Report on ARB's Interim SB 535 Guidance & Recommendations for the Final Guidance

Background: SB 535 (2012) requires that **at least 10 percent of Greenhouse Gas Reduction Fund** ("GGRF") investments be made **within disadvantaged communities** and **at that least 25 percent** be invested to **provide benefits** to disadvantaged communities ("DACs"). To ensure meaningful implementation of the statute's promise, the ***535 Coalition*** harnessed community input and developed a Disadvantaged Community Benefits Tool (DCB Tool), a four-step analysis for determining whether an investment will provide meaningful benefits to disadvantaged communities and populations. We then worked closely with the Administration and the Air Resources Board ("ARB") in the year before ARB released Interim SB 535 Guidance. We advocated that no project should be eligible for SB 535 funds unless it passed all four-prongs of our DCB Tool (incorporated in the Luskin Center's SB 535 Implementation report released June 2014). Our letter to ARB in August 2014, co-signed by 60 organizations from across the labor, environmental, affordable housing, transportation, and public health sectors, supported the DCB Tool and urged ARB to require that all SB 535 investments: (a) provide significant benefits, (b) target low-income households' needs, (c) authentically engage residents of disadvantaged communities and (d) avoid harms.

Overview: In September 2014, ARB adopted Interim SB 535 Guidance.[1] Thanks to our effective involvement, many of our principles are contained in the Interim Guidance. Its main guiding principle is that all SB 535 projects, "**regardless of location … provide direct, meaningful and assured benefits to a disadvantaged community**" (p.12). Yet, while the Interim Guidance incorporates the spirit of several of the coalition's principles, the Guidance fails to carry them out in fact and thereby does not fulfill all of the statutory requirements for GGRF funds. Much work remains to be done to ensure that implementing agencies invest SB 535 funds in a manner that results in meaningful and transformative benefits for disadvantaged communities and households.

ARB will adopt final SB 535 guidance this summer. This paper describes how the Interim Guidance measures up, both in principle and in requirement, to each step in the DCB Tool, and offers recommendations for how ARB can improve the final guidance. We need the Final Guidance to do more to ensure that SB 535 investments provide meaningful benefits that meet the needs of underserved communities and maximize benefits to California's economy as required by state law.

I. WILL THE INVESTMENT MEET AN IMPORTANT NEED?

The first step of the DCB Tool asks whether an investment will meet an important need, specifying the need for a fundamental **nexus** between SB 535 investment benefits and the priority needs of DACs. Projects that "provide benefits" to disadvantaged communities and households should be required to **directly and significantly address a need commonly identified by low-income populations** such as reducing health disparities; lowering household costs of housing, transportation or energy; increasing family income, job readiness or career opportunities; or improving mobility and access to opportunity.[2] On the other hand,

[1] The "Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies on Investments to Benefit Disadvantaged Communities under Senate Bill 535 (De León, Chapter 830, Statutes of 2012)" is available at http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final535-interim-guidance-11-3-2014.pdf.

[2] Table 3 (attached here) is derived from the chart of commonly identified disadvantaged community needs in the 535 Coalition's Disadvantaged Community Principles developed to help guide the Luskin Center's SB 535 implementation convening in March 2014.

projects "<u>located within</u>" a disadvantaged community should be required to address either a: (a) **need highlighted by CalEnviroScreen** (e.g., areas where unemployment is especially high should be targeted for jobs) or **(b) need identified as a high priority by the community** through an inclusive public process.

ARB incorporated this principle in the Interim Guidance, which states:

> **To the maximum extent possible**, investments should result in benefits that **either address an important need commonly identified by disadvantaged community residents or address a key factor that caused the area(s) to be identified as a disadvantaged community** (e.g., unemployment levels) (p.18).

The Guidance states that "[i]deally," agencies would identify the important needs "during the outreach process," but "can also refer to Table 3 for examples of commonly identified needs of disadvantaged communities" (p.18). However, the Guidance does not include a clear approach to implementing this principle. Agencies are not directed to ***require*** a nexus between the benefits provided and priority community needs. Rather, to determine whether a project qualifies for SB 535, agencies are directed to Appendix A, the criteria that determine SB 535 eligibility. Under Appendix A, "each criterion is independent; a project **need only meet one criterion** to qualify as located within or providing benefits to one or more disadvantaged communities" (p.12).

Recommendations: The final guidance should require implementing agencies to seek a clear demonstration of how each proposed investment addresses priority community needs. It should not be sufficient to solely meet one criterion on Appendix A. Each project sponsor should be required to demonstrate how the criterion selected will meet priority community needs. As the Tool specifies, there should be different requirements based on whether the project is located within a disadvantaged community or providing benefits to one or more DACs.

II. <u>ARE THE BENEFITS SIGNIFICANT?</u>

By statute, all GGRF investments must maximize benefits and ARB must provide guidance on how "administering agencies should maximize benefits for disadvantaged communities.[3] Thus, step 2 of the DCB Tool requires that "one or more of the benefits meets a threshold of significance," to ensure that each SB 535 investment results in meaningful rather than nominal or incidental benefits. The Interim Guidance agrees with this principle and repeatedly states the objective that SB 535 investments should "**improve California's most vulnerable communities**," strive to "**meet multiple policy objectives**" and provide significant benefits. Despite language highlighting the need for each investment to provide significant benefits, the Guidance provides two methods for implementing agencies to maximize benefits:

[3] Health & Safety Code § 39715. AB 32 requires ARB to design all programs adopted under it "in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions." Health & Saf. Code 38562 (b) (1). 2014's budget trailer bill specifically directs ARB to include guidelines on maximizing benefits to disadvantaged communities in implementing SB 535.

1) Maximize the percentage of GGRF monies that are allocated for projects that benefit disadvantaged communities, preferably in a way that exceeds the minimum 10 percent and 25 percent investment targets; and
2) When selecting projects for a given investment, give priority to those that maximize benefits to disadvantaged communities (e.g., use scoring criteria that **favor projects which provide multiple benefits or the most significant benefits**)" (p. 15).

The Interim Guidance "focuses on the first example, pending ARB development of methodologies for quantifying project benefits," (p.15) despite its focus on quantity rather than quality of investments, and contains very few metrics by which to measure the significance of benefits. Appendix A offers some minimum benefit thresholds (e.g., "at least 25% of new riders from DACs" or "at least 25% of work hours performed by residents of DACs") and proximity requirements ("accessible by walking within ½ mile of a DAC"), but most do not include significance thresholds.

ARB states that the final "full funding guidelines" will "incorporate this interim guidance on SB 535, as well as provide direction on … methods to quantify GHG reductions and co-benefits …" (p. 3), and a timeline on p. 25 states that by "mid-2015," "ARB and agencies [will] begin developing methodologies to quantify greenhouse gas reductions and other co-benefits." In the meantime, the Interim Guidance limits itself to general language in each table in Appendix A directing implementing agencies to prioritize projects that provide multiple or significant benefits.[4] In short, ARB has not yet provided robust guidance on how to quantify the significance of benefits, but committed itself to doing so in the final guidance.

Recommendations: (1) The Interim Guidance's focus on maximizing benefits by exceeding the two SB 535 investment targets is undermined by ARB's assertion that the SB 535's two investment categories are ***not*** added to each other to lead to a minimum of 35% of GGRF benefits being targeted to DACs:

> This guidance establishes that the GGRF monies invested in all projects meeting criterion 1 count towards the SB 535 requirements for both investments "within" disadvantaged communities and investments "benefiting" disadvantaged communities. The result is that the investments in all projects credited under criterion 1 are a subset of criterion 2 (p.12).

While SB 535 allows this interpretation, it does not require it. We ask that ARB take a significant step toward maximizing benefits to DACs by interpreting SB 535 to require 10% of SB 535 projects to be located within DACs and an additional 25% to provide benefits to disadvantaged communities and households.

(2) ARB acknowledges that it has a statutory mandate to develop methodologies for quantifying benefits (p.8). In our Quad meeting with ARB staff in April, we heard that ARB is significantly behind on its timeline for developing co-benefit quantification methodologies. It is imperative that we press for meaningful requirements in the final guidance to ensure that benefits are significant, even if quantification is not feasible for this year within ARB's timeframe.

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[4] ARB also includes optional language, e.g.: "agencies may choose to implement the second example as well if they have the means to provide robust and consistent calculation protocols to project applicants" (p.15); and an agency could "when developing eligibility requirements . . . establish targets or minimum thresholds that will help maximize benefits. For example, an agency could identify a certain percentage of total jobs for a project to be held by residents of disadvantaged communities in order to receive a higher priority for funding." (p.20)

If quantification proves infeasible at this time, we recommend advocating that the final guidance take a qualitative approach to ensuring significant benefits. We propose to draft language for the final guidance that implementing agencies would be required to include in solicitation materials, which could mean (a) requiring agencies to seek a qualitative assessment of significance as part of the funding application, and (b) including methods to hold applicants accountable to deliver the significant benefits they promised in the application narrative The qualitative assessment could be in the form of a clear and persuasive narrative identifying the DCBs the project will provide and giving a persuasive rationale for why its cumulative beneficial impacts are expected to be significant. (Where multiple benefits are present, the benefits that are targeted to DAC needs must be the ones that are significant.) ARB's final reporting requirements should also require reporting of investment results in a manner that enables the public to determine whether the benefits provided were as significant as promised.

III. ARE LOW INCOME RESIDENTS OR HOUSEHOLDS THE PRIMARY BENEFICIARIES?

AB 1532 (2012) requires that all GGRF "moneys shall be used to facilitate the achievement of reductions of greenhouse gas emissions in this state . . . and, where applicable and to the extent feasible . . . direct investment toward the most disadvantaged communities and households in the state."[5] To effectuate this requirement, Step 3 of the DCB Tool requires that low-income households be the primary beneficiaries of all SB 535 investments: "Some GGRF investments will be expressly targeted to low-income residents or households (defined by CalEnviroScreen as no more than 200% of the federal poverty limit). For those that are not specifically targeted, project sponsors must demonstrate that the overwhelming majority of beneficiaries will be low-income."

The Interim Guidance does not directly address this step, either in principle or in most of its requirements for implementing agencies. One criterion in Appendix A does include a targeting component: "Project includes recruitment, agreements, policies or other approaches that are consistent with federal and state law and result in at least 10% of project work hours performed by **residents of a DAC participating in job training programs which lead to industry recognized credentials or certifications**." By contrast, even investments located within disadvantaged communities are not expressly required to target disadvantaged households within these communities, based on income or other demographic factors of socio-economic disadvantage included in CalEnviroScreen.

Recommendations*:* ARB should require SB 535 investments to target benefits toward the neediest households. Some GGRF investments, such as affordable housing, low-income weatherization and low-income solar are expressly designed to target low-income residents or households. In the case of affordable housing, however, more should be done to ensure that the funds are primarily spent to fund **units set aside for households in the low-, very low- and extremely-low income categories**. In the investment categories that can be spent within DACs, but are not expressly income-targeted, such as urban forestry, the **overwhelming majority of beneficiaries should be low-income or otherwise disadvantaged**. Each project located within a DAC should be required to demonstrate that it provides benefits to existing, local socio-economically disadvantaged residents. For example, a park project would demonstrate that 70% of the residents with

5 Health & Saf. Code § 39712 (b)(4). Since AB 1532 applies to all GGRF funds, perforce it requires SB 535 investments to target the households that are most in need.

walkable access to the community asset are low-income and previously had no access to open space income. An EV charging station demonstrates that 65% of the expected users of the facility will be low-income. New transit service demonstrates that it is targeting an area where the predominant share of new riders will be transit-dependent. Finally, the Guidance should do more to ensure that low income residents will be eligible for a significant number of jobs created by SB 535 investments. One way to do this would be to **require** rather than suggest, targeted jobs-related benefits of all project that propose to create new paid positions with GGRF funding.

IV. DOES THE INVESTMENT AVOID SUBSTANTIAL BURDENS?

Step 4 of the DCB Tool contemplates that SB 535 projects should "avoid substantial burdens," such as **increasing exposure to toxics**, **net losses of affordable housing units**, and **displacement of low-income residents or local businesses**, and that ARB should direct administering agencies to monitor possible adverse impacts of projects receiving SB 535 funding. This step aims to ensure that projects do not harm DAC residents and that their net benefits are significant. The Interim Guidance incorporated part of this step by acknowledging the need to avoid displacement harms and requiring all projects in the Affordable Housing and Sustainable Communities program to be "designed to avoid displacement of DAC residents and businesses." (p. A-3). Further, all programs administering SB 535 funds are *encouraged* to "require that projects be designed to avoid displacement of disadvantaged community residents and businesses" (p.20).

Recommendations: No project should increase community exposure health risks or cause a net loss of affordable housing or cause displacement of low-income residents or local businesses. ARB must give direction on **avoiding adverse impacts** and provide **clear direction on anti-displacement strategies**, especially through directing more targeted deployment of co-benefits such as targeted or local hire.

Summary of Recommendations and Next Steps: Discuss recommendations with Quad members. Incorporate suggestions from 535 Coalition members and partners. Prepare proposed redlines to the Interim Guidance, as ARB staff has requested.

ARB’s Fig 3 (p. A-3) provides a helpful “Summary of [the] Process for Administering Agencies to Design and Implement Programs Funded by Auction Proceeds

[currently not attached]

Disadvantaged Community Benefits Tool

Will the investment meet an important community need?

- SB 535 investments should meet the distinct needs and priorities of disadvantaged communities.

Are the benefits significant?

- SB 535 investment benefits should meet a threshold of significance that excludes merely nominal benefits.

Are low-income residents or households the primary beneficiaries?

- SB 535 benefits should be expressly targeted to low-income households OR the overwhelming majority of beneficiaries will be low-income.

Does the investment avoid substantial burdens?

- Projects ***located in*** DACs should not increase toxic exposures, lead to a net loss of affordable housing, or displace low-income residents or local businesses.

Table 3: Illustrative Examples of Common Needs of Disadvantaged Communities (as Identified by Community Advocates)

Public Health and Safety
1. Reduce health harms (e.g., asthma) suffered disproportionately by low-income residents/communities due to air pollutant 2. Reduce health harms (e.g., obesity) suffered disproportionately by low-income residents/communities due to the built environment (e.g., by providing active transportation opportunities, parks) 3. Increase community safety 4. Reduce heat-related illnesses and increase thermal comfort (e.g., weatherization and solar energy can provide more efficient and affordable air conditioning; urban forestry can reduce heat-island effect)
Economic
1. Create quality jobs and increase family income (e.g., targeted hiring for living wage jobs that provide access to health insurance and retirement benefits with long-term job retention) 2. Increase job readiness and career opportunities (e.g., workforce development programs, on-the-job training, industry-recognized certifications) 3. Revitalize local economies (e.g., increased use of local businesses/small businesses) -> supply chain = local or DBE* 4. Reduce housing costs (e.g., affordable housing) 5. Reduce transportation costs (e.g., free or reduced cost transit passes) and improve access to public transportation (e.g., new services in under-served urban and rural communities) 6. Reduce energy costs (e.g., weatherization, solar, etc.) 7. Improve transit service levels and reliability on systems/routes that have high use by low-income riders 8. Bring jobs and housing closer together (e.g., affordable housing in transit-oriented development, and in healthy, high-opportunity neighborhoods)
Environmental
1. Reduce exposure to local toxic air contaminants (e.g., provide a buffer between bike/walk paths and corridors with high levels of transportation pollution) 2. Prioritize zero-emission vehicle projects for areas with high diesel air pollution