

Specific Comments

Mitigation Alternatives

The Department takes all environmental commitments seriously, regardless of the level of environmental documentation. The Department set up an extensive environmental commitment tracking program, in which these commitments are carefully tracked through the construction phase, and post-construction, through maintenance and operations as required by the specifics of each environmental commitment. The Department's scoping process is rigorous as well.

The Draft Guidance specifies that for an Environmental Impact Statement, (EIS), the agency will consider reasonable alternative mitigation measures. Consistent with current statute and regulation, the Department's current NEPA process provides for exploration and full consideration of mitigation measure options as part of public scoping, agency consultation, and environmental document preparation. While the Department does set forth mitigation alternatives in appropriate circumstances (such as when there is uncertainty about land availability), there are many times when just a single mitigation alternative is sufficient. The Department requests revision of the Draft Guidance to clarify that alternative mitigation measures are not specifically required under NEPA; they are a best practice in appropriate situations. Our concern is that the Draft Guidance does not clearly distinguish between advisory and mandatory processes under NEPA.

The Draft Guidance emphasizes commitment to the implementation of mitigation, relied upon in reaching a Finding of No Significant Impact (FONSI), or mitigated FONSI, in order to satisfy NEPA. The Department's environmental commitment process is fully described in the SER, and ensures implementation of the mitigation measures and environmental permit requirements that support the NEPA environmental document, and the approvals of other environmental agencies. Additionally, the SER provides detailed guidance on determining the level of NEPA documentation required for the proposed action.

The Department has developed its NEPA process so that the level of environmental documentation can be, in the vast majority of our projects, correctly determined early in the project development process; this includes the identification of any mitigation measures needed to support a FONSI. We are able to do this based on the fact that the Department's project development teams (PDT) include construction, maintenance, and landscape architecture representatives who work with the environmental function to ensure proposed environmental commitments will be successful, based on past experience.

In addition, the Department works in compliance with the California Environmental Quality Act (CEQA), a comprehensive environmental statute under state law, which requires the implementation of mitigation measures, and the preparation of a mitigation monitoring and reporting plan. Many other states likewise have similar environmental laws, and we are

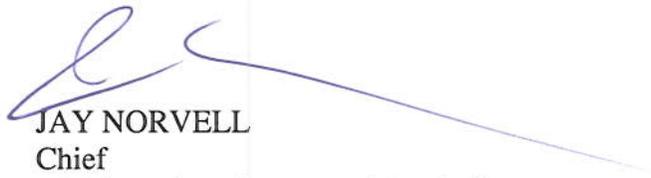
concerned for the potential of redundancy and inefficiency under the Draft Guidance as currently written.

Mitigation Failure

The Draft Guidance recommends that mitigation commitments be structured to include adaptive management in order to minimize the possibility of mitigation failure. The Department urges CEQ to retain the flexibility currently provided under NEPA, so that adaptive management is one of the supplementary actions that could be taken in the event of mitigation failure, but not the sole method for ensuring mitigation success. The SER outlines the agency consultation process, in which the Department works with the environmental agencies to ensure that proposed mitigation measures are effective, based on the past experience, knowledge, and expertise of agency and Department environmental planners and specialists. The tracking system currently in use for the Department's environmental commitments follows the measures through implementation and monitoring to ensure mitigation success. In addition, most permits and approvals from environmental agencies have success criteria and a resultant feedback loop built into the terms and conditions already. We believe that what is proposed in the Draft Guidance is largely redundant and may result in unnecessary expenditures of public funds and unnecessary delays in the project development and implementation.

Our primary concern overall is that the Draft Guidance be modified to more clearly distinguish between advisory and mandatory processes under NEPA. Again, the Department appreciates the opportunity to comment on CEQ's Draft Guidance for NEPA Mitigation and Monitoring. If the Department can be of any further assistance or provide any additional information, please do not hesitate to contact Kelly Dunlap, Chief, Environmental Management Office, at (916) 651-8164.

Sincerely,



JAY NORVELL
Chief

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cc: Kelly Dunlap