TO: California Air Resources Board

FROM: Gordon Piper, 33 Hiller Drive, Oakland, CA 94618; (510) 843-3828

SUBJECT: Comments, Discriminatory Proposed ARB Greenhouse Gas Reduction Fund Guidelines

DATE: August 23, 2015

I am writing as a retired State of California civil rights agency administrator and employee who spent 31 years helping to investigate discrimination complaints involving public and private employers and to enforce State and Federal civil rights laws to share my comments on the proposed California Air Resources Board (ARB) Greenhouse Gas Reduction Fund (GGRF) Guidelines that I believe would result in adding to the discriminatory utilization and investment of both State GGRF funding and the discriminatory administration of the use of this grant funding in violation of the requirements of both applicable State and Federal civil rights laws and regulations, the equal protection requirements in the California and U.S. Constitutions, and the prohibition against preferential treatment and affirmative action contained in section 31 of the California Constitution. My review of the Interim Guidelines adopted by the Air Resources Board in 2014 combined with the investment plan recommendations of the ARB in fiscal year 2014-2015 led me to conclude that your initial Interim Guidelines were the equivalent of a “How To Discriminate” Guide for State agencies administering GGRF funded programs/investments in fiscal year 2014-2015, and the draft GGRF Guidelines will further result in even substantially more violations in this fiscal year and future years of:

* The California Unruh Civil Rights Act prohibition against arbitrary discrimination in the provision of services, privileges and advantages by a public agency based on considerations of race, color, national origin, ancestry, geographic location and income and that mandates “each person be entitled to equal services, privileges, and accommodation in the State of California”;
* The Equal Protection clause in the California Constitution prohibiting discrimination by government agencies and guaranteeing that no person is discriminated against by government agencies and guaranteeing that no person is discriminated against by State government agencies;
* Government Code Section 11135 (a) which states that no person is denied the right to participate in or the benefits of a program receiving State assistance;
* California Constitution prohibitions against preferential –treatment-based considerations of race, color, national origin or ancestry in public contracting and programs;
* California Resources Code Section 71110 in the California Resources Code which mandates The California Environmental Protection Agency, in designing its mission for programs, policies, and standards shall do all of the following: (a) *Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensure the fair treatment of all races, cultures, and income levels, including minority populations and low income* populations of the state”, but which has not been effectively complied with by either CAL EPA or the ARB in its current Interim Guidelines or proposed actions or GGRF final Guidelines and investment recommendations;
* The California Fair Employment and Housing Act and implementing regulations that are supposed to ensure equal treatment in employment practices related to hiring, terminating or training;
* Title VI of the Civil Rights Act of 1964 and implementing regulations of Federal agencies in relation to the Effectuation of Title VI compliance that apply to State agencies that accept Federal funds and combine those with State GGRF funds for programs that do not comply with the various equal treatment and non-discrimination requirements outlined in Title VI and the implanting Regulations for ensuring equal treatment and non-discrimination and that require that “no person is denied the right to participate in or the benefits of a program receiving Federal assistance; and
* Title VII of the Civil Rights Act of 1964 with respect to the requirements for non-discrimination in employment practices related to hiring, terminating or training.

I found in my research in 2014 and 2015 of the actions of the California Environmental Protection Agency and the Air Resources Board and other involved State agencies involved in administering the utilization of State GGRF funds that the investment recommendations/decisions and the guidelines for administering GGRF funded programs resulted in systemic discrimination involving multiple State of California agencies and departments including but not limited to the ARB, the California Environmental Protection Agency, the Governor’s Office, the California Department of Finance in:

* Discriminating against millions of California residents located in many of the 6000 California census tracts that were essentially redlined and not included in the so-called “disadvantaged communities” developed by the California Environmental Protection Agency ;
* A huge class of millions of non-Hispanics whites or Caucasians located in the 6000 California census tract that were denied access to potential funding or program benefits as a result of the actions in largely limiting benefits to so-called “disadvantaged communities” which targeted benefits to primarily minority communities of color in less than 2000 of California’s 8000 census tracts and less than half of California counties;
* Applying criteria in the CALENVIROSCREEN 2.0 benefiting primarily minority residents in less than 2000 California census tracts that had a definite disparate impact on the millions of non-Hispanics whites or Caucasians based on considerations of race, color, national origin and ancestry that would violate the requirements set forth in the U.S. Department of Justice’s Title VI Manual for enforcement of Title VI of the Civil Rights Act of 1964 for programs receiving Federal assistance;
* Forcing many recipient of State GGRF funds combined with Federal funds to potentially violate the requirements of State and/or Federal civil rights laws such in focusing their services or targeting employment benefits based on affirmative action and preferential treatment considerations related to race, color, national origin, ancestry, and/or geographic location and income to benefit low-income communities of color and racial minorities; and
* Intentionally violating obligations in contracts that some State agencies entered into in 2014 and 2015 with Federal agencies for some jointly funded or supported programs that would violate the Title VI regulations of Federal agencies.
* Violating the definition of environmental justice codified in State of California statute at California Government Code Section 65040.12 found at http://coes.lp.findlaw.com/cacode/GOV/1/7/d1.5/4/s65040.12 that states “Environmental Justice is the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies”.

I found in my research online substantial evidence the draft GGRF Guidelines and the previously adopted Interim Guidelines adopted and issued by the California Air Resources Board were greatly influenced by a sophisticated and manipulative coalition of public interest law firms and many minority community organizations and other advocates for affirmative action and preferential treatment benefiting minority communities of color to provide preferential treatment and assure affirmative action to target benefits in public contracting and funding for environmental programs with State and Federal funding based on considerations of race, color, national origin, ancestry, geographic location and income to benefit primarily minority communities of color in violation of the ban on affirmative action and preferential treatment passed Proposition 209 by California voters back in 1996. Proposition 209 banned the use of race and ethnicity in State contracting and this is now included in section 31 of the California Constitution, which states: “The State shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin the operation of …public contracting.” This Constitutional Prohibition against preferential treatment in public contracting appears has not prevented the multiple coalitions organized by the Public Advocates, the Greenlining Coalition, and the Asians Pacific Environmental Network (APEN) from over a series of years from successfully lobbying legislators and State agencies/their staffs including the California ARB and Environmental Protection Agency to help in developing and influencing ARB’s Board and staff in the development of the discriminatory Interim Guidelines for Agencies Administering Greenhouse Gas Reduction Funds and the latest draft GGRF Guidelines that follow extremely closely the April 24, 2013 written recommendations of these coalition members made to ARB Chair Mary Nichols on April 24, 2013 that can be found online at: http://greenlining.org/wp-content/uploads/2013/04/SB535-Coalition-Comments-on-Draft-Cap-and-Trade-Investment-Plan-April-24-2013-Final-2.pdf .

My online research which I documented back in April of this year and also this week revealed that the Public Advocates law firm, the Geenlining Coalition, and APEN among others claimed in a series of website/blog articles that they had influenced:

* The passage of SB535 and AB 1532 that established a framework for spending cap and trade proceeds and the Greenhouse Gas Reduction Fund by “working in high-impact campaigns that **help increase economic opportunity for low income communities of color**” (see <http://www.publicadvocates.org/2014-04-14/public-advocates/hits-bullesey-with-new-staff-attorney>); In another June 16, 2014 Public Advocates website article entitled “A Quick Primer on the Greenhouse Gas Reduction Fund” found at <http://www.publicadvocates.org/2014-06-16/greenouse-gas-reduction-fund-q-and-a>” pointedly clarified “what has been Public Adovocates’ role” relative to the GGRF funds: “Public Advocates is a leading partner in two key coalitions working hard to ensure that GGRF is used to fund program that both reduce greenhouse ga reduction gas (GHG) emissions and **benefit low-income communities of color** (emphasis added): The Sustainable Communities for All Coalition (SC4A) and the SB535 Coalition.”
* The ARB in the development of the Interim Guidelines for Administering Greenhouse Gas Reduction Fund Moneys (see the written comments sent by coalition members on September 17, 2014 to ARB Board Chairman found at <http://greenlining.org/wp-content/uploads/2013/04/SB535-Coalition-Comments-on-Draft-Cap-and-Trade-Investment-Plan-April-24-2013-Final-2.pdf> that went into more detail advocating for increasing local and targeted hiring goals exceeding the “thresholds exceeding 25%” and and also increasing eligibility criteria and making change in “Scoring and Ranking processes to ensure that “benefits to disadvantaged communities are maximized” providing multiple significant benefits, and ARB guidance outlined a process whereby each agency calculates a cumulative scored based on how well several important indicator or eligibility criteria are met” which the coalition contended would allow agencies to make strategic investments focused on benefiting “disadvantaged communities” in 2000 California census tracts targeting “economic for low income communities of color”;
* State budget allocations in June 2014 approved by the Legislature and Governor which included substantial set asides of recommended GGRF funding for projects benefiting so-called “disadvantaged communities” in 2000 census tracts, in which Maria Taruc, state organizing director for APEN, stated in a press release from the Gleenlining Institute found at *http:greenlining.org/issues/2014/calif-budget/make=historic-climate-investments-low-income-communities/)* stated that “the real winners through this budget process are low income communities of color…”;
* The continuing efforts to maximize benefits to disadvantaged communities even more in working with the Legislature and ARB Guidelines and staff; for example, a February 10, 2015 article on the APEN website found at <http://apen-4ej.org/breaking-climate-legislation-promiseds-to-benefit/communities-of-color> noted that efforts were under way to maximize benefits to communities of color or so-called “disadvantaged communities” through the efforts of a new California Environmetnal Justice Alliance (CEJA) named coalition involving some of the same SB535 coalition partners focused on a goal of securing State of California legislation to “at a minimum doubling the care-out for disadvantaged communities within the Greenhouse Gas Reduction Fund to 50%. The object is to “Increase climate investments in disadvantaged communities”and to target disadvantaged communities with preferential treatment/affirmative action benefits to “ensure energy efficiency programs create high-road, long-term, accessible jobs for communities that have suffered from chronic unemployment” apparently located in just 2000 of California’s 8000 census tracts. Among their series of goals is that of adding dedicated staff to the ARB and other agencies to help accomplish this agenda of maximizing the benefits to disadvantaged communities at the risk of institutionalizing discrimination in violation of the ban on preferential treatment in public contracting in the California Constitution and violation of State and Federal civil rights laws that prohibit discrimination in the provision of services, privileges and advantages by public agencies to some residents in California that are being afforded to others based on considerations of race, color, national origin, ancestry, geographic location, or income level. The new coalition like the other coalitions organized and led by Public Advocates and partners have a sophisticated lobbying approach and organizing campaigns with multiple initiatives and mulition colations to achieve these aims (see the link cited above). Their power point information can also be found at [*http://www.scribd.com/doc/28859319/SB-535-Coalition-Engaging-EJ-Communities-for-Transformative-Climate.scribd*](http://www.scribd.com/doc/28859319/SB-535-Coalition-Engaging-EJ-Communities-for-Transformative-Climate.scribd)outlining ways the coalitos successfully influenced the environmental legislation of the State of California.
* In a March 8, 2013 to California ARB Chair Mary Nichols signed by representative of the SB535 Coaliton such as Public Advocates Managing Attorney Richard Marcantonio, Greenlining Legal Counsel Ryan Young, APEN Director Mari Taruc, and California Black Chamber of Comerce President AubryStone, some of the coalition members raised “color” considers as a basis for the ARB and the State of California in making investments of GGRF noting: “Low-income and communities of color, who are the majority of California, can be the catalyst for the culture shift needed to ensure the success of our State’s climate programs. California investment in their (emphasis added) climate solutions is key to this shift and many of these efforts will require investments that may require further shaping of existing programs and new programs to meet these needs”. The letter then went on to have the SB535 Coalition recommend 5 areas for near-term investments, including some of the specific investment targets subsequently prioritized by the ARB for FY 2014-2015 GGRF fund investments such as CAL FIRE’s Urban and Community Forestry Program which as developed and funded in 2014 targeted 100% of tree planting funding and subsequently awarded 29 grants that focused on providing 100% of the benefits to disadvantaged communities in CalEnviroScreen 2.0 that primarily benefit minority communities of color in less than 2000 of California census tracts while redlining and largely excluding millions of residents including a huge class of millions of non-Hispanic whites or Caucasians that were located in the 6000 California census tracts and more than half of California counties that were not identified as “disadvantaged communities” by the California Environmental Protection Agency and the ARB in its Interim Guidelines.
* Online research revealed in a December 14, 2014 newsletter article that a Public Advocates attorney how the Sustainable Communities for All Coalition was advocating to the ARB and other State staff that the SB535 set aside goals actually exceed the disadvantaged communities requirements of SB535, meaning the 25% benefits directtly benefiting the so-called disadvantaged communities and 10% of the projects located within disadvantaged communities. The SB535 Coalition that Public Advocates was helping to lead posted online a pdf in 2012 that noted “After Governor Brown signed SB535 and AB1532 the SB535 Coalition went right to work engaging grassroots, community-based organizations and individual suupporters across the state to educate them regarding the top 5 near term program idas that should be funded by the Greenhouse Gas Reduction Fund. The First two program ideas this SB535 Coalition listed were Community Greening (i.e., Cal FIRE Urban and Community Forestry Program) and Low-Income Energy Efficiency Programs (i..e. Energy Savings Assistance Program, Weatherization Assistance Program). As the Public Advocates article noted by May 2013 both of these recommended priorities for programs were selected by the California Air Resources Board and the California Department of Finance for allocating 100% of their GGRF funding in allocations be utilized either in or to directly benefit disadvantaged communities, which far exceeded the disadvantaged communities set aside requirement of SB535 and which much the much higher required benefit levels of disadvantaged communities primarily benefit the “low income communities of color” that Public Advocates and its coalition partners were seeking to benefit, while violating the requirements of State and Federal civil rights laws and Title VI Regulations in Federal contracts involving millions of dollars with several State agencies such as CAL FIRE and the California Department of Community Services and Development that resulted in restricting 100% of program benefits in a manner that disparately impacted and discriminated against millions of non-Hispanic Caucasian or white residents that lived in census tracts in approximately 6000 of the 8000 California census tracts not designated as “disadvantaged communities” by CAL EPA and the ARB.
* The advocacy activities for preferential treatment that Public Advocates led in 2012-2014 in working with its major partners in the SB535 Coalition appears to have had a substantial influence on California’s Air Resources Board (ARB) that drafted the “Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies” and more recently the latest draft proposed final GGRF Guidelines that include many of the SB535 Principles first submitted on March 8, 2013to ARB Board Chair Mary Nichols in a letter from SB535 Coalition leaders being led by Public Advocates, which can be found at http://www.publicadvocates.org/sites/default/files/library/part\_1\_of\_2\_sb\_535\_coalition\_comment\_letter\_to\_arb\_3-8-13.pdf ­­­­­­­­­­­­­­­­­­ and in the APEN summary of the Top 5 Priorities for GGRF funding found at http://apen4ej.org/wp-content/uploads/2012/09/SB535Co-5-Priorities-brochure-2pg-v2-1.pdf.
* In 2014, the Legislature amended the Health and Safety Code to require that ARB develop funding guidelines for administering agencies that are appropriated GGRF monies to ensure the requirements set forth for investments of GGRF fund in “disadvantaged communities” are met. An online article on Public Advocates website by Staff attorney Marybelle Nzegwu dated October 17, 2014 summarized how “*over the past few months, Public Advocates and our SB535 Coalition partners” had made huge strides in influencing the California ARB and the draft “Interim Guidance”*. The article noted: “*At ARB-hosted public workshops in Fresno, Los Angeles and Oakland, the 535 Coalition turned out to urge the agency to make key improvements to the Draft”* including requiring agencies to maximize benefits to disadvantaged communities “to the maximum extent feasible” rather than simply “whenever feasible”.

One of the areas where the advocacy activity of the two coalitions led by Public Advocates appear to impact these ARB guidelines was on page 13 where the ARB document issued on November 3, 2014 10 days before the grant application deadline for the Green Trees in the Golden State Tree Planting Grant Program noted: *“While statute encouraged all agencies to maximize benefits for disadvantaged communities wherever possible, there are certain programs that are better suited for being located within disadvantaged communities (e.g., urban forestry, weatherization, etc.)…”* On page 14 of the ARB “Interim Guidance” summarized the 100% as the “Total % Targeted to Benefit Disadvantaged Communities” ([http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/auctionproceeds.htm)](http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/workshops/arb-sb-535-interim-guidance-08-22-2014.pdf_%29)for the CAL FIRE Urban and Community Forestry program and allocating $18 million in funds to benefit so-called disadvantaged communities, of which approximately $16 million in 29 grant awards for urban forestry programs were recently made by CAL FIRE that discriminated by targeting benefits to projects benefiting minority communities of color which violated requirements of State and Federal civil rights laws cited at the beginning of this document such as the Unruh Civil Rights Act and Title VI of the Civil Rights Act of 1964 and applicable Title VI Regulations of the U.S. Department of Agriculture. The second area where the ARB Interim Guidelines resulted in discrimination was in the allocation of 100% of the $75 million in Low-Income Weatherization; Renewable Energy in FY 2014-2015 by the California Department of Community Services and Development (CSD) to just serve qualified applicants located exclusively in some of the 2000 California Census tracts identified by CAL EPA and the ARB as “disadvantaged communities”, while other potential California residents in 6000 other California census tracts not identified ads disadvantaged communities were excluded from GGRF funding for these benefits. The draft GGRF Guidelines of the ARB would potentially continue the discrimination in this CSD program if the Governor’s proposed FY2015-2016 Proposed Appropriation was approved to allocate another $140 million just to provide benefits restricted to some of the 2000 census tracts and redlining 6000 other California census tracts.

* On pages 14 and 20-22 in the “Interim Guidance” publication I found that the ARB and California Environmental Protection Agency appeared to be intentionally going along with the lobbying recommendations by Public Advocates and its partners that Public Advocates attorney David Zisser described as: “*high-impact advocacy campaigns that help increase economic opportunity for low income communities of color*”. Zisser noted: *“Public Advocates is a leading partner in two key coalition working hard to ensure that the GGRF is used to fund programs that both reduce greenhouse gas emissions and benefit “communities of color”*. The recommendations that the ARB included on pages 20 to “Maximize Funding to Benefit Disadvantaged Communities” included preferential treatment approaches very similar to those recommended by Public Advocates in its work with the Mega Coalition and SB535 Coalition and already included in CAL FIRE’s Green Trees for the Golden State Tree Planting Grant Program in early 2014.
* In an October 8, 2014 Presentation “What California Climate Policy Means for Urban Forests”, CAL FIRE’s John Melvin cited a series of preferences, privileges and advantages that were being provided by CAL FIRE in the Green Trees for the Golden State Program that I believe violated the prohibitions against arbitrary discrimination and preferential treatment in the California Unruh Civil Rights Act and also Title VI regulations of the U.S. Department of Agriculture that CAL FIRE had pledged to comply with. This preferential treatment in CAL FIRE contract with a combination of GGRF funds supported by the ARB’s actions and Interim Guidelines along with Federal funds resulted in discrimination and differential I the following areas that are very similar to what is now being advocated by language/recommendations in the latest ARB draft GGRF Guidelines that encourage preferential treatment to maximizing benefits by a series of approaches that treat projects that benefit disadvantaged communities more favorably in screening, selection and funding, such as :
	+ *Reduce or eliminate matching if necessary*
	+ *Make establishment care fully eligible for reimbursement*
	+ *Maintenance endowments*
	+ *Allow for advancement of funds when justified*
	+ *Give strong scoring preference for disadvantaged communities*
	+ *Give strong preference for job creation and other disadvantaged community needs*
	+ *Help them find partners*
	+ *We are using USFS grant funds to support early action and outreach by us and partners*

<http://www.fs.fed.us/research/urban-webinars/california-climate-change-policy.php>

Criteria for Special Preference in Green Trees for Golden Gate Tree Planting Program

|  |  |  |  |
| --- | --- | --- | --- |
| **SB535 Coalition****Positions** | **ARB/Cal EPA Interim Guidance****Appendix A Criteria** | **CAL FIRE Green Trees for Golden Gate Tree Planting Specifications** | **Comments** |
| Establish a framework to direct investments to disadvantaged communities; establish a minimum of 25% of investments benefit disadvantaged communities; requires at least 10% of investments are for projects located in disadvantaged communities. | Set aside a percentage of funding or a dollar amount used only for projects located within or provide benefits to disadvantaged communities. | 100% and “Strong preferences” given to environmental justice communities identified in CalEnvirScreen2.0. | The Coalition goals were very similar to affirmative action goals in public contracting. Almost immediately the Coalition pushed for maximizing the benefits so that the 25% was considered the floor rather than the ceiling; resulting in the benefits growing to the 100% level in multiple programs that intentionally discriminates against a huge class of Caucasians. It was initially opposed by CalReleaf and the California Urban Forestry Council who wrote to the Cal EPA and ARB asking that some of the funding be available to non-disadvantaged communities. Cal EPA/ARB and CAL FIRE ignored the input resulting in violation of state and federal laws. |
| Require agencies to maximize benefits to the “maximum extent feasible” rather than simply “whenever feasible.”“Our work with the Air Resources Board on implementing SB 535, led to [guidelines](http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final535-interim-guidance-11-3-2014.pdf%22%20%5Ct%20%22_blank) that direct state agencies to invest GGRF funds to [meet the high-priority needs](http://www.publicadvocates.org/2014-10-17/making-sb-535-promise-a-reality) of communities already overburdened with pollution and the least equipped to deal with its adverse health impacts.”  | Higher incentive amounts for projects provide benefit to disadvantaged communities. | Grant applicants for projects in disadvantaged community might receive “enhanced maintenance funding” subsequently. | Public Advocates claims credit for developing [The ARB Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies,](http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final535-interim-guidance-11-3-2014.pdf) which read like a “How To Discriminate” in providing these special privileges and advantages. |
| Require agencies to maximize benefits to the “maximum extent feasible” rather than simply “whenever feasible.” | Hold competitive solicitations that award extra points to projects that provide benefits to disadvantaged communities. “*Solicitation materials should require applicants to provide a clear description of the expected benefits and proposed metrics for tracking and reporting on those benefits*. “  | Offered “extra points” in promising the “strong preference” would be given to disadvantaged communities as defined in CalEnviroScreen2.0 and required descriptive information of applicants.  | See above. |

SB 535 Coalition Presentation from APEN at <https://sb535workshop.files.wordpress.com/2014/04/mari-rose-taruc-and-bill-magavern.pdf>

Making SB 535 Promise a Reality from Public Advocates, Inc. at <http://www.publicadvocates.org/2014-10-17/making-sb-535-promise-a-reality>

# A New Year’s Resolution for Climate and Justice from Public Advocates, Inc. at <http://www.publicadvocates.org/2014-12-18/a-new-year-s-resolution-for-climate-and-justice>

For all intents and purposes, these coalitions seek preferential treatment for communities of color at the expense of fair treatment of all races and incomes in the implementation of environmental laws, policies and programs as mandated by the Government Code definition of Environmental Justice in California Government Code Section Section 65040.12 cited earlier and as set forth in the requirements of Public Resources Code 7110 that CAL EPA and the ARB are supposed to be abiding by in conducting their programs, policiees, and activities that substantially affect human health or the environment in a manner that ensure “the fair treatment of all races, cultures, and income levels”. Both the coalition members and state agencies seem to be overlooking this fact. Based on my review, the proposed ARB GGRF Guidelines for Agencies that Administer California Climate Investments on your website at [http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm](http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm%22%20%5Ct%20%22_blank) need substantial revision and if adopted as currently proposed would continue to lead to violations of the requirements of the Unruh Civil Rights and the other State of California and Federal laws and Federal Agency Title VI Regulations cited at the outset of my comments that could discriminate against millions of Californians in 75% of or 6000 California census tracts and more than half of California counties and a huge class of millions of non-Hispanics whites or Caucasians. The proposed GGRF Guidelines are severely flawed and need to be basically completely redrafted to ensure full compliance with all of the requirements of these cited State and Federal laws, Regulations, and Constitutional provisions requiring equal protection and prohibiting preferential treatment as mandated by both Section 31 in the California Constitution and the requiremeents of California’s Unruh Civil Rights Act, California Government Code Section 11135 (a) which the State equivalent of Title VI for programs rei, and also the detailed requirements of Title VI of the Civil Rights Act of 1964 and the various Federal agency Title VI Regulations for effectuating compliance with Title VI for the contracts involving various State programs utilizing Federal funds.

The new "draft" ARB proposed GGRF Guidelines were even more discriminatory in their guidance than the previously adopted ARB Interim Guidelines for Agencies Administering Greenhouse Gas Reduction Fund Programs, and both include provisions that promote preferential treatment based on considerations of race, color, national origin, ancestry, geographic location, and income considerations that may be found to violate the requirements of :

* The California Unruh Civil Rights Act prohibition against arbitrary discrimination in the provision of services, privileges and advantages by a public agency based on considerations of race, color, national origin, ancestry, geographic location and income and that mandates “each person be entitled to equal services, privileges, and accommodation in the State of California”;
* The Equal Protection clause in the California Constitution prohibiting discrimination by government agencies and guaranteeing that no person is discriminated against by government agencies and guaranteeing that no person is discriminated against by State government agencies;
* Government Code Section 11135 (a) which states that no person is denied the right to participate in or the benefits of a program receiving State assistance;
* California Constitution prohibitions against preferential –treatment-based considerations of race, color, national origin or ancestry in public contracting and programs;
* California Resources Code Section 71110 in the California Resources Code which mandates the California Environmental Protection Agency, in designing its mission for programs, policies, and standards shall do all of the following: (a) Conduct its programs, polies, and activities that substantially affect human health or the environment in a manner that ensure the fair treatment of all races, cultures, and income levels, including minority poulations and low income populations of the state”, but which has not been effectively complied with by either CAL EPA or the ARB in its current Interim Guidelines or proposed actions or GGRF final Guidelines and investment recommendations;
* The California Fair Employment and Housing Act and implementing regulations that are supposed to ensure equal treatment in employment practices related to hiring, terminating or training;
* Title VI of the Civil Rights Act of 1964 and implementing regulations of Federal agencies in relation to the Effectuation of Title VI compliance that apply to State agencies that accept Federal funds and combine those with State GGRF funds for programs that do not comply with the various equal treatment and non-discrimination requirements outlined in Title VI and the implanting Regulations for ensuring equal treatment and non-discrimination and that require that “no person is denied the right to participate in or the benefits of a program receiving Federal assistance; and
* Title VII of the Civil Rights Act of 1964 with respect to the requirements for non-discrimination in employment practices related to hiring, terminating or training

The ARB would be ill advised and inviting potential discrimination complaints, administrative complaints and investigations, compliance reviews by Federal agency civil rights staff members and compliance reviews by Federal for contract involving State agencies with contracts involving Federal assistance that contain obligations to comply with detailed provisions of Title VI regulations mandating equal treatment and nonpdiscrimination, lawsuits, public criticism, adverse publicity, and might potentially be named in a complaint or lawsuit as a party along some of the other State agencies or subcontractors or recipients of grant funds that would be restrictin benefits to just for projects or benefits for disadvantaged communities in Californiathat might follow some of the current guidance contained in the Interim Guidelines or the proposed GGRF Guidelines that the ARB is now considering that might favor projects or programs benefiting just some residents in 2000 census tracts while restricting access, benefits or denying the same benefits and advantages to persons located in the 6000 California census tracts that are not designated as so-called “disadvantaged communities”. There could be potential action taken by Federal agency civil rights staffs to possibly terminate Federal funds going to some agencies or department who might following guidance in the ARB’s existing Interim Guidelines or the proposed GGRF Guidelines now being considered, and the U.S. Justice Department could potentially initiate legal actions in court to address violations by the State or State agencies/departments of Title VI Regulations by State agencies of the detailed contractual obligations for complying with Federal agency Title VI Regulations that basically bar preferential treatment or differential treatment and discrimination for programs receiving Federal funds that deny access to any persons or benefits to persons that are required by Title VI of the Civil Rights Act of 1964 and implementing Regulations.

The ARB Board should require its staff and other experienced and knowledgeable advisors to immediately carefully review and revise the current Interim Guidelines and proposed GGRF Guidelines to ensure the guidance complies fully with the requirements of the various cited State of California and Federal laws and Regulations and Constitutional requirements. Review of the Interim and Proposed GGRF Guidelines reveals to me serious flaws because will find there is virtually no mention of the requirements of the potentially applicable State of California or Federal civil rights laws and regulations and Constitutional obligations that apply to State agencies/department and to projects, benefits or grant programs funded or supported in part by State of California and Federal funds, and the guidance provided in these Guidelines to administering State agencies and departments administering GGRF programs can violate many legal and contractual requirements that are applicable and not addressed in the ARB Guidelines with sufficient details provided to ensure understanding and compliance with these requirements. I find in my research and interviews a substantial lack of awareness of the requirements of Title VI regulations and requirements and blatant non-compliance with State of California and Federal civil rights laws. There is an opportunity here for ARB’s Board, staff to carefully research and reconsider its exisiting and proposed GGRF Guidelines and to be part of the solution to these discrimination problems and to ensure effective compliance with Title VI and VII of the Civil Rights Act of 1964 and Federal agency Title VI Regulations that might be applicable along with State civil rights laws and constitutional requirements mandating equal treatment and non-discrimination in these Federally-assisted programs and these large State-assisted programs.

After reviewing both the Interim Guidelines and the latest proposed ARB GGRF Guidelines I find that the Calfornia ARB has been largely manipulated by the advocates for preferential treatment and affirmative action action in public contracting and programs of the State of California funded with GGRF funds into adopting Guidelines for agencies administering California Investments that currently violate and may in the future if these proposed GGRF Guidelines by the ARB result in violations of many of the State of California and Federal laws, Regulations and Constitutional requirements I have cited. I worked for 31 years for the State of California civil rights agency (the Department of Fair Employment and Housing) and have substantial experience in investigating discrimination complaint and enforcing State and Federal Civil Rights laws. I also served as a Contract Compliance Officer for the City of San Diego early in my career. I have done extensive research and documented what I feel are systemic violations involving multiple State of California agencies and department that I believe are violating requirements of State and Federal civil rights laws and Federal Title VI Regulations, along with Constitutional requirements for equal protection that prohibit discrimination by public agencies and that are supposed to bar affirmative action/preferential treatment in public contracting by State of California agencies. The draft GGRF Guidelines that the ARB is now considering and proposing continues to provide a whole series of special preferences and advantages to programs in so-called "disadvantaged communities" in less than 2000 California census tracts and to "maximize benefits" for these programs well beyond the 25% level for program benefits to disadvantaged communities included in California SB535.   Preferential treatment is basically being provided based on considerations of race, color, national origin, ancestry, geographic location and income levels that appear to violate the requirements of Title VI Regulations and of other State civil rights laws and regulations, as well as the Equal Protection clauses in the California and U.S. Constitution, and the prohibition in Section 31 of the California Constitution against preferential treatment based on considerations of race in public contracting that was approved by California voters and upheld by a Federal court.

For example, when I read through the draft GGRF Guidelines I found a Table 2-1 that summarized for both GY 2014-2015 and for FY 2015-2016 that in relation to the Low-Income Weatherization/Renewable Energy program of the CSD that the chart revealed that the Governor's Proposed FY2015-2016 Appropriation would raise the discriminatory appropriation for this program from last year's $75 million to $140 million and again 100% of the grant funds would be target to benefit and be located in strictly so-called "disadvantaged communities".  I also found in my online research today that both the U.S. Department of Energy and the U.S. Department of Health and Human Services have adopted and issued Title VI Regulations that would presumably apply to the grant funds being provided to CSD supporting programs such as the Low-Income Weatherization Program, and I believe that CSD may be in violation of the contractual obligations it has for ensuring compliance with the Title VI regulation requirements in its development and administering of Low Income Weatherization that it recommended last year be provided with $75 million to provide 100% of benefits in just some of the 2000 California census tracts that the CAL EPA and ARB had identified as eligible for benefits as “disadvantaged communities”. If the $140 million allocation proposed in your proposed GGRF Guidelines and in the Governor’s FY 2015-2016 Appropriation was allocated again for benefiting 100% again just some persons in 2000 census tracts while excluding potentially eligibile applicants in 6000 other California census tracts this could lead to continuing violations of Title VI regulations and of applicable State of California and Federal civil rights laws and constitutional requirements.

I recently found  a similar Title VI violation in my research regarding the Federal funds granted by the US Forest Service to another State of California agency, the California Department of Forestry and Fire Protection, for urban forestry grant programs, where I believe CAL FIRE did not meet the non-discrimination and equal treatment requirements outlined in the Title VI Regulations of the U.S. Department of Agriculture.  I believe there is a clear and continuing pattern of violations of Title VI Regulations by State of California agencies that are accepting Federal funds and apparently combining these with State of California GGRF funded programs and denying access to and benefits of these programs to millions of Californians in approximately 75% of California census tracts.

In reading the Title VI Regulations of the Federal agencies referenced it appears that all three of the Federal agencies that I have complained to have the authority to conduct investigations and apparently do compliance reviews.  I am concerned regarding the delays of months in follow up in relation to the Title VI complaints that I have filed in relation to the formal acceptance, investigation and remedying of the discriminatory actions involving the State of California agencies that take Federal funds and then apparently violate the requirements of the Title VI Regulations that Federal agencies have issued, in the development and administering of the programs the State agencies are utilizing public dollars to fund or administer.

I found in looking online today at the CSD website at [http://www.csd.ca.gov/Portals/0/Documents/State%20Plans/DOE%20State%20Plan%202015%204-30-15%20DRAFT.pdf](http://www.csd.ca.gov/Portals/0/Documents/State%20Plans/DOE%20State%20Plan%202015%204-30-15%20DRAFT.pdf%22%20%5Ct%20%22_blank) that there was a copy of the 2015 Draft DOE WAP State Plan updated April 30, 2015 or of a contract between CSD and the Department of Energy for $5,244,959 that contained the standard OMB Burden Statement regarding compliance with Title VI requirements.  CSD agreed for the period from July 1, 2015 through June 30, 2016 to comply with Title VI requirements.  This obligated I presume CSD to comply with requirements of DOE's Title VI Regulations in 10-CFR 1040.11.  However, I do not believe that CSD was in compliance either in 2014 or now in 2015 with its Title VI obligations  under the new contract with DOE with respect to the Low-Income Weatherization Program where 100% of the funding from the State of California is being utilized just to benefit qualified  (primarily minority) low-income residents in less than 2000 California census tracts while residents in approximately 6000 census tracts are differently treated in being denied access and benefits from the public funds being allocated.

I read in the proposed GGRF Funding Guidelines that the Calfornia ARB is proposing that State agencies continue to provide a whole series of special preferences and advantages to programs in so-called "disadvantaged communities" in less than 2000 California census tracts and to "maximize benefits" for these programs well beyond the 25% level for program benefits to disadvantaged communities included in California SB535.   The preferential treatment guidance in your existing Interim Guidelines and the proposed GGRF Guidelines I believe based on my research was largely developed based on considerations of race, color, national origin, ancestry, geographic location and income levels that appear to violate the requirements of Title VI Regulations and of other State civil rights laws and regulations, as well as the Equal Protection clauses in the California and U.S. Constitution, and the prohibition in Section 31 of the California Constitution against preferential treatment based on considerations of race in public contracting that was approved by California voters and upheld by a Federal court.

The more time that passes the more institutionalized and pervasive  the discriminatory practices reflected in the existing and proposed ARB GGRF Guidelines are going to become, making it to more difficult to change or eliminate new and expanded discriminatory practices that the various State of California agencies administering billions in State of California GGRF funds are being encouraged or required to adopt in implementing and administering some of these jointly funded or supported State and Federal programs.  There will be more discriminatory programs funded soon by State of California agencies in this fiscal year and potentially continuing into the following fiscal year unless the ARB changes course and its GGRF Guidelines substantially to ensure compliance with the State of California and Federal laws, regulations and constitutional requirements that I have cited. There can also be many violations of Title VII of the Civil Rights Act of 1964, and of the California Fair Employment and Housing Act (FEHA), if ARB Guidelines continue to encourage administering agency requirements for grant recipients of these State and Federal dollars for GGRF programs are forced to discriminate in their employment practices in violation of the Civil Rights Act of 1964 or the FEHA. as I see in the new proposed GGRF Guidelines pressure to ensure "co benefits" by contractors that basically are advocating for jobs to be provided targeting certain racial groups predominantly residing in so-called "disadvantaged communities" in 2000 California census tracts while excluding potential applicants in approximately 6000 California census tracts and more than half of California counties that have larger concentrations of non-Hispanic whites or Caucasians among their residents.

It appears that these advocates based on their initial success in obtaining the set asides of 25% and 10% for disadvantaged community/minority community investments in SB535 felt that essentially they had nullified the preferential treatment/affirmative action prohibitions in government contracting in the California Constitution, or the requirements of Title VI of the Civil Rights Act of 1964/California Government Code Section 11135 (a) that indicated that no person because of their race, color, national origin, or ancestry could be denied access to or the benefits of a State or Federally funded program, and that SB535 and other legislation “trumped” the Unruh Civil Rights Act/Civil Code Section 51 prohibitions against business establishments (including both private sector and public agencies) denying any person in California the same services, privileges and advantages.

I believe that the Constitutional prohibition against preferential treatment and affirmative action based on considerations of race, color, national origin and ancestry in public contracting is not trumped by more recent California Legislature bills such as SB535 and AB1532, and the same thing holds in terms of the Unruh Civil Rights Act/Civil Code Section 51 prohibition against arbitrary discrimination in the provision of services, privileges and advantages by public agencies. Based on my research findings, I find that some public interest law firms and partners in the last three years appear to have been acting as developers and leaders of coalitions focusing on “preferential treatment and affirmative action advocacy” based on considerations of race, color, national origin, and ancestry to benefit “communities of color” focusing on benefits to primarily Hispanics, Asians, and African Americans. The advocacy and actions of these organizations in working with multiple coalitions to promote affirmative action and preferential treatment for “communities of color” rather than helping the California government to address the complex issues that lead to discrimination, appear to be more focused on manipulating Legislators and State of California agencies/employees to grant preferences, to engage in affirmative action and discriminatory practices in providing services and in details and provisions relative to public contracts and funding for programs to primarily benefit “communities of color.”

The recommendations called for a system very similar to the contract compliance programs by government agencies providing preferential treatment in public contracting benefiting minorities with set asides that the California Supreme Court held in “Coral Construction, Inc. v. City and County of San Francisco (2010) (No. S152934.Aug.2.2010) was unconstitutional, which effectively ended San Francisco’s 12 d set aside program. A Federal appeals court also upheld Proposition 209’s validity that barred preferential treatment in public contracting. At the State level, there appeared to be more of an interest in retaining the new millions/billions in GGRF leveraged with Federal funds that funded these programs on the part of the agencies such as CAL FIRE, CSD, Cal EPA, and the ARB than in protecting the rights of all persons that were entitled to participate in and equal access to the benefits of these programs receiving State and Federal funding.

I actually experienced in my researching a potential grant opportunity with the California Department of Forestry and Fire Protections (CAL FIRE) funded by State of California GGRF funds and apparently Federal funds from the U. S. Forest Service that denied me an opportunity to apply for grant funding because of considerations of my geographic location in one of the 6000 California census tracts that the CAL FIRE and the ARB and the State Department of Finance insisted that had to be allocated 100% to potential applicants for projects benefiting so-called “disadvantaged communities”. When I reviewed the ARB’s Interim Guidelines I found they read like a “How To Discriminate” Manual, and that CAL FIRE’s grant administrator and State Urban Forester was following this discriminatory guidance insisting that what the funders required so that is what CAL FIRE was going to do, even if it violated my rights under the Unruh Civil Rights Act to be free from arbitrary discrimination in the provision of services, privileges and advantages, and also of Title VI Regulations of the US Department of Agriculture that set forth detailed obligations to ensure equal treatment and non-discrimination in the Federally assisted Green Trees for the Golden State Tree Planting Grant Program that CAL FIRE awarded approximately $16 million in grants for in July 2015 on a discriminatory basis to projects restricted 100% as recommended by the ARB to serving so-called “disadvantaged communities” in less than 2000 census tracts with predominantly minority populations.

I believe that the plan to restrict/allocate 100% of the urban forestry funding to projects either in or directly benefiting Disadvantaged Communities as identified in Calenviroscreen2.0 (http://oehha.ca.gov/ej/pdf/CES20Finalreport2014.pdf) violated the Unruh Civil Rights Act prohibitions against arbitrary discrimination in the provision of services, advantages and privileges based on considerations of race, color, national origin, ancestry, geographic location, and income. This constituted discrimination against both me as an individual and the two nonprofits (Oakland Landscape Committee and the North Hills Community Association Open Space Committee) that I lead. I also feel that this discriminated against millions of Caucasians in excluded census tracts, denying potential services, funding and benefits for tree planting and maintenance to these excluded California residents. These arbitrary restrictions of funding and special benefits discouraged me and others from applying for these grants, as we would have been excluded from carrying out a tree planting project in our census tract location not identified as “Disadvantaged Communities”. This is an example of how ARB’s existing Interim Guidelines discriminates and how the proposed ARB GGRF might discriminate against many other potential persons on programs funded with billions in GGRF funds might be denied access or benefits because of the preferential treatment and discriminatory features in your existing and proposed GGRF Guidelines that do not comply with requirements of State and Federal civil rights laws that I have cited. I subsequently filed an Unruh Civil Rights Act complaint against CAL FIRE in November 2014 and with the US Department of Agriculture regarding the discriminatory actions that violated my civil rights and acces to the grant program and the benefits of this approximately $16 million tree planting grant program supported by State and Federal funding.

In addition to the two CAL FIRE publications issued in 2014 that contained discriminatory restrictions for the Green Trees Grant Program, the “Cap-and-Trade Auction Proceeds Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies” (http://www.calepa.ca.gov/EnvJustice/GHGInvest) at link“ARB Interim Guidance to Administering Agencies.PDF” (http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final535-interim-guidance-11-3-2014.pdf) issued November 3, 2014--ten days before the CAL FIRE application deadline for the Green Trees for the Golden State Tree Planting Grant Program--, presented even more requirements and recommendations for screening applications and provided special incentives and preferences for projects in and directly benefiting disadvantaged communities, as well as many requirements and “guiding principles” that would result in maximizing benefits in disadvantaged communities to levels that exceeded the statutory provisions in SB535. The guidance being provided by the California Environmental Protection Agency (Cal EPA) and the Air Resources Board (ARB) to agencies such as CAL FIRE reads like a “How To” manual for discriminating and I believe encouraged CAL FIRE representatives to engage in preferential treatment and affirmative actions in the use of State Greenhouse Gas Reduction Fund monies in 2014 and 2015 in violation of both California and Federal civil rights laws, such as the Unruh Civil Rights Act, Government Code Section 11135 (a), Title VI of the Civil Rights Act of 1964 and the prohibition in the California Constitution enacted by voters in 1996 approving Proposition 209 that added a new constitutional provision (Section 31 of Article I) that barred discriminating or granting preferential treatment to any individual or group on the basis of race, color, ethnicity or national origin in public programs or contracting.

ARB’s Interim Guidelines and Proposed GGRF Guidelines recommending preferential treatment for so-called “disadvantaged communities” in 2000 California Census tracts while largely redlining persons and program benefits for persons in most of the 6000 other California census tract utilizing the CalEnvirosScreeen 2.0 methodology has now and will continue to have a discriminatory impact or disparate impact that I believe violates Title VI of the Civil Rights Act of 1964 and helps to establish a discriminatory intent in relation to the ARB Guidelines and their discriminatory impact on millions of persons in the census tracts that are largely ecluded and redlined and denied program benefits. This is another important reason for the ARB to revise its discriminatory existing and proposed GGRF Guidelines.

The process for identifying these disadvantaged communities by CAL EPA and ARB was far from “race neutral”. According to a staff member in the Cal EPA Office of Health Hazard Assessment that developed the Calenviroscreen methodologies, race and color considerations were among those considered in the original work on the Calenviroscreen2.0, and the final Calenviroscreen2.0 certainly has an adverse impact on Caucasians in 6000 of the 8000 California census tracts. I have found discrimination by CAL FIRE under the Unruh Civil Rights Act not only based on “geographic location” but on it having a disparate impact on millions of Caucasian Californians located in the 6000 census tracts that were largely redlined and excluded from receiving grant funding and benefits based on considerations of race, color, national origin and ancestry on Caucasians or whites born in the United States and not of Hispanic ancestry.

On October 31, 2014 Cal EPA came out with a definition of disadvantaged communities that would be utilized in the Calenviroscreen2.0 limiting this to 25% of the 8000 California census tracts, or to 2000 of the 8000 census tracts in California, which combined with CAL FIRE’s insistence on 100% of the Green Trees for the Golden State Tree Planting Grant Program funding going to disadvantaged communities, essentially redlined or excluded most of the persons residing in 6000 California census tracts from receiving any benefits and from equal access to the benefits of the Grant Program. This violates the Unruh Civil Rights Act based on the broad coverage of the Act barring discrimination by a public agency in provision of services, privileges and advantages.

 The 100% limitation on grant funding induced me to research how Cal EPA had defined “disadvantaged communities” under Calenviroscreen2.0 and whether this would have a disparate impact on different groups based on race, color, national origin and ancestry, such as Caucasians in comparison to Hispanics, African Americans, and Asians. The first indication appeared online in a Cal EPA “Analysis of Calenviroscreen2.0 Scores and Race/Ethnicity” chart (http://oehha.ca.gov/ej/pdf/CES20RaceEthnicity\_05082014.pdf) from August 2014 summarizing “Fraction of racial/ethnic groups living in one of the 20% most impacted census tracts” that revealed:

o 1 in 14 were white;

o 1 in 3 were Hispanic

o 1 in 4 were African American

o 1 in in 7 were Native American

o 1 in 8 were Asian/Pacific

o 1 in 9 were other/multiple

This strongly suggests that Caucasian and whites (that were not Hispanic) were being adversely impacted by the way that “disadvantaged communities” had been defined by Cal EPA ,ARB, other involved State agencies and that this might result in discrimination against Caucasians and whites if more research was done in not on the fraction of racial/ethnic groups living in one of the 20% most impacted census tracts but in

the 25% most impacted census tracts, which was the standard announced on October 31. I made multiple requests to Cal EPA in November and December 2014 for a breakdown by race of the 25% and was told that Cal EPA’s Office of Environmental Health Hazard Assessment (OEHHA) hadn’t yet completed developing this information. I submitted a public records request for this information after an OEHHA rep indicated the information had finally been developed. I learned from the representative that race and color had originally been included in the criteria that were evaluated under earlier versions of the CalEnviroScreen2.0, and I was interested to find out what the ramifications or impacts were on different racial groups from the 25% standard that was selected that excluded 75% of California census tracts (6000 out of 8000 census tracts) versus the 25% of the census tracts that were included (2000 census tracts).

 Significantly, I found that Calenviroscreen2.0 methodology had a disparate impact on Caucasians and whites (that were not Hispanic) both in the 84 Oakland census tracts or 77% of all Oakland census tracts that were not identified as “disadvantaged communities” and that there was also a disparate impact on Caucasian and whites in the 6000 California census tracts not identified as “disadvantaged communities” by Cal EPA. Based on the insistence by CAL FIRE supported by ARB that 100% of the combined State and Federal funding from the Green Trees Tree Planting Grant Program would go to projects either in or directly benefiting defined “disadvantaged communities”, the result caused preferential treatment by color, race, national origin and ancestry by census tract locations for persons in California. Significantly higher percentages of Hispanics and African-Americans by race benefit from limiting 100% of the CAL FIRE Green Trees tree planting grant funding for tree planting/maintenance to projects in the 2000 “disadvantaged community “ census tracts than to whites (not of Hispanic ancestry). The information obtained from Cal EPA in January 2015 as a result of my public records request for “a breakdown by race of the population in the 25% of California census tracts included in the definition of disadvantaged communities by Cal EPA versus a breakdown of the 75% of California census tracts that were not included in the definition of disadvantaged communities” revealed:

Of the total population living in the approximately 2000 census tracts identified as disadvantaged, 64% are Latino; 16% are white (while Caucasian or whites other than Hispanics make up almost 39% of the total population statewide); 9.5% Asian; 8.2% African American; 0.3% Native American; and 1.7% other or multiple ethnicities; Statewide persons of Hispanic or Latino origin made up only 37.6% of California residents in the 2010 census (14,013,719 out of 37, 253, 956) but as the Cal EPA analysis revealed 64% of the Hispanic or Latino population in California resides in the Environmental Justice or so-called disadvantaged communities and a substantially larger percentage stands to benefit from the investment in millions of dollars each year in these communities, while only about 10% of the total white population in the 8000 California census tracts would potentially benefit.

 An analysis by Cal EPA of the fraction of racial/ethnic groups living in one of the 25% high scoring census tracts in Calenviroscreen2.0 revealed:

2 in 5 Hispanics or 40% of the total Latino population lived there and would benefit;

1 in 3 African-Americans lived in these census tracts or 33% of the total African-American population and would benefit;

1 in 5 Native American population or 20% of the total Native American population and would benefit;

1 in 6 or 17% of the total Asian population lived in these census tracts and would benefit;

1 in 7 or other/multiple ethnicities lived in these census tracts and would benefit;

while only 1 in 10 Whites or 10% of the total White population lived in these census tracts and would benefit.

In my online research for the City of Oakland and its census tracts, I also found significant disparities based on race, color, national origin and ancestry considerations in looking at the census tracts to evaluate who was benefiting and not benefiting from the definition of disadvantaged communities that resulted in 84 Oakland census tracts being included. In my own Oakland census tract 4001 I found that 70.8% of the 2937 resident in the 2010 census were white and excluded from urban forestry project funding benefits versus only 25% of the persons that were white (19,076 out of 75,546) in the 24 census tracts in Oakland that designated as disadvantaged communities, and therefore eligible for potential project benefits from the Green Trees for the Golden State Tree Planting Grant Program.

Only 4% of the 2937 residents in my Oakland census tract were Hispanic who were denied potential project benefits versus 22% of the persons that were Hispanics (16,810 out of 75,546 total) in the 24 Oakland census tracts defined as disadvantaged communities that were Hispanic and eligible to potentially benefit from project funding in the Green Trees for the Golden State Tree Planting Grant Program.

Only 4.8% of the residents in my Oakland census tract 4001 were African American who were denied potential project benefits versus 30% (22,340 out f 75,546) of the persons that were African American in the 24 Oakland census tracts defined as disadvantaged communities and eligible to potentially benefit from project funding in the Green Trees Grant Program. This analysis documented the discriminatory impact upon Caucasian residents in my census tract of CAL FIRE’s decision and action in the Green Trees for the Golden Tree Planting Grant Program action to limit 100% of the grant funding to projects in or directly benefiting disadvantaged communities.

I believe CAL EPA and ARB aided CAL FIRE in violating my civil rights and Constitutional rights in the last year, along with the civil rights of millions of California residents in the 6000 California census tracts ostensibly redlined and restricted from receiving most GGRF program benefits in programs such as CAL FIRE’s approximately $16 million urban and community forestry grant programs funded by State of California and Federal fund that recently announced 29 contract awards restricted to projects benefiting so-called “disadvantaged communities”. I contacted by phone and email on December 15, 2014 Cal EPA Deputy Secretary for Law Enforcement and Counsel Alice Reynolds. I discussed in detail in my telephone conversation and two detailed emails some of the evidence that showed the discrimination and preferential treatment and the violation of State and Federal civil rights laws and regulations and equal protection clauses in the California and U.S. Constitution including:

* The actions of CAL FIRE and of Cal EPA and the ARB that led me to file this Unruh Civil Rights Act complaint with DFEH and also a Title VI complaint DFEH Complaint No. 411904-134246with the USDA Office of Civil Rights in Washington regarding the apparent violation of Title VI of the Civil Rights Act of 1964, as well as the provisions of California Government Code Section 11135 (a) and implementing regulations in the California Code of Regulations Title 22 Sections 98211 (c) and 98100;
* The evidence of the disparate impact of Cal EPA’s CalEnviroScreen2.0 and the decision by Cal EPA limiting the definition of disadvantaged communities to 25% of California census tracts (2000 out of 8000 census tracts) versus the 6000 California census tracts that would result in benefiting a significantly higher percentage of Hispanics, African Americans, Asians, Native Americans, and Asian/Pacific residents in comparison to whites/Caucasian, based on CalEPA’s “Analysis of CalEnviroScreen2.0 Scores and Race/Ethnicity”;
* My complaints to CAL FIRE representatives (including Forester I James Scheid, Urban Forester John Melvin, EEO Rep Christine Martinez, General Counsel Stephanie Shimazu, Chief of the Office of Program Accountability Windy Boulin, and the office of CAL FIRE Director Ken Pimlott) and Governor Brown about the arbitrary discrimination and discriminatory features in the Green Trees for the Golden State Tree Planting Grant program that violated the Unruh Civil Rights Act as well as other State and Federal laws and regulations.
* The failure of these State representatives to modify the Request for Proposals for the discriminatory Green Trees for the Golden State Tree Planting Grant Program prior to the November 13 grant application deadline to ensure nondiscrimination and to allow project applications for potential projects on a non-discriminatory basis by CAL FIRE in any California census tract;
* My filing of a formal complaint with CAL FIRE General Counsel Stephanie Shimazu on November 11, 2014 pursuant to Government Code Section 1135 (a) regarding the Grant Program of CAL FIRE that discriminated I felt based on color, race, national origin and census tract locations, and my not receiving any subsequent communications from Ms. Shimazu or CAL FIRE;
* Other State programs funded by GGRF funds that may also arbitrarily discriminate in violation of the Unruh Civil Rights Act, such as the $75 million in funding being set aside for the Low Income Weatherization Program for disadvantaged communities in the California Department of Community Services and Development;
* I further pointed out that the “Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies” issued by the ARB and Cal EPA on October 31, 2014 promotes discrimination and preferential treatment in other State administered programs by encouraging them to maximize benefits using different approaches for GGRF funded programs for disadvantage communities while denying participation or denying rights to the benefits of other State and/or Federally assisted programs to persons in many census tracts not identified as “disadvantaged communities”;
* Section 71110 of the California Resources Code mandates “The California Environmental Protection Agency, in designing its mission for programs, policies, and standards shall do all of the following: (a) Conduct its program, policies, and activities that substantially affect human health or the environment in a manner that ensure the fair treatment of all races, cultures, and income levels, including minority populations and low income populations of the state.;” I believe this requirement mandates the “fair treatment of people” of “all races” and “income levels” and that the Environmental Protection Agency needs to ensure that its programs, policies and standard do not result in unfair or discriminatory treatment. It doesn’t appear that Cal EPA ever followed up on this requirement.
* I further noted: “I believe this obligation would mandate a review of:
1. the Calenviroscreen2.0 system that doesn’t currenly ensure fair treatment of all races, cultures and income levels;
2. how the decision to designate 25% of California census tracts in California impacts persons by race and income level in California and the GGRF funding in some instances to exclusively benefit disadvantaged ommunities or persons in disadvantaged communities;
3. the Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund moneys issued by Cal EPA and the Air Resources Board , which do not appear to necessarily ensure “fair treatment of all races, cultures and income levels” and appear to encourage some State agencies to grant more services, preferences, and advantages to only some persons located in some locations with predominantly minority population and/or low-income populations of the State;
4. the recommended 100% allocation of GGRF funding made by the AirResources Board and Cal EPA in the Interim Guidance for the $17.8 in urban forestry program funding by CAL FIRE and the $75 million of LIWP program funding of the California Department of Community Services and Development that would not ensure “fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state;
5. the requirements of the Unruh Civil Rights Act, Government Code Section 11135 (a), California Administrative Code Title 22 Section 98211 (c) and 98100, Title VI of the Civil Rights Act of 1964 and Section 601 and 602, and the Equal Protection Clauses of the California Constitution and 14th Amendment of the U.S. Constitution, and whether you’ve adequately considered these in relation to the requirements of California Public Resources Code Section 71110 relative to ensuring by Cal EPA, the State, and State agencies of fair treatment of all races, cultures, and income levels, including minority populations and low-income populations of the state.”
* I also indicated: “I would like to see meetings convened promptly by Cal EPA with interested/involved parties in view of your responsibilities under various laws and regulations to discuss further what is required and what needs to be one and what needs to be changed as the State moves forward in relation to administering the GGRF funds in 2014, 2015, and future years in relation to not only environmental justice considerations but also the requirement of State and Federal civil right laws and the Equal Protection Clauses in the Constitutions. Some discussions and changes are needed to ensure compliance with the various laws and requirement of these laws and regulation, in order to avoid more complaints or possible litigation that might impact GGRF funding, environmental justice implementation by the State and Federal agencies, Federal funding coming to the State for certain programs, and compliance with the requirements of State and Federal civil rights laws/regulations. I would be interested in meeting with you and some other EPA representatives to try to discuss and start to address some of these issues. There are some other interested parties that also might contribute constructively to discussions that might be convened in Sacramento and/or some other locations such as San Francisco or Los Angles. I believe some mistakes have been made in the first year of the GGRF program implementation by the State and that action is needed to avoid repeating the mistakes and compounding problems in 2015 and future years of GGRF implementation and administering efforts by State agencies.”
* I talked again in January 2015 with Cal EPA’s Counsel and Deputy Secretary for Law Enforcement Reynolds by telephone, and was advised that some high level State representatives were considering some of the points that I had raised as noted above, but no meeting was ever arranged nor was there follow up written or telephone communication by Ms. Reynolds regarding any steps taken by Cal EPA or other State agency representatives to be responsive to the multiple points I had raised as summarized above.
* Rather than be proactive in responding to my concerns, I actually encountered delays in 2014 in attempting to obtain a breakdown from Cal EPA showing by race/color the Cal EPA “Analysis of Calenviroscreen2.0 to ensure the fair treatment of people of all races, cultures and income levels in 2.0 Scores and Race/Ethnicity” and had to make a public records request to obtain the information in January 2015. I feel the Cal EPA and ARB failed to follow up when this analysis revealed the evidence of disparate impact based on considerations or race/color upon Caucasians, and to address the potential violations of State and Federal civil rights laws and regulations and the Constitutional requirements for equal protection prohibiting discrimination by government agencies and barring preferential treatment/affirmative action related to considerations of race, color, national origin, and ancestry.
* I believe no changes were made by Cal EPA or the ARB in the Interim Guidance for Agencies Administering Greenhouse Gas Reduction Fund Moneys to eliminate recommended preferential treatment for disadvantaged communities that was intentionally crafted to preferentially treat and benefit “communities of color” by major SB535 Coalition partners;
* Similarly, it does not appear any changes were made by Cal EPA and the ARB in the percentage allocation provisions in the “Interim Guidance” publication for the 100% requirements for urban forestry investments at CAL FIRE or the similar requirements in the Low-Income Weatherization Program of the California Department ofCommunity Services and Development that would discriminate against Caucasians and low-income residents in half of California counties and 6000 of the 8000 California census tracts, even though this would appear to violate the nondiscrimination requirements in the Unruh Civil Rights Act, California Government Code Section 11135 (a), and Title VI of the Civil Rights Act of 1964 based on considerations of race, color, national origin and ancestry impacting many Californians in excluded census tracts.

In relation to my review of the ARB’s Interim Guidelines that included specific FY 2014-2015 Appropriations for different State programs funded with $872 million in GGRF funds and the proposed Appropriations included in the latest proposed GGRF Guidelines for FY2015-16 for $2.237 billion (subject to change in decision by leaders the Legislature and State agencies) which are summarized in Table 2-1 in these Guidelines along with “Estimated Minimum to Benefit Disadvantaged Communities in both years , I wanted to share with the Air Resources Board members and staff information I obtained from my research into how the allocations for GGRF funded were established for Potential Funds to Benefit Disadvanatged Communities. I believe it is relevant to consider how the 100% allocations for GGRF program appropriations for were reportedly made in 2014:

* I was informed on October 23, 2014 by CAL FIRE grant administrator and State Urban Forester in relation to the $17.8 million in urban forestry funding that primarily funded the Green Trees for the Golden State Tree Planting Grant Program that I was denied the opportunity to be considered eligible to apply for because of my census tract that was not designated as a disadvantaged community by CAL EPA and the ARB that “It was later decided by the Administration (Dept. of Finance I think) that all of the $17.8 million for Urban Forestry must be used in or directly serving disadvantaged communities as defined using Calenviroscreen2.0”.
* When I contacted the State Department of Finance in approximately early January of 2015 regarding my Unruh Civil Rights Act complaint, I inquired why the Department of Finance had imposed this requirement on CAL FIRE and if it could be changed in 2015. I was directed to talk with Department of Finance Assistant Program Budget Manager Matt Almy, who is responsible for Natural

Resources, Energy, Environment; Capital Outlay including Resources Environment/Environmental Protection Agency. Mr. Almy in our conversation explained that in developing the recommendations for GGRF investments for 2014-2015 some programs were selected for recommended investments by the Department of Finance that had little or no/zero greenhouse gas reduction benefits to speak of, such as the $250 million investment that the Governor wanted for the High Speed Rail project, as well as some other program investments that were recommended ultimately by the Department of Finance. To achieve the SB535 set aside standards, the Finance Department had raised the allocation for investment for the $17 million in GGRF funds in urban forestry programs at CAL FIRE to 100% in disadvantaged communities to balance investments that offered virtually no greenhouse gas benefits. Mr. Almy didn’t seem to care whether the 100% requirement for investment of the urban forestry GGRF funding in the Green Trees for the Golden State Tree Planting Grant Program might discriminate against Caucasians or provide preferential treatment to communities of color, or

violate State and Federal civil rights laws and equal protection requirements or contractual obligations pursuant to Federal agency Title VI regulations. He indicated there would be a similar amount of funding allocated in 2015 of GGRF funds/State funds for urban forestry to CAL FIRE in the budget, and apparently no change will be made or recommended by the Department of Finance for the 100% requirement for investment of these funds in disadvantaged communities (even if this discriminates based on considerations that might violate the Unruh Civil Rights Act), because there are still programs being recommended for investments by Finance and the ARB, such as the $250 million for High Speed Rail, that have little or no greenhouse gas reduction benefits.

* I understand from reviewing the Governor’s Proposed FY2-15-2016 Appropriations included in the ARB’s Draft GGRF Guidelines as shown in Table 2-1 along with “Estimated Minimums to Benefit Disadvantaged Communities” for FY2015-2016 that the Governor’s Office was again proposing to recommend in the allocation of $2.237 billion that the Legislature and the ARB go along a recommending for allocating twice as much this year in GGRF funding be allocated for his favorite program area High Speed Rail (HSRA) that had no indicated benefit to either GGRF reduction of Benefit Disadvantaged Communities noted, raising the sum from $250 million in FY 2014-2015 to $500 million proposed for FY2015-2016. Based on my research and interview with Department of Finance representative and Assistant Program Matt Almy the allocation by the State of California representatives in GGRF funds by programs aren’t really scientifically based or strictly linked to complying with Legislative madates in SB535 or greenhouse gas reduction or environmental justice considerations, but governed in part by old fashioned “pork barrel” or political considerations of favored programs such as the Governor’s desire for GGRF investments to benefit a program benefit with “little or no/zero greenhouse gas reduction benefits to speak of” such as the half billions dollars being recommended for appropriate in this year’s listing of ARB Programs that are to be funded. Footnote #3 in Table 2-1 of the proposed GGRF Guidelines states that “The minimu SB 535 targets can be met without including the High-Speed Rail project, but the project is expected to provide additional benefits for disadvantaged communities beyond those quantified in this table.” The Table 2-1 doesn’t show any expected benefits for disadvantaged communities.
* I believe that the inclusion of pork barrel or favored programs based on political considerations that are evident in the allocations in FY2014-2015 and proposed appropriations by the Governor’s Office for appropriations in FY2015-2016 are significant in looking at the failure by the State agencies involved and staff or elected officials involved in making important decisions regarding the percentages of funds that were allocated both in the last fiscal year (2014-2015) and this fiscal year (starting July 1, 2015-June 30, 2016) by program and agency that have resulted in disproportionately high percentages of funds being allocated for certain programs such as Urban Forestry and Low Income Weatherization where the 100% allocations that were made in the last last fiscal year resulted in violations of the requirements of State and Federal civil rights laws and violations/non-compliance with contractual obligations for compliance with Title VI Regulations of the Civil Rights Act of 1964 that State agencies had in accepting and entering into contracts supported with Federal funds to ensure detailed compliance with the non-discrimination and equal treatment requirements that should have been also enforced in ensuring compliance with the requirements of the State civil rights laws and Constitutional requirements cited above, such as the Unruh Civil Rights Act, Government Code Section 11135 (a), the prohibition against preferential treatment contained in Section 31 of the California Constitution, the requirements in the codified Government Code definition for Environmental Justice in Section 65040.12 or California Resources Code Section 71110 to be fair to all races, cultures and income or income levels. It is my assessment based on my research that involved State agencies/departments last year that were involved in the violations in the last fiscal year and that might be yielding like the ARB in these proposed GGRF Guidelines to allowing discriminatory allocations of GGRF funds to be made that are inconsistent with the provisions of SB535 and with legal and contractual requirements for equal treatment, non-discrimination and barring preferential treatment in state contracting and programs have allowed pork barrel considerations or affirmative action/ monetary and job gain considerations related to race, color, national origin, ancestry, geographic location and income to serve as an improper justification for the development and implementation of discriminatory funding decisions in State of California GGRF/Federally supported programs, and the development of discriminatory ARB Interim Guidelines and proposed final GGRF Guidelines, and the development of discriminatory CalEnviroScreen2.0 methodologies and designations of so-called “disadvantaged communities” that would be used in part to dictate GGRF funding allocations in some programs that violate legal an contractual obligations to ensure non-discrimination and equal treatment and to fully enforce compliance with State and Federal civil rights laws, with constitutional requirements for Equal Protection barring discrimination by public agencies, and the violation of the prohibition against affirmative action and preferential treatment in public contracting in Section 31 of the California Constitution that has taken place and that may continue to be violated if these proposed ARB GGRF Guidelines and the Governor’s proposed FY 2015-2016 Appropriations as summarized in these ARB Guidelines were approved and implemented. Stated in another way, affirmative action considerations of advocacy organizations/minority community organizations and pork-barrel political considerations for favored programs should not be allowed to trump or violate the requirements of important State and Federal civil rights laws and Federal agency Title VI Regulations/the State of California’s Government Code 11135 (a) non-discrimination and equal treatment equivalent of Title VI guaranteeing the rights of all Californians, or constitutional rights in the California Constitutions and U.S. Constitutions to Equal Protection that bar discrimination by State or public agencies or that bar affirmative action/preferential treatment in public contracting by the State or State of California agencies or departments. The State Legislature, the Governor and the Governor’s Office and its Office of Planning and Research, the Department of Finance, the California Air Resources Board, the Environmental Protection Agency, the California Department of Justice, the California Department of Fair Employment and Housing and other involved State agencies have an obligation to comply with these important State and Federal laws, regulations and Constitutional requirements. No amount of sophisticated campaigning or lobbying by public interest laws firms, minority community coalitions, and environmental activists, or others with self-interests in securing allocations of State or Federal funding for affirmative action or economic gain reasons should be allowed or permitted by either State or Federal agencies to result in allowing the State’s GGRF program or the Agencies Administering California Climate Investments to discriminate and violate the civil rights and other legal rights of California residents in any or all of California’s 8000 census tracgts as mandated by the California Constitution and U.S. Constitution, and requirements of State and Federal civil rights laws and regulations, and requirements of government regulations applicable to State and Federal contracts.
* The ARB Board and CAL EPA administrators and staff need to immediately address the problems in relation to their Interim Guidelines and these proposed GGRF Guidelines that violate a public trust and obligation to ensure compliance with the legal requirements of State and Federal Civil rights laws and constitutional requirements as described above, and to revise these Guidelines that it appears some individuals and groups manipulated to influence State staff and agencies to promote and dictate affirmative action and preferential treatment by these advocates for affirmative action/securing benefits for low-income communities of color while discriminating and violating the legal and civil rights of millions of Californians in 75% of California census tracts and discriminating against a huge class of millions of non-Hispanic whites or Caucasians in denying benefits and potential access to programs or grant funding. The State and Federal Constitutions and equal protection and other clauses prohibit preferential treatment and discrimination by public agencies, and no one in State service is above the requirements of State and Federal civil rights laws and obligations to ensure equal treatment and non-discrimination for all California in all California census tracts. The ARB Interim Guidelines and proposed GGRF Guidelines do not meet the legal requirement and mandated contractual obligations for State agencies to ensure non-discrimination and to bar preferential treatment and affirmative in public contracting. The ARB and CAL EPA need to start afresh in drafting GGRF Guidelines and also to replace the CalEnrio Screen 2.0 methodology and approach to ensuring the fair treatment of all races, cultures and incomes in relation to the requirements of the Unruh Civil Rights Act, Government Code Section 11135 (a),California Resource Code Section 71110, Section 31 of the California Constitution, the Equal Protection clauses in the State and U.S. Constitution barring discrimination by State government and public agencies, the requirement of Title VI and Federal agency Title VI regulations for the effectuation of Title VI, and the requirements of the California Fair Employment and Housing Act and Title VII of the Civil Rights Act of 1964.
* GGRF Funding needs to be provided as part of corrective action and an appropriate remedy to victims of discrimination that may have been caused by the ARB Interim Guidelines and Investment recommendations in the last fiscal year or this year to develop and carry out on a regular basis much needed training and perhaps technical assistance publications/online materials to ensure much enhance the apparently large lack of understanding and compliance with the requirements of these cited laws by State agencies/departments, their staffs, State and local elected officials, by the California Department of Fair Employment and Housing and the State Department of Justice staff, by the public interest law firms and other organizations that have been lobbying for affirmative/preferential treatment/securing benefits for minority communities that may violate requirements of State and Federal laws and regulations and contractual obligations, and the general public. Funding and some staff is needed to ensure more effective enforcement of some of the laws and Regulations that have not been complied with or that lack complaint procedures and procedures for ensuring appropriate investigations and enforcement of some of these laws such as Government Code Section 11135 (a), California Resource Code Section 71110, section 31 of the California Constitution, the Equal Protection Clause in the California Constitution.