

TO: California Air Resources Board FROM: Gordon Piper, Retired CA Civil Rights Agency Administrator  
SUBJECT: Comments on Draft Revised Funding Guidelines for Agencies That Administer California  
Climate Investments: CA Law & Constitutional Violations Impact 30 Million Californians; Legal  
Obligations/Liability & Obligations To Immediately Act to Ensure Non-Discrimination in All  
Programs/Guidelines DATE: May 9, 2018

**PROBLEM SUMMARY AND ANALYSIS:** During the last 8 years, a series of a dozen or more unconstitutional CA laws have been enacted resulting in the development of many discriminatory program guidelines and implementation of nearly 40 discriminatory programs in California that deny important civil/Constitutional rights and important benefits to over 30 million Californians located in 75% of CA census tracts. The State is using billions of dollars to discriminate in State funds leveraged with Federal funds subject to many laws/legal obligations to ensure non-discrimination & ensure no Californian is denied the benefits of a program receiving State or Federal funds/assistance. The discriminatory implementation of these laws, programs, and program guidelines by nearly 20 State of CA agencies/departments in recent years is resulting in systemic discrimination that grows each year and violates the CA Constitution prohibitions against preferential treatment in public contracting and employment and Constitutional requirement for equal protection. The discriminatory actions, grant & benefit programs/program guidelines undercut enforcement of State/Federal civil rights laws/regulations & the State/U.S. Constitution, and result in forcing State/local agencies to discriminate in their practices that impacts millions of Californians and can lead to potential loss of important Federal funding and to substantial liabilities for State agencies/staff and members of the Governor's Cabinet that could result from administrative complaints, investigations, or legal actions or findings by various government agencies or courts. Advocates for preferential treatment based on considerations of race, color, national origin, ancestry, age, geographic location, and income here in CA are continuing an active initiative each year in CA to add new discriminatory laws and to influence CARB and all State of CA agencies and State contractors to discriminate in their programs and grant/benefit programs and in Funding Guidelines and in the provision of benefits and training/the provision of jobs. See additional comments attached for more details, analysis and recommendation for remedying what is now the greatest violation of civil/Constitutional rights in United States history. CARB Funding Guidelines and many of the State laws that led to these State guidelines and GGRF programs contain provisions that are discriminatory/violate Constitutional requirements, and compel discrimination in public contracting and public employment that violate the rights of and important benefits to 30 million Californians.

**RECOMMENDATIONS.** The State of California and State agencies and the Governor & all Cabinet members are obligated by their oaths to uphold the California/United States' Constitutions which mandate equal protection of all residents. Immediate corrective action is required to ensure now and in the future nondiscrimination and equal protection under the laws in all State public benefit and grant programs, in public contracting and employment, and to end the systemic discrimination in 2018 and to eliminate the discriminatory provisions in California laws, Funding Guidelines, reporting requirements, and in the provision of benefits as described above and my written comments attached and provided previously in writing and verbally in complaints made verbally and in writing. Discriminatory GGRF laws, programs and guidelines should be made to conform with the requirements of the Constitution and civil rights laws at the State and Federal levels, and there needs to be more effective monitoring/enforcement and training and information provided to ensure non-discrimination in contracting/employment.

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. I also have prior professional experience serving as a Contract Compliance Officer for the City of San Diego and helped to enforce nondiscrimination requirements in relation to government contracting practices involving private employers and their employment practices. In my professional career of over 30 years, and also in retirements during the last 11 years, I have been active in working to ensure nondiscrimination in employment and contracting involving governmental agencies at all levels as well as other recipients of state and or Federal funds such as public and private contractors.

I believe the recently implemented and proposed California Air Resources Board (CARB) Draft Revised Funding Guidelines for Agencies Administering California Climate Investments like the previously issued Supplement to the Draft Funding Guidelines result in adding to the discriminatory utilization and investment of both State GGRF funding and the discriminatory administration of this grant funding leveraged with other public funds in violation of the requirements of both applicable State and Federal civil rights laws and regulations and that they violate 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. I believe these Funding Guidelines should be immediately rescinded and replaced with Funding Guidelines that conform to all requirements of the California Constitution and United States Constitution and applicable requirements of various State of California and Federal civil rights laws and regulations that mandate non-discrimination and equal protection.

My review of the Interim Guidelines adopted by the Air Resources Board in 2014 combined with the investment plan recommendations of CARB in fiscal year 2014-2015, and in 2016 through 2018-2019 led me to conclude that your initial Interim Guidelines, and the Supplement to the Draft Guidelines that Administer California Climate Investments, and your Cap-and-Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments and subsequent 2017 Draft Funding Guidelines for Agencies that Administer California Climate Investments were the equivalent of a "How To Discriminate" Guide for State agencies administering GGRF funded programs/investments in the last 3 fiscal years and resulted in massive violations of State and Federal civil rights laws imposing redlining provisions impacting approximately 29 million Californians in 75% of California census tracts and most of California's 58 counties. The latest Draft Revised Funding Guidelines for Agencies that Administer California Climate Investments are far worse than previous CARB funding and investments guidelines and will very likely both now and if finally enacted as currently written and being implemented continue the pattern by CARB of ignoring the discriminatory requirements in and results of its various guidelines and the discriminatory CalEnviroScreen3.0 methodology used in granting discriminatory treatment related to considerations of race, color, national origin, ancestry and/or other bases covered by different civil rights laws or applicable laws including age, geographic location, income, and other discriminatory preferences targeting minority communities of color and low-income households and communities that result in: (1) the largest violation of civil rights and constitutional rights in United States history; and (2) encouraging substantially more individual and systemic violations in this fiscal year and future years of:

- The **California Unruh Civil Rights Act** prohibition contained in Civil Code Section 51 that was approved by the Legislature and signed into law in 1959 that bars arbitrary discrimination in the provision of services, privileges and advantages by “business establishments of every kind whatsoever” including both public agencies (including the State of California, state/regional/local government agencies and departments) and private sector organizations and employers or contractors based on considerations of race, color, national origin, ancestry, geographic location and other bases not specifically listed in the Act. Geographic location is also a basis of discrimination. The Unruh Civil Rights Act has been liberally interpreted by the California Supreme Court as applying to more than just the traditional bases covered under the Fair Employment and Housing Act (FEHA). The Supreme Court noted in the “Koire v. Metro Car Wash” decision [40 Cal.3d 27] that “The act is to be given a liberal construction with a view to effectuating its purposes, further: (Orloff v. Los Angeles Turf Club (1947) 30 Cal.2d 110, 113 [180 P.2d 321, 171 A.L.R. 913]; Winchell v. English (1976) 62 Cal.App.3d 125, 128 [133 Cal.Rptr. 20].)

The In re Cox decision of the California Supreme Court provided clarification that the list of explicitly mentioned categories is illustrative, that the classes that previously had been recognized as covered under the act remained covered, and that additional bases of discrimination can be covered as well, even if they are not specifically mentioned in the act. (Koire v. Metro Car Wash <http://law.justia.com/cases/california/supreme-court/3d/40/24.html>; In Re Cox <http://law.justia.com/cases/california/supreme-court/3d/3/205.html>).

I found in my research, interviews and also personal experience of discrimination involving State of California agencies developing and implementing discriminatory Greenhouse Gas Reduction Fund programs in the last 5 years with State funds leveraged with Federal funds that there was massive “arbitrary discrimination” taking place in the implementation of benefit and grant programs under the California Air Resources Board’s guidelines and requirements for 20 California State agencies that administer California Climate Investments with Greenhouse Gas Reduction Funds based on considerations that included race, color, national origin, ancestry, geographic location, income level, ratings of California’s 8000 census tracts using a methodology that focused on targeting a variety of benefits including jobs to the maximum extent possible to low-income minority communities, and ratings of California census tracts on other criteria which violate the broad prohibitions against discrimination and the denial of equal services, privileges and advantages required by the Unruh Civil Rights Act, and by other State of California and Federal civil rights laws and implementing Regulations as well as the Equal Protection clauses in the California Constitution and the 14<sup>th</sup> Amendment of the United States Constitution such as:

- **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 - Article 1, Declaration of Rights SEC. 7. (a) A person may not be denied equal protection of the laws;
- **The Equal Protection Clause in the United States Constitution** – 14<sup>th</sup> Amendment, Section 31. No State shall make or enforce any law which shall abridge the privileges of, immunities of the

citizens of the United States; nor shall any state...deny to any person within its jurisdiction the equal protection of the laws.

- **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. I have found many Californians during recent years that have been denied the benefits of programs receiving State of California assistance such as Greenhouse Gas Reduction Funds (often leveraged to the maximum extent with additional Federal and local government funds). I have frequently complained and reported this to State and Federal agencies and not seen corrective action.
- **California Constitution prohibitions against preferential –treatment-based considerations of race, color, national origin or ancestry in public contracting and programs; California Constitution – Article 1, Declaration of Rights SEC. 31. (a)** 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 in the operation of public employment, public education or public contracting; this Constitutional language grew out of Prop 209 passes by California voters in 1996 and CARB Funding Guidelines have been undercutting this important prohibition against preferential treatment in both State contracting and public employment utilizing billions in public dollars to subsidize preferential treatment targeting minority communities of color in 25% of California census tracts and more recently additionally targeting low-income household and low-income communities to the maximum extent possible while redlining 75% of California census tracts and denying important benefits including training and jobs to millions of Californians.
- **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 CARB in its current Draft Revised Funding Guidelines that are now being implemented and adding to growing systemic discrimination. For example, the current CARB Funding Guidelines forces State agencies when selecting projects for a given investment to target and give priority to those that maximize benefits for so-called “disadvantaged communities” or “low-income household” and “low-income communities” and discriminates against millions of Californians that reside in nearly 6000 census tracts with higher average income levels. This is not complying with the requirements in California Resources Code Section 71110 requirements for the California EPA to ensure the fair treatment of all income levels, and CARB has imposed a requirement in its series of Funding Guidelines that clearly violates this important non-discrimination requirement and forces 20 State agencies to discriminate in approximately 40 separate programs. Similarly, CARB and the California Environmental Protection Agency have undercut the State of California’s codified definition of “environmental Justice” requirements to be fair to “all races” and “all incomes” codified in State of California statute at California Government Code Section 65040.12 found at <http://coes.jp.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”.*

- **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. The California Legislature and California Governor Jerry Brown recently set a very dangerous precedent in October, 2017 in enacting into California law AB1530 which is now being implemented and can result in discrimination. The latest AB1530 law approved by the State I believe will promote discrimination by multiple state agencies and contractors. The law referenced “creation of permanent jobs in tree maintenance and related urban forestry activities in neighborhood, local and regional urban areas to enable workforce training for you women and men in disadvantaged communities” targeting the “creation of permanent jobs” to “enable workforce training for young women and men.” Statewide I found in my research that included gathering and analyzing census information and information from California’s Office of Environmental Health Hazard Assessment staff, 45% of California’s 39,250,017 residents are age 40 or above, while only 15% of California residents are ages 20-29 and 14% are ages 30-39. The targeting by the State of California and State of California funded agencies involved of the urban forestry training and permanent job to young men and women in just so-called “disadvantaged communities” can deny civil rights and Constitutional rights that are supposed to be guaranteed under the Civil Rights Act of 1964 and Title VI to every resident in California and should be open as benefits to potentially nearly 17,662,507 Californians that are age 40 or above.

EEOC’s “Facts About Age Discrimination” online summary notes that the ADEA “generally make it unlawful to include age preferences, limitation, or specification” in job notices or advertisements. However, the State of California in October 2017 through the actions of the Legislature and Governor enacted a new law and amended an existing law (the State’s California Urban Forestry Act of 1978) that I believe expands its systemic discrimination and sets a very dangerous precedent by referencing an actual age preference and also a restrictive geographic preference for “young women and men” in relation to training programs and permanent jobs in tree planting, maintenance and related urban forestry activities funded by millions in dollars in Stated funds leveraged with millions more of leveraged Federal and local funds. If the State of California is allowed to establish by law and regulations discriminatory preferences for jobs and training programs based on age in a large geographic area such and urban forestry training programs in 25% of California census tracts, this could quickly spread to almost any number of different training programs, hiring opportunities/jobs, and the job opportunities of millions of California residents in large geographic location impacting the civil rights of millions of Californians.

The State of California and AB1530 assigned primary responsibility to the California Department of Forestry and Fire Protection (CAL FIRE) to implement this discriminatory new law and preferences related to age and geographic location that I found differentially treats potential applicants and disparately impacts: (1)millions of Californians age 40 and older; (2) millions of non-Hispanic Caucasian in 75% of California census tracts that were substantially redlined and

not given preferences for workforce training and permanent jobs; and(3) millions of minority Californians ages 40 and older in so-called “disadvantaged communities” in 25% of California census tracts that are not targeted for workforce training and permanent jobs like “young women and men in disadvantaged communities”. I found in my recent research that the State of California now has three major grant/benefit programs funded with many millions of dollars in State of California Greenhouse Gas Reduction funds for urban forestry programs and greening programs, and CAL FIRE and its subcontractor California ReLeaf are utilizing the discriminatory criteria related to age, geographic location, and other covered bases now incorporated into the California Urban Forestry Act that effectively discriminate in violation of State/Federal civil rights laws in evaluating grant applications from public and private sector applicants for millions of dollars in grants targeting jobs to primarily “young women and men” in 25% of California census tracts for residents in “minority communities of color” designated as so-called “disadvantaged communities” where 84% of residents are ethnic minorities.

The State of California urban forestry and greening grant programs that I believe discriminate against me and millions of other Californians and contain discriminatory criteria that discouraged us in relation to applying for training programs or permanent jobs growing out of the latest \$40 or more million in urban forestry grants include the following:

- (1) The California Department of Forestry and Fire Protection (CAL FIRE) 2017/2018 California Climate Investments Urban Community Forestry Program Grant Guidelines [\\_17\\_18\\_FINAL%2012\\_19\\_17.pdf](#); this is an approximately \$18 million grant program;
- (2) California ReLeaf 2018 Social Equity Grant Program found at <http://californiareleaf.org/wp-content/uploads/2017/GGRF-Social-Equity-Grant-Guidelines-2018-Final.pdf>; this is an \$800,000 grant program impacted by AB1530 discriminatory provisions; and
- (3) URBAN GREENING PROGRAM FINAL GUIDELIINES FUNDED BY CALIFORNIA CLIMATE INVESTMENTS found at: <http://resources.ca.gov/grants/wp-content/uploads/2018/01/Urban-Greening-Guidelines-Round-Two.pdf>.; This is a \$24.7 million grant program.

I took advantage on November 12, 2017 of an opportunity to talk with CAL FIRE Director Ken Pimlott about the discriminatory new AB1530 law and the targeting of training and permanent jobs by this State law toward minority youth located in so-called “disadvantaged communities” in just 25% of California census tracts. I explained to Director Pimlott that this law appeared to violate both State and Federal civil rights laws and that the targeting of grants, benefits, jobs and training programs based on considerations of age to just young women and men in disadvantaged communities violated the State and CAL FIRE’s obligations to ensure nondiscrimination and its non-discrimination certifications made to Federal agencies relative to the receipt of Federal funds. Director Pimlott responded that CAL FIRE would continue to do what the Legislature or Governor mandated until someone forced them to stop. Mr. Pimlott’s showed by his comments to me that he was willing to continue to violate the requirements of State and Federal civil rights laws that I cited such as California’s Unruh Civil Rights Act, the

California Fair Employment and Housing Act, the prohibition against preferential treatment and affirmative action in the California constitution based on race, or the nondiscrimination provisions in Federal civil rights laws such as Title VI and VII and the ADEA.

I also spoke to CAL FIRE's newly appointed State Urban Forester Robert Little who helped to develop the new urban forestry grant program for CAL FIRE being implemented in 2018 and shared with him the results of my investigation into the past discrimination by CAL FIRE in awarding 100% of urban forestry grant in 2014-2015 in a discriminatory manner to so-called "disadvantaged communities" targeting minority communities of that discouraged me from applying for a grant or a potential job opportunity in this State and Federally funded urban forestry program, and shared my concerns about the discriminatory AB1530 law that targeted training and permanent jobs to "young women and men in disadvantaged communities". Actions speak louder than words and Mr. Little and CAL FIRE's subsequent grant program urban forestry program guidelines were issued and noted that CAL FIRE would be using the California Urban Forestry Act of 1978 criteria (which I believe are discriminatory) and targeting a high percentage of grants to provide benefits and jobs again of close to 60% to so-called disadvantaged communities or and another 15% to low-income households and communities as mandated by the California Department of Finance and CARB, and the State of California.

- **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 implementing 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"*; I have found in my research that there are many persons being denied benefits in some State programs receiving Federal assistance. Title VI Regulations of Federal agencies are supposed to prohibit entities from denying a protected individual any service, financial aid or other benefit under the covered programs and activities, and also to prohibit entities from providing service or benefits to some individuals that are different from or inferior in quantity or quality to other benefits provided to others, and to prohibit segregation or separate treatment in any manner related to receiving program benefits or services. I believe a CARB's Funding Guidelines in the last few years appear to have encouraged violations by State agencies and contractors of some of these important Title VI provisions or prohibitions based on considerations related to protected bases under multiple Federal laws and State of California laws.
- **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; and
- **The Civil Rights Restoration Act of 1987** by encouraging various public and private contractors to not comply with the requirements of the Civil Rights Restoration Act of 1987 in relation to this United State legislative act that specified that recipients of federal funds must comply with civil rights laws in all areas or institution-wide, not just in the particular program or

activity that received federal funding. The California Environmental Protection Agency, CARB and a lengthy series of California agencies and departments that are recipients of federal funds I believe are violating the Civil Rights Restoration Act of 1987 and also forcing other public and private contractors to violate requirements of the Civil Rights Restoration Act by the discriminatory provisions in the State of California laws and regulations and investment guidelines. These I believe result in disparate treatment and disparate impact of millions of non-Hispanic Caucasians, millions of older Californians in relation to some State programs, and deny or restrict access to benefits to residents in almost half of California counties and 75% of California census tracts, and which violate the Equal Treatment provisions in the California and U.S. Constitutions and target benefits toward minority communities of color based on considerations of race, color, national origin, ancestry, age, geographic location and income.

- **The Age Discrimination in Employment Act (ADEA) as amended by the Civil Rights Restoration Act of 1987** by incorporating discriminatory preferences related to age from AB1530 enacted and signed into law in October 2017 into the California Urban Forestry Act and the grant program guidelines for screening grant applications from both public and private applicants for millions of grants for grant and benefit programs for urban forestry grants administered by the California Department of Forestry and Fire Protection and the California ReLeaf network of tree and greening groups. I believe the subsequent grant guidelines issued by CAL FIRE and California ReLeaf result or will soon result in forcing many of these potential State contractors or subcontractors to discriminate in their tree planting and maintenance programs and by targeting these programs to the maximum to discriminate in favor of young men and women in so-called disadvantaged communities for trainee positions and permanent jobs and to potentially violate the California Unruh Civil Rights Act in the provision of benefits and services and the California Fair Employment and Housing Act (FEHA) in their employment and training practices based on multiple considerations of age, geographic locations, income, race, color, national origin and ancestry. I further believe AB1530 provisions and the amended California Urban Forestry Act will result in demonstrating the intent of the State of California, State agencies, elected officials and staff to discriminate in the provision of trainee positions and permanent jobs in relation to the ADEA as amended by the Civil Rights Restoration of 1987 and that the rationale for utilizing the CalEnviroScreen3.0 methodology to favor so-called “disadvantaged communities” located in approximately 25% of California census tracts and 10% low-income households and communities is suspect as well and violates Constitutional equal protection requirements and actually discriminates against older (over age 40 minorities and non-minorities) in the so-called “disadvantaged communities” in violation of the ADEA and FEHA.
- **The Civil Rights Act of 1871, Section 1983 as amended by the Civil Rights Act of 1991.** This Federal civil rights law contains provisions in Section 1983 enacted 144 years ago by Congress that are very significant today in relation to mandating the protection of all of the civil and Constitutional rights of every person or all Americans from a deprivation of any rights or privileges “under color of any statute, ordinance, regulation, custom or usage of any State.” Section 1983 provides in part: “Every person who, under color of any statute,, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of

the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges...secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” Section 1983’s primary objective was to provide a means to enforce the provisions of the 14<sup>th</sup> Amendment to the Constitution. This law protects the rights of all citizens against state sponsored infringement of constitutional rights. This Federal civil rights statute I believe has substantial applicability in potential legal challenges that might be brought and potential court decisions that could be rendered after trial in actions to challenge on behalf of any person or persons for a violation of their civil or Constitutional rights by a person who believes that their civil or Constitutional rights have been violated or that they have been denied privileges, advantages or perhaps services and benefits or access to benefits “under the color state law” either by a State or local official. In the case of *Hafer v. Melo*, 501 U.S. 21, 112 S.Ct. 358 (1991) the Supreme Court held that state officers may be personally liable for damages under Section 193 based upon action taken in their official capacities. The Supreme Court also held that the state officer’s potential liability is not limited to acts under color of state that are outside their authority and not essential to operation of state government, but also extend to acts within their authority and necessary to performance of governmental functions and Eleventh Amendment immunity does not erect barriers against suits to impose individual and personal liability on state officers under Section 1983. It is significant that the courts have held that a personal capacity law suit could be filed against a governmental officer for actions taken under color of state laws.

State and local officials here in California may be far more likely to end the discriminatory and unconstitutional State laws, the discriminatory preferences and screening provisions being shown in relation to race, age, geographic location and income, public contracting and public employment if investigations and potential court proceedings or administrative findings resulted in findings of “personal liability in a Section 1983 action, where it is enough to show that the official acting under color of state law or laws “caused the deprivation of a federal right” for a person or persons. Independent contractors and other individuals who willfully participate in a joint activity with a state or a local agency may meet the requirements of acting under color of state law plaintiffs to sue individuals for monetary damages if such individuals violated plaintiffs’ constitutional and statutory rights “under the color of state law” and could have a Section 1983 action brought against them, courts have ruled. It appears from my research and interviews that there are violations of Federal rights taking place here in California in relation to some grant programs and benefit programs that might impact as many as 30 million Californians in the largest violation of civil rights and Constitutional rights in United States history. I’ve heard too often in the last four years from State staff members in different agencies just saying that they were going to continue doing what they were told to do by the funding sources like the State Department of Finance or the California Legislature or Governor’s office or requirements such as those included in CARB Funding Guidelines and Reporting Requirements until some court, attorney, government agency or Legislative body tells them to stop. State employees are obligated to uphold the California and Federal Constitution requirements, and this includes the requirements for equal protection.

I found in my research of the actions of the California Environmental Protection Agency and the Air Resources Board and up to 20 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 up to 20 State of California agencies and departments and staff members in these departments including, but not limited to major agencies such as CARB, the California Environmental Protection Agency, the Governor's Office, the California Department of Finance, the California Department of Justice, the California Department of Community Services and Development, the California Department of Transportation, the California Transportation Agency, the California Natural Resources Agency, the Strategic Growth Council, the California High Speed Rail Authority, the California Conservation Corps, the California Department of Fish and Wildlife, and the California Department of Resource Recycling and Recovery 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 and now CALENVIROSCREEN 3.0 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 2014-2017 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*".
- Violating the prohibitions against discrimination based on age contained in the California Fair Employment and Housing Act and the Age Discrimination in Employment Act by targeting training opportunities and permanent job in State funded urban forestry grant programs in a

discriminatory manner in implementing AB1530 approved by the Legislature and Governor Brown, which targeted jobs to the maximum these opportunities and job to young men and women in so-called “disadvantaged communities” , while excluding all Californians ages 40 and above from the same treatment, including even all older Californians in so-called “disadvantaged communities including many older minorities that reside in these geographic locations. This latest extension of the discriminatory criteria being utilized by ARB and State agencies to age sets a very dangerous precedent that can significantly adversely impact training and job opportunities for millions of older Californians ages 40 and above and deny important benefits.

- The Annual Report for CARB to the Legislature on California Climate Investments issued in March 2018 of this year contains a substantial amount of information, which can be found online at:  
[https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/2018\\_cci\\_annual\\_report.pdf](https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/2018_cci_annual_report.pdf). It includes some background on some of the various laws that have promoted preferential treatment and redlining of millions of California residents in a lengthy series of California Climate Investment programs that involve State funding leveraged in many cases with Federal funds. Particularly noteworthy each year in the reports to the California Legislature is the discriminatory impact that the requirements in these CARB-regulated programs that force State agencies and some public and private contractors to target benefits in a discriminatory manner to benefit so-called “disadvantaged communities” are the Table ES-2 section of the report that show the names of the many programs and the Administrative Agency involved and the amount of funding benefitting so-called “Disadvantaged Communities” and the frequently high percentages of program funds that were spent/allocated to the so-called Disadvantaged Communities that in many programs range between 80% and 100%, while approximately 75% of California’s population located in 75% of California census tracts are often denied the benefits of these programs and have their rights to equal protection or to equal privileges and advantages in State-assisted or Federally-assisted programs being denied. Each year in the last few years these Reports have shown the impacts of the targeting of public funds and maximizing benefits to targeted “minority communities of color” by advocates for preferential treatment in a discriminatory manner in a growing number of programs that often receive over a billion dollars in State of California funds leveraged with billions in Federal funds and some local funding.

I found substantial evidence that the latest Draft Funding Guidelines and the previously issued Supplement to the Draft Funding Guidelines, and the previously adopted Interim Guidelines issued by the California Air Resources Board were greatly influenced by a coalition led by a public interest law firm Public Advocates, the Greenlining Institute that is affiliated with the Greenlining Coalition, and the Asian Pacific Environmental Network and many minority community organizations such as the NAACP and other advocates for affirmative action and preferential treatment benefiting minority communities of color. They were clear in their goal 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 has not prevented the multiple coalitions over a series of years from successfully lobbying legislators and State agencies/their staffs, including the California ARB and Environmental Protection Agency in the development of multiple CARB issued discriminatory Guidelines including the latest Draft Revised Funding Guidelines for Agencies Administering Greenhouse Gas Reduction Funds.

I previously submitted several sets of detailed written comments to the California Air Resources Board in approximately August and September 7, 2017 (see attached) in which I outlined in my comments how the multiple coalitions led by Public Advocates, the Greenlining Institute, the Asian Pacific Environmental Network and other advocates for preferential treatment that now call themselves the California Climate Equity Coalition had worked to pass a series of new California laws and to influence the implementing regulations developed by the California Air Resources Board to maximize the benefits targeting minority communities of color located in primarily just 25% of California census tracts where ethnic minorities constituted 84% of the residents. For all intents and purposes, these coalitions as I reported in my previous comments to CARB seek preferential treatment for communities of color at the expense of fair treatment of all races and all income in the implementation of environmental laws, policies and programs as mandated by the Government Code definition of Environmental Justice.

I have found that the California Air Resource Board members and its staff like many other State agencies and their staff members have been nonresponsive in relation to comments and complaints I have made in the last four years about the growing systemic discrimination promoted by the coalitions of advocates for preferential treatment for minority communities of color (previously called the SB535 Coalition) led by Public Advocates, the Greenlining Coalition and others in the SB535 Coalition. I have found in the last few years that many State of California elected officials and staff members appear to have violated the requirements of the oath of allegiance to uphold the California Constitution and United States Constitution found in California Constitution – Article XX, Miscellaneous Subjects SEC. 3 that mandates: Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, ...shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation...I...do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, with any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of which I am about to enter.

I have found as summarized above and in my earlier comments to the California Air Resources Board that many State agencies, elected officials and State agency staff members are undercutting or violating provisions and requirements in the California Constitution and United States Constitution that mandate equal protection under our laws, including both State of California civil rights laws and regulations and Federal civil rights laws and regulations. The California Air Resources Board four years ago was one of the primary targets by Public Advocates, the Greenlining Institute and others in the SB535 Coalition to get the State of California and State agencies to preferentially treat minority communities of color in public

contracting and public employment related to environmental investments based on considerations of color. I found, for example that coalition leaders wrote to CARB Board Chair Mary Nichols on March 8, 2013 citing color considerations as a rationale for targeting and maximizing California environmental program benefits to primarily benefit minority communities of color:

*“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 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.” Pacific Environmental Network Director Mari Tarux, and California Black Chamber of Commerce President Aubry Stone. March 8, 2013 letter to California ARB Chairman Mary Nichols, signed by representatives of the SB 535 Coalition including Public Advocates Managing Attorney Richard Marcantonio, Greenlining Legal Counsel Ryan Young, Asian Pacific Environmental Network Director Mari Tarux, and California Black Chamber of Commerce President Aubry Stone.*

I found in my research in the last four years the California Environmental Protection Agency and the California Air Resources Board and CARB staff have been largely influenced by the coalitions led by these coalitions led by Public Advocates, the Greenlining Coalition, and Asian Pacific Environmental Network including the SB535 Coalition that has now been renamed or reincarnated by Public Advocates and its advocacy partners promoting massive redlining and preferential treatment for minority communities of color and calling themselves now the California Climate Equity Coalition. Member organizations of the Public Advocates and Greenlining Institute led-coalitions for years I believe been the prime sponsors I believe of a series of discriminatory laws and arbitrary discrimination requirements promoting preferential treatment for minority communities of color, or low-income households and low-income communities (which I believe violate State of California laws barring unfair treatment of all races, cultures and particularly incomes – i.e., middle and upper income households and communities that constitute the vast majority of California’s population) and manipulating and successfully lobbying State agencies, elected officials, staff members, and in the discriminatory development, administration, and implementation of many State of California Greenhouse Gas Reduction Funded programs that appear to violate civil rights laws and regulations of State and Federal agencies. These programs I believe undercut the constitutional protections in the California Constitution and United States Constitution by the targeting of preferential treatment by public agencies in the provision of funding and benefits in a manner that largely excludes 75% of California census tracts and has targeted most benefits in recent awards to the maximum extent possible in a manipulative manner to benefit ethnic minorities and low-income minority communities of color and low-income residents in only 1983 of the 8000 California census tracts. CARB and the State of California’s Funding Guidelines for Agencies Administering Greenhouse Gas Reduction Fund programs I have found violated the civil rights and Constitutional rights of nearly 30 million Californians located in 75% of California census tracts and are not “fair to all races, cultures, and incomes” as mandated by State and Federal definitions of “environmental justice”, but have been and are being used to maximize benefits for minority community of color and low-income residents in 25% of California census tracts where ethnic minorities constitute 84% of the residents, while redlining 75% of California census tracts based

on discriminatory considerations related to income, race, color, national origin, ancestry, geographic location and most recently based on age.

### **Following the Trail of “Maximizing Benefits”**

This situation is like a multi-tiered wedding cake of intentional and systemic discrimination. It took seven years in the baking, with recently enacted environmental laws and guidelines established that conflict with Constitutional equal protection requirements and major State and Federal Civil Rights laws and regulations. Meanwhile the cake expanded with additional legislation and guidelines, stretching the discriminatory policies and requirements from just a few state agencies to many state agencies and hundreds of regional and local agencies, a growing number of Federal agencies, as well as private sector organizations and contractors/subcontractors receiving substantial funding subject to EO 11246. So, now we have an “Environmental Racism” cake inconsistent with the Environmental Justice definition of State and Federal agencies that undermines enforcement of State and Federal civil rights laws/regulation, contract compliance enforcement of EO 11246 for many contractors and subcontractor, the civil and Constitutional rights of 28 million Californians in 6000 census tracts, or half of California’s counties and a huge class of approximately 12.5 million non-Hispanic Caucasians or Whites who live outside of the 25% of the targeted census tract, who do not benefit from most of these discriminatory environmental program investments by many State agencies and some of the Federal agency investments because they were outside of the targets. The entire process intentionally took away fundamental benefits that are supposed to be assured under Title VI and Title VII, the Equal Protection clauses in the California and U.S. Constitution, EO 11246, and other State civil rights and environmental laws to these affected residents in half of California counties and 75% of California census tracts that, for all intents and purposes, are now the new “disadvantaged communities” in the State of California being denied huge number of benefits in billions of dollars in publicly funded investments each year.

The concept of “maximizing benefits” seems to have come from the involvement of advocates for affirmative action and preferential treatment for ethnic minorities/minority communities of color. There is direct and anecdotal evidence of discriminatory intent on behalf of Public Advocates, the Greenlining Institute and the affirmative action coalition/multiple coalitions led by Public Advocates that greatly influenced the California Legislature and the Governor in the passage of SB 535 and SB 862, the identification of disadvantaged communities, the discriminatory funding of GGRF investment programs, and the preferential treatment and arbitrary discrimination linked to considerations of income and race in the provision of services, privileges and advantages. These were far from “race-and income-neutral” in the factors related to the purpose of the legislation such as SB 535, SB 862 and AB 1532, and the maximizing of benefits approaching the 100% level toward low-income minority communities of color and low income minorities. This program was intended to primarily benefit “communities of color” based on considerations of race, color, national origin, ancestry and geographic location in 1983 census tracts in a program that redlined primarily 6000 California census tracts with larger percentages of Caucasian residents. (See previously sent April report and attachment.) **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 and in Public Resources Code 7110. Both the coalition members and state agencies I have found seem to be overlooking this fact and the non-discrimination requirements contained in long-standing State and Federal civil rights laws.**

The advocates for preferential treatment and affirmative action led by Public Advocates and the Greenlining Institute starting in 2009 essentially got the California Environmental Protection Agency and the California Air Resources Board to go along with a series of new State laws that I believe targeted in an unconstitutional and discriminatory manner environmental program benefits with billions in State Greenhouse Gas Reduction Fund money leveraged with more billions in Federal and local funds to carry out a discriminatory agenda targeting to the maximum economic and environmental benefits including jobs to benefit minority communities of color. One of their apparent objectives I believe was to get around voter-approved California Proposition 209 which prohibited discrimination or preferential treatment of any individual or group on the basis of race, color, ethnicity or national origin in the operation of public employment, public education or public contracting in language inserted in California's Constitution by voters. A challenge to Prop 209 and the language that was included in Article 1 Section 1 of the California Constitution was upheld by the California Supreme Court in 2010. It is significant that then Attorney General Jerry Brown, now Governor of the State of California, opposed Prop 209 and had been closely allied to former Public Advocates leader Robert Gnaizda, who at one time was California's Health Director and Chief Deputy Secretary for Health, Welfare and Prisons under Governor Brown. The Court upheld that the voter-approved ban on affirmative action and preferential treatment ruling it violated the Federal Equal Protection Clause and required specific raced-based affirmative action.

After having submitted several sets of detailed written comments on August 28 and September 14, 2017 to the California Air Resources Board and discussed these extensively with the lead CARB staff member at the August 28, 2017 community meeting held by CARB at the Oakland State Building regarding your Draft 2017 Funding Guidelines for Agencies Administering California Climate Investments, I had hoped to see CARB in holding another community meeting on April 24, 2018 in San Francisco to discuss and receive comments from the public turn over a new leaf and to change from the role of being the LEAD DISCRIMINATOR or aider and abettor of violations of State and Federal civil rights laws and Constitutional requirements for equal protection here in California in implementing new environmental laws and issuing regulations or Funding Guidelines and reporting requirements to direct State agencies and State contractors on their obligations for non-discriminatory implementation of billions of dollars' worth of publicly funded California Climate Investments. I had hoped that CARB and the California Environment Protection Agency would step up and meet its responsibilities in relation to the various State and Federal laws that I have cited for ensuring nondiscrimination in all your programs and those of the various State agencies that receive more than a billion dollars of Greenhouse Gas Reduction Funds each year leveraged with billions more in leveraged Federal and local government funding and assistance.

I found at the April 24, 2018 Bay Area Regional Meeting on Climate Investments conducted by CARB, however, that CARB and its staff members essentially allowed Public Advocates and its major partners in promoting preferential treatment in the erroneously called "California Climate

Equity Coalition” to take over this community meeting and utilize this public meeting to try to get those individuals attending from various public and private sector organizations to accept and buy into supporting the latest discriminatory recommendations from Public Advocates and its Coalition members that they appear to have gotten CARB and its staff to include in the latest CARB Draft Funding Guidelines that were issued on February 18, 2018. CARB staff allowed Public Advocates of the California Climate Equity Coalition at this meeting to essentially run the meeting with speakers and presenters from its Coalition members including staff from the Asian Pacific Environmental Network, Public Advocates and others leading the meeting and directing the discussions by attendees and going through a carefully prepared two-page agenda that attempted to get those attending this community meeting to go along with the latest discriminatory recommendations from this Coalition that are now being implemented by CARB and were printed on the back of the joint Agenda for this meeting that indicated it was being led by the “California Climate Equity Coalition and Air Resources Board”.

Earlier this year I also attended a community meeting held in relation to the new urban forestry grant programs and urban greening grant programs of the State of California being funded with \$50 in California Climate Investments Funds. The meeting on January 29, 2018 arranged by California ReLeaf that is a subcontractor to the California Department of Forestry and Fire Protection in overseeing urban forestry grant funds that are California Climate Investment funds of the State was held at the Greenlining Institute office in Oakland and had members of the so-called California Climate Equity Coalition including the Greenlining Institute staff being allowed to lead the California ReLeaf meeting for public and private sector participants. I was concerned at this meeting to hear a discussion of the requirements for applicants for urban forestry and greening grants from the State being required to submit certifications to the State of non-discrimination, when the State itself appears to be discriminating in relation to these urban forestry and greening grants by targeting 60% of the grants to go to benefit so-called “disadvantaged communities” and another 10% to go to programs that discriminate in violation of the California Unruh Civil Rights Act to programs benefit “low-income households and low-income communities”. I asked at this meeting how the State could require these non-discrimination certification of public agencies and private sector organizations when the State of California and its agencies such as the California Department of Forestry and Fire Protection have been discriminating in their administration of urban forestry grant programs receiving State funds leveraged with Federal funding starting back in 2014 and continuing to 2018.

In my online research after the April 24, 2018 meeting I found on the Public Advocates website blog an article (see link online at link <https://www.google.com/search?q=Public+Advocates+Blog+article+by+Chelsea+Tu+August+23+re+Air+Resources+Board&oq=Public+Advocates+Blog+article+by+Chelsea+Tu+August+23+re+Air+Resources+Board&aqs=chrome..69i57.40289j0j7&sourceid=chrome&ie=UTF-8>) written by Public Advocates Staff Attorney Chelsea Tu on August 23, 2017 that revealed that Public Advocates and its Coalition members were still working very closely with the California Air Resource Board and its staff to include more items dictated by Public Advocates to implement discriminatory State of California laws such as the AB1550 that the article noted Public Advocates had helped the State of California to adopt in 2016 “requiring that at least 10 percent

of climate funds benefit low-income communities and households”. The article by Ms. Tu insisted that “The new ARB guidelines should faithfully implement this requirement by ensuring that this share of funds provides exclusive and direct benefits to low-income people.” The Public Advocates Blog article by Ms. Tu went on to outline a series of features in prior CARB Funding Guidelines that “we won” that required State agencies and contractors to follow I believe the discriminatory mandates of Public Advocates and its Coalition targeting in public contracting and public employment programs as part of the California Climate Investments leveraged with other Federal funds and local public funds to force State agencies and contractors to discriminate in favor of so-called “disadvantaged communities” or “low-income households and low-income communities” that essentially targets minority communities of color located in 25% of California census tracts to the maximum for most benefits including jobs.

I found in further online research regarding Public Advocates and Staff Attorney Chelsea Tu that there was an article written January 20, 2016 (See at <http://www.publicadvocates.org/resources/blog/get-know-chelsea-tu-new-metro-equity-staff-attorney/>) that indicated Ms. Tu joined Public Advocates apparently near that date at a Staff Attorney on Public Advocates “Metropolitan Equity Team”. The Metropolitan Equity Team it was noted “advocates for transportation, housing and climate justice on behalf of low-income communities and communities of color”. This article was very similar to other Public Advocates Blog articles I had seen in prior research that noted that Public Advocates’ attorneys in their work on securing a series of new State of California laws and provisions in CARB Funding Guidelines focusing on promoting what I believe is an advocacy agenda of preferential treatment for low-income communities of color in relation to a series of State laws and the CARB Funding Guidelines and State programs implementing so-called California Climate Investments with billions of dollars in State funding leveraged with more billions in Federal and local public funds.

For example, Public Advocates managing Attorney Richard Maracantonio who attended and spoke at the April 24, 2018 meeting promoting the advocacy agenda of the California Climate Equity Coalition now promoting preferential treatment now included in the Draft CARB Funding Guidelines described in an online article entitled “California \$5.2 billion transportation funding bill, in perspective” how Public Advocates and its Coalition partners are continuing in sponsoring new bills to continue “our recent experience dedicating a share of cap-and-trade auction revenues to benefit disadvantaged communities (SB535, de Leon, and AB1550, Gomez)” implementing the “community-driven” model that Public Advocates is pushing to target billions of dollars in public funds to steer jobs and a lengthy series of other benefits in a manner that targets benefitting “low income communities of color”. Maracantonio noted in his article regarding Public Advocates’ continuing campaign to target benefits to the maximum to benefit “low-income communities”: “At Public Advocates, we think this model is ready to take on the road. That’s why, with our partners,..we are co-sponsoring AB 1640 (E. Garcia), which would require regional agencies to dedicate 25 per cent of a major pot of transportation funds to projects” that essentially benefit low-income communities and communities of color.

I found in my research online substantial evidence the September 4 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 a discriminatory manner 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. My online

research which I documented revealed that the Public Advocates law firm, the Greenlining Institute, and the Asian Pacific Environmental Network (APEN) among other affirmative action coalition partners 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-at-orney>); 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/greenhouse-gas-reduction-fund-q-and-a>” pointedly clarified “what has been Public Advocates’ 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 programs that both reduce greenhouse gas 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 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 score based on how well several important indicators or eligibility criteria are met” which the coalition contended would allow agencies to make strategic investments focused on benefiting “disadvantaged communities” in 1993 California census tracts targeting “economic opportunity for low income communities of color”; this redlined largely 29 million Californians or 75% of Californians located in over 6000 California census tracts and denied them many important benefits that they were supposed to be guaranteed access to in any programs receiving State funds or Federal funds or assistance.
- 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 1993 census tracts, in which Maria Taruc, state organizing director for APEN, stated in a press release from the Greenlining 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 Environmental 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 1993 of California’s 8000 census tracts.

- In a March 8, 2013 to California ARB Chair Mary Nichols signed by representative of the SB535 Coalition such as Public Advocates Managing Attorney Richard Marcantonio, Greenlining Legal Counsel Ryan Young, APEN Director Mari Taruc, and California Black Chamber of Commerce President Aubry Stone, 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 1883 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 or subsequently issued Funding 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 directly 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 supporters across the state to educate them regarding the top 5 near term program ideas 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. 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 (CSD) 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. I found this violated the Title VI Regulations of U.S. Department of Agriculture (USDA) applicable to CAL FIRE’s contract with the USDA Forest Service in which CAL FIRE certified compliance with Title VI in relation to the Federal funds received for urban forest funding. I also believe this violated the assurance of compliance signed by CSD’s Director with Title VI Regulations in the CSD’s current multi-million dollar contract for the LIWP with the US Department of Energy and the assurance of compliance with Title VI Regulations and requirements applicable to the Low-Income Home Energy Assistance Program (LIHEAP) for which CSD receives millions of dollars each year.

One of the areas where the advocacy activity of the two coalitions led by Public Advocates appears to have impacted the California Air Resources Board (CARB) guidelines for agencies like CSD administering Greenhouse Gas Reduction Fund programs like the LIWP was on page 13 where the CARB document issued on November 3, 2014 that 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 CARB “Interim Guidance” summarized the 100% as the “Total % Targeted to Benefit Disadvantaged Communities” (<http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/auctionproceeds.htm>) 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 made in 2015 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 CARB 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) and in subsequent years to just serve qualified applicants located exclusively in some of the 1993 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 as disadvantaged communities were excluded from GGRF funding for these benefits.

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, AB1550 and AR1530, 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 firm and partners in the last four to 9 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, age, geographic location, and income to benefit “communities of color” focusing on benefits to primarily Hispanics, Asians, and African Americans. Approximately 29 million Californians that don’t live in the 6000+ census tracts that have been redlined and denied the same treatment and benefits now afforded to so-called “disadvantaged communities” by CARB, EPA, the State of California and various State agencies in relation to discriminatory California Climate Investments and CARB’s discriminatory Draft Funding Guidelines now being implemented and heavily influenced by the advocates for preferential treatment led by Public Advocates and its Coalition partners that seek preferential treatment in large part benefiting low-income communities of color in just 25% of California census tracts.

CARB, EPA and many State Agencies and State agency staff members and elected officials have given too much support to the recommendations and advocacy agenda of Public Advocates and its Coalitions of advocates for preferential treatment that ignored the requirements of State and Federal civil rights laws and Regulations, as well as Constitutional requirements for Equal Protection and barring preferential treatment in government contracting and public employment. The advocacy and actions of these organizations in working with multiple coalitions to promote affirmative action and preferential treatment for “communities of color” 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” and more recently to discriminate based on age against older Californians in 75% of California census tracts, and to further discriminate based on income level in a manner that is not fair to all “races, cultures and incomes” as mandated by State of California laws.

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 appears to be more of an interest in retaining the new millions/billions in GGRF leveraged with Federal funds that fund these discriminatory programs on the part of the agencies such as CAL FIRE, CSD, Cal EPA, and CARB 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.

The California Air Resources Board, and its staff, and all State of California agencies and elected officials including State legislators cannot allow Public Advocates and its various Coalition of advocates for preferential treatment to continue to dictate the provisions of new discriminatory State laws and to utilize other recently passed discriminatory and unconstitutional State laws that they and various coalition partners have helped to get enacted, along with discriminatory State of California Funding Guidelines or grant/benefit program guidelines, such as the latest CARB Draft Funding Guidelines for Agencies that Administer California Climate Investments to redline and discriminate against 30 million Californians and to deny civil rights and the constitutional rights to equal protection to any Californian.

It should be noted by the California Air Resources Board and many other State of California agencies and contractors/subcontractors that the CARB Funding Guidelines and recently issued Draft Funding Guidelines advocated and relies in part on maximizing and leveraging the State of California’s Greenhouse Gas Reduction Fund money with both Federal funds and other government funding to maximize the impact of the California Climate Investments and the benefits of these funds in targeting benefits in public contracting and public employment currently in a discriminatory manner that targets “minority communities of color”, “young men and women” in so-called “disadvantaged communities”, and based on discriminatory income considerations toward “low income households and low income communities” that violate the rights of middle and upper income households and communities to equal protection under State and Federal laws. The problem with this approach by CARB and the State of California to leverage its discriminatory Greenhouse Gas Reduction Fund programs by leveraging these programs and accepting millions and billions of dollars in Federal funds is that this made each of the California agencies that utilized these Federal funds liable for ensuring non-discrimination “institution wide” in all of their programs in order to comply with the requirements of Title VI of the Civil Rights Act of 1964 and the various Title VI Regulations of Federal agencies, along with complying with the clear requirements of the Civil Rights Restoration Act of 1987 that amended and now apply to both Title VI requirements for non-discrimination that Federal agencies must enforce and the non-discrimination requirements of the Age Discrimination in Employment Act of 1975 as amended by the Civil Rights Restoration Act of 1987 that the U.S. Equal Employment Opportunity is obligated and designated to enforce.

There are many State of California agencies like CARB that have received Federal funds last year, this year and likely could receive Federal funding in future years. However, I have found that that CARB and many other State agencies that now have received Federal funds have not complied fully with the nondiscrimination requirements and the nondiscrimination certification requirements by State agencies and State contractors/subcontractors in accepting the Federal funds that leverage the State funding and then following through to ensure nondiscrimination in all of their programs and actions. I found online for example that the California Air Resources Board received Federal funds from the U.S. Environmental Protection Agency in a grant this year that imposes an obligation for CARB under the provisions of Title VI of the Civil Rights Act of 1964 as amended by the Civil Rights Restoration Act of 1987 “institution wide” to ensure nondiscrimination in all of its programs. This is problematic for CARB since it has been utilized for a number of years by the State Legislature, the Governor, the California Department of Finance to carry out the role of the State agency with various responsibilities for overseeing and implementing a series of discriminatory State laws related to the development, administration, and implementation and reporting requirements and contracting provisions related to the Greenhouse Gas Reduction Fund programs of various State agencies. CARB Board members and staff and the CARB agency can no longer ignore the clear nondiscrimination requirements of various State of California and Federal civil rights laws and the Equal Protection requirements in the State and U.S. Constitution in relation to their work with other State agencies and State contractors/subcontractors. As I outlined above, there are various civil rights laws and Constitutional requirements that must be complied with in relation to CARB’s responsibilities and if it does not ensure nondiscrimination in all of its programs and the dictates and requirements it makes in its Funding Guidelines then the CARB Board, staff members, and the CARB agency might open themselves to potentially being named in administrative complaints or lawsuits and could possibly incur liability for not complying with legal obligations for ensuring nondiscrimination or for denying a Federal right to one or more California residents.

CARB cannot continue now or as it has in the recent past in acting in a capacity that ignores its legal obligations to ensure nondiscrimination in all of its programs, or to aid and abet in the violation of various civil rights laws and regulations by allowing State agencies and contractors/subcontractors to discriminate in relation to the requirements of various State and Federal laws and regulations and Constitutional requirements that prohibit discrimination based on a wide range of bases, including race, color, national origin, ancestry, age, geographic location, income, and other bases as outlined by the California Supreme Court that might be covered under the broad protections of the California Unruh Civil Rights Act and Fair Employment and Housing Act.

I believe the CARB Board, agency and staff now need to act quickly and in a very comprehensive manner to end the discrimination resulting from their past actions and various Funding Guidelines and staff involvement that might have aided and abetted violations of State and/or Federal civil rights laws/regulations and Constitutional requirements. The current CARB Funding Guidelines are blatantly discriminatory and flawed, and CARB reporting Rules relative to reporting requirements for California Climate Investments very likely need to be promptly rescinded and replaced by a new series of Regulations or requirements developed by outside

experts regarding the nondiscrimination requirements of various State and Federal civil rights laws and Constitutional requirements and to ensure that the State and all State agencies and contractors/subcontractors are fully complying with nondiscrimination requirements and equal protection requirements in the State and United States Constitutions.

Similarly, many other State agencies that receive Federal funds and State funds will need to evaluate all of their programs “institution wide” and make necessary changes in their grant/benefit programs and guidelines and requirements applicable to Greenhouse Gas Reduction Fund programs and public contracting and public employment programs to ensure nondiscrimination. I have found that there are a large number of the State of California agencies that have not fully complied with their obligations for ensuring nondiscrimination in all of their programs, including programs related to California Climate Investments and for ensuring nondiscrimination in benefit/grant programs and preventing preferential treatment in public contracting and public employment, or in relation to nondiscrimination requirements applicable to the provision of benefits, privileges and advantages by agencies and contractors.

I will attach separately to my comments to CARB copies of some of my previous written comments submitted in relation to some State of California programs related to California Climates Investment areas such as those related to urban forestry programs developed and administered by CAL FIRE, California ReLeaf, and greening programs of the California Natural Resources Agency. CARB and/or the California Department of Finance and these agencies included in recent years requirements for discriminatory set asides or for awarding to the maximum large percentages of contracts for programs to benefit so-called “disadvantaged communities” and more recently percentages or set asides for benefiting “low-income households and low-income communities” that I believe are suspect categories or that were intended by legislation sponsors to discriminate based on considerations of race, color, national origin, ancestry, age, geographic location, and income that violate provisions of a series of State and Federal laws and the Constitutional prohibition of preferential treatment in public contracting here in California.

I was previously told, for example, by a CALFIRE urban forester when I led a greening group in 2014 and looked into applying for a CALFIRE State and Federally funded urban forestry funding program that where I lived in one of many Oakland census tracts that was not designated as a so-called “disadvantaged community” that I would not qualify for consideration. This discrimination and redlining is still going on four years later and is discouraging potential applicants from applying for grant funding or from serving some of the 6000 California census tracts not designated as so-called “disadvantaged communities” . The State of California and some State of California agencies and contractors are still discriminating and not ensuring nondiscrimination by setting arbitrarily high goals and attempting to maximize the percentage of benefits including trainee positions and jobs, and contracts awarded in various California Climate Investment programs to so-called “disadvantaged communities” in just 25% of California census tracts or the increased 35% range at a minimum established to benefit minority communities of color, low-income households and low-income communities. I have found that CARB and in some cases the California Legislature appear to establish artificially high percentage requirements or “quotas” or “set aside” percentages for benefits in many California

Climate Programs that are extremely arbitrary and that discriminate in violation of provisions of State and/or Federal civil rights laws and Constitutional provisions requiring equal protection and prohibiting preferential treatment. CARB's Annual Report to the State Legislature describes some of the set asides established for various State agencies and programs targeting to the maximum providing benefits to "disadvantaged communities".

There are other agencies here in California at the State or Federal level that CARB, and various State agencies I believe should turn to for assistance in ensuring nondiscrimination with respect to ensuring nondiscrimination and for help in eliminating all the unconstitutional and discriminatory provisions in various State laws, Funding Guidelines, reporting requirements, grant programs, benefit programs, and California Climate programs and to help in preventing future enactment of discriminatory laws and guidelines or discrimination in benefit and public employment programs subject to nondiscrimination requirements and Constitutional prohibitions against preferential treatment. For example, in view of potential conflicts of interest that some State of California agencies might have in relation to making necessary or needed changes to ensure nondiscrimination in all of their programs, practices and guidelines, it could help to call on the United States Department of Justice and experts in agencies such as the U.S. Equal Employment Opportunity Commission and its Systemic Investigation staff to assist in helping to end the systemic discrimination related to discriminatory State laws, State agency programs related to California Climate Investments and discriminatory preferences/advantages/ and requirements, ensuring effective compliance by State of California agencies with nondiscrimination requirements and needed training and monitoring to prevent further violations of both State and Federal laws, and helping to get our legal system and State representatives to assist in eliminating unconstitutional and discriminatory provisions in State agency programs that have received Federal funds or State funds that have nondiscrimination requirements that are applicable.

EEOC shares with the California Department of Fair Employment and Housing here in California in a work sharing agreement the responsibility for investigating and ensuring effective compliance with State and Federal civil rights laws. EEOC also has a Systemic Investigation unit and priority for conducting systemic discrimination complaint investigations, and expertise and experience in working with courts or negotiated agreements and consent decrees to ensure nondiscrimination. It could be helpful to get the EEOC to agree to conduct one or more systemic investigations of what I believe is the largest civil rights violation and Constitutional rights violation in United States history that is taking place in California, and to perhaps help bring about a consent decree and court monitoring of both State and Federal involvement in relation to the systemic discrimination. Many Federal agencies have not done all that they could or should to prevent the growing systemic discrimination in programs here in California that receive State, Federal and local public funding and violate the civil rights of many Californians. There is a need for Federal agencies to not violate the Federalism Executive Order and to more effectively enforce Title VI Regulations to ensure nondiscrimination by conducting effective compliance reviews and investigations that will stop the discrimination and end preferential treatment that is sometimes encouraged by Federal agencies in their actions and funding practices that promotes preferential treatment in states such as California. We also need more effective enforcement by Federal agencies such as EEOC and others providing millions or billions in funding to California

State agencies of Title VI and VII of the Civil Rights Act of 1987 and the Civil Rights Restoration Act of 1987 that apparently is not being adequately enforced by some Federal agencies.

The U.S. Office of Federal Contract Compliance Programs might also be called on to help ensure more effective enforcement of Title VI Regulations here in California that will stop discrimination in public contracting and employment programs. These Federal agencies need to do much more than accepting paper certifications from California State agencies of nondiscrimination and compliance with Title VI or the Civil Rights Restoration Act of 1987 and other Federal laws and regulations.

There has been difficulty in the past few years in getting many State agencies to step up to ensure nondiscrimination in many of these government programs labeled by CARB as California Climate Investments receiving State funds, and often Federal funds and local government funds. The California Department of Fair Employment and Housing and the State Department of Justice also receive funding from Federal agencies and are obligated to ensure nondiscrimination in all of their programs and to meet responsibilities for ensuring the State and State agencies do not discriminate. It would be helpful for these agencies that receive substantial Federal funding to be far more active and effective than they have been in the last decade in ensuring nondiscrimination and compliance with the various requirements in State and Federal civil rights laws and the California Constitution and to help in ending the growing systemic discrimination and working to ensure needed training, monitoring and administration of State programs related to public contracting and public employment. It appears many State of California agencies have been blatantly discriminating in recent years, and DFEH and the California Department of Justice need to initiate investigations and promptly act with others to end this discrimination and to monitor and prevent discrimination in the future and to eliminate discriminatory provisions in State laws and Funding Guidelines and grant programs and benefit programs. I have communicated in the last few years with many representatives in various State agencies about the growing systemic discrimination in relation to California Climate Investment programs by State agencies and contractors in relation to public contracting and public employment and found most agencies were nonresponsive and failed to respond or to even set up a meeting or to take any corrective action or actions mandated by our laws and Constitution to ensure equal protection and to prevent preferential treatment.

Action is also needed from other major State of California agencies to step up and more effectively help in ending the systemic discrimination related to discriminatory laws, guidelines and methodologies being utilized to discriminate in various California Climate Investments and programs of State agencies. For example, the California Environmental Protection Agency has responsibilities in relation to complying with various State laws that I have cited earlier including California Resource Code Section 71110 that it does not appear to be effectively implementing or working to ensure that is complied with along with helping to ensure compliance with the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, and other State and Federal civil rights laws and Constitutional requirements for equal protection. CARB's Funding Guidelines make virtually no mention of State and Federal laws that mandate non-discrimination or the Constitutional prohibition against preferential treatment in public

contracting and public employment, and this is problematic in view of the many provisions in these Funding Guidelines that appear to encourage or require discrimination and preferential treatment. The CalEnviroScreen3.0 methodology has been greatly misused by State agencies/contractors and the California Environmental Protection Agency and CARB I believe, and actions need to be taken to end the use of this methodology by the EPA and the State of California to aid and abet discrimination or to misuse this kind of information and methodology to aid discrimination in State contracting, public employment, benefit and grant programs, and various government programs here in California. The methodology has been misused to discriminate in a variety of ways: against both minorities and non-minorities; to redline 75% of California census tracts and deny important benefits in many grant and benefit programs; to target benefits based on age in a discriminatory manner and to even discriminate against many older residents in so-called disadvantaged communities and all Californians 40 and older.

The California Department of Community Services and Development I found in my research and believe has also been discriminating for the last four years against low-income residents in 75% of California census tracts across California in relation to its energy programs utilizing State funding leveraged with Federal dollars. Year after year CARB, EPA, the State Department of Finance, and other State agencies have allowed CSD to continue to discriminate in programs heavily leveraged with Federal funds from multiple Federal agencies. Neither State or Federal agencies nor government civil rights agencies should allow this type of systemic discrimination to continue. Government agencies are not supposed to discriminate in the provision of services, and too often here in California government agencies are egregiously violating the civil rights and Constitutional rights of large numbers of residents. We need the Governor, the Attorney General, the Director of the California Department of Fair Employment and Housing, and others to have a backbone, and to stand up for the oath of allegiance to uphold the Constitutional rights of Californians to equal protection and to ensure the permanence of nondiscrimination policy in our State and in our country.

No one in State service or government service is above the law, and its time for government agencies to stop permitting or allowing special interest groups or a public interest law firm or coalitions of advocates for preferential treatment to dictate discriminatory policies or new State laws that discriminate against any Californian and their rights to equal protection under our laws. California Governor Jerry Brown needs to lead and to uphold California's Constitution and important California and Federal civil rights laws, and as an attorney and our Governor he needs to get back to correcting and ending the systemic discrimination that has flourished during his administration and to get Public Advocates and others promoting preferential treatment and undercutting the enforcement of State and Federal civil rights laws and our Constitutional requirements to equal protection to start working with the State of California to properly implement programs serving Californians that are fair to all races, cultures and incomes, and to implement environmental and other benefit programs in a nondiscriminatory manner.

If government employees are not supporting the Constitution and our civil rights laws and Constitutional rights of any Californian, they should step down and allow others that will protect the Constitution to take their place. There are only 8 months before California installs a new Governor and new Cabinet members and they should not have to inherit the largest violation of

civil and Constitutional rights in United States history and many discriminatory grant and benefit programs and discriminatory Funding Guidelines from CARB. Some California agencies that are supposed to protect the civil rights of all Californians have been noticeably “missing in action” even though the growing systemic discrimination and the huge violations of civil rights laws and the Constitution in many State programs have been called to their attention. It’s time for these civil rights agencies to more effectively initiate investigations and to take actions to end the discrimination and preferential treatment and help compensate the victims and eliminate the discriminatory and unconstitutional laws, guidelines and any program that discriminates and denies important rights and benefits to Californians that are supposed to be guaranteed in any program receiving State assistance or Federal assistance. California must once more be the leader in civil rights enforcement and not violating the civil rights of 30 million Californians.

As an attorney, California Governor Brown should recognize the Ninth Circuit Court already twice upheld the validity of Prop 209 barring preferential treatment by governmental agencies in public contracting and public employment, and have the courage to reverse or end the unconstitutional provisions in CARB Funding Guidelines that he previously supported for maximizing the benefits for so-called “disadvantaged communities” and redlining 75% of California census tracts that denies important benefits and civil rights and Constitutional rights of nearly 29 million California residents before the Governor’s legacy becomes being known as the greatest discriminator in California and United States history. Cabinet officers in California agencies and departments also need to stand up for the Constitution and for the civil and Constitutional rights of all California residents and end their maximizing of benefits for so-called “disadvantaged communities” targeting just 25% of California residents or “low-income minority communities of color” before their agencies are challenged in administrative complaints, compliance reviews, or other actions for violating the civil rights and Constitutional rights of millions of Californians in nearly 75% of Californians in discriminatory implementation of so-called California Climate Investment programs that are a pretext for discrimination. If you can’t uphold the California Constitution and uphold your oath of allegiance and the rights of all of our California residents, you have no business working for the State of California or leading a California agency or department.

When I contacted the State Department of Finance in approximately early January of 2015, I inquired why the Department of Finance had imposed this 100% requirement on CAL FIRE and CSD 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 \$75 million in the LIWP at CSD and the \$18 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 LIWP funds 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 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 for FY2014-5, that have little or no greenhouse gas reduction benefits.

I found in my online research some evidence that a public interest law firm and Coalition of n organizations were essentially working in 2017 and now in 2018 in a collaboration with CARB staff in developing and promoting the recently issued Draft CARB Funding Guidelines that have already taken effect to dictate an enhanced list of requirements that will promote preferential treatment and assist in implementing the series of unconstitutional and discriminatory laws that this Coalition of preferential treatment partners are promoting to force the State of California and State agencies and contractors to discriminate further I believe in public contracting and public programs/public employment in violation of the California Constitution prohibition of preferential treatment and the various requirements of State and Federal civil rights laws and regulations. I raised my concerns in the April 24 meeting with CARB staff members in attendance both in written comments I presented about the discriminatory CARB Funding Guidelines and actions of State agencies in implementing the preferential and discriminatory provisions in these Guidelines and the many State agency programs redlining 75% of California census tracts and discriminating against over the 30 million Californians. I raised questions at the meeting as to why State agencies would be requiring other government agencies and private sector organizations and individuals to join them or require or teach them to discriminate and violate the civil rights and Constitutional rights of millions of California residents in violations of their obligations to ensure nondiscrimination in programs and practices. I advised the lead CARB staff member I was angry about the actions of CARB and other State agencies, and I was even more upset after seeing the actions of CARB staff and CARB as an agency in basically letting Public Advocates and its Coalition of advocates for preferential treatment run this important meeting that was supposed to help thoughtfully address the appropriateness of the newly issued CARB Funding Guidelines and to turn it into a pep rally for Public Advocates and its Coalition advocating expansion of preferential treatment and discriminatory new criteria in CARB Funding Guidelines for 20 Agencies overseeing nearly 40 State of California benefit and grant programs. I reflected after the meeting on CARB and CARB staff becoming a puppet for Public Advocates and this joint meeting with the Coalition members being a rally or public relations event promoting redlining and a new preferential treatment and discrimination agenda. It made me think about Moby Dick or a large whale swallowing California State agencies and the civil rights and Constitutional rights of 30 million Californians in 20 State agencies and 40 discriminatory programs ... as the ship of preferential treatments continues to sail on in California counties and redlines 6000 census tracts including the community where I live utilizing billions of State, Federal and local public funds to discriminate. When the going gets tough, the tough and thoughtful in California need to end this growing systemic discrimination by government agencies at all levels here in California before it violates the rights of even more Californians and undercuts our Constitutions.

The State of California and various State agencies (including CARB) and potentially State contractors that are recipients of public funding I believe are discriminating against over 29 million California residents located in a geographic area that covers over 75% of California census tracts, some 6,052 census tracts with 29.91 million total residents and potentially against the 45% of California residents (approximately 17,662,507 Californians) that are age 40 and over) in what appears to be the largest violation of civil rights and Constitutional rights in United States history.

To provide a perspective on the magnitude of the growing discrimination and civil rights and Constitutional rights violations, I researched the number of Americans in 1860 that were slaves/denied their civil rights and found the 1860 U.S. Census revealed there were approximately 3.9 million slaves or

12.6% of the total population denied important rights. The State of California I have found and believe is discriminating against and denying the civil rights and Constitutional rights to an egregious record number of individuals, and many millions more individuals and a far higher percentage of its total population in 2018 I found in comparing/analyzing this current discrimination to the situation in 1860 involving slavery and the denial of important civil rights. The systemic discrimination involves areas that EEOC has identified as examples of systemic practices which include: discriminatory barriers in recruitment, hiring and training programs and age discrimination practice and policy with broad impact.

The systemic discrimination I have identified in my research and also encountered in my personal experience involves the State of California and multiple State agencies that in implementing a series of over a dozen State laws and more than 20 large grant/benefit programs in recent years that have established discriminatory policies, practices, laws and requirements for State agencies and contractors that target hiring, recruitment and training programs to primarily recruit, hire and benefit primarily 7.8 million minority residents found in 25% of California census tracts (some 1,983 census tracts) in violation of Title VI and most recently escalated the discrimination to discriminate against based on age in violation of the Age Discrimination in Employment Act (ADEA) targeting permanent jobs and training program positions for “young women and men” in so-called “disadvantaged communities” where 84% of the residents in these census tracts are minorities (7,832,804 ethnic minorities out of a total of 9,337,810 residents residing in these census tracts).

I can provide a detailed listing and of these laws, administrative regulations, and other documentation regarding discriminatory State grant program guidelines that contribute to the systemic discrimination based on race, color, national origin, ancestry, age and geographic location by the State of California and State agencies here in California.

I have found that the California Air Resource Board members and its staff like many other State agencies and their staff members have been nonresponsive in relation to both detailed written comments, summaries of and documentation of specific violations and evidence I have provided, and formal written complaints and verbal summaries of discrimination I have provided in the last four years about the growing systemic discrimination. I previously submitted several sets of detailed written comments to the California Air Resources Board in approximately August and September, 2017 (see attached) in which I outlined in my comments how the multiple coalitions led by Public Advocates, the Greenlining Coalition, the Asian Pacific Environmental Network and other advocates for preferential treatment that now call themselves the California Climate Equity Coalition had worked to pass a series of new California laws and to influence the implementing regulations developed by the California Air Resources Board to maximize the benefits targeting minority communities of color located in primarily just 25% of California census tracts where ethnic minorities constituted 84% of the residents.

CARB's Funding Guidelines and current reporting requirements promote discrimination and preferential treatment for so-called "disadvantaged communities" in 1983 California Census tracts while largely redlining persons and program benefits for persons in most of the 6000 other California census tract utilizing the CalEnviroScreen 3.0 methodology has now and will continue to have a discriminatory impact or disparate impact that 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 excluded and redlined and denied program benefits. This is another important reason for CARB and the State to seek outside assistance to rescind these Guidelines and conform them fully to non-discrimination requirements of State and Federal laws and Constitutional requirement for equal protection. The process for identifying these disadvantaged communities by CAL EPA and CARB 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.

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 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 these jointly funded or supported State and Federal programs.

#### NEXT STEPS

The ARB Board and CAL EPA administrators and staff need to immediately address the problems with their Interim Guidelines and these proposed GGRF Guidelines and the Supplement to the Draft Funding 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. 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 persons in all California census tracts. The ARB Interim Guidelines and proposed GGRF Guidelines and the Supplement to the Draft 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 CalEnviroScreen 3.0 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, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Civil Rights Restoration Act of 1987.

As part of the corrective action, I would like to see:

- Training of civil rights staff, program staff and legislators of the requirements of state and federal civil laws and prohibition of affirmative action and preferential treatment in public contracting so that programs don't discriminate.
- Appoint a team of experts in the requirements of State and Federal civil rights laws and Constitutional requirements for equal protection and prohibiting preferential treatment to review the Funding guidelines, GGRF grant and benefit guidelines and provisions/requirements, and the State's practices in relation to public contracting and public employment related to California Climate Investments and to make sure that they are in compliance with State and Federal civil rights laws and Constitutional requirements.
- Meet with federal agencies including EEOC and the U.S. Department of Justice to understand and comply with the requirements for nondiscrimination and mandated equal treatment under Title VI and to apply them whenever implementing programs fully or partially funded with federal monies, and to bring the State agencies into compliance with the requirements of Title VI and VII of the Civil Rights Act of 1964, the ADEA, the Civil Rights Restoration Act of 1987, and Title VI Regulations of Federal agencies.
- Develop a new screening system to replace CalEnviroScreen 3.0 and the current definition of disadvantaged communities that does not discriminate as the current one does nor disparately impact Caucasians and the residents in the 75% of the census tracts now unable to participate in the program or many benefits.
- Establish a complaint and investigation procedure to enforce these requirements.
- Training and information for recipients of these grant funds so that they can also be in compliance with the state and federal civil rights laws.
- Complete revision of the CARB Draft Funding Guidelines and requirements to ensure full compliance with applicable civil rights laws at the state and Federal levels that mandate nondiscrimination in public contracting and employment.
- Repeal of the discriminatory provisions in various State of California laws and guidelines for GGRF funded programs including grant programs.
- Repeal the discriminatory language in AB1530 that promotes discrimination based on considerations of age, race, color, national origin, ancestry, geographic location, income and other considerations.
- Actions taken to address the various concerns cited and to ensure nondiscrimination in all State and Federally assisted programs and equal protections ensured under all of the States GGRF programs before the end of 2018 and ongoing monitoring in the next few years to ensure nondiscrimination in all California Climate Investments and State contracting and public employment as mandated in the California Constitution

