

The template on the following page is intended to facilitate integration of the work products from three subtask groups. All recommendations should be documented using a standard template. As you respond to the directions below, please include sufficient detail to reflect your group's specific knowledge and experience, as well as any public comment received. This will help differentiate your recommendations from those in the other subtask groups.

Following the identification of challenges and potential solutions, your recommendation(s) should:

- Identify the **challenges(s)** addressed and any **current barriers** to addressing them;
- Include a brief **rationale** describing how the recommendation would address the challenge(s) and/or barriers and why the group selected the recommendation;
- Describe the **key strategies** and next steps to move the recommendation forward, including any expertise, coordination, resources, or training that may be necessary; and
- Identify the potential **challenges and outcomes** that may result from implementation.

Please prioritize your work and limit your final recommendations to no more than five (5) per subtask group. These should be the top items the group wants to see move forward and should be the focus of your final discussions as a group. We recognize that your conversations may result in more challenges and potential solutions than can be captured in just five recommendations or analyzed in the limited time we have together. The final report will include an appendix to capture additional challenges and solutions and ensure all ideas are acknowledged and documented for potential future work.

Templates should be returned to DEQ staff contacts **by 5pm on May 17, 2024**. This will allow time for us to compile a draft report for discussion at the work group meeting on **May 29, 2024**.

**Subtask Group Recommendation Template
for the Final Report
May 7 2024 DRAFT**

Subtask Group: Climate Analysis

Initial Challenge Identified: Climate analysis in the MEPA process has been prohibited by state statute since 2011. Under the 2023 *Held vs. State of Montana* decision, the courts have ruled that the Montana Department of Environmental Quality (MDEQ) is constitutionally obligated to consider and address the impacts to the climate in its decision-making and as part of its analyses under the Montana Environmental Policy Act (MEPA). If the Montana Supreme Court upholds climate analysis requirements in the MEPA process ahead of the 2025 session, state agencies do not yet have clear direction from the Montana Legislature to adequately analyze climate impacts. The lack of statutory guidance creates an unpredictable regulatory environment for Montana businesses. While the Montana Supreme Court reviews the lower court decisions, MDEQ and other state agencies need to develop a short-term framework for climate analysis in the MEPA process for public input.

Barrier(s): Court decisions regarding climate analysis are not final and do not provide a clear roadmap for addressing climate impacts in the MEPA process; the Legislature has not provided statutory direction to MDEQ on climate impacts in the MEPA process and will not meet and be able to pass legislation for roughly 8-10 months; the Legislature has not provided funding and FTEs to MDEQ to internally analyze climate impacts in the MEPA process and will not be able to do so for 8- 10 months.

Additional Barriers for developing Climate Analysis in MDEQ reviews include:

1. Indeterminate Threshold Levels for Climate Analysis
2. Unclear Guidance for Levels of Scoping
3. Lack of Consensus on Analysis Models to be used
4. MDEQ must act before the MT Supreme Court completes its review of *Held vs. State of Montana* and before the 2025 Legislature convenes to give policy direction.

Recommendations:

1. MDEQ should draft an interim study bill that would task the Environmental Quality Council to look at different climate analysis models, economic impacts, and a predictable Montana statutory framework that will be compatible with any direction given by the Montana Supreme Court.

2. DEQ climate analysis in the short term should be as robust as its resources, expertise, and obligations under existing law allow and that can also ensure predictability for permit applicants and the public's right to know/participate. In **the timeframe** before the Supreme Court completes its review and the next Legislature can provide direct policy statutes, the MDEQ should consider taking the following steps when analyzing a proposed action's climate change effects under MEPA:

- (a) Quantify the reasonably foreseeable GHG emissions of a proposed action, the no action alternative, and any reasonable alternatives;
- (b) Disclose and provide context for the public for the anticipated GHG emissions and climate impacts associated with a proposed action and alternatives, explaining clearly the assumptions and ranges of uncertainty reflected in any models employed;
- (c) Analyze reasonable alternatives, and identify available mitigation measures to avoid, minimize, or compensate for climate effects.

In addition, DEQ should proceed in the short term assuming that some or all of the *Held* case will be upheld by the Montana Supreme Court and use the time before the session to estimate costs, FTE needs, and changes to MEPA that allow for a range of climate analyses. It should also develop some in-house expertise on how climate analyses are done in other jurisdictions.

Rationale: In order to comply with constitutional requirements, DEQ must have a robust climate analysis for projects that implicate impacts on our climate. Such an analysis would fully consider the range of impacts, adequately characterize them, and identify alternatives to mitigate or eliminate them.

For incorporating Climate Analysis in the Interim Period: Many models exist to (1) analyze foreseeable GHG emissions of a proposed action; (2) disclose and provide context for public understanding of proposed actions; (3) analyze reasonable alternatives and identify mitigation measures. In the interim period before the legislature can provide further policy input, MDEQ should identify and implement models that are adapted to the Montana context and fulfill its constitutional obligation to incorporate climate analysis in its review process, using its expertise and “rule of reason” for guidance.

For the Interim study by EQC: Montana is the first state in the country where a court has ordered climate analysis rather than the mandate coming from the legislative or executive branch. In the event climate analysis is a requirement following a final disposition in the *Held* case, the Montana Supreme Court is unlikely to spell out what that climate analysis must look like within the context of MEPA. An interim study will allow the policy-making branch – the Montana Legislature – to weigh the pro/cons, costs/benefits of certain processes, balance constitutional rights, provide funding and FTEs as needed, and generally put this on a path of predictability for Montana businesses and permittees. While the Legislature will likely contemplate other MEPA legislation in 2025, this interim study can encourage legislators from both sides of the aisle to have an open mind and thoughtfully weigh the pros and cons to certain approaches on climate analysis.

Key Strategies:

The short-term strategy is for MDEQ to develop and implement a draft climate analysis process that clearly describes the steps to be taken to conduct a climate analysis under MEPA. While being implemented immediately to comply with court orders, ultimately this draft process should be reviewed by EQC and the Legislature. The overall review/rulemaking process should provide for public review and comment. The long-term strategy would be for MDEQ to monitor developments in the climate analysis arena and incorporate as appropriate for MEPA, reflecting both court mandates and legislative policy statutes.

Possible Challenges and Outcomes:

Disagreements with models and analyses employed by MDEQ in response to court mandates, as well as permitting decisions that employ those analyses, could result in legal actions. A single Climate Analysis process is not widely agreed upon and while the CEQ NEPA Interim Guidance provides a process, there have been many comments challenging the process, the assumptions used, and the inherent uncertainties in the process. MDEQ will need to adopt short term policies around climate analysis until such point that *Held* is upheld, reversed, or some other disposition. There are strong feelings in the legislative branch on climate analysis. A broad coalition of stakeholders would need to support such an interim study. The hope would be a balanced approach to climate analysis in the MEPA process that would be predictable, non-substantive, and compatible with Montana’s constitution.