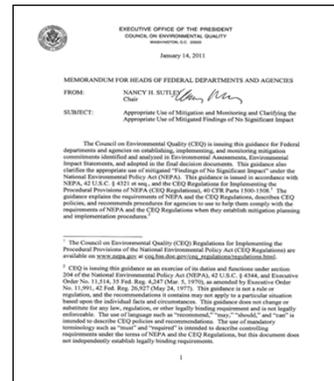


CEQ Guidance on Mitigation

1

Council on Environmental Quality (CEQ), "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact"
(Jan. 14, 2011)



http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf

Mitigation and the NEPA Process

2

CEQ regulations direct Federal agencies to “[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will **avoid or minimize adverse effects of these actions...**”
40 CFR § 1500.2(e); see 40 CFR § 1500.2(f).

This includes:

- **Lead agency** evaluation of alternatives
- **Cooperating agency** input
- Continued involvement of the **project proponent(s), the public, stakeholders, and partners**

Evaluating Mitigation under NEPA

3

Mitigation Measures:

- May be included in the proposed **project design** (“design features”)
- Must be included in the **alternatives** and analyzed in the **Environmental Consequences** section
- May be analyzed in an Environmental Assessment (EA) and support a **“Mitigated FONSI”**



40 CFR §§ 1502.14(f) and 1502.16(h); see 40 CFR § 1508.25(b)(3)

Identifying & Evaluating Mitigation

4

The **lead agency** is to identify “[a]ll relevant, reasonable mitigation measures that could improve the project,” even if they:

- Are outside the jurisdiction of the lead agency or the cooperating agencies; and
- Would not result in mitigation commitments in the Record of Decision (ROD). CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, March 1981, Question 19b,*

<http://ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#19>.

Identifying & Evaluating Mitigation

5

Cooperating agencies with jurisdiction by law that object to a proposed action based on environmental impacts are required to specify the mitigation measures they believe are necessary for approval of the action.

40 CFR § 1503.3(d).

Authorities & Resources

6

Mitigation commitments should reflect applicable legal authorities and available resources for implementation.

Legal Authorities

- BLM authority typically stems from the Federal Land Policy and Management Act (FLPMA) or other statutes besides NEPA.
- Other agencies and Tribes may have relevant authorities.

Available Resources

- NEPA documents should discuss the likelihood that mitigation measures will be implemented or enforced by agencies.

Mitigation in Decision Documents

7

- **Agency decision documents** such as a ROD should “clearly identify **commitments to mitigation measures...**”
 - Agencies should specify performance expectations (e.g., start date and duration of mitigation).
- Mitigation commitments must be **implemented by the lead agency or another consenting agency** through conditions of approval, grant or permit conditions, or other mechanisms. 40 CFR § 1505.3(a)-(b).

Mitigation Monitoring Programs

8

- “Agencies may provide for monitoring to assure that their decisions are carried out and ***should do so in important cases.***” 40 CFR § 1505.3.
- CEQ guidance addresses:
 - Factors for **evaluating importance** warranting monitoring;
 - Monitoring **mitigation implementation**;
 - Monitoring **mitigation effectiveness**; and
 - The **role of the public**.
- CEQ guidance also includes options for addressing **ineffective or non-implemented mitigation** measures.