

Lockey, Heather@CNRA

From: Ping Chang <CHANG@scag.ca.gov>
Sent: Wednesday, March 14, 2018 8:23 PM
To: CEQA Guidelines@CNRA
Subject: CEQA/SB 743 Comment Letter
Attachments: SCAG CEQA-SB 743 Comment Letter and Attachments - 03142018.pdf

Attached please see the SCAG comment letter on CEQA/SB 743 Guideline Updates.

Best,



Ping Chang

Acting Manager, Compliance & Performance Monitoring

Tel: (213) 236-1839 | Cell: (310) 293-0897

chang@scag.ca.gov

PLEASE NOTE OUR NEW ADDRESS EFFECTIVE 12/18/17

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS
900 Wilshire Blvd., Ste. 1700, Los Angeles, CA 90017

Stay Connected



March 14, 2018

Mr. Christopher Calfee
Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

SOUTHERN CALIFORNIA
ASSOCIATION OF GOVERNMENTS
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017
T: (213) 236-1800
www.scag.ca.gov

REGIONAL COUNCIL OFFICERS

President
Margaret E. Finlay, Duarte

First Vice President
Alan D. Wapner, Ontario

Second Vice President
Bill Jahn, Big Bear Lake

Immediate Past President
Michele Martinez, Santa Ana

COMMITTEE CHAIRS

Executive/Administration
Margaret E. Finlay, Duarte

Community, Economic &
Human Development
Rex Richardson, Long Beach

Energy & Environment
Carmen Ramirez, Oxnard

Transportation
Curt Hagman, San Bernardino County

RE: Comments on the Proposed Rulemaking for “Amendments and Additions to the State CEQA Guidelines” including SB 743 Implementation Guidelines

Dear Mr. Calfee:

Thank you for the opportunity to review and comment on the proposed rulemaking for the “Amendments and Additions to the State CEQA Guidelines” including SB 743 Implementation Guidelines. We appreciate the extensive outreach efforts that have been made by the staff of the Governor’s Office of Planning and Research (OPR) throughout the process. Specifically, throughout the SB 743 implementation development process, OPR staff have reached out to obtain input from stakeholders throughout the state. In collaboration with OPR staff, SCAG has hosted six stakeholder workshops during the guidelines development process to receive input. Most recently, these efforts included OPR staff participation in a Workshop devoted to this topic held at Caltrans District 7 offices in downtown Los Angeles on January 31, 2018. The CEQA Guidelines Update/SB743 Workshop, attended by approximately 120 participants, provided current information and answers to questions in regard to these significant proposed changes to CEQA practice for our regional stakeholders.

SCAG is the largest metropolitan planning organization (MPO) in the nation, representing six counties, 191 cities, and more than 19 million residents in Southern California. In April 2016, SCAG’s Regional Council adopted the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS), a transformational plan for Southern California, which provides intensive focus on the development of a sustainable transportation system and the promotion of land use practices and decision-making that is congruent with our vision for a sustainable, climate resilient future for our region.

SCAG is generally supportive of the changes to the CEQA guidelines proposed by OPR as they provide needed clarity and promote implementation efficiency, which will benefit local jurisdictions throughout the state. Additionally, the development of an alternative metric to evaluate CEQA transportation impacts that serves to reduce greenhouse gas emissions, supports development of multimodal networks, and encourages mixed-use transit oriented development will also facilitate implementation of SCAG’s 2016 RTP/SCS.

SCAG recognizes the importance of the proposed CEQA Guidelines update and the provisions of SB 743 for the effective implementation of the objectives of our 2016 RTP/SCS. Through its focus on infill development and greenhouse gas reduction, implementation of SB 743 will serve to facilitate achievement of many of the regional

Mr. Christopher Calfee
California Natural Resources Agency
March 14, 2018
Page 2 of 2

goals identified in our adopted 2016 RTP/SCS, specifically those pertaining to regional sustainability, improving transportation system efficiency, providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality, and promoting environmental preservation. These beneficial outcomes will improve economic, quality of life, and public health performance in the SCAG region and throughout the state while also supporting critical regional investments, particularly in active transportation and transit.

While SCAG is generally supportive of the proposed changes, we have assembled a set of comments discussing recommended revisions and requests for further clarification on particular topics (Attachments 1 and 2). Our comments also seek to fine-tune the proposed implementation structure of the guidelines to ensure that any added administrative burden to our local implementing agencies is minimal.

We look forward to our continued cooperative and constructive relationship with both the OPR and the Natural Resources Agency on the effective implementation of this rulemaking, and on other issues that promote sustainability in our region and in our state. Please contact me if you have any questions.

Sincerely,



Hasan Ikhata
Executive Director

Attachment 1: Comments on Proposed CEQA Guidelines Update
Attachment 2: Comments on Proposed SB 743 Implementation Guidelines

Attachment 1

Comments on Proposed CEQA Guidelines Update

1. Clarification on Environmental Baseline (Proposed Amendments to Section 15125)

The Governor's Office of Planning and Research (OPR) package proposes to amend subdivision (a) of section 15125 regarding the environmental setting. Specifically, OPR's package proposes to add a statement of purpose and three subdivisions to subdivision (a).

In the body of subdivision (a), OPR proposes to add a sentence stating that the purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project's likely impacts, both near-term and long-term. The purpose of adding this sentence to subdivision (a) is to guide lead agencies in the choice between alternative baselines. When in doubt, lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project's possible impacts (Page 98).

In the body of subdivision (a)(1), OPR's package sets forth a general rule: "normally, conditions existing at the time of the environmental review should be considered the baseline." However, it further states that, "the lead agency may describe both existing conditions as well as future conditions" (Page 99).

In the body of subdivision (a)(2), OPR's package sets forth the exception to the general rule and the conditions allowing lead agencies to use an alternative baseline. Subdivision (a)(2) explains that existing conditions may be omitted in favor of an alternate baseline where "use of existing conditions would be either misleading or without informative value to decision-makers and the public" (Page 99). It further clarifies that if future conditions are to be used, "they must be based on reliable projections grounded in substantial evidence" (Page 100).

In the body of subdivision (a)(3) OPR's package specifies that hypothetical conditions may not be used as a baseline. Specifically, the subdivision states that "lead agencies may not measure project impacts against conditions that are neither existing nor historic, such as those that might be allowed under permits or plans" (Page 100).

SCAG appreciates OPR's efforts on providing additional language with regard to baseline and base year existing conditions. There has been an on-going debate as to how agencies should properly evaluate long range plans. The updated guidelines appear to give the lead agency the freedom to choose either setting for assessing existing conditions, as appropriate.

However, further suggestions and questions are as follows:

- SCAG suggests that the pathway used to describe both existing and future conditions, be titled a "hybrid approach."
- SCAG requests OPR to revise the guidelines to state that use of this hybrid approach is not common and that choosing one (either existing or future conditions) baseline period is the generally accepted approach.
- If the lead agency decides to describe both existing conditions as well as future conditions, does the project applicant have the option to determine the level of significance for one and not the other?
- If not, would the lead agency be required to determine the level of significance by comparing both existing and future conditions?

2. Clarification on Tiering

OPR's package proposes to amend section 15152(h) to further assist lead agencies to determine if tiering is appropriate for a given project. OPR proposes to rewrite this section that tiering is only "one of several streamlining mechanisms that can simplify the environmental review process" (Page 25). The proposed amendment states: "The rules in this section govern tiering generally. Several other methods to streamline the environmental review process exist, which are governed by the more specific rules of those provisions. Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section. Where multiple methods may apply, lead agencies have discretion regarding which to use" (Page 27). Additionally, proposed amendments under section 15152(h) now include "infill projects (Section 15183.3)" for potential projects qualified for tiering (Page 28).

SCAG appreciates OPR including "infill projects" as potential projects qualified for tiering. Local jurisdictions who wish to tier off of their Specific Plan PEIRs or gain CEQA exemptions for Transit Oriented Development projects would highly benefit from this addition.

OPR's efforts on providing clarification for tiering and CEQA streamlining is much appreciated. Redundancy has become a major issue when conducting environmental analysis. However, it would be helpful if the CEQA guidelines were revised to describe all CEQA streamlining options under one unified section. Currently, CEQA streamlining and tiering is described under Section 15152, 15183, Appendix M and other sections throughout the CEQA guidelines. Streamlining the Guidelines itself would provide clarity to a project applicant.

While not applicable to the CEQA guidelines itself, it would be helpful if OPR hosted workshops with respect to CEQA streamlining and providing materials (i.e., examples, flowcharts) to lead agencies. Educating lead agencies and CEQA practitioners would facilitate the environmental review process.

3. Promoting the use of existing regulatory standards in the CEQA process

OPR's package promotes the use of existing regulatory standards in the CEQA process. OPR proposes to update sections 15064 and 15064.7 to expressively provide that lead agencies may use thresholds of significance in determining significance, and that some regulatory standards may be appropriately used as thresholds of significance.

SCAG has been a proponent of using existing regulatory standards in the CEQA process and has done so for the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS) Programmatic Environmental Impact Report. We believe that using regulatory standards for determining significance would bring cohesiveness and consistency throughout the region. By doing so, not only are we able to reach statewide goals together but are able appropriately assess statewide impacts from a macro (program level) to micro (project level) scale with ease. However, when using existing regulatory standards, it is not simply enough to state a standard and determine that a project would result in less than significant impacts, should it fall within or below the standard. The usage of regulatory standards to determine a level of significance should be fully explained and supported by adopted policies and scientific evidence within the CEQA document.

4. Discussion of energy based impacts under Appendix G

OPR's package proposes to amend Section 15126.2 to discuss energy-based impacts under Appendix G.

SCAG appreciates OPR's effort into integrating energy based impact discussion under Appendix G. Appendix F of the CEQA guidelines has contained guidance on energy analysis for decades but was often overlooked. Even though Appendix F was revised in 2009 to clarify that analysis is mandatory, the discussion of energy impacts was limited. SCAG believes that in order to reach our greenhouse gas emissions reduction targets for the future, it is important that we identify any wasteful energy use and identify appropriate mitigation measures to reduce emissions and to promote sustainable features for any given project.

5. Updates to evaluating greenhouse gas impacts (Proposed Amendments to Section 15064.4)

OPR's package proposes to amend Section 15064.4. First, the proposed amendments clarifies that a project must make a good faith effort to estimate or describe a project's greenhouse gas emissions. More importantly, the focus of the lead agency's analysis should be on the project's effect on climate change (Page 87). This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compare to global emissions (Page 88). OPR's package further clarifies that lead agencies should consider the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change (Page 88). Second, the proposed amendments clarifies that lead agencies should consider a timeframe for the analysis that is appropriate for the project, due to the fact that in some cases, it would be appropriate for agencies to consider a project's long-term greenhouse gas impacts, such as for projects with long time horizons for implementations (Page 88). Third, the proposed amendments clarifies that an agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes (Page 88). Forth, the proposed amendments clarifies that an agency's analysis may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change (Page 89).

SCAG supports OPR's proposed amendments on evaluating greenhouse gas impacts. As mentioned previously, it is important that we work towards reducing emissions. In the past, when greenhouse gas emissions were evaluated, emissions were often analyzed with little or no mention of climate change. Proposed changes would ensure that we focus on a projects contribution (or no contribution) to climate change, thereby allowing us to quantify our distance to the region's greenhouse gas emissions target goals. SCAG agrees that an appropriate timeframe setting is important when evaluating greenhouse gas emissions. Projects that have significant development or operational periods and have potential to emit significant amount of greenhouse gas emissions, should have a level of analysis that captures a longer timeframe as it allows us to determine if we can achieve long term State targets in reducing greenhouse gas emissions.

SCAG also agrees that an agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes. The purpose of a CEQA document is to fully inform the public and decision makers on a project's potential impacts. Therefore, it is important that when conducting CEQA documentation, agencies should make the best effort to use the best data and modeling tools available. This is highly critical as scientific research and knowledge is a dynamic process, which is continuously evolving rather than a static one. It is also important that discussion and analysis revolves around existing and new regulatory standards that are and were codified during the preparation of the environmental document. As referenced before, should an agency decide use regulatory standards as a threshold for significance, standards should be fully explained and supported by adopted polices and scientific evidence within the CEQA document.

Since the enactment of Executive Order's B-16-2012, B-30-15, S-3-04, Assembly Bill 32 and the codification of Senate Bill 32, there has been an on-going debate as to how to appropriately analyze greenhouse gas emission impacts, particularly cumulative impacts. Greenhouse gas emissions by nature are "global", unlike "normal" (i.e. localized) with respect to cumulative impacts. To clarify, greenhouse gas emission impacts are not confined within the boundaries of a project area, a city or even a state, but contribute to a global inventory by nature, thus making it difficult to analyze within CEQA as it hard to bridge the gap of analysis for a local project (i.e. manufacturing factory, small refinery, or retail projects) and its impacts on the state or the entire world. SCAG requests that OPR work with MPOs and local jurisdictions to develop a sound roadmap as to how to properly analyze for cumulative greenhouse gas emission impacts, in an effort to facilitate the CEQA process, minimize litigation and to achieve statewide targets.

6. Discussion of Project Benefits (Proposed Amendments to Section 15124)

OPR's package proposes to amend subdivision (b) of Section 15124. Currently, subdivision (b) states that a project description shall include a statement of objectives sought by the project. The proposed language has been revised to state: "The statement of objectives should include the underlying purpose of the project and may discuss the project benefits" (Page 152).

SCAG supports the proposed amendments to Section 15124. Allowing a discussion project benefits within the project description would be beneficial to lead agencies. Previously, project benefits have been discussed solely within the Findings of Facts and Statement of Overriding Considerations Section within the Final Environmental Impact Report. Unfortunately, this section is highly overlooked from the general public. As such, reader often do not understand as to why a certain project is being developed and will often focus on the environmental impacts, thus creating a negative bias. By describing the project benefits up front, the reader will be offered a balanced perspective, prior to making their decision.

7. Discussion of Wildfire Impacts under Appendix G

OPR's package proposes to amend Appendix G by adding the discussion of wildfires as one of its primary environmental topics.

SCAG supports to proposed amendments to Appendix G, allowing for a discussion of wildfire impacts. Over the past decades, the State of California has experienced a multitude of wildfires. The wildfires of 2017 were considered the most destructive fire event in California's history. According to the California Department of Forestry and Fire Protection, a total of 9,133 fires burned through 1,381,405 acres, which resulted in an economic toll of at least \$180 billion. More important, the fires resulted in the loss of precious lives and livelihoods and flora and fauna, which contribute to the vibrancy of the State. As such, it is clear that a discussion revolving around wildfire impacts is greatly needed. The discussion of wildfire impacts will beneficial, as it will potentially inform the general public about potential wildfire risks. Additionally, should any potential risks or impacts be identified, appropriate mitigation measures to minimize such hazards would be developed.

Attachment 2

Comments on Proposed SB 743 Implementation Guidelines

1. SCAG appreciates the efforts that the Governor's Office of Planning and Research (OPR) staff have made over the past four years to ensure that the process of guidelines development for the implementation of SB 743 are as inclusive and participatory as possible. On multiple occasions, OPR staff have reached out, in a meaningful manner, to obtain feedback and input from stakeholders throughout the state. In collaboration with OPR staff, SCAG has hosted six stakeholder workshops during the guidelines development process to receive input.
2. One major modification provided by OPR in its final proposal was to make VMT analysis for highway capacity projects optional rather than required. This significant accommodation was made in direct response to the expressed concerns of many regional stakeholders. Highway capacity improvement projects that are already included in the adopted SCAG RTP/SCS are critical to our region's long-term mobility objectives, and collectively contribute to the Plan's overall regional sustainability and climate goals.
3. While LOS-based analysis is useful for evaluating how a development might impact traffic flow through a project area, it tends to penalize infill projects, including TOD, since these types of projects are typically located in areas that are already highly developed. Since LOS analysis focuses on minimizing motor vehicle delay and maximizing vehicle throughput, it also tends to discourage projects that feature amenities supportive of active transportation.
4. Through its focus on infill development and greenhouse gas reduction, implementation of SB 743 will serve to facilitate achievement of many of the regional goals identified in SCAG's adopted 2016 RTP/SCS, specifically those pertaining to regional sustainability, improved transportation system efficiency, providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality and promoting environmental preservation.
5. By seeking to reduce VMT per capita rather than optimizing Level of Service (LOS), SB 743 will provide benefits to the SCAG region, including improved economic, quality of life, and public health outcomes.
6. SCAG is confident that the proposed methodological change, from the previously used 'Level of Service' (LOS) analysis, will ultimately serve to enhance the ability of our state and our region to achieve our GHG reduction goals, while still preserving our critically needed regional mobility investments.
7. It is critical that lead agencies be provided sufficient time to adequately prepare for the methodological changes that will be required through implementation of SB 743. The currently targeted implementation date of January 1, 2020, as prescribed in the proposed new Guidelines Section 15064.3 (c) entitled 'Applicability', should be revised to allow for a full two-year implementation opt-in period from the effective date of the final rule-making. (Note: In addition, the proposed regulatory text provided on the California Natural Resources website indicates a statewide implementation effective date of July 1, 2019 (page 11, Section (c) entitled, 'Applicability'). This inconsistency should be corrected.
8. Since these regulations represent a substantial change in methodology from previously used CEQA transportation impact analysis processes, it is critical that, after rule adoption, the state provide additional implementation assistance and guidance opportunities to our local jurisdictions for enacting the new procedures at the local level. The establishment of a set of best practices for implementation

of the new methodology over a variety of settings and project types will assist lead agencies to evaluate and anticipate potential impacts of their planned projects. SCAG has already engaged with other MPOs in this direction and looks forward to assisting OPR in this effort.

9. On page 3 of the Technical Advisory, the paragraph addressing 'Vehicle Types' specifically defines the term "automobile" as referring to "on-road passenger vehicles, specifically cars and light trucks." For purposes of clarity, SCAG requests that this defining language also be included in the SB 743 implementation regulatory text. The exemption of freight VMT analysis should be made explicit in the regulatory text.
10. The word "existing" should be replaced with "baseline" in the regulatory text when referring to projects within 1/2 mile of a major transit stop or high quality transit corridor since the baseline for determination of this exemption may be something different than the existing condition.
11. The Technical Advisory states that if a local jurisdiction uses city VMT per capita, the "Proposed development referencing city VMT per capita must not cumulatively exceed the number of units specified in the SCS for that city, and must be consistent with the SCS." (Technical Advisory, Page 12, 'Recommended Numeric Thresholds for Residential, Office, and Retail Projects', November, 2017). Since total number of housing units is not a variable in SCAG's growth forecasts, it is not included in the adopted SCS. SCAG uses the variable of "households", or occupied housing units, which is a slightly smaller subset of housing units, depending upon the vacancy factor. Therefore, there is no number of units inventory for a local jurisdiction in SCAG's SCS from which to make a determination as to whether or not a proposed project exceeds the number of units specified in the SCS. We request that OPR clarify this methodological ambiguity in the SB 743 guidelines.