environmental effects due to its greenhouse gas emissions.

D. Ecology should only require use of the IPCC Assessment Report for climate warming impacts.

We strongly support the Department of Ecology's ("Ecology") decision to evaluate both short-term, 20-year, and long-term, 100-year, climate warming impacts as recommended in the GAP Rule Framework. Ecology's decision to consider both short-term and long-term climate change impacts is supported both by Governor Inslee's directive, and by SEPA's requirement to consider both short-term and long-term impacts of a project. WAC § 197-11-060(4)(c).

The Framework recommends using global warming potential values from both the most recent IPCC Assessment Report, and the most recent IPCC / UNFCCC Inventory guidance. We recommend that Ecology instead require that agencies use only global warming potentials from the most recent IPCC Assessment Report. These reports provide the best available scientific data, and a second source is not necessary.

E. The lifecycle emissions endpoint should be ultimate disposal.

Ecology's draft Rule Framework specifies that the endpoint for the analysis of a project's lifecycle emissions is the first use of the product. We believe that a complete analysis of a project's lifecycle emissions should include subsequent uses and ultimate disposal of a product. Even if Ecology does not require this complete lifecycle accounting to be quantified and included in the calculus of lifecycle emissions, Ecology should require project applicants to qualitatively describe emissions associated with later use and ultimate disposal of a product. These downstream effects provide important information as to the full impact of a given project.

II. THE ENERGY ANALYSIS MUST INCLUDE STRICT SIDEBOARDS AND MUST BE CONSISTENT WITH THE NO ACTION ALTERNATIVE

The scope and application of the energy analysis as described in the GAP Rule Framework is unclear. As Ecology notes, some of the components of the energy analysis will duplicate information already considered and applied as part of the lifecycle analysis of the project's greenhouse gas emissions. These components of the energy analysis will generally be easier to calculate with a high degree of certainty, such as the project's energy inputs and outputs.

Other components are unlikely to duplicate this analysis and are not clearly defined, such as analysis of potential "leakage" and potential global market analysis of projects that may significantly affect an energy market. As we have stressed in our prior comment letters, these components of the analysis are often much more difficult to calculate with any reasonable degree of certainty.

We continue to have concerns regarding the reliability of some components of this analysis, particularly market analyses based on assumptions that a given energy source will lead to leakage or displacement. We continue to believe the best course would be to disallow such analyses as inherently too speculative. If Ecology does include them, strict sideboards will help minimize the potential for unfounded speculation to undercut the environmental assessments for these major, polluting projects.

A. The energy analysis must be consistent with the no action alternative.

First, and most importantly, Ecology must clarify that the energy analysis must be consistent with the low carbon no action alternative. This is particularly critical for components of the analysis that deal with effects of the project on other sources of energy, such as leakage or market analysis.

Requiring consistency between the energy analysis and the no action alternative means that assumptions regarding emissions from other sources must be consistent with the no action alternative. In the context of leakage, this means that the leakage analysis should only assume new sources will be built elsewhere if the construction of those new sources elsewhere is consistent with state, national, and approved international goals. For example, an analysis finding high leakage emissions based on the assumption that new coal fired power plants would be built across state lines would not be consistent with the no action alternative because the construction of new coal fired power plants anywhere is inconsistent with state, national, and approved international climate goals.

Similarly, any market analysis must not assume that a proposed project will displace a fuel that must be phased out anyways under the no action alternative. For example, a proposed new gas fired power plant must not include in its energy analysis assumptions that market effects

will lead to displacement of coal fired power plants, because coal fired power plants will be phased out anyways under the no action alternative.

Requiring the energy analysis to be consistent with the no action alternative creates consistency across the environmental assessment. It also helps to significantly limit the possibility that the energy analysis can be used to greenwash polluting projects by reference to an inappropriate business-as-usual baseline.

B. The energy analysis should only include reasonably foreseeable effects.

As we stressed in our earlier comment letters, only effects of the project that are reasonably foreseeable should be included in the energy analysis. This should be the standard for both qualitative and quantitative analyses. In general, we expect this standard to preclude most analyses of impacts based on global market effects, particularly over a long time horizon.

Incorporating effects that are not reasonably foreseeable into the environmental assessment of major projects threatens the integrity and usefulness of the analysis. Accordingly, Ecology should stress that environmental assessments must include detailed information as to why a given effect is allegedly reasonably foreseeable, as well as a range of potential outcomes where quantifying a precise effect is not possible.

C. Ecology should clearly define and limit the use of “energy analysis emissions.”

Ecology’s draft rule framework refers occasionally to “energy analysis emissions,” but the framework does not discuss how these emissions are defined or used. As Ecology has described the energy analysis, it will likely include a mix of qualitative and quantitative analyses, and it is not clear how this analysis would lead to a specific calculation of “emissions.”

More importantly, it is not clear how any calculation of “energy analysis emissions” would be used in the overall environmental assessment. If this calculation includes projected emissions that are inherently less certain – such as leakage “emissions” and market effect “emissions” – it will be critical for Ecology to limit how these “energy analysis emissions” are used. For example, they should not be used to reduce a project’s mitigation obligations, or to offset a project’s calculation of its total “actual emissions.”

A project’s “actual emissions,” including facility emissions and lifecycle emissions, can be calculated with a high degree of certainty. Energy analysis “emissions,” depending on what that calculation includes, may be far less certain. Any comparison or offsetting between actual emissions and energy analysis emissions would be an apples-to-oranges comparison. We urge Ecology to strictly limit what emissions can be included in the energy analysis calculation, and to strictly cabin the use of this calculation in the overall assessment.

III. MITIGATION

In our previous comment letter dated December 1, 2020, we addressed several of the issues raised by Ecology in its questions regarding mitigation. We incorporate those comments by reference in this comment letter. Further, below we identify guiding principles that should govern mitigation of GHG emissions from a project and then offer answers to some of the specific questions asked by Ecology.

A. Guiding Principles for Mitigating GHG Emissions

First and foremost, the GAP Rule should center climate justice and environmental justice. Climate change will likely have differing social, economic, public health, and other adverse impacts on underprivileged populations, and these climate impacts will likely exacerbate inequitable social conditions.² Moreover, the same projects that emit climate pollution generally also emit co-pollutants that harm human health, and too often these co-pollutants exacerbate existing health and environmental disparities. Environmental Groups recommend integrating the following guiding principles into the GAP rule to center climate justice and environmental justice in the mitigation analysis:

1. **Minimize First** - The GAP rule should require that project proponents demonstrate that they minimized project GHG emissions to the maximum extent possible before allowing mitigation. Environmental Groups support Ecology's decision to recognize that actions to reduce GHG emissions should be evaluated as part of the project design—and should not be deemed mitigation. Ecology should also require that a project proponent reduce GHG emissions to the maximum extent before being allowed to mitigate for GHG impacts. Maximum GHG pollution reduction on-site is necessary to achieving environmental justice because co-pollutants emitted with GHG pollution would have additional adverse human health impacts. Before a project can mitigate for GHG pollution, it must first use best available science to demonstrate that the facility reduced on-site GHG pollution to the maximum extent.
2. **Prioritize mitigation projects in highly impacted communities** – Environmental Groups agree that mitigation projects should be prioritized in minority communities, Tribal Communities, Low-income populations, communities disproportionately affected by climate change, and communities affected by other impacts from the project, such as local transportation, water quality or other air quality impacts. Environmental Groups encourage Ecology to consider using the terms “highly impacted community” and “vulnerable populations” as defined in the Washington Clean Energy Transformation Act

² D. Simmons, “What is ‘climate justice’?”, Yale Climate Connections, July 29, 2020, <https://yaleclimateconnections.org/2020/07/what-is-climate-justice/>.

when defining this prioritization, as these definitions appear to overlap with the categories identified by Ecology. A “highly impacted community” as defined as "a community designated by the department of health based on cumulative impact analyses or a community located in census tracts that are fully or partially on 'Indian country'[".] RCW 19.405.020. Vulnerable populations are defined as “communities that experience a disproportionate cumulative risk from environmental burdens due to [] Adverse socioeconomic factors ... and [] Sensitivity factors, such as low birth weight and higher rates of hospitalization.” *Id.* Ecology may also want to cross-reference the HEAL Act after its passage in defining communities where mitigation should be prioritized.

3. **Prioritize mitigation in locally affected communities** – If a proposed project would emit co-pollutants that have adverse health impacts or would otherwise burden surrounding communities, Ecology should require the project proponent to prioritize mitigation that benefits those locally affected communities. This prioritization should be layered with the requirement to prioritize highly impacted and vulnerable communities. Accordingly, local communities that are adversely impacted by a proposed project and that are *also* highly impacted and/or vulnerable would be highest priority for mitigation for that project.
4. **Mitigation projects should be developed in coordination with the community.** As we have stressed in our earlier comment letters, project proponents must develop mitigation plans in partnership with impacted communities. The Department of Ecology should develop guidelines for community engagement when a project applicant is developing proposed mitigation. The Environmental Justice Taskforce recently issued a report to the legislature and the Governor that included recommendations for addressing structural barriers to community engagement. Environmental groups recommend that Ecology reference the approaches identified in the Environmental Justice Taskforce report when developing these guidelines for community engagement on mitigation. Additionally, Ecology should incorporate a requirement that a mitigation plan developed in coordination with the community be formalized in a community benefits agreement.

B. Require Mitigation for Lifecycle Emissions

Ecology requested comments on whether an applicant should be required to mitigate for lifecycle emissions or facility emissions. Environmental Organizations recommend that Ecology require projects to mitigate all of their greenhouse gas emissions, including upstream and downstream emissions. Upstream and downstream emissions are caused by the project; the fact that they do not come out of the facility’s smokestack does not change their contribution to climate change. Especially for linear projects or export projects, upstream and downstream

emissions can dwarf emissions at the facility itself (if there even is a facility). Omitting these emissions from the mitigation requirement would turn a blind eye to their real-world consequences and the project's role in causing them. Exempting any portion of a project's emissions from the mitigation requirement is incompatible with a sustainable climate future.

Similarly, projects must mitigate all of their emissions regardless of whether these emissions occur within Washington or elsewhere. Greenhouse gas emissions lead to warming in Washington and the rest world regardless of where they are emitted. There is no principled scientific basis for exempting out of state emissions. Washington must take responsibility for all emissions caused by projects permitted here, regardless of where those emissions occur.

C. Create regulatory preferences that favor mitigation projects in highly impacted communities and/or vulnerable communities that are locally affected.

Ecology requested comments on when applicants should be allowed to use of out-of-state mitigation, and what evidence they would need to demonstrate to allow out-of-state mitigation. Environmental Organizations recommend that Ecology create a regulatory preference for mitigation in highly impacted and vulnerable communities that are locally affected. Ecology should not allow out of state mitigation if in state mitigation is available. Through a mitigation trust and/or list of pre-approved projects discussed below, Ecology should be able to ensure that mitigation is available in state in virtually every instance.

There is precedent for creating a regulatory preference and weighting for certain types of mitigation. For example, under the Clean Water Act, when wetlands are harmed or destroyed, an applicant must compensate for wetland destruction by restoring, preserving, or enhancing wetlands of the same type. 33 C.F.R. § 332.3(e)(1). Thus, if a project would destroy bog wetlands, then the applicant must compensate for the loss by restoring, preserving, or enhancing bog wetlands at another location. An applicant is prohibited from compensating for wetland loss with a different type of wetland, unless they can demonstrate that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed. *Id.* at § 332.3(e)(2). Further, for disfavored types of mitigation, e.g. preservation, the Corps requires higher mitigation ratios—meaning for each acre of wetland lost, a much greater amount of wetlands must be preserved. *Id.* at § 332.3(h)(2).

Environmental Groups recommend that Ecology establish a similar hierarchy and weighting for preferred mitigation projects to prioritize mitigation in locally affected, highly impacted and vulnerable communities:

1. **Mitigation in highly impacted and/or vulnerable communities that are also locally affected should receive preference**, such that if mitigation occurs outside these communities then Ecology should require a greater amount of mitigation. Mitigation in locally-affected, highly impacted and/or vulnerable communities can occur at a 1:1 ratio, such that for every tonne of GHG emitted by the project, a tonne of GHGs should be mitigated. Creating a preference for mitigation in

communities that are both directly affected by the project and also highly impacted and/or vulnerable is appropriate to remedy the harms of climate change that will disproportionately affect these communities, as well as the harms caused by the project. While an analysis of the project's non-GHG impacts is beyond the scope of the GAP Rule, under existing SEPA rules the SEPA analysis for these projects should identify which communities are directly, adversely affected by a proposed project (via co-pollutant emissions or other impacts such as noise or land use changes).

2. **Mitigation that occurs in highly impacted and/or vulnerable communities in the same county as the project** but not in locally affected communities should occur at a 1:1.5 ratio; such that for every tonne of GHG emitted by the project, a proponent should compensate for those emissions by mitigating for 1.5 tonnes of GHGs.
 3. **Mitigation that occurs in-state** should require a 2:1 ratio, with priority to projects that benefit highly impacted and/or vulnerable communities.
 4. Ecology should **prohibit out-of-state mitigation** unless an applicant can demonstrate that no in-state mitigation projects are available. Out of state mitigation should also require a 2:1 ratio, and the project proponent should bear the burden of demonstrating that no in-state mitigation is available. If Ecology develops a mitigation trust or a list of pre-approved projects (discussed below), in state mitigation would presumptively be available via either or both of those mechanisms. Ecology should not allow market purchase of out of state offsets to satisfy mitigation requirements.
- D. Ecology should develop one or more mechanisms to help ensure in-state mitigation that benefits locally affected, highly impacted and/or vulnerable communities is presumptively available.

Developing mitigation projects that meet robust monitoring, verification, and quantification requirements can be time and resource intensive. This could be prohibitive for communities that seek to provide input or advocate for specific projects as part of a project applicant's mitigation plan. These same resource considerations and lack of certainty surrounding individualized projects may also lead project applicants to propose mitigation that does not prioritize locally affected, highly impacted and vulnerable communities.

We encourage Ecology to develop one or more mechanisms to reduce these barriers. One approach would be to develop a list of pre-approved mitigation projects. Another would be to develop a mitigation trust.

1. *Pre-approved mitigation project list*

Environmental Organizations recommend that Ecology consider developing a list of in-state, pre-approved mitigation projects. Ecology should quantify the GHG emissions reductions from those projects that will count toward a project applicant's mitigation requirement. Ecology should ensure that projects on this list will benefit highly-impacted and/or vulnerable communities.

Ecology should evaluate a wide range of projects for inclusion on this list and should accept public comment on the proposed list as part of the draft rule. Projects Ecology should evaluate could include:

- **Investing in zero or near zero emission transportation**, e.g. financing zero-emission or near-zero emission drayage trucks in polluted port communities; building charging stations for electric vehicles in highly impacted and vulnerable communities; investing in zero emission or near zero emission school buses in highly impacted and vulnerable communities.
- **Renewable energy investment** that benefits highly impacted and/or vulnerable communities, e.g. financing community solar projects.
- **Energy efficiency**, e.g. financing residential weatherization projects in highly impacted and/or vulnerable communities to reduce energy use as well as improving comfort and health for residents; providing meaningful financial incentives for energy efficient in-home appliances in highly impacted and vulnerable communities.

Ecology should require that the applicant work collaboratively with local organizations to identify which projects would best serve the affected local community. For example, the Duwamish River Cleanup Coalition is currently undergoing a stakeholder engagement process using a results-based approach to identify pathways to cleanup air quality in the Duwamish River Valley. Action items identified through the stakeholder process to date include reducing vehicle emissions from drayage trucks and passenger vehicles.

2. *Mitigation trust*


Ecology should consider setting up a mitigation trust that applicants can contribute to, in lieu of performing their own mitigation projects. This trust could then be managed to invest in environmental projects that reduce greenhouse gas emissions. Projects funded by the trust should prioritize investment in highly impacted and vulnerable communities that are locally affected by projects contributing to the trust. Ecology should establish a community advisory board to guide investments by the trust. Creating a mitigation trust would enable strategic investment in a just transition to zero emission transportation and electricity, as opposed to one-off mitigation projects.

As an example, California set up a mitigation trust funded by penalties from a lawsuit against Volkswagen.³ Volkswagen fraudulently reported that their diesel-powered cars had low GHG emissions, even though the emissions from their cars were much higher. The consent decree between Volkswagen and California required creation of a trust fund that described eligible mitigation actions specifically identified in the consent decree. Further, the trust required that California strive to ensure that 35% of California's allocation benefit low-income or disadvantaged communities. The trust created five categories of projects to fund – zero emission transit, school and shuttle busses, zero emission freight and port drayage trucks, zero emission freight and marine projects, lower GHG emitting freight and marine projects, and light duty zero emission vehicle infrastructure. *Id.*

* * *

Thank you again for the opportunity to participate in this critical rulemaking. Ensuring complete analysis and equitable mitigation for large fossil fuel and industrial projects is critical to preventing catastrophic climate change and decreasing environmental inequities. We look forward to participating in future stages of this rulemaking.

Sincerely,



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³ See Cal. Air Res. Bd., “Volkswagen Environmental Mitigation Trust for California,” <https://ww2.arb.ca.gov/our-work/programs/volkswagen-environmental-mitigation-trust-california>.

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