

November 1, 2013

Mary Nichols, Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: Comments on AB 32 Scoping Plan Update Discussion Draft

Dear Chair Nichols:

Public Advocates Inc.,¹ Urban Habitat, Breakthrough Communities, Regional Asthma Management and Prevention, and West Oakland Environmental Indicators Project welcome this opportunity to comment on ARB's 2013 Scoping Plan Discussion Draft.

Low-income communities and communities of color share the state's concern for the challenges posed by global warming and climate change. As recognized by AB 32, climate change will disproportionately impact the disadvantaged communities in California that are already disproportionately impacted by the state's air pollution. Proximity to numerous major sources of co-pollutant emissions such as ozone, smog, fine particulate matter, and toxic air contaminants has led to higher rates of respiratory illness, hospitalizations and premature death in these communities. Furthermore, market-based emissions reduction measures such as cap-and-trade have the potential to exacerbate existing health impacts in disadvantaged communities by failing to require direct emissions reductions evenly across the state.²

It is therefore critical that AB 32 implementation both avoids disproportionate adverse impacts on disadvantaged communities, and directs public and private investment to these areas.³

We commend ARB's commitment to achieving these goals as reflected in the Discussion Draft, which includes several key policies that begin addressing the needs of disadvantaged communities. Yet, there are several key areas where the Draft falls short, including its failure to identify transit service improvements as a key GHG reduction strategy.

We support the EJAC Recommendations and write to urge ARB to prioritize and address existing disparities faced by communities that live and work near sources of harmful GHG co-pollutants. It is simply good public policy to prioritize disadvantaged communities/households for a fair share of all investments by the state. By doing so, California will dramatically improve

¹ Public Advocates is a nonprofit civil rights law firm and advocacy organization that strengthens community voices in public policy. We work closely with economic justice, public health, housing, environmental justice, transportation and environmental groups in the Bay Area and across California to ensure that climate change policies meet environmental, economic and equity goals. As a member of the 6 Wins network in the Bay Area and the statewide 535 coalition, Public Advocates works to ensure that California designs GHG emissions reduction strategies and programs that directly benefit the most polluted and most disadvantaged communities.

² While the Adaptation Management Plan will attempt to identify and mitigate increases in pollution, ARB should also develop a plan to ensure that an equitable amount of emissions reductions occur in disadvantaged communities.

³ Heath & Saf. Code §§ 38562(b)(2), 38565.

our air quality and public health and catalyze the transformative structures that will enable us to *rapidly and aggressively* decrease GHG emissions post 2020.⁴ As we and our 6 Wins partners learned from our “Equity, Environment and Jobs” scenario in the Bay Area’s Regional Transportation Plan/Sustainable Community Strategy process, we maximize the co-benefits of greenhouse gas reductions, such as clean air, clean energy and revitalized communities, when we prioritize the needs of disadvantaged communities.

A. Investment Principles

As the ‘master plan’ for the state’s climate change program, the Scoping Plan, among other things, informs the state’s Greenhouse Gas Reduction Fund (“GGRF”) Investment and Expenditure plans. SB 535 requires that a minimum of 25 percent of GGRF funds invested provide benefits to disadvantaged communities, and that a minimum of 10 percent be spent on projects within these communities. To ensure that investments truly “benefit” these communities, about 50 social and environmental justice groups have supported three core principles developed by the SB 535 coalition. First, all funding decisions must be made with **transparency, accountability and the robust public participation** of disadvantaged communities. Second, investments must specifically address **high-priority needs**⁵ of disadvantaged communities. Finally, the benefits of any investment must **significantly outweigh the burdens** that the projects may impose on those communities.⁶

Finally, ARB should monitor all investments to ensure they actually result in GHG emissions and make such information available to the public.

B. Recommendations

We believe that these principles should be complemented in the Scoping Plan by three particular areas of focus, each discussed below: (1) early strategies and investments to reduce emissions in the most overburdened communities; (2) a comprehensive program that will promote equitable implementation of SB 375 in our regions; and (3) a consistent emphasis the provision of quality jobs and economic opportunity throughout.

⁴ “Achieving the highly efficient, low carbon economy necessary to reach the 2050 target will require aggressive development and deployment of the cleanest technologies.” [...] ...80 percent reductions are technically achievable, mostly with technologies commercially available today, but that rapid market penetration will be required to significantly accelerate emissions reductions....” Discussion Draft at p. 74-75 (discussing the aggressive measures that will be necessary to achieve the 2050 emissions cap.)

⁵ In addition to transit service improvements, affordable TOD housing, and emissions reductions, other high-priority needs in disadvantaged communities that also reduce GHG emissions include: (1) clean energy: EJAC recommendation II.b. “The Plan should emphasize the importance of siting of renewable energy, grid storage, and micro-grid projects within communities identified by the CalEnviroScreen tool.” Clean energy investments in low-income communities lead to monetary savings on carbon expenses. (2) energy efficiency: EJAC recommendation II.c. “State and municipal energy agencies should work to lower barriers to pursuing deep energy retrofits to upgrade homes, businesses, and public institutions in low-to moderate income communities.” Energy efficiency investments both reduce GHG emissions and provide cost savings.

⁶ See <http://www.publicadvocates.org/document/principles-for-implementing-sb-535-to-benefit-disadvantaged-communities>.

1. Near-term investment priorities should include early strategies and investments that target and reduce emissions in disadvantaged communities.

GHG co-emissions include criteria pollutants and toxic air contaminants that cause significant harm to human health. Thus, there is a direct relationship between many mitigation actions and health.⁷ Because strategies to reduce GHG emissions can help reduce cumulative health risks posed to populations near major sources of pollution, we urge ARB to design strategies that maximize the co-benefits inherent in this direct relationship. ARB should not only mitigate all unintended emissions increases by including adaptive management policies *in all emissions reduction measures*, but also **proactively target and secure emissions reductions in the most disadvantaged communities**. Targeting the emissions most harmful to human health fulfills AB 32's focus on the public health impacts of GHG emissions and mandate that the state's GHG emissions reduction program maximize environmental and economic co-benefits and "complement[] the state's efforts to improve air quality."⁸

A. ARB should identify the current health risk baseline for disadvantaged communities and quantify and track all progress toward reducing current health risks.⁹

While acknowledging the difficulty of assessing the health impacts of the state's emissions reduction programs, we recommend that ARB and Cal EPA prioritize calculation and inclusion of relative health risk data in the CalEnviroScreen tool.¹⁰ In addition, ARB should conduct a mandatory assessment of the "fuel and energy consumption, and emissions of GHGs, criteria pollutants and TACs"¹¹ for *all* major stationary sources. The results of these assessments should be combined with the CalEnviroScreen to provide a roadmap for reducing high-toxicity emissions in high-needs communities. Such robust and transparent data will inform disadvantaged communities statewide about the baseline health risks in their communities and a range of emission-reduction and mitigation measures.

B. ARB should prioritize funding to expand cumulative risk reduction programs such as the BAAQMD's Community Air Risk Evaluation ("CARE") program.

⁷ "In addition to combatting climate change and its subsequent health impacts, many of these efforts have additional direct and indirect public health benefits. ... assessing the directionality of the relationship between many mitigation action and health based on current empirical literature indicates that overall, the State's climate control program has many health co-benefits, particularly for chronic diseases. Discussion Draft at p. 53.

⁸ Health & Saf. Code 38501(h).

⁹ The EJAC recommends that ARB quantify the "health impacts of past, present and future GHG emissions programs." The Discussion Draft states that "it is challenging to assess the magnitude of health impacts that result specifically from AB 32 mitigation measures." Discussion Draft at p. 53.

¹⁰ See California Communities Environmental Health Screening Tool, Version 1.1 (CalEnviroScreen 1.1) September 2013 Update at p. iii ("The CalEnviroScreen score is not an expression of health risk and does not provide quantitative information on increases in cumulative impacts for specific sites or projects. Further, as a comparative screening tool, the results do not provide a basis for determining when differences are significant in relation to public health or the environment.")

¹¹ See Discussion Draft at p. 36.

Cumulative risk reduction tools such as the BAAQMD's Cumulative Risk Reduction Plans assess the relative health risk presently borne by various populations and prioritize the use of resources to reduce TACs in the most highly impacted areas (i.e., priority communities). The CARE program develops and implements mitigation measures - such as grants, guidelines, or regulations - to achieve cleaner air for the public and the environment, focusing initially on priority communities."¹² The Scoping Plan should include as a near-term program and investment priority funding for additional coordination between Air Quality Management Districts and local and regional jurisdictions to target and reduce the emissions most harmful to human health. ARB should determine and fund all feasible mitigation measures for communities in high-risk areas.

C. ARB should develop additional strategies that prevent unintended pollution increases in disadvantaged communities.

We support the EJAC recommendation that ARB "emulate" its Adaptive Management Plan "to address the unintended impacts of certain technologies within the Renewable Portfolio Standard and the Low Carbon Fuel Standard."¹³ For example, ethanol plants are usually major sources of air pollution. In Central Valley towns where they are sited, increased ethanol production can hinder efforts to improve local air quality. ARB should develop and implement policies that address the potential for increased air pollution impacts in communities near ethanol and electricity production, transmission and distribution as demand increases. Disadvantaged communities simply cannot afford to be the last to enjoy the benefits of GHG emissions reductions, or shoulder the burdens of GHGs reductions obtained elsewhere. While it is true that "many of the actions that reduce GHG emissions also improve the health and well-being of these vulnerable communities," ARB should continue to design emissions reductions programs that focus on "address[ing] ... our current environmental and health disparities."¹⁴

2. ARB must ensure equitable implementation of SB 375.

As the Equity, Environment and Jobs (EEJ) alternative to Plan Bay Area demonstrated, we best meet our GHG and air quality goals when we lead with the needs of disadvantaged communities. The Final Investment Plan¹⁵ targets clean transportation and sustainable communities for the largest share of cap-and-trade revenue investment. But the EEJ scenario demonstrates that development is not sustainable unless it is equitable. Moreover, because California is required to spend twenty-five percent of the revenues in the GGRF to *benefit* disadvantaged communities, the benefits and burdens of all GHG reduction measures must be quantified and available for public review. To ensure that these benefits are delivered as the Legislature intended, ARB should work with regional and local jurisdictions to create funding for programs in disadvantaged communities that provide affordable TOD housing and improved levels of local transit service, as identified in the Final Investment Plan. All expenditures should be made through a public process with ample opportunity for public input.

¹² See <http://www.baaqmd.gov/Divisions/Planning-and-Research/CARE-Program.aspx>

¹³ EJAC Recommendation III. Waste & Biomass, Biomass recommendation d.

¹⁴ See Discussion Draft at p. 53.

¹⁵ The Final Investment Plan is available at http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final_investment_plan.pdf.

A. ARB should explicitly prioritize boosting investment in transit **operations** as part of an effective near- and long-term strategy for reducing GHG emissions.

The transportation sector is “the largest source of GHG emissions in California” and “the primary source of smog-forming and toxic air pollution.”¹⁶ Co-pollutants present in vehicular and diesel emissions cause significant harm to human health and near-roadway exposures are a significant source of health risks in the urban environment. Altering the basic footprint of land use and transportation strategies is a key strategy for achieving GHG emissions reductions. Since affordable TOD housing is a cornerstone of sustainable community development, it is critical that such investments be accompanied by enhanced transit service levels and affordable fares. This requires increasing operating funds, rather than capital funds.

Low-income riders are transit’s core ridership. Thus, if fare hikes and service cuts reduce public transit’s affordability and accessibility, the benefits of an affordable TOD strategy cannot be realized. ARB’s GHG strategies should explicitly prioritize funding for programs that improve transit operations to ensure frequent and reliable service and increase affordability, such as enhanced passenger subsidies and free transit pass programs. ARB should recommend increased funding to the State Transit Assistance Program (as identified in the Final Investment Plan), earmarking that funding for transit operations that serve economically disadvantaged areas. Furthermore, ARB should continue to help develop GHG emissions reduction strategies for the rural areas of the state and increase mobility and connectivity in rural regions through vanpools, shuttles and other strategies.

B. ARB should work with each region to strengthen affordable TOD housing, anti-displacement and fair housing strategies.

We applaud ARB’s inclusion of affordable housing in transit oriented development as a near-term priority investment.¹⁷ Unless housing near transit remains affordable to households of all incomes, the true benefits of TOD cannot be realized.

Displacement is an equally urgent issue, which the Discussion Draft acknowledges.¹⁸ Failure to ensure affordable housing in transit-oriented development can lead to displacement of core transit riders, reducing ridership and GHG reduction potential. If “smart growth” and targeted infill are not accompanied by affordability covenants and other anti-displacement measures, they are likely to displace many low-income residents from transit-connected neighborhoods. Many will move into exurban communities with very low levels of transit service, causing regional VMT to increase as they drive older cars back to their former communities and jobs.

Finally, to maximize the VMT reductions, ARB should work to ensure that affordable housing opportunities are distributed equitably throughout each region. Affordable housing is needed not just in urban core communities, but also in high-opportunity suburban jobs centers. Many of these places are served by transit, and have large numbers of low-wage in-commuting workers.

¹⁶ Discussion Draft at p. 86.

¹⁷ *Id.* at p. 110.

¹⁸ “... [P]ursuing more compact, transit-oriented development . . . without appropriate preventative measures” has the potential to displace current residents...” *Id.* at p. 58.

We urge ARB to also consider the importance, as a GHG-reducing strategy, of funding affordable housing near jobs even where transit service is less robust. ARB should work with the regions to utilize the Jobs-Housing Fit model and coordinate with HCD to ensure that each SCS complies in both its adoption and its implementation with fair housing requirements including HUD's upcoming Affirmatively Furthering Fair Housing rule.

3. ARB must prioritize the creation of economic opportunity and quality jobs for low-income residents.

We fully support the EJAC's recommendations on job creation.¹⁹ To comply with state law mandates that GGRF investments achieve economic co-benefits, all expenditures from the GGRF should be attached to appropriate policies to ensure that expenditures create quality jobs and economic opportunities. These policies include: hiring of disadvantaged or underrepresented residents; collaboration with local Workforce Investment Boards and community-based workforce programs; where appropriate, utilization of state-certified apprentices on building and construction projects, and paid interns in other industries where feasible; prevailing wages on construction jobs; and living wages with health coverage on permanent jobs. These economic standards should apply as broadly as possible, whether the dollars are spent on direct hiring or are distributed to contractors or subcontractors, to consultants, on marketing and outreach, as incentive payments or through other avenues.

We thank you for the opportunity to submit these comments. By incorporating our recommendations above into the AB 32 Scoping Plan, ARB can take important steps in ensuring that all communities equitably enjoy the benefits of California's climate change efforts.

Sincerely,

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Bob Allen, Acting Executive Director, **Urban Habitat**

Carl Anthony & Paloma Pavel, Co-Directors, **Breakthrough Communities**

Joel Ervice, Associate Director, **Regional Asthma Management and Prevention**

Margaret Gordon, Co-Director, **West Oakland Environmental Indicators Project**

¹⁹ EJAC Recommendations at II.h. The Plan should direct implementing agencies (and entities subject to their jurisdiction), in consultation with state workforce agencies, to identify and develop data and criteria for measuring employment outcomes and related co-benefits resulting from AB 32 related public investments. ii. The Plan should direct implementing agencies (and entities subject to their jurisdiction) to develop, in consultation with state workforce agencies, specific goals to train and facilitate employment of workers from disadvantaged communities. EJAC recommends using CalEnviroScreen and other more robust screening tools and localized unemployment data to identify and prioritize communities for job creation programs. 1. Agencies should employ/require project labor agreements and best-value contracting combined with local/targeted hire goals to provide access to career track construction jobs for disadvantaged workers. iii. Implementing agencies should build training partnerships with local institutions that have a proven track record of placing disadvantaged workers in career-track jobs (such as community colleges, nonprofit organizations, labor management partnerships, state-certified apprenticeship programs, and high school career technical academies). iv. In order to maximize carbon reduction and energy savings, the Plan should direct implementing agencies to promote the highest standard of quality work and explicitly include standards for participating contractors and minimum training and skill standards for workers.