



Association of Bay Area Governments
Bay Area Air Quality Management District
Bay Conservation and Development Commission
Metropolitan Transportation Commission

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JOINT POLICY COMMITTEE

September 15, 2014

Mr. Matthew Rodriquez
Secretary, California Environmental Protection Agency
1001 I Street
P.O. Box 2815
Sacramento, CA 95812-2815

Ms. Mary Nichols
Chair, California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: CalEPA Identification of Disadvantaged Communities & ARB Interim Guidance

Dear Secretary Rodriquez and Chair Nichols,

The Joint Policy Committee, which helps to coordinate the regional planning efforts among the Bay Area's four regional agencies, respectfully offers the following comments on the identification of disadvantaged communities (DACs) proposed by the California Environmental Protection Agency (CalEPA) pursuant to Health & Safety (H&S) Code 39711 and the Interim Guidance proposed by the Air Resources Board (ARB) for state agencies administering Greenhouse Gas Reduction Fund monies pursuant to H&S Code 39715.

Background & Summary of Recommendations

As you know, Senate Bill 375 (Steinberg, 2008) directed California's metropolitan regions to plan for a future in which transportation investments and local land use plans are better integrated in order to reduce dependence on single occupancy vehicles, and thereby reduce growth in greenhouse gas (GHG) emissions. Our region's first sustainable communities strategy, Plan Bay Area, focuses growth within locally nominated priority development areas (PDAs) to support the day-to-day needs of residents and workers in pedestrian environments near transit. This goal is also supported by the region's Clean Air Plan.

As the state finalizes its approach to identifying disadvantaged communities for guiding Cap and Trade investments, we urge the Administration to ensure that these policies reinforce the investment priorities set forth in sustainable communities strategies and air quality plans statewide.

Our agencies strongly support the intent of SB 535 (DeLeón, 2012) and SB 862 (2014) to ensure that a minimum percentage of funds be used for investments located within and for the benefit of DACs. As the state's second largest metropolitan region with an extremely high cost of living, we support state policy designed to ensure that Cap and Trade auction proceeds benefit low-income communities.

However, we do not believe Method 1, nor any of the four alternate methods described by CalEPA to identify DACs reflect the reality of the San Francisco Bay Area. Considering that our region comprises 19 percent of the state's population, is home to 17 percent of the state's residents living in poverty and is exposed to levels of diesel particulate matter higher than anywhere except the South Coast, we are deeply concerned that the state's proposal identifies less than 3 percent of the state's disadvantaged communities within our nine counties. As an alternative, we urge you to consider the Bay Area Air Quality Management District's proposed Method 6, plus adjustments to several variables, which we believe do a much better job of identifying disadvantaged communities across California, and are more closely aligned with the intent of SB 535.

Secondly, with respect to the Air Resources Board's Interim Guidance, we recommend the state refine its criteria to acknowledge that transportation improvements provide benefits at a corridor level, and not solely in buffer zones around investments. Similarly, with respect to affordable housing, the state should prioritize its subsidies in transit-rich areas close to jobs that are identified for development in adopted sustainable communities strategies. A further broadening of the criteria would help ensure that those communities most in need of additional transportation investment and affordable housing have the greatest opportunity to benefit from the new Cap and Trade funds.

Third, with respect to process, we respectfully encourage you to allocate more time to the identification of disadvantaged communities and to the methods for determining project benefits so that you can carefully consider public comments before you make a final decision. Given the millions of dollars in high-profile public funds at stake and the scores of highly competitive projects that will be vying for funding, it is imperative that state agencies develop the program guidelines in a transparent manner that allows for meaningful public input.

ARB's scheduled adoption of its interim guidance on September 18 — just two full days after the close of public comment— leaves little opportunity for ARB staff to consider these comments before finalizing their proposal. In addition, the corridor maps that ARB promised to post on its web site had yet to be posted on its web site when this letter was finalized. CalEPA has indicated a similarly rushed schedule with plans to finalize identification of DACs by the end of September. It is not clear to us why these decisions need to be made so quickly. For instance, the proposed schedule released by the Strategic Growth Council indicates that applications for funding will not even be *due* until April 2015, with funds expected to be awarded in June — *nine* months from now. As for the two public transit programs, no time frame has even been released for the program guidelines, suggesting a Notice of Funding Availability is very unlikely before early 2015.

The remainder of this letter provides our detailed comments on the two policy matters at hand: 1) CalEPA's identification of DACs and 2) ARB's interim guidance.

Comments on Identification of Disadvantaged Communities

As noted above, we oppose the use of the CalEPA's Method 1 for defining DACs as it underrepresents the Bay Area's communities most in need of improved transportation options and affordable housing based on an equity analysis conducted as part of Plan Bay Area in July 2013. In addition, many census tracts considered at risk for poor air quality by the Bay Area Air Quality Management District are excluded by Method 1. Some of the most troubling areas where census tracts are excluded from the DAC designation are:

- Bay View/Hunter's Point in San Francisco
- Portions of Richmond and Rodeo
- Portions of West Oakland, adjacent to the Port of Oakland
- Portions of East Oakland and San Jose with very high poverty rates

We are concerned that Method 1 could exclude communities that have the greatest financial hardship and where improved transportation and affordable housing options are needed most, undermining the key goals of SB 535 and cost-effective use of Cap & Trade funds.

Current law clearly allows CalEPA to use population based metrics *or* environmental metrics when establishing its definition of disadvantaged communities. Yet, CalEPA's proposed Method 1 requires that in order for a census tract to be identified as a DAC, it must score medium-high on virtually all 19 criteria. Under this approach, many communities that are severely disadvantaged in terms of key health factors, such as income, air quality, asthma rates and low birth weight, fall outside of the top 20% threshold. Consider the following counterintuitive results of Method 1:

- Of the top 10 *most impoverished* census tracts in the region — where poverty rates exceed 70 percent— not a single one is included in Method 1.
- Of the 46 census tracts that *are* identified by Method 1, 20 are census tracts where the poverty rate is below 50 percent.

We appreciate the extensive time and energy that CalEPA has invested in CalEnviroScreen (CES). Accordingly, we respectfully request that you consider an alternative approach to calculating cumulative scores from CES data, which has been proposed as "Method 6" by the Bay Area Air Quality Management District and discussed by MTC and BAAQMD staff at the September 3 workshop in the Bay Area. This method uses a "product of ranks" approach to calculate a cumulative score from CES variables for each tract and applies uniform weights to all indicators. We strongly believe this approach better reflects the intent of SB 535.

In addition to Method 6, described above, we recommend the following modifications:

- Add "rent burden" as a new criteria — a factor expressly listed in SB 535 as an option, but one not chosen by CalEPA. This factor will help capture the significant cost of living differences across the state and the unique burden facing low-income residents who live in areas such as our region where the cost of housing crowds out other needs.
- Remove the pesticide variable since it does not take into account people living in areas exposed to residential or commercial applications of pesticides.
- Set the threshold for determining disadvantage at the top 30% statewide to ensure that those tracts that are close to the cusp are counted.

Method 6 broadens the scope of DACs in the Bay Area considerably, from 46 census tracts to approximately 221 and from 214,000 residents to approximately 938,000.

Of the DACs that are identified:

- 90% are transit priority areas where the region is trying to focus growth.
- 71% have 30% or higher concentration of households living in poverty.
- 62% are considered “rent-burdened,” where at least 15% of households are spending 50% or more of their income on rent

Comments on ARB’s Interim Guidance

Our comments on ARB’s Interim Guidance focus largely on Appendix 1 of the document, titled *Criteria for Evaluating Benefits to Disadvantaged Communities by Project Type*. These are the draft criteria that state agencies will use to determine whether a project is located within or provides benefits to a disadvantaged community. Our comments are divided into three parts: 1) how transportation projects provide benefits to DACs; 2) the “Low-Carbon Transit Projects” draft criteria; and 3) Affordable Housing and Sustainable Communities draft criteria.

How Transportation Provides Benefits to Disadvantaged Communities

We are encouraged by ARB’s inclusion of a two-step process for evaluating the investment categories under the Cap-and-Trade program. This process acknowledges that many projects provide direct, quantifiable benefits to disadvantaged communities without being physically located in those places.

This is especially important when considering how transportation investments benefit DACs. Transportation operates as a multi-modal *system* for moving people and goods. Transit, bicycle/pedestrian, and travel demand strategies on our expressways and local streets can all provide benefits on a regional scale. Additionally, a considerable proportion of our transit ridership is made up of low-income individuals, many of whom reside in disadvantaged communities. Improving these residents’ access to reliable, clean, and modern transit and expanding service to key destinations reduces dependence on single occupancy vehicles, thereby reducing vehicle miles traveled (VMT) and the associated GHG and other vehicular emissions.

Our primary concern is that the draft criteria’s narrow scope threatens to exclude transportation investments that could provide substantial benefit to disadvantaged communities. While benefits are often experienced by communities in close proximity to the specific investment, given the diverse nature of travel patterns in the Bay Area, a project’s benefits may be experienced in a community located miles away. For example, improving transit service to a job-rich destination can provide considerable benefits to workers who originate their trips in any number of places, not just areas proximate to the project’s physical location.

The draft guidance notes that ARB will be posting a list of “impacted corridors” in addition to ½ mile DAC zones and ZIP codes containing DACs. We strongly support a corridor approach as a more defensible method for identifying areas that would benefit from Cap and Trade investments. The definition of the corridor would likely vary depending on the nature of the program. For instance, truck traffic corridors negatively affecting DACs would be different from key bicycle corridors benefiting such communities. A corridor approach also aligns closely with Plan Bay Area’s regional targets to reduce GHG and coarse particulate (PM2.5 and PM 10) emissions.

Low-Carbon Transit Projects Criteria

We offer these specific suggestions on the draft criteria for Low Carbon Transit Projects. First, it is not clear whether the criteria are meant to be applied to both the “Low Carbon Transit Operations” program (a formula program administered by Caltrans) as well as the “Transit and Intercity Rail Capital” program (a competitive program administered by CalSTA, Caltrans, and CTC.) The guidance is currently silent on the latter program. Since the names of the programs, eligibility and process for project selection and verification differ between the two programs, we request ARB clarify this in the interim guidance. It may be simplest to set forth the criteria for each Cap and Trade program, despite some redundancy, since they are each administered separately.

Second, using ZIP code to determine whether a DAC benefits from a particular project is too limited in certain instances as it ignores the reality of travel patterns, the supply and demand of existing transit service, and how persons from disadvantaged communities access transit. To address this, for the instances when ARB has proposed applying ZIP code, we recommend:

- Adding a half-mile buffer around the ZIP code to avoid arbitrary cut-off points.
- Adding a 1-mile buffer around the DAC to capture the benefit of projects that fall outside the ZIP code (and the proposed ½ mile buffer), but still within 1 mile of a DAC.

We recommend against the proposed benefit criterion that a project demonstrate that it creates “at least 25% of new riders from DACs” as this will be extraordinarily difficult for administrative agencies or transit operators to calculate and verify. While transit operators typically understand their existing travel markets, it is more difficult to estimate where “new riders” may reside. Instead, we recommend focusing on providing benefits to *existing* riders. This is also a way to incorporate travel corridors, and not strictly geographic buffer zones. In addition, we believe a percentage threshold, while attractive for its simplicity, is not appropriate in this case as it could understate the benefit to a DAC served by a large transit operator. We suggest modifying this criterion as follows: “Project will increase or modernize intercity rail (and related feeder bus service), commuter bus or rail transit service for riders on a route regularly accessed by residents of a DAC.”

Finally, we recommend broadening the criteria to include the full range of eligible transit projects under the Low-Carbon Transit Operations Program and Transit and Intercity Rail Capital Program, including “rail and bus capital projects, expanded intermodal facilities and operational improvements that result in increased ridership and reduced GHG emissions.” The Bay Area’s aging public transit system is already affecting service quality and reliability, inconveniencing transit-dependent riders, but also discouraging use of transit by those who might otherwise drive. Rehabilitation and modernization of transit vehicles that have reached the end of their useful life, used in areas serving DACs, should be recognized as benefiting DAC residents. Preventing the loss of existing transit riders due to unreliable services is just as valuable a GHG reduction tool as gaining new riders from a rail or bus expansion. When it comes to public transit systems, “fix it first” is both a good infrastructure and environmental investment.

Affordable Housing and Sustainable Communities Projects Criteria

We offer the following suggestions on the draft criteria for Affordable Housing and Sustainable Communities Projects. While the AHSC program casts the widest net of any Cap and Trade program in terms of project eligibility, the guidance only offers one substantive criterion for judging

if a project provides benefits to a DAC: “Project is within ½ mile of a DAC and reduces vehicle miles traveled, and is designed to avoid displacement of DAC residents and businesses.”

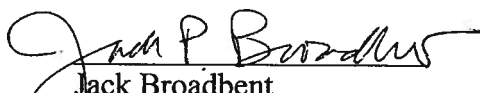
The AHSC program is the broadest of all the Cap and Trade funding programs in terms of project eligibility, but the reference to displacement in this criterion suggests it is strictly a housing program. We recommend the guidelines be revised to define benefit as it relates to *all* project types in the statute, consistent with legislative intent and reflective of the range of sustainable communities strategy investments designed to reduce GHG emissions.

In addition, we recommend that the reference to a project needing to be “designed to avoid displacement” be an option for a project demonstrating a benefit to a DAC, rather than a requirement for a project to fit the “located within” or “provides benefit to” criteria. We are concerned that this requirement could make it more difficult for developers to build affordable housing projects. Anti-displacement policies, while sometimes feasible at the project level, can also be addressed by the local jurisdiction as part of a city-wide policy and should not necessarily be a requirement for individual affordable housing projects.

SB 862 requires that at least 50% of AHSC funds be invested to provide affordable housing. With this requirement in mind, we question ARB’s criterion that affordable housing projects be located within ½ mile of a DAC in order to qualify as *benefiting* a DAC. For affordable housing projects as well, we urge consideration of a corridor-approach and/or a wider buffer zone for projects affordable to residents of DACs. By focusing solely on projects located in or within ½ mile of DACs, ARB’s guidance could actually discourage the production of affordable housing in job-rich areas with good transit service, thereby reducing opportunities for current residents of DACs to move into such areas. Moreover, such narrow criteria could encourage development in and around areas with high rates of pollution, a perverse and undesirable outcome from a public health standpoint.

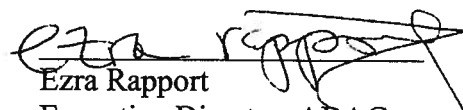
Thank you for giving these recommendations your thorough and sympathetic consideration. Please don’t hesitate to contact Rebecca Long, MTC Senior Legislative Analyst at (510) 817-5889 — if you have any questions or we can provide further assistance.

Sincerely,


Jack Broadbent
Chief Executive Officer, BAAQMD


Larry Goldzband
Executive Director, BCDC


Steve Heminger
Executive Director, MTC


Ezra Rapport
Executive Director, ABAG

cc: The Honorable Darrell Steinberg, Senate President Pro Tempore
The Honorable Kevin DeLeón, Senate President Pro Tempore Elect
The Honorable Toni Atkins, Assembly Speaker

Bay Area Assembly & Senate Delegation

Mr. Brian Kelly, California State Transportation Agency Secretary

Mr. Arsenio Mataka, Assistant Secretary, CalEPA

Mr. Matt Botill, Manager, Climate Change Program, ARB

Ms. Shelby Livingston, Cap & Trade Program, Air Resources Board