Preliminary Recommendations for Final SB 535 Guidance (May 2015)

Proposed by the SB 535 Coalition (APEN, Coalition for Clean Air, Greenlining Inst., Public Advocates)

The SB 535 Quad appreciates the opportunity to submit preliminary recommendations to ARB staff as it develops a draft of the Final Guidance on implementing SB 535. These preliminary recommendations build on our SB 535 principles and four-step framework, parts of which have been incorporated, at least at the level of principle, into the Interim Guidance. We now hope to see these principles fully incorporated and fully implemented.

1. Require a demonstrated nexus between an important DAC need and the benefits provided. The Interim Guidance correctly emphasizes that "To the maximum extent possible, investments should result in benefits that either address an important need commonly identified by disadvantaged community residents or address a key factor that caused the area(s) to be identified as a disadvantaged community (e.g., unemployment levels)." (p.18) It falls short, however, of directing agencies to require a nexus between the benefits provided and priority community needs. The Final Guidance should fully implement this principle by requiring the link between the investment benefits and priority needs of the relevant disadvantaged community (DAC).

Preliminary Recommendation: To be eligible as providing a benefit under SB 535, each project sponsor should be required to demonstrate that the criteria selected in App. A will directly and significantly address community needs that have been identified as priorities in the relevant DAC and/or (for projects "located within" a DAC) will directly and significantly address a need highlighted by CalEnviroScreen.

The Final Guidance should strongly encourage meaningful and inclusive community participation in identifying priority needs and shaping investment proposals. However, if a project sponsor's community process identifies as a priority a need not included in Table 3, an additional showing should be required to ensure that this was not the outcome of a manipulated or otherwise inadequate community process. We will follow up with further recommendations about how Table 3 can be used in connection with these requirements, as well as a more detailed version of that Table.

2. Ensure that all SB 535 investments provide significant benefits. By statute, all GGRF investments must maximize benefits and ARB must provide guidance on how "administering agencies should maximize benefits for disadvantaged communities.[1] The Interim Guidance correctly acknowledges that SB 535 investments should "improve California's most vulnerable communities," strive to "meet multiple policy objectives" and provide "provide significant benefits to disadvantaged communities.."[2] The Interim Guidance lays down the principle that implementing agencies should "give priority to [investments] that maximize benefits to disadvantaged communities (e.g., use scoring criteria that favor projects which provide multiple benefits or the most significant benefits)" (p. 15), and states that the Final Guidelines will "provide direction on … methods to quantify GHG reductions and co-benefits …" (p. 3) "[P]ending ARB development of methodologies for quantifying project benefits" (p.15), the Interim Guidance offers only optional language.,[3] while Appendix

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[1] Health & Saf. Code § 39715.

[2] Interim Guidance at p. 17; see also Appendix A-5-13.

[3] E.g.: "agencies may choose to implement the second example as well if they have the means to provide robust and consistent calculation protocols to project applicants" (p.15); and an agency could "when developing eligibility requirements . . . establish targets or minimum thresholds that will help maximize benefits. For example, an agency could identify a certain percentage of total jobs for a project to be held by residents of disadvantaged communities in order to receive a higher priority for funding." (p.20)

A offers few thresholds of co-benefit significance (e.g., "at least 25% of new riders from DACs" or "at least 25% of work hours performed by residents of DACs").

***Preliminary Recommendations*:** To the extent possible, additional quantitative thresholds of co-benefit significance should be added to ensure the nexus to addressing priority DAC needs is robust. To the extent that quantification proves infeasible on ARB's timetable, pending further work on quantification by ARB the Final Guidance should ensure that the significance of benefits are demonstrated qualitatively. The Guidance should require implementing agencies to solicit a qualitative assessment of significance in narrative form as part of the funding application. The qualitative assessment should (a) identify the priority community needs that the project will address, (b) provide a persuasive basis to support its assertion that the impacts on each need will be significant, and (c) describe outcomes, and where possible metrics, that can be used to confirm the significance of those impacts at the reporting stage. ARB's final reporting requirements should then require reporting of investment results to demonstrate the extent to which those outcomes have been met.

In addition, the Interim Guidance allows investments to qualify for SB 535 by meeting any one criterion in Appendix A. In the Final Guidance, (1) those criteria should be revised to more robustly align with the community needs in Table 3; and (2) SB 535 investments should be required to demonstrate that they will address two or more of those needs in a manner that is both individually and cumulatively significant. We will follow up with more detail on this recommendation.

3. Ensure that the primary beneficiaries of all SB 535 investments are disadvantaged households. The Final Guidance should require SB 535 investments to target benefits to the most disadvantaged households. AB 1532 (2012) requires that all GGRF "moneys shall be used to facilitate the achievement of reductions of greenhouse gas emissions in this state . . . and, where applicable and to the extent feasible . . . direct investment toward the most disadvantaged communities and households in the state."[4] Some GGRF investments are expressly targeted to low-income residents or households. In some cases, this occurs because the program itself is needs-qualified (e.g., affordable housing), and for others there can be a tie to such programs.[5] In all other cases, the Final Guidance should require project sponsors to demonstrate that the **overwhelming majority** of beneficiaries will be low-income.

Where an SB 535 investment provides benefits "located within" a DAC, the purpose of this requirement is to ensure that disadvantaged households, rather than a small number of high-income households or new neighbors in a gentrifying neighborhood, are targeted for the benefits of the investment. The purpose of SB 535 is to ensure the investment of GGRF funds in community assets. Where an SB 535 investment "provides benefits" outside a DAC, such as affordable housing that gives residents of DACs access to healthy high-opportunity areas with good schools and jobs, the targeting requirement should be stricter: 100 percent of the beneficiaries should be low-income.

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[4] Health & Saf. Code § 39712 (b)(4). Since AB 1532 applies to all GGRF funds, perforce it applies to investments counted under SB 535.

[5] For instance, the Interim Guidance includes one criterion in Appendix A that indirectly targets low-income residents who, based in part on their income, qualify for job training programs. App. A-7 - A-13 ("Project includes recruitment, agreements, policies or other approaches that are consistent with federal and state law and result in at least 10% of project work hours performed by residents of a DAC participating in job training programs which lead to industry recognized credentials or certifications.").

***Preliminary Recommendations**:* The Final Guidance should require project sponsors to demonstrate that the overwhelming majority of beneficiaries will be low-income as defined by CalEnviroScreen (at or below 200% of the federal poverty limit).

- Affordable Housing and Sustainable Communities – The final guidance should explicitly require that SB 535 funds prioritize **units set aside for households in the low-, very low- and extremely-low income categories**.

- In the investment categories that can be spent within DACs, but are not expressly income-targeted, the **overwhelming majority of beneficiaries should be low-income or otherwise disadvantaged**. This will ensure that disadvantaged households benefit from these community assets. Each project located within a DAC should be required to demonstrate that it provides benefits to existing, local socio-economically disadvantaged residents. For example: a park project would demonstrate that 70% of the residents with walkable access to the community asset are low-income; an EV charging station would demonstrate that 70% of the expected users of the facility will be low-income; new transit service would demonstrate that it will overwhelmingly be utilized by transit-dependent riders; and so on.

- The final guidance should ensure that low income residents will be eligible for a significant number of **jobs** created by SB 535 investments. One way to do this would be to **require** rather than suggest, targeted jobs-related benefits of all project that propose to create new paid positions with GGRF funding.

4. <u>Require all SB 535 investments to avoid substantial burdens</u>. To provide benefits to disadvantaged communities and households, investments must avoid substantial burdens of any kind. Burdens include **increased exposure to toxics**, a **net loss of housing units occupied by low-income households**, and **displacement of low-income residents or local community-serving businesses.** The Interim Guidance took an important step toward recognizing and implementing this broader principles by requiring all projects in the Affordable Housing and Sustainable Communities program to be "designed to avoid displacement of DAC residents and businesses" (p. A-3) and encouraging administering agencies in other program areas to "require that projects be designed to avoid displacement of disadvantaged community residents and businesses" (p.20).

***Preliminary Recommendations*:** The Final Guidance should explicitly state as one of its guiding principles that no SB 535 investment – and indeed, no GGRF investment – will impose any substantial burden on disadvantaged communities or households. It should state that burdens include, but are not limited to, increased community exposure to health risks, a net loss of housing units occupied by low-income households, and the direct or indirect displacement of low-income residents or businesses.

In addition, the Final Guidance should provide that:

- No GGRF funds may be invested in a way that will result in a net loss of units occupied by low-income households
- Provide guidance on the use of targeted or local hire as a displacement prevention strategy
- Prioritize funding for projects in jurisdictions with anti-displacement strategies in place, such as rent stabilization, just cause eviction, living wages and inclusionary zoning (unless the project

sponsor has demonstrated no current or future risk of displacement in the neighborhood and jurisdiction).

5. **Interpret SB 535's investment targets as additive to ensure a GGRF set aside for DACs that exceeds their 25% share of the state population.** The Interim Guidance's focus on maximizing benefits by exceeding the two SB 535 investment targets is undermined by ARB's assertion that the SB 535's two investment categories are ***not*** added to each other to lead to a minimum of 35% of GGRF benefits being targeted to DACs:

> This guidance establishes that the GGRF monies invested in all projects meeting criterion 1 count towards the SB 535 requirements for both investments "within" disadvantaged communities and investments "benefiting" disadvantaged communities. The result is that the investments in all projects credited under criterion 1 are a subset of criterion 2 (p.12).

SB 535 itself does not require this approach,[6] and indeed, this approach undermines the intent of SB 535. That intent was to direct investments to disadvantaged communities in excess of their share of the population, in order to address the historic and ongoing burdens of pollution and under-investment those communities have long suffered. The Interim Guidance, however, merely provides a per capita share of GGRF investment to DAC residents, directing 25% of GGRF investments to benefit the 25% of Californians who reside in an identified DAC.

Preliminary Recommendation: The Final Guidance should require at least 10% of SB 535 investments to be located within DACs and an additional 25% to provide benefits to disadvantaged communities and households.

[6] Health & Saf. Code § 39713(c) ("The allocation pursuant to subdivision (b) may be, but need not be, for projects included, in whole or in part, in the set of projects supported by the allocation described in subdivision (a).").