

August 11, 2015 CEQA Guidelines Discussion Draft
City of Roseville Comments (Part 2)

I. Using Regulatory Standards in CEQA:¹

A. *General Comment:* Despite the subtitle on page 12,² this section discusses more than regulatory standards, it covers **Thresholds of Significance** in general.

B. *OPR's proposed new Section 15064(b)(2)*³, first sentence [p. 15]:

“Thresholds of significance . . . may assist lead agencies in determining the significance of an impact.” [Emphasis added]

1. *Comment:* The use of the word “may” is ambiguous. This sentence seems to indicate that agencies may ignore thresholds altogether, which would not be advisable because they usually constitute part or all of the substantial evidence supporting the significance conclusion. At the very least, it would seem that OPR should advise lead agencies that thresholds “should” be used to “assist” in making the determination.

(a) *Suggested Change:* “Thresholds of significance . . . may should be used to assist lead agencies in determining the significance of an impact.”

II. “Within the Scope” of a Program EIR:

A. *General Comments:* Despite the subtitle on page 20, this section can be read more broadly to include determining whether any environmental document for a later activity is covered by an early document for a bigger plan, program or project, not just EIRs formally determined to be “program” EIRs.

B. *OPR's proposed revisions to Section 15168(c)(1)*, new last sentence [p. 23]:

“If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may be tiered from the program EIR as provided in Section 15152.”

1. *Comment:* The phrase “[t]hat later analysis” is ambiguous, because the prior sentence refers to a “later activity” and then to an “initial study” leading to “an EIR or a negative declaration,” but not to a “later analysis.”

¹ Headings are verbatim from the OPR document.

² All page numbers cited are references are to the document downloaded from the OPR website.

³ All section numbers refer to the State CEQA Guidelines unless otherwise noted.

- (a) *Suggested Change*: “That later ~~analysis~~ environmental document may be tiered from the program EIR as provided in Section 15152.”
- (b) *Alternative Suggested Change*: ““That later EIR or negative declaration may be tiered from the program EIR as provided in Section 15152.”

C. *OPR’s proposed revisions to Section 15168(c)(2)[p. 23]:*

“If the agency finds that pursuant to Section 15162 no new significant effects could occur or no new mitigation would be required . . .”

1. *Comment*: This revision does not entirely capture the requirements of Section 15162.

- (a) *Suggested Change*: “If the agency finds that pursuant to Section 15162 no new or substantially more severe significant effects could occur or no new mitigation would be required . . .”

- (b) *Additional Comment*: Please note, the discussion on page 30 (5th paragraph), among other places, uses the phrase “new or worse significant impacts.” This phrase also captures the intent of the Suggested Change, above, but does not track the language of Section 15162 as well. See, e.g., Section 15162(a)(1) (“ . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.”).

III. Transit Oriented Development Exemption:

A. *Compare OPR’s proposed new Section 15182(b)(2) [p. 32]:*

“Limitation. Additional environmental review **may** be required for a project described in this subdivision if one of the events in section 15162 occurs with respect to that project.” [Emphasis added.]

. . . and *OPR’s proposed new Section 15182(c)(2)[p. 32]:*

“Limitations. If after the adoption of the specific plan, an event described in Section 15162 occurs, the exemption in this subdivision **shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan.**” [Emphasis added.]

B. *Comment*: What is the relationship between these two “Limitations” sections, why are they different, and why would additional environmental review *not* be required pursuant to new Subsection (b)(2)? In other words, it is unclear why OPR’s proposed new Section 15182(b)(2) states that additional environmental

review “may” be required if one of the criteria for additional environmental review in Section 15162(a)(1)-(3) is met, but proposed new Section 15182(c)(2) seems to make clear that additional environmental review *would* be required.

IV. Updating the Environmental Checklist [Appendix G]:

A. *OPR’s proposed revisions to Appendix G, § I.b) (Aesthetics) [p. 51]:*

“Substantially degrade the existing visual character or quality of public views of the site and its surroundings in conflict with applicable zoning and other regulations.”

1. *Comment:* Why are the only possible aesthetics impacts proposed to be those that are “in conflict with applicable zoning and other regulations”? Will this work in back country areas where zoning or other regulations are either non-existent or subject to federal or state control?

B. *OPR’s proposed new Appendix G, § V.b) [p. 57]:*

“Incorporate renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?”

1. *Comment:* Why is this checklist item proposed to be added? What, specifically, is the anticipated impact associated with incorporating “renewable energy or energy efficiency measures” into projects that is already not covered by the rest of the checklist?

C. *OPR’s proposed revisions to Appendix G, § VIII.e) and .h) (Hazards and Hazardous Materials):*

1. *Appendix G, § VIII.e) [p. 58]:*

“For a project located within an airport land use plan . . . would the project result in a safety hazard or excessive noise for people residing or working in the project area.”

(a) *Comment:* In what way is excessive noise a “hazard” that should be separated out from noise impacts? If this remains in Hazards etc., should this checklist items cross-reference Noise (and vice versa)?

2. *Appendix G, § VIII.h)[p. 58]:*

“Expose people or structures to a significant risk of loss, injury or death involving wildland fires, flooding or other inundation, unstable soils and other potential hazards.”

(a) *Comments:*

- (i) Since “flooding or other inundation” is proposed to be added to Subsection VIII.h), should this checklist items cross-reference the proposed, newly created Open Space, Managed Resources and Working Landscapes section (and vice versa)?
- (ii) Deleting the reference to placing people and damageable property in a regulatory “100-year flood hazard area” is not helpful for purposes of planning and spotting important issues.
- (iii) Deleting the reference specifically to “tsunami,” and perhaps the other hazards in Appendix G, § IX, j), is not helpful for purposes of planning and spotting important issues.
- (iv) Besides reinserting references to tsunamis and 100-year flood hazard areas, it would be helpful to add a reference to areas subject to sea level rise.

D. *OPR’s proposed revisions to Appendix G, § IX (Hydrology and Water Quality):*

- 1. *Comment:* There is no explanation in the introductory section [pp. 38-44] for the revisions to the Hydrology and Water Quality section of Appendix G.

E. *OPR’s proposed new Appendix G, § XI (Open Space, Managed Resources and Working Landscapes):*

- 1. *Subsection XI.a) [p. 63]:*

“ . . . whether the project would: a) Adversely impact open space for the preservation of natural resources . . . ”

- (a) *Comment:* What is intended to be covered by the phrase “open space for the preservation of natural resources”? Can this be more specific, or list a few examples?

- (b) *Suggested Change (if this is the intent of the new checklist item):*
 “ . . . Adversely impact open space that is used for the preservation of natural resources. . . ”

- 2. *Subsection XI.b) [p. 63]:*

“ . . . whether the project would: b) Adversely impact open space for the production of resources . . . ”

- (a) *Comment:* What is the definition of “resources”?

(b) *Suggested Change*: “. . . Adversely impact open space for the production of agricultural and forest resources. . .”

3. *Subsection XI.d)(1)-(2) [pp. 64-65]:*

(a) *Comment*: It is unclear why many of these topics (inundation, wildfire hazards, flood zones, unstable soil zones, fault zones) are covered in the new Open Space [etc.] subsection of Appendix G rather than in Hazards. The topics do not appear to be limited to Open Space, Managed Resources or Working Landscapes. New urban development often is proposed in these hazardous areas. Moreover, wildfire now has its own Subsection XVII (see pp. 69-70).

F. *OPR’s proposed revisions to Appendix G, § XIII.c) (Population and Housing) [p. 65]:*

~~“Result in a substantial imbalance in regional jobs/housing fit? Displace substantial numbers of people, necessitating construction of replacement housing elsewhere?”~~

1. *Comment*: The new wording of this section introduces the concept of “regional jobs/housing fit.” The term “jobs/housing fit” needs to be defined. The discussion on page 43 states that OPR is attempting to clarify whether proposed population growth is “planned,” but it is not clear how this concept informs the wording of the revised checklist item.

G. *OPR’s proposed new Appendix G, § XVIII (Wildfire)[pp. 69-70]:*

1. *Comment*: As stated above, the concept of wildfire hazards is also in new Subsection XI.d)(ii) (Open Space, etc.) [p. 65]. It is unclear why it is needed in two places.

2. *Comment*: Subsection XVIII.a) concerning emergency response and evacuation plans is also covered Subsection VIII.g (Hazards) [p. 58]. It is unclear why it is needed in both places.

3. *New Appendix G, § XVIII.c) [p. 70]:*

“. . . would the project: c) Require the installation or maintenance of **associated** infrastructure . . . that may exacerbate fire risk . . .” [Emphasis added.]

(a) *Comment*: Why is the word “associated” needed in this sentence? It appears to introduce ambiguity. If the project requires the installation or maintenance of infrastructure, wouldn’t that infrastructure be “associate” to the project by definition?

V. Remedies and Remand:

A. *Comment on and suggested changes to portions of proposed new Section 15234:*
The following proposed revisions are intended to more closely reflect Public Resources Code section 21168.9.

1. *Subsection (a), first sentence [p. 73]:* “Not every violation of CEQA is prejudicial and requiring—requires rescission of project approvals.
2. *Subsection (a), second sentence [p. 73]:* “. . . and that noncompliance in that case was a prejudicial abuse of discretion . . .”
3. *Subsection (a)(2) [p. 73]:* “suspend any project activities that preclude consideration and implementation of specific mitigation measures . . .”
4. *Subsection (b)(3) [p. 74]:* “the agency complied with CEQA as to those activities.”
5. *Subsection (d), first sentence [p. 74]:* “As to those portions of an environmental document that a court ~~finds to comply~~ determines are in compliance with CEQA . . .”
6. *Subsection (d), second sentence [p. 74]:* “. . . except under the circumstances described in section 15088.5(a)(1)(3).”

VI. Water Supply Analysis in CEQA:

A. *OPR’s proposed new Subsection 15155 (f)(2) [p. 87]:*

“An analysis of the long-term environmental impacts of supplying water throughout the life of all phases of the project.” [Emphasis added.]

1. *Comment:* The phrase “long-term” does not seem to add anything to this new requirement if the analysis must also include “all phases of the project”? What if the project has only one phase?
2. *Suggested change to proposed new Subsection 15155 (f)(2) [p. 87]:* “An analysis of the ~~long-term~~ environmental impacts of supplying water throughout the life of all phases of the project.”

VII. Pre-Approval Agreements:

A. *OPR’s proposed revision to Subsection 15051(2)(A) [p. 111]:*

“For example, agencies shall not: (A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities; ~~except that agencies may designate a preferred site for CEQA review and may~~

~~enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA review."~~

- B. *Comment:* This change would substantially reduce the flexibility of agencies to acquire land for future uses (e.g., land banking), unless it is the view of OPR that the two sentence in Subsection 15015(2)(A) are redundant.

VIII. Consultation With Transit Agencies:

- A. *OPR's proposed revisions to Subsections 15072(e) and 15086(a)(5) [pp. 121 and 123]:*

The following new sentence would be added to both subsections:

"The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project."

- B. *Comment:* The term "transportation facilities" is defined in both subsections, but the new term "transit facilities" is not defined. Also, the use of the term "should" implies that consultation is suggested but not required. Is that the intent of OPR?

IX. Posting Notices With County Clerk:

- A. *OPR's proposed revision to Subsection 15082(a) [p. 131]:*

"... the local agency shall send a notice of preparation stating that an environmental impact report will be prepared to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared and file with the county clerk of each county in which the project is located."

- B. *Correct typo in new language:* "... and filed with the county clerk of each county in which the project is located."

X. Time Limits for Negative Declarations:

- A. *Proposed revision to Section 15107 [p. 135]:*

"... the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the 180-day time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant."

Comment: This proposed revision adds a limitation on the time limits to prepare a negative declaration, even if the extension is agreed upon by the lead agency and the applicant. The time limit is one 90-day extension, and makes Section 15107

consistent with Section 15108 which has the same limitation applicable to EIRs. In practice, however, many agencies and applicants agree to longer extensions.

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