

September 15, 2014, with updated list of signatories as of September 17, 2014

Mary Nichols, Chair
California Air Resources Board

Re: Comments on Draft Interim Guidance on Investments to Benefit Disadvantaged Communities

Dear Chair Nichols and Members of the Air Resources Board:

We commend ARB for including in its Draft "Interim Guidance on Investments to Benefit Disadvantaged Communities" (released August 22) many of the principles articulated in our August 20, 2014 letter from 60 organizations statewide. The Draft Guidance recognizes that benefits should address the important needs of disadvantaged communities; that the value of benefits should be maximized and that community input should be incorporated into project design. The **535 Coalition, Sustainable Communities for All Coalition, the 6 Wins for Social Justice Network, the California Environmental Justice Alliance** and other social equity and EJ coalitions across California have a shared goal of ensuring that all SB 535 investments provide significant benefits to California's disadvantaged communities and households.

In a number of critical ways, however, the Draft Guidance falls short in translating the principles into actionable processes necessary to ensure that SB 535's promise of benefits to disadvantaged communities becomes a reality. We write to reinforce the positive aspects of the Draft Guidance and to suggest solutions to the following key shortcomings:

1. While location is a key factor, benefits should be targeted to disadvantaged beneficiaries, such as low-income households, workers with barriers to employment, and low-income transit riders.
2. Each project's net benefit must be assessed to ensure it provides significant benefits after harms, such as bringing additional polluting facilities into overburdened neighborhoods or displacing current residents are considered.
3. Investments must be ranked and scored based on how they meet several important environmental, economic and public health criteria and the most significant benefits prioritized.
4. Projects that authentically engage members of disadvantaged communities should receive priority.
5. SB 535's two set aside categories should be counted separately so that a minimum of 35% of GGRF funds is spent to benefit disadvantaged communities and populations.

We believe these recommended improvements will ensure that SB 535 investments result in tangible, meaningful benefits for disadvantaged communities and households in California.

1. ARB's Guidance Must Avoid Using Location as the Sole Touchstone for Assessing Whether a Project Provides a Benefit to Disadvantaged Communities.

The Draft sets out the appropriate fundamental guiding principle: that community benefits should "directly address[] important needs commonly identified by [disadvantaged] communities, or

address[] a key factor that caused an area to be identified as a disadvantaged community.”¹ It also acknowledges that the *location* of a project is neither sufficient to determine that it provides a benefit to a disadvantaged community nor necessary to ensure that it provides such a benefit.²

The draft criteria in Appendix 1, however, predominantly boil down the evaluation of community benefits to geographic location. This approach has two major flaws: (a) under the Draft, virtually any investments within an identified disadvantaged census tract would count as a disadvantaged community benefit, regardless of the importance of the need addressed or accessibility to socioeconomically disadvantaged populations; and (b) many investments that would offer substantial benefit to disadvantaged communities are excluded because they are not adjacent to an identified census tract.

- a. ARB must require more than simply the location of a project within a disadvantaged community to count as a benefit to a disadvantaged community.

Location within a disadvantaged community alone should not be sufficient to qualify a project for the 10% funding set aside. Location alone does not guarantee that an investment will benefit disadvantaged residents. For example, a rail station may not produce a direct benefit for residents if the cost of transportation is out of their price range, or does not provide access to needed destinations. In fact, it could increase pollution burden by attracting more vehicles (passenger, medium, and heavy-duty) to drive into the area or by causing gentrification in areas without anti-displacement policies. To mitigate potential negative harms and to bring direct benefits to residents, the project should include community benefits such as affordable housing, local and targeted hiring, and or subsidize transit passes.

Yet, under the Draft Guidance, transit investments and many others appear to qualify toward SB 535 requirements without any further analysis beyond location.³ At the same time, we recognize that some investments do inherently provide meaningful benefits to disadvantaged communities by virtue of their geographic proximity to these communities. For example, urban trees planted in urban heat islands effectively mitigate that impact and bring benefits to local disadvantaged residents. ARB Guidance should require agencies to undertake careful analysis of projects both located in and immediately adjacent to disadvantaged communities to ensure the benefits flow to socio-economically disadvantaged residents.

- b. ARB should expand the “Provides Benefit To” criteria to include investments that benefit disadvantaged populations regardless of where they are located.

Conversely, some investments that increase the mobility of low income populations and offer them access to opportunity may provide significant benefits to disadvantaged communities regardless of their location. Disadvantaged households and populations are found in disadvantaged census tracts, along impacted corridors, in small neglected neighborhoods adjacent to more affluent communities and elsewhere. For example:

- Homes affordable to lower-income households benefit disadvantaged communities wherever they are built, as they increase choices, mobility, and access to opportunities for disadvantaged

¹ Draft Interim Guidance at pp. 1-2.

² See *id.* at p. 11 (“Both of these approaches require that the project provide direct benefits to a disadvantaged community, regardless of location.”)

³ Draft Interim Guidance Appendix 1 p. 1-1 (“Step 1”).

communities and households. This is already explicitly noted in the list of needs identified by community advocates (see item 8 on p. 17 of Draft Guidance), but is not included in the draft criteria for evaluating affordable housing projects (see p. 1-2 in Appendix 1). To provide these benefits, the housing need not be adjacent to a specific disadvantaged area. Occupancy preferences or tailoring new housing to meet needs specifically identified by disadvantaged communities could potentially be employed to strengthen this connection.

- Transit capital and operations funds invested along “impacted corridors” in addition to within ½ mile of a disadvantaged community can provide benefits to disadvantaged residents if fares and routes allow low-income people to access the transit lines. Similarly, transit passes or vouchers targeted to lower-income riders are a great method to reduce fares for transit’s core ridership, and provide a benefit to disadvantaged communities.

We recommend that ARB refine its definition of what it means to “provide a benefit to a disadvantaged community” to include benefits to disadvantaged households and populations.⁴ Doing so will help avoid the perverse outcome of causing GGRF transit and affordable housing investments to isolate, rather than benefit, low-income residents.

2. The Guidance Must Ensure that Projects Avoid Displacement and Other Burdens.

Investments that burden or displace disadvantaged communities do not benefit them. To put this principle into practice, the total benefit of a project should be described as its ‘net benefit,’ after taking a specified list of harms into consideration. A housing development proximate to a major freeway should require additional air quality mitigations. A new polluting facility should not be counted as a benefit to the local community unless it is replacing a dirtier land use.

Guarding against displacement is particularly important, as lower-income residents cannot enjoy benefits from investments that result in pricing them out of their homes.⁵ Anti-displacement protections are needed for *all* GGRF investments to ensure that the benefits of SB535 expenditures are not outweighed by displacement risks. Displacement from transit hubs disrupts and burdens low income people, transit’s core ridership, thereby undermining GHG reduction goals. We recommend that the “Requirements for all agencies that receive GGRF appropriations” on page 15 of the Draft Guidance include the following:

- No project should receive funding if it results in a net loss of units occupied by lower income households. If existing housing units are demolished or converted, they must be replaced on a 1-for-1 basis with units of comparable size and affordability, and displaced residents must be given the first opportunity to occupy those units.
- All funded stationary projects must be located in jurisdictions that have in place policies that protect against economic displacement of lower income residents⁶ or be income-qualified to ensure that most, if not all, project beneficiaries are lower-income (e.g. 100% affordable housing developments, low-income transit pass programs).

⁴ AB 1532, which applies to all GGRF funds, includes the goal that investments should be directed “toward the most disadvantaged communities *and households* in the State.” See Draft Interim Guidance at p. 5.

⁵ While we are pleased to see that the draft guidelines mention displacement with regard to the Sustainable Communities investment program, it is much too narrow to apply displacement protections only to this program and the requirement is vague.

⁶ A non-exhaustive list of anti-displacement policies is attached.

3. Investments that Provide Multiple and Cumulative Benefits to Disadvantaged Communities Should Be Prioritized.

We appreciate the language directing implementing agencies to score proposed projects higher if they leverage high benefits to disadvantaged communities.⁷ However, that language is not integrated into the process outlined in Appendix 1, which instead would allow an agency to determine that a project qualifies for SB 535 if it meets any one of the broad eligibility criteria and says nothing about maximizing or multiplying benefits.

Eligibility criteria should be used to ensure each project meets minimum environmental, economic and public health requirements, while maximizing benefits. While ARB is still developing metrics for measuring benefits, we urge the agency to propose a process wherein projects that provide the most significant benefits receive funding priority. Even a system that required a minimum of two criteria be met at high levels, or three criteria met at medium levels, would likely ensure greater benefits.

Furthermore, ARB should increase the local and targeted hiring goals in the current criteria. Many Project Labor Agreements already require targeted hire thresholds exceeding 25%. Additionally, the criteria do not specify benefits associated with the provision of permanent jobs or contracting with disadvantaged business enterprises.

Finally, the eligibility criteria contained in the Guidance should not be exhaustive. ARB must allow additional flexibility for agencies to invest in projects that address needs and provide benefits identified by disadvantaged community residents and households.

Scoring and Ranking processes should be required in addition to eligibility criteria to ensure that benefits to disadvantaged communities are maximized. The extent of benefits that each project provides to low-income households should be scored and all projects ranked in a “performance management approach,” such as the one suggested by the Luskin Center and advocates.⁸ While the Draft Guidance states that agencies should use scoring criteria favoring projects that provide multiple significant benefits, the guidance currently does not direct or require agencies to accomplish this. The process, requiring only that implementing agencies check one box, risks relegating the provision of disadvantaged community benefits to a *pro forma* requirement. We recommend instead that ARB outline a process whereby each agency calculates a cumulative score based on how well several important indicators or eligibility criteria are met, thereby allowing agencies to make strategic investments and prioritize the most beneficial projects.⁹

Non-SB 535 funds. In addition to prioritizing the top tier of disadvantaged communities to receive the SB 535 set-asides, we recommend that ARB should give a second level of prioritization to next tier of disadvantaged communities, households and populations for the remainder of the GGRF monies, that is, non-SB 535 funds. This could be done by employing a ranking system similar to the one

⁷ “When selecting projects for a given investment, give priority to those that maximize benefits to disadvantaged communities (e.g., use scoring criteria that favors projects with provide multiple benefits or the most significant benefits).” Draft Interim Guidance at p. 13. “[L]everaging across programs and collaboration among agencies can be used to help multiply the benefits of investments to achieve a transformative impact on these communities.” Draft Interim Guidance at p. 4.

⁸ Callahan & DeShazo, June 2014. Investment Justice through the Greenhouse Gas Reduction Fund: Implementing SB 535 and Advancing Climate Action in Disadvantaged Communities, UCLA Luskin Center for Innovation at pp. 16-17

⁹ *Id.* at p. 11 (“The investment options should then be evaluated based on how strongly they meet as many of the indicators as possible.”).

proposed for SB 535. Language could be added to page 15 to reflect this next level of prioritizing projects: “Target funding, to the extent feasible, for projects that benefit disadvantaged communities and households, whether or not these investments are within communities in the top tier of disadvantaged communities that qualify for SB 535 funding.” We recommend that ARB include a second tier of prioritization for investments that benefit:

- Census tracts with overall CES scores in the top 40%;
- Census tracts with an indicator in the top 40%, if the project will address that indicator; and
- Low-, very-low, or extremely-low income households, as determined by area median income (AMI).

4. Projects that Authentically Include Disadvantaged Communities in the Planning, Implementation, Evaluation and/or Selection Process, Should Receive Funding Priority.

The Draft Guidance states that agencies must conduct outreach efforts for any investment to be located within, or provide benefits to, disadvantaged communities.¹⁰ The guidance on community outreach and engagement, however, is not adequately reflected in the criteria in Appendix 1. Community participation should be integrated into these criteria to ensure projects that authentically engage community participation during the development, selection or evaluation of projects receive priority. There is an important distinction between “outreach” and “engagement” or “participation.” ARB’s approach does not ensure that community participation will happen in an authentic and meaningful way. For example, engagement opportunities should be held at convenient times and locations, with child care and language assistance provided. We would like to see criteria that ensure implementing agencies engage disadvantaged community residents as early in the process for rolling out these funds as possible.

5. ARB Should Require Investments to Fulfill Either the 10% or the 25% Set-Aside, Not Both and Should Set Target Benefit Levels for All GGRF Programs.

SB 535’s intent is to ensure that GGRF investments achieve AB 32’s original mandates that investments are directed to disadvantaged communities, co-benefits to the state are maximized and efforts to improve air quality are complemented.¹¹ While SB 535 is somewhat ambiguous as to how its two set-aside categories should be calculated, accomplishing the overarching goal of maximizing benefits to disadvantaged communities is best accomplished by counting the 10% and 25% requirements separately so that disadvantaged communities benefit from at least 35% of GGRF funds. Ample evidence shows the disproportionate environmental health vulnerabilities facing low-income “communities that are already adversely impacted by air pollution.”¹² Meanwhile, these communities have been consistently overlooked as targets for beneficial investments and thus should receive priority for investments now. We are concerned that the Draft Guidance explicitly states that projects that are built within disadvantaged communities also count toward fulfilling the

¹⁰ Draft Interim Guidance at p. 15.

¹¹ Health & Safety Code § 38565 (“direct public and private investment toward the most disadvantaged communities in California”); *Id.* at § 38501(h) (“maximizes additional environmental and economic co-benefits for California, and complements the state’s efforts to improve air quality”).

¹² *See id.* at § 38570.

25% benefit category.¹³ This effectively means that only an additional 15% of the funds are set aside to “provide benefits to” disadvantaged communities.

We would also like to see ARB set concrete SB 535 targets for more programs (Table 2 in the Draft Guidance is currently incomplete). Targets are necessary to ensure the SB 535 minimums are met and that agencies think critically about how to provide, leverage and maximize benefits to disadvantaged communities and households.

CONCLUSION

Thank you again for your dedication to ensuring that investments counted toward SB 535’s mandates meet the priority needs of socio-economically disadvantaged residents and households in California and provide *significant net benefits* by carefully avoiding foreseeable burdens.

Respectfully,

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¹³ Draft Interim Guidance at pp. 11, 20.

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