



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

March 8, 2013

VIA ELECTRONIC SUBMISSION

Ms. Shelby Livingston, Chief
Climate Change Program Planning and Management Branch
California Air Resources Board

Re: Cap-and-Trade-Auction Proceeds Investment Plan Draft Concept Paper

Dear Ms. Livingston:

California Rural Legal Assistance, Inc. (CRLA) submits the following comments on the Cap-and-Trade Auction Proceeds Investment Plan Draft Concept Paper issued by the California Department of Finance (DOF) pursuant to AB 1532 and SB 535. CRLA is a non-profit legal services organization that provides legal representation to low-income residents of rural California, including in many communities comprised primarily of farmworkers and their families.

The State of California, through implementation of the Cap and Trade Auction Proceeds Investment Plan (Investment Plan) must advance the goals laid out in AB 1532. These goals include not only the reduction of greenhouse gas (GHG) emissions, but also the stated aims of maximizing economic, environmental and public health benefits to the state; fostering job creation through green jobs; complementing efforts to improve air quality; and directing investment toward the most disadvantaged communities and households in the state. (Cal. Health and Safety Code Section 39712). We submit these comments to support the State's efforts to administer the Investment Plan to further all of the goals identified by the legislature.

At the outset, we strongly encourage the Investment Plan to focus maximum resources on disadvantaged communities to further the goals of 1532 and other GHG emission reduction programs. To that end, while SB 535 identified a *floor* for investment in and for the benefit of disadvantaged communities of 10% and 25%, respectively, these numbers should in no way constitute a ceiling for investment in disadvantaged communities. We believe that the State should invest more than the statutory minimum levels in and for the benefit of disadvantaged communities. Doing so will not only better achieve co-benefits of 1532, but also support the

reduction of GHG emissions and create a stronger and healthier California. Furthermore, those funds earmarked to comply with SB 535 must specifically address the high priority needs of one or more disadvantaged communities, achieve measurable benefits for them, and deliver benefits that significantly outweigh any burdens that will fall on those communities.

The remainder of our comments will focus on the potential exclusion of several disadvantaged – primarily rural - communities from Cap-and-Trade auction proceeds and provide suggestions for programs and activities that will extend the benefits of AB 1532 to all Californians.

Exclusion of Rural Communities from Cap-and-Trade Auction Proceeds

Deficiencies in the CalEnviroScreen Tool

Senate Bill 535 directs the California Environmental Protection Agency (Cal EPA) to identify disadvantaged communities for purposes of the Investment Plan. Cal EPA, through the CalEnviroScreen has identified such communities by analyzing several environmental and demographic indicators. The Investment Plan anticipates targeting investments earmarked for disadvantaged communities to those communities identified as among the top 10% of disadvantaged communities (technically ZIP Code Tabulation Area, or ZTCAs) according to the CalEnviroScreen.

While we support the use of the CalEnviroScreen to identify disadvantaged communities for the purpose of SB 535 and AB 1532 implementation, we are concerned that the tool, due to significant identifiable gaps in the data used to calculate community scores, underestimates the environmental and socioeconomic burdens on certain communities, particularly rural communities. Due to this underestimation, the CalEnviroScreen excludes from the top 10% certain highly impacted communities that, in the presence of more robust data and a better-developed tool, would likely be included, within that critical top 10% of highly impacted communities statewide.

If DOF defines “disadvantaged community” to mean only those communities that fall within the top 10 percentiles of the existing draft of CalEnviroScreen, communities that are inappropriately excluded from this threshold due to deficiencies in the tool will be excluded from consideration for critical resources. In recognition of flaws in the existing draft of CalEnviroScreen, we urge DOF to expand the definition of “disadvantaged communities” to those rural communities that score in the top 15% or 20% on the current draft of the CalEnviroScreen. If permissible under the statute, we also urge DOF to include as disadvantaged those communities that have a mean household income below 60% of State Median Income.

Failure to Capture Environmental Characteristics in Rural Communities

CRLA raised several of our concerns with respect to deficiencies in the most recent draft of CalEnviroScreen in comments to the Office of Environmental Health Hazards Assessment (OEHHA) on February 1, 2013. We have attached those comments hereto for your consideration. In summary, we are concerned that significant data gaps make the CalEnviroScreen less reliable in measuring environmental and population characteristics in rural areas as compared to urban areas, where data are frequently more robust. In particular, we are concerned that the following indicators fail to reflect existing conditions in rural areas of California:

- Air Quality: Ozone – potentially underestimates burden on rural areas due to inadequate air monitoring in rural areas
- Air Quality: PM 2.5 – potentially underestimates burden on rural areas due to inadequate air monitoring in rural areas, particularly in agricultural areas that experience unique PM exposures
- Asthma – use of Asthma-Related Emergency Departments data potentially underrepresents asthma prevalence in rural areas, where residents may be reluctant to access ED care except in the most severe circumstances due to distance from EDs and/or unavailability of MediCal-accepting EDs.
- Lack of drinking water quality indicator in existing draft – fails to represent a significant environmental health hazard impacting rural communities, many of which rely on private wells or small water systems rather than on well-resources municipal water systems.
- Lack of infrastructure indicator in existing draft – fails to represent significant environmental health and safety hazards posed by inadequate wastewater treatment, and dilapidated housing.

As a result of these deficiencies, we are concerned that several highly disadvantaged communities will be excluded from Cap-and-Trade Auction proceeds. Despite exhibiting demographic indicators demonstrating disadvantage and vulnerability (e.g. poverty levels) several rural cities and towns do not score in the top 10% of disadvantaged communities according the CalEnviroScreen due, we believe, to data deficiencies in rural areas. Some examples include Huron (99th percentile among ZTCAs based on poverty indicators, CalEnviroScreen score of 16-20%), San Joaquin (99th percentile based on poverty indicator, CalEnviroScreen score of 11-15%), Mendota (98th percentile based on poverty indicator, CalEnviroScreen score of 16-20%), Avenal (97th percentile based on poverty indicator, CalEnviroScreen score of 36-40%), Dos Palos (90th percentile based on poverty indicator, CalEnviroScreen score of 11-16%). None of these communities, and many like them, will qualify for Cap-and-Trade Auction proceeds targeting disadvantaged communities.

Failure to Capture Environmental Threats on Tribal Lands

We are also concerned that many of the databases used in the CalEnviroScreen completely fail to capture significant environmental threats on tribal lands which

are outside of the jurisdiction of California regulatory agencies but which abut, or even house, sizeable California communities comprised of non-tribal members who suffer the environmental health effects of threats such as hazardous waste treatment, tire recycling, closed-but-not-cleaned illegal dumps and untreated wastewater from mobilehome parks. This data deficiency is particularly relevant in the Eastern Coachella Valley, where small tracts of tribal lands are interspersed with non-tribal lands inhabited by California residents, mostly low-income farmworker families. The CalEnviroScreen's failure to account for environmental hazards on tribal lands results in significant underrepresentation of the pollution burden on the communities of Mecca, Thermal, and Coachella. The following indicators fail to account for environmental hazards on tribal lands that impact California communities:

- Cleanup Sites – EnviroStor database does not include hazards on tribal lands
- Solid Waste Sites and Facilities, and Hazardous Waste Facilities – EnviroStor and Solid Waste Information Systems databases do not include hazards on tribal lands
- Groundwater Threats – GeoTracker database does not include hazards on tribal lands

Deficiencies in Population Characteristics

The CalEnviroScreen relies on several demographic indicators as key factors in determining a community's "population characteristic," a component of its score for determining its eligibility as a disadvantaged community. These indicators include a poverty indicator, educational attainment, linguistic isolation and age of population. The CalEnviroScreen fails to fully and accurately capture demographic characteristics of rural communities due to data deficiencies, including significant Census undercounts (see CRLA comments to CalEnviroScreen, attached) and geographic units that fail to capture small, disadvantaged communities that are co-located in a ZIP Code Tabulation Area (ZTCA) with better resourced areas.

For example, ZTCA 95363 in Stanislaus County includes the incorporated city of Patterson along with several unincorporated communities including Grayson and Westley. Westley, according to Census data, has poverty levels of around 32%, compared to the ZTCA as a whole, with poverty rates of approximately 14%. Similar disparities exist for other CalEnviroScreen demographic indicators. As a result, the community of Westley exhibits an artificially low "population characteristic" on the CalEnviroScreen. The tool assigns the 95363 ZTCA to the 16-20% percentile, thus excluding Westley from Cap-and-Trade Auction proceeds targeted at disadvantaged communities. There are many other communities just like Westley.

In recognition of the risk of undercounting the vulnerability of communities such as Westley, the Office of Environmental Health Hazards Assessment (OEHHA) and the California Environmental Protection Agency (CalEPA) have committed to produce future iterations of the CalEnviroScreen at the much finer Census tract level, which

would more accurately reflect the actual demographics of small, severely low-income communities that share a ZTCA with wealthier communities. Since even OEHHA and CalEPA recognize the current draft's potential for underrepresenting the local conditions of small disadvantaged communities due to the use of ZTCA rather than Census tract, we urge DOF to broaden its definition of "disadvantaged communities" in order to avoid inappropriately excluding communities that would almost certainly fall within the top 10 percentile of the CalEnviroScreen but for their proximity to wealthier communities.

In order to allow for full inclusion of those communities that the legislature intended to benefit with passage of AB 1532 and SB 535, we reiterate that DOF in its Investment Plan should broaden the definition of disadvantaged communities to include those rural communities that do not score in the top 10% of disadvantaged communities on the CalEnviroScreen due to data deficiencies.

Proposed Programs and Activities to Promote the Intent of AB 1532

To ensure that the benefits of AB 1532 and SB 535 reach all Californians, including Californians in rural Communities we propose the following eligible uses and preferences for funds:

Proposed Eligible Activities Should Include, but not be Limited to the Following:

1. Expand or improve public transit service, including transit and transportation programs for rural communities such as van pools, car share and carpool promotion programs, with significant funding for operations.
2. Expand bicycle and pedestrian networks, facilities, infrastructure and programs to promote additional use and safety and provide access to transit, schools, colleges, health center, and other essential services.
3. Provide discounted transit passes in low income communities.
4. Invest in energy efficiency improvements for residential structures, including multifamily rental homes, owner-occupied homes and mobile homes affordable to lower-income households.
5. Engage in planning and investment activities that promote mixed use development in low-income, rural communities, thereby reducing VMTs by increasing "access through proximity" to essential goods and services.
6. Invest in sustainable, basic infrastructure and services, including drinking water and wastewater services, in existing communities.
7. Support infill development in existing communities.
8. Develop employment and training programs that prepare low income residents for green jobs.

Preferences Should be Given to Projects and Programs That:

1. Avoid or mitigate the disproportionate impacts of environmental stressors on disadvantaged communities and households.
2. Provide or support workforce development and long-term job and economic growth for low-income and disadvantaged communities and households.

3. Improve public health by decreasing air pollution, improving drinking water quality, improving the safety of housing or transportation systems, improving access to essential services, or increasing use of active transportation.
4. Invest in existing communities and affordable housing opportunities low income people throughout California, including farmworkers in rural communities who support California's critical agricultural industry.
5. Reduce racial and/or economic segregation.

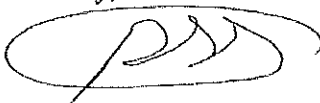
A note of caution on tying AB 1532 investments to SB 375 implementation

While we support the development of programs and practices that reduce greenhouse gas emissions through sustainable community development, SB 375 implementation and with it the development of Sustainable Communities Strategies (SCS) in the Southern California Association of Governments (SCAG) region and currently in the San Joaquin Valley has thus far excluded low income, and in particular rural, communities from the co benefits of SB 375. Metropolitan Planning Organizations have directed resources to urban cores and larger metro areas to the detriment of low income, rural communities. In the SCAG region and thus far in the San Joaquin Valley, SCSs – in various stages of development and adoption – do not project infill, transportation improvements, and defined growth in the counties' most impoverished existing communities, yet residents of these communities support the region's agricultural wealth and are in close proximity to agricultural jobs thereby contributing to low Vehicle Miles Traveled (VMT) targets for the regions. As such, prioritization should be given to projects that seek to develop and invest in sustainable planning for these communities to ensure that they benefit from smart growth and sustainable planning throughout the state despite their possible exclusion from Sustainable Communities Strategies. This would meet the State's goals of reducing GHGs, promoting public health, investing in disadvantaged communities and improving air quality.

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Thank you for your kind consideration of these comments. Should you have any questions, please feel free to contact Phoebe Seaton at pseaton@crla.org.

Sincerely,



Phoebe Sarah Seaton
Attorney at Law



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February 1, 2013

VIA ELECTRONIC MAIL

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Re: Comments on Second Public Review Draft of the California Communities
Environmental Health Screening Tool (CalEnviroScreen)

Dear Dr. Faust:

California Rural Legal Assistance, Inc. (CRLA) submits the following comments on the second public review draft of the California Communities Environmental Health Screening Tool (CalEnviroScreen) released by the Office of Environmental Health Hazards Assessment (OEHHHA) and the California Environmental Protection Agency (CalEPA). CRLA is a non-profit legal services organization that provides legal representation to low-income residents of rural California, including in many communities comprised primarily of farmworkers and their families. CRLA commends OEHHHA and CalEPA for their attention to a broad array of environmental justice issues and for their clear awareness of the relationship between environmental conditions and human health. CRLA is prepared to support Version 1.0 of CalEnviroScreen when it is finalized in the spring of 2013. However, we would like to call the attention of OEHHHA and CalEPA to certain deficiencies in the existing version of CalEnviroScreen, and we strongly urge OEHHHA and CalEPA to set and follow a schedule for addressing these deficiencies in order to ensure that CalEnviroScreen truly reflects the relative pollution burdens and socioeconomic vulnerabilities of California communities. In order to ensure that vulnerable communities receive appropriate investment, including in the initial disbursement of disadvantaged community set-aside funds under SB 535, we encourage OEHHHA and CalEPA to make every possible effort to address these discrepancies prior to finalizing Version 1.0 of CalEnviroScreen. In particular, as this tool will be used to allocate 25% of the available monies from cap-and-trade revenue to disadvantaged communities, CRLA seeks to ensure that rural communities have a fair opportunity to benefit from the Greenhouse Gas Reduction Fund.

OEHHA and CalEPA should ensure that environmental burdens on tribal lands bordering California communities are adequately represented in all components of the CalEnviroScreen scoring system.

Several of the datasets used in the existing version of CalEnviroScreen rely on data collected by state agencies that track environmental hazards on land that is subject to the jurisdiction to the state of California. These datasets include the EnviroStor Cleanup Sites Database (maintained by the Department of Toxic Substances Control (DTSC)), the EnviroStor Hazardous Waste Facilities Database (maintained by DTSC), the GeoTracker Database (maintained by the State Water Resources Control Board), and the Solid Waste Information System (maintained by CalRecycle). These databases do not include any information on environmental hazards located on tribal land within California, because these tribal lands are not under the jurisdiction of the state of California. However, environmental hazards on tribal lands can have very real environmental health impacts on California communities adjacent to tribal lands, and even on non-tribal members residing on tribal land (such as non-tribal families residing in mobilehome parks on tribal land; the infamous “Duroville” is in the process of closing due to federal court order, but other such mobilehome parks remain in operation in the Eastern Coachella Valley, including at least one park that is significantly larger than Duroville). In the Eastern Coachella Valley, CRLA is aware of the following sites which we believe would trigger reporting to EnviroStor, GeoTracker, and/or the Solid Waste Information System if they were located on non-tribal land, but which are currently not reported in any of these databases:

- ② Cabazon Resource Recovery Park: a one-square-mile parcel held by the Cabazon Band of Mission Indians, immediately adjacent to the non-tribal town of Mecca. Currently houses Western Environmental, Inc. (which for several years received California hazardous waste despite not meeting California statutory or regulatory requirements for the treatment and handling of this material), First Nations Tire Recycling/Consolidated Tire Recyclers (which is the subject of ongoing scrutiny by the United States Environmental Protection Agency due to over-accumulation of scrap tire material), and a biomass plant owned by Greenleaf Power (formerly owned by Colmac Energy, Inc.).
- ② Lawson Dump: On an allotment held by a member of the Torres Martinez Band of Desert Cahuilla Indians. The dump was closed by federal government action several years ago but never cleaned up. Site of occasional spontaneous fires that cause severe respiratory symptoms in residents of downwind communities.
- Duroville (Duro’s Mobilehome Park): Very large mobilehome park on an allotment held by a member of the Torres Martinez Band of Desert Cahuilla Indians; in the process of closing pursuant to federal court order. Septic system and other potential environmental threats never inspected or regulated by state or county entities.

- ② Las Chicanitas Mobilehome Park: Very large mobilehome park (several hundred mobilehomes) in ongoing operation on an allotment held by a member of the Torres Martinez Band of Desert Cahuilla Indians. The Park's septic system has never been inspected or regulated by state or county entities. The Park houses thousands of non-tribal members.
- Mount San Diego: Hundreds of tons of bio-solids received from San Diego on an allotment held by a member of the Torres Martinez Band of Desert Cahuilla Indians. Dumping was halted by federal government action several years ago, but the site has never been cleaned up. Site is located less than ½ mile from a K-12 non-tribal public school complex.

Due to the "checkerboard" division of tribal and non-tribal land in parts of the Eastern Coachella Valley, all of the above sites are located in close proximity to non-tribal lands inhabited by non-tribal members, mostly very low-income Latino agricultural workers and their families. There may well be other sites on tribal land in the Eastern Coachella Valley of which CRLA is not currently aware, and similar issues may exist in other parts of the state. CRLA recommends that CalEPA and/or OEHHA consult with USEPA Region 9 staff in order to get more information about these sites for inclusion in CalEnviroScreen. However, CRLA cautions that, due to the fact that California's environmental laws are often more stringent than federal environmental laws, USEPA may not track hazards with the same level of scrutiny that California state agencies would use if these sites were located on non-tribal land in California. For example, Western Environmental, Inc. is classified by USEPA as a solid waste facility because the material received on the site does not meet the federal definition of hazardous waste, although it is classified as hazardous waste by the state of California.

OEHHA and CalEPA should take steps to ensure that air quality data used in CalEnviroScreen adequately represents the air quality of rural communities.

Rural and agricultural areas are subject to a number of unique air quality burdens that are largely not reflected in existing data available from the California Air Resources Board. For example, the closest PM 2.5 monitor to the Eastern Coachella Valley is located in the more urbanized city of Indio, which is upwind of the Valley's agricultural areas. The monitor is classified as operating at a neighborhood scale, which is hardly adequate to assess air quality dozens of miles away in the agricultural areas of the ECV. See South Coast Air Quality Management District, South Coast Air Quality Management District 5 Year Network Assessment, July 2010, at 14. Furthermore, the South Coast Air Quality Management District (SCAQMD) has reported that the siting of this monitor is not appropriate for a particulate matter monitor. See id. at 43. Given this fact, and the fact that CARB does not report PM 2.5 data from the Indio monitor on its online Quality assurance Air Monitoring Site Information system (see http://www.arb.ca.gov/qaweb/site.php?s_arb_code=33157, last viewed 2/1/2013), it is unclear whether CRLA believes that air quality monitoring within the rural and agricultural areas of the Eastern Coachella Valley is needed in order to capture accurately the air quality experienced by residents of these areas, such as diesel emissions from farm

equipment and long-haul trucks, particulate emissions from intentionally smoky agricultural burns used to protect fields against frost, and pesticide drift

Due to the potential for strong urban bias in the Asthma-Related ED Visits dataset, OEHHA and CalEPA should identify a more equitable mechanism for measuring asthma incidence.

Many of California's rural areas are extremely medically underserved, with residents needing to travel long distances in order to access an emergency department. In some areas, Medi-Cal recipients must travel even farther in order to access an emergency department that will accept Medi-Cal. For example, in parts of the Eastern Coachella Valley, residents must drive more than twenty miles to reach the closest emergency department, located in the city of Indio; residents who rely on Medi-Cal or are uninsured, however, must travel more than eighty miles to reach the Riverside County Hospital in Moreno Valley, or risk receiving an unaffordable bill for emergency care received at closer facilities that do not accept Medi-Cal. Because of these concerns and because of numerous anecdotal reports from area residents, CRLA believes that Eastern Coachella Valley families might be unlikely to seek care at an emergency department for anything other than an apparently life-threatening medical episode. In contrast, residents of more urbanized areas are likely to have much better access to emergency departments, and in particular to emergency departments that accept Medi-Cal. Urban residents may, on average, be more willing to seek emergency medical care for somewhat less severe asthma attacks. For this reason, CRLA believes that asthma-related ED visits are not an equitable measurement of asthma incidence or severity statewide, but rather are likely to show disproportionately higher rates in urban areas where residents can seek emergency medical care with greater ease.

CRLA recommends that OEHHA and CalEPA seek out other data to give a more realistic picture of relative asthma incidence statewide, for example, data obtained by community clinics and/or data on prescriptions for asthma medications.

OEHHA and CalEPA should be cautious in their use of U.S. Census data.

Many of the Population Characteristics indicators used in CalEnviroScreen rely on data obtained from the United States Census Bureau, either via the decennial census or via the American Communities Survey. CRLA's experience, throughout the state of California, is that Census Bureau data often undercount California's rural populations, particularly low-income agricultural workers. This undercounting is attributable to a number of factors, including seasonal movement of agricultural workers, difficulty of accessing certain rural communities (particularly smaller mobilehome parks, which are located on private land and often are neither visible from public roads nor reflected in any official government databases), and census workers' unfamiliarity with local communities. CRLA understands that alternative datasets may not be available but recommends that OEHHA and CalEPA bear in mind that Census Bureau data is likely to undercount low-income farmworker populations.

OEHHA and CalEPA should commit to a strict timeline for the development of a drinking water quality indicator to be added to CalEnviroScreen; this indicator should be subject to a full public notice and comment process.

OEHHA and CalEPA have stated that they plan to add a drinking water quality indicator to CalEnviroScreen. CRLA fully supports the addition of drinking water quality, which is a significant environmental health factor in many rural areas of California, and recommends that OEHHA and CalEPA immediately publicize a timeline for the development of this indicator. Due to the complexity of issues affecting drinking water quality statewide, CRLA strongly urges OEHHA and CalEPA to release the drinking water quality indicator for public notice and comment prior to finalizing it. Public notice and comment is the best way to ensure input from stakeholders throughout the state, many of whom have high levels of expertise regarding their own local drinking water quality and are likely to be able to provide significant support to OEHHA and CalEPA in creating an indicator that accurately reflects drinking water quality concerns throughout the state.

In the next iteration of CalEnviroScreen, OEHHA and CalEPA should capture infrastructure conditions that have environmental health implications.

Many rural communities, particularly low-income farmworker communities, are plagued by infrastructural deficiencies that have severe impacts on residents' health. Concerns such as inadequate septic systems, dilapidated housing, and lack of sidewalks and streetlights take a toll on residents' health in both the short term, through exposure to untreated wastewater and vector-borne diseases, and the long term, through disproportionately low access to safe opportunities for active transportation that could increase exercise while lowering tailpipe emissions. CRLA strongly encourages OEHHA and CalEPA to incorporate such infrastructural deficiencies in the second iteration of CalEnviroScreen and to make these new metrics available for full public notice and comment. As a preliminary consideration, CRLA would like to point out that many lower-income rural residents live in mobilehomes that age significantly more rapidly than conventional buildings; therefore, age of housing stock is highly unlikely to be an accurate reflection of relative housing quality.

OEHHA and CalEPA should follow through on their commitment to compile future iterations of CalEnviroScreen at the census tract level.

CRLA appreciates that OEHHA and CalEPA recognize the necessity of increasing the precision of CalEnviroScreen by compiling data at the census tract level, rather than the census zip code level, in future iterations.

In order to enhance the robustness of CalEnviroScreen, OEHHA and CalEPA should address data gaps.

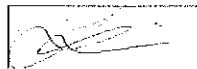
In California, many datasets are much less robust in rural areas than in urban areas. The foregoing comments have highlighted some of the most significant data gaps in rural areas, but

other gaps are likely to exist. In order to avoid premising policy and/or investment decisions on data that underreflect the environmental burdens faced by rural communities, CRLA strongly recommends that OEHHA and CalEPA prioritize the equitable collection and use of data.

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Thank you for your kind consideration of these comments. Should you have any questions, please feel free to contact Laura Massie at LMassie@crla.org.

Sincerely,



Laura Massie
Attorney at Law

cc: Phoebe Seaton, Program Director, Community Equity Initiative, California Rural Legal Assistance, Inc.