

Internal Deliberative Draft

Proposed Amendment to section 15252 related to requirements for Certified Regulatory Programs

15252. Substitute Document

(a) The document used as a substitute for an EIR or Negative Declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(b) Prior to final action on a proposed activity for which a document used as a substitute for an EIR has been prepared, the agency shall evaluate comments received during the written comment period provided for the substitute document and prepare written responses.

(c) The notice of the decision on the proposed activity shall be filed with the Secretary for Resources.

Rationale

In 1975, SB 707 was enacted to exempt certain state regulatory programs from the requirement to prepare duplicative EIRs if the program included certain criteria designed to ensure it met the basic goals of CEQA. Specifically, Public Resources Code section 21080.5 (hereafter Section 21080.5), subdivision (a) states when an agency's regulatory program has been certified by the Secretary of Natural Resources pursuant to that section, "the plan or other written documentation" required by that regulatory program "may be submitted in lieu of the environmental impact report required by this division."

Section 21080.5 specifies that a certified regulatory program is exempt from CEQA's EIR requirements (specifically the requirements of Chapters 3, 4, and section 21167 of

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CEQA) and the certified program's plan or other documentation can be used as a substitute for the CEQA required EIR.

While Section 21080.5 mentions only substitute documents for CEQA required EIRs, the CEQA Guidelines section 15252 specifically identifies the substantive requirements for two types substitute documents, stating the "substitute for an EIR or negative declaration" shall include a project description and either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

Subsection (A) describes the basic substantive requirements of a document equivalent to an EIR¹ and subsection (B) describes the basic substantive requirements of a document equivalent to negative declaration.²

The CEQA Guidelines do not currently clarify the requirements for treatment of public comments received on a substitute document. The language below (or language that serves the same intent) should be added to CEQA Guidelines section 15252 to make this clarification.

(b) Prior to final action on a proposed activity for which a document used as a substitute for an EIR has been prepared, the agency shall evaluate comments received during the written comment period provided for the substitute document and prepare written responses.

¹ Pub. Resources Code, § 21061.

² Pub. Resources Code, § 21064.