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May 24, 2010

Ted Boling
The Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Re: Draft Guidance for Mitigation and Monitoring under the National Environmental Policy Act (NEPA), 75 *Fed. Reg.* 8046-8047 (Feb. 23, 2010)

Dear Mr. Boling:

The Texas Association of Business (TAB) submits these comments in response to the Council on Environmental Quality's (CEQ) draft guidance, "NEPA Mitigation and Monitoring" under the National Environmental Policy Act as published in the *Federal Register* on February 23, 2010.

Founded in 1922, the Texas Association of Business is a broad-based, bipartisan organization representing more than 3,000 small and large Texas employers and 200 local chambers of commerce.

Under NEPA, a federal agency is required to develop an environmental impact statement prior to any major federal action in order to identify environmental impacts, particularly those impacts that cannot be avoided. Under NEPA the discussion of mitigation has an appropriate role in that the consideration of potential mitigation can further the goals of NEPA, which is to inform an interested public of the possible outcomes of certain projects.

While there is a role for discussion of mitigation, however, NEPA does not impose specific requirements or obligations on a federal agency for mitigation or any specific mitigation project. There is a significant difference between discussions of mitigation within an EIS to better inform the public of the possible consequences of a federal project and the binding obligation to actually develop and implement a mitigation plan. The proposed guidance risks turning a hopefully useful information or decision tool into a license, particularly in light of the consideration in the guidance that mitigation can be better assured by conditioning future funding agreements or instruments, grants, permits or other authorizations on implementation of a specific mitigation plan.

This approach ignores the fact that federal project sponsors or participants may not be in a position to guarantee the availability of funding for mitigation or control a future mitigation project, at least not within the context of a NEPA analysis. That does not preclude interested persons from pursuing consideration of mitigation or offsets of project impacts in a more appropriate venue and at the proper time, generally through participation in the consideration of a permit or other authorization for a specific project or project component. An expansion of the

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role of NEPA in mitigation, however, will result in significant delays for projects and increase costs to federal agencies at a time when these increased costs can hardly be justified. In addition, the proposed guidance relating to monitoring and information dissemination creates potential long-term obligations for federal agencies and administrative burdens that have never been considered within the scope of NEPA and almost guarantee the creation of expectations on the part of interested public participants that cannot be satisfactorily met by federal agencies.

TAB would ask that CEQ not look to NEPA to provide a mechanism for control and regulation of federal projects that is more appropriately found in other regulatory statutes. The proposed guidance expands the role of NEPA well beyond its intended procedural basis and into areas of decision making that will affect federal agencies in ways not intended by the Act and which Congress should consider to determine if such significant policy changes are fully understood or warranted.

Thank you for the opportunity to comment on the draft guidance. Your consideration of these comments is appreciated.



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