

Memorandum

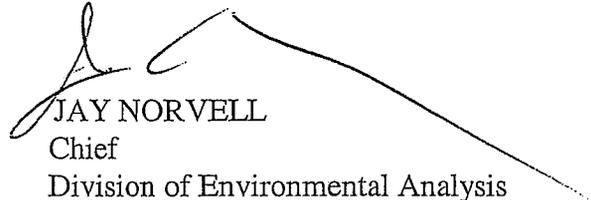
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To: DISTRICT DIRECTORS
DEPUTY DISTRICT DIRECTORS, Environmental
DEPUTY DISTRICT DIRECTORS, Project Management
DEPUTY DISTRICT DIRECTORS, Right of Way
REGION CHIEFS, Environmental
REGION CHIEFS, Project Management
REGION CHIEFS, Right of Way

Date: December 11, 2007

File: Acquisitions

From: 
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Chief
Division of Right of Way and Land Surveys


JAY NORVELL
Chief
Division of Environmental Analysis

Subject: Qualifying Early Acquisition Projects

The California Department of Transportation (Department) requested, and was granted effectively on July 1, 2007, all of the United States Department of Transportation Secretary's responsibilities, under the National Environmental Policy Act of 1969 (NEPA), for most projects on the State Highway System. The responsibilities are being assumed under a pilot program that in compliance with Streets, and Highways Code Section 820.1 will conclude on January 1, 2009, unless extended by the State Legislature. The Department will be working with the Legislature to extend that date to match the Pilot Program expiration date of August 10, 2011.

With the assumption of the Federal Highways Administration's (FHWA) responsibilities, the Department now has a potential conflict with early acquisition of property prior to Project Approval and Environmental Document.

Since the Department is legally assuming the role of the FHWA, there is currently a conflict of interest with the Department acquiring property prior to the environmental decision that authorizes it. The FHWA and NEPA regulations expressly prohibit acquiring property with the exception of hardship acquisition or protective buying for a project until the NEPA process has been completed. This conflict does not occur on California Environmental Quality Act, only projects (if the Department follows its existing process) if the local sponsor of the project is acquiring property under its own authority, or on those projects where FHWA retains its environmental approval responsibilities. As long as the NEPA decision maker is not the same entity as that doing the early acquisition, and the NEPA decision maker plays no role in that acquisition, then early acquisition may occur as allowed under other processes. "Early acquisition" of environmental mitigation parcels is acceptable as currently allowed by the Department's policy and in accordance with the NEPA requirements.

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If the project team is considering early acquisition, please consult with your Environmental Coordinator.

c: RLand

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HQ Right of Way Office Chiefs