

November 16, 2016

BY EMAIL: lctopcomments@dot.ca.gov

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California Department of Transportation
Division of Rail and Mass Transportation, MS #39
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**Re: Comment on the Draft Low Carbon Transit Operations Program (LCTOP) Guidelines
FY 2016-17**

Dear Ms. Priebe:

Thank you for the opportunity to comment on the draft Low Carbon Transit Operations Program (LCTOP) Guidelines for FY 2016-17 (Draft Guidelines). This update offers the opportunity to provide low-income Californians with affordable and reliable public transit while reducing greenhouse gas (GHG) emissions.

Several of the undersigned organizations are members and supporters of the Sustainable Communities for All coalition and the California Climate Equity Coalition (formerly the SB 535 Coalition), which proposed and helped shape the LCTOP. Many of us also worked to pass SB 824 (Beall, 2016). Our goal is to ensure that this program reduces GHG emissions by increasing transit operations and ridership levels, as required by SB 862 (2014), and to see robust implementation of SB 862, SB 824, and other applicable laws and guidance documents.

Our comments are based on requirements established under these laws and guidances, and build on our previous recommendations (attached). In particular, the Draft Guidelines should be amended to:

- 1) Ensure that at least 75% of LCTOP funds directly support transit operations;
- 2) Require a direct tie of capital expenditures to operational improvements;
- 3) Ensure that every investment counted as located in and/or as a benefit to a disadvantaged community under SB 535 provides direct and meaningful mobility benefits to low-income residents of disadvantaged communities;
- 4) Ensure that projects avoid substantial harms to low-income residents of disadvantaged communities;
- 5) Require transit agencies to demonstrate compliance with their civil rights and environmental justice obligations;
- 6) Robustly implement SB 824's prohibition on supplanting existing funding sources with LCTOP funds; and
- 7) Improve community outreach and engagement in project selection, design, and implementation.

Each of these recommendations is discussed in more detail below:

1. Ensure that at least 75% of LCTOP funds directly support transit operations.

SB 862 directs Caltrans to invest the overwhelming portion of LCTOP funds to operational projects, despite allowing for the funds to support both operational and capital projects. First, SB 862 expressly states that the purpose of this program is “to fund operation investments to increase transit ridership and reduce emissions of greenhouse gases by reducing vehicle miles traveled throughout California.”¹ Second, SB 862 provides that the goal of the program is to allow agencies to “reduce GHG emissions *and* improve mobility,” both of which would not be met without ensuring that a significant portion of the program’s funds are designated to operational projects.²

Despite the Legislature’s emphasis on supporting operations, we were extremely disappointed to see a decline in the share of LCTOP investments in operations, from more than two-thirds (69%) to just over half (51%) from the first year of implementation to the second.³

In order to meet this purpose to directly enhance ridership and the mobility of riders, particularly from disadvantaged communities, Caltrans should set a goal in the final FY 2016-17 guidelines to allocate a minimum of 75% of program funds to operational projects.

Additionally, Caltrans should revise the Draft Guidelines to specify that projects must meet the requirement for projects to increase ridership, in addition to meeting the eligibility criteria, GHG emissions reduction requirement, and other statutory mandates.

2. Require a direct tie of capital expenditures to operational improvements.

Related to the first point, in the rare instances in which Caltrans allows the use of LCTOP funds for capital expenditures, it should require transit agencies to demonstrate a clear tie of such expenditures to improved operations.

In addition, since LCTOP is the only GGRF program that is dedicated to supporting transit operations, Caltrans should balance spending on transit operations versus transit capital under various other GGRF programs, in particular with the Transit and Intercity Rail Capital Program (TIRCP), which allows only capital expenditures and receives twice as large of a continuing appropriation as LCTOP, and received an additional \$135 million for FY 2016-17. The Low Carbon Transportation Program (LCTP) also limits transit-related investments to capital projects. Additionally, to the extent that the Affordable Housing and Sustainable Communities (AHSC) program funds transit, it overwhelmingly supports capital projects.⁴

¹ Stats. 2014, ch. 36.

² Pub. Res. Code Section 75230(a) (emphasis added).

³ See Transform and Public Advocates, *Investing in Mobility: Strengthening California’s Low Carbon Transit Operations Program* (Oct. 2016), at 10. Available at: <http://www.publicadvocates.org/resources/library/investing-in-mobility-and-equity/>.

⁴ 2015-16 AHSC Award Project Summaries, available at: <http://sgc.ca.gov/resource%20files/10112016AHSCFY1516AppendixB.pdf>.

In order to ensure that agencies maximize spending LCTOP funds on operational projects, Caltrans should require that transit agencies seeking to use LCTOP funds for capital purposes demonstrate that they have first applied for funds from the TIRCP, LCTP, and/or AHSC programs and been denied funding, or otherwise demonstrate that the capital need is ineligible for funding from those programs.

3. Ensure that every investment counted as located in and/or as a benefit to a disadvantaged community under SB 535 provides direct and meaningful mobility benefits to low-income residents of disadvantaged communities.

SB 862 requires LCTOP investments to “reduce greenhouse gas emissions *and improve mobility*, with a priority on serving disadvantaged communities.”⁵ The priority on “serving” disadvantaged communities means “improv[ing] *mobility*” for residents of those communities.⁶ ARB’s funding guidelines, too, require that an investment deemed to benefit a disadvantaged community must be one that “provides direct, meaningful, and assured benefits” to that community.⁷ Therefore, Caltrans should count a project as located in or benefitting a disadvantaged community as long as it provides a mobility benefit to the residents of that community.⁸ A close look at past LCTOP applications reveals that Caltrans awards projects and counts them toward both being located within and benefitting disadvantaged communities under SB 535, so long as they reduce air pollution in a disadvantaged community regardless of whether the project improves mobility for those DAC residents.⁹ Therefore, Caltrans should provide guidance to transit agencies on ensuring LCTOP investments prioritize service for DAC residents, thereby providing multiple benefits to these residents, including improved mobility and air quality.

Caltrans should coordinate with ARB to revise its guidelines to only count projects as being located in and/or benefitting disadvantaged communities if they also bring direct mobility benefits, in compliance with SB 535. Caltrans should also require agencies to publicly provide

⁵ Pub. Res. Code Section 75230(a) (emphasis added).

⁶ SB 862 requires these investments to “reduce greenhouse gas emissions *and improve mobility*, with a priority on serving disadvantaged communities.” Pub. Res. Code Section 75230(a) (emphasis added).

⁷ California Air Resources Board, Cap-and-Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments, 2-6 (adopted December 2015) [hereinafter ARB Guidelines].

⁸ See *California Department of Transportation, Low Carbon Transit Operations Program FY 2016-2017 Draft Guidelines* (Nov. 2016), 10 and Attachment H (referring to ARB Guidelines, at 2.A-9 and 2.A-10 (providing that a project is “located in” a disadvantaged community if it “creates or improves infrastructure or equipment that reduces air pollution on regular routes that are primarily within a disadvantaged community (e.g., rail electrification, zero-emission bus).”; also providing that a project will “provide benefits to” disadvantaged communities if they include a stop, or intercity rail, commuter bus, or rail transit connectivity for riders using stations or stops, in a zip code that contains a disadvantaged community). See also ARB Guidelines, at 2-18 (explaining that “if a diesel truck or bus has a regular route that travels through a community and it is replaced by a zero or near-zero emission vehicle, the reduced air pollution can be considered as a benefit for that community”).

⁹ See LCTOP FY 2015-16 Project Request and Allocation Summary Peninsula Corridor Electrification Project, *available at*: http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/Cap&Trade/LCTOP_Bay%20Area/15-16-D04-049_TARv.1.pdf.

data showing how the LCTOP funds are used to improve the mobility of disadvantaged community residents, in compliance with the purpose of the program as established under SB 862.

Finally, given the significant unmet need for transit service in disadvantaged rural communities, we recommend that agencies that serve both rural and non-rural populations ensure, through their equity analyses, that they are investing LCTOP and other funds to provide a fair share of mobility benefits to rural riders.¹⁰

4. Ensure that projects avoid substantial harms to low-income residents of disadvantaged communities.

Caltrans should require agencies to demonstrate how projects avoid substantial harms, including air quality, health and displacement harms, to low-income residents of disadvantaged communities, in compliance with AB 32.¹¹ The ARB Funding Guidelines also specifically require that “projects be designed to avoid substantial burdens, such as physical or economic displacement of low-income disadvantaged community residents and businesses or increased exposure to toxics or other health risks.”¹²

Caltrans therefore should require agencies to describe qualitatively and, if possible, demonstrate quantitatively that their LCTOP projects have avoided harming low-income residents of disadvantaged communities. Caltrans should require this demonstration at both the application and reporting stages.

5. Require transit agencies to demonstrate compliance with their civil rights and environmental justice obligations.

Under SB 824, Caltrans must provide guidance for transit agencies to comply with state and federal environmental justice obligations in their use of LCTOP funds.¹³ We appreciate that the Draft Guidelines require agencies to provide a link to their Title VI plan within the funding allocation requests.¹⁴ The final guidelines should go further in ensuring that key civil rights obligations at the federal level are incorporated into this program.

Specifically, the final guidelines should require larger transit agencies¹⁵ to submit with their applications, and provide links on their websites to: (a) their demographic and service

¹⁰ For a definition of rural communities see the definition of a “Disadvantaged Unincorporated Community” in Government Code Section 65302.10.

¹¹ AB 32 requires that GHG emissions reductions measures should not “disproportionately impact low-income communities.” (Health & Safety Code Section 38562(b)(2).).

¹² ARB Guidelines, at 2-12.

¹³ Pub. Res. Code Sections 75230(t) & 75231(a)(3).

¹⁴ Draft FY 2016-17 Guidelines, at 19.

¹⁵ “Larger transit agencies” are defined by the Federal Transit Administration (FTA) in its Title VI Circular as those that operate 50 or more fixed route vehicles in peak service and are located in Urbanized Areas (UZA) of 200,000.

profile maps and charts¹⁶ and (b) their demographic ridership and travel pattern data.¹⁷ Those agencies should be required to explain how the direct beneficiaries of the LCTOP investments they propose to make compare, with respect to race/ethnicity and income level, with their overall ridership. Those agencies should also be required to provide their definition of a minority transit route, and monitor the performance of those routes against the performance of other routes, and address other important federal requirements.¹⁸

Caltrans should ask smaller transit agencies not subject to these FTA requirements to provide any relevant demographic data that they do collect and, to the extent that they have the relevant data, to also provide an explanation of how the direct beneficiaries of the LCTOP investment(s) they propose to make compare, with respect to race/ethnicity and income level, with their overall ridership.

Additionally, the final guidelines should require include language requiring larger agencies to either (a) provide documentation of the equity analysis they completed of a service or fare changes that they propose to make with LCTOP funds,¹⁹ or (b) explain why an equity analysis is not required, under the Title VI Circular. This same requirement should be extended to transit agencies that propose to retain unspent funds, loan/transfer funds, reassign surplus funds, or request a letter of no prejudice, under SB 824.

Furthermore, following the community outreach and engagement practices set out in the Environmental Justice (EJ) Circular, Caltrans should require *all* transit agencies to: (a) report on the public outreach and processes in connection with their decisions about the use they propose to make of LCTOP funds; (b) explain how the EJ principles have been incorporated into the decision-making process; (c) provide a summary of the opportunities for public engagement, including a summary of the comments received from low-income and/or minority riders and how they were incorporated into the final decision; and (d) encourage all transit agencies to allow riders to comment on a set of alternative proposals wherever feasible. Please also see recommendations regarding how Caltrans could provide further guidance to agencies on improving their disadvantaged community outreach and engagement efforts, below.

Finally, Caltrans should post on its website agencies' allocation requests and reports, including documents demonstrating agencies' compliance with civil rights and environmental justice obligations.

¹⁶ Federal Transit Administration, Title VI Requirements and Guidelines for Federal Transit Administration Recipients, ch. IV, sec. 5 (a), p. IV-7 to IV-8 [hereinafter FTA Circular].

¹⁷ FTA Circular, ch. IV, sec. 5 (b), p. IV-8 to IV-9 and App. I.

¹⁸ FTA Circular, ch. IV, sec. 6, p. IV-9 to IV-10 and App. J. The final guidelines should also require those agencies to (a) provide their definition of "minority transit route" and the basis for it, (b) provide a list of all routes, specifying which are and which are not "minority transit routes," (c) provide a copy of the most recent results of its monitoring program, as submitted to FTA pursuant to ch. IV, sec. 6 (h), (d) state whether it has found any disparate impact, and if so what corrective action it has taken, and the effect of that action, and (e) provide an explanation of how the LCTOP investment(s) they propose to make will benefit the riders of "minority transit routes" as compared to the riders of other routes

¹⁹ FTA Circular, ch. IV, sec. 7, p. IV-10 to IV-21 and App. K.

6. Robustly implement SB 824’s prohibition on supplanting existing funding sources with LCTOP funds.

Despite the explicit requirement of SB 824 that “[a] recipient transit agency shall demonstrate that each expenditure of program moneys does not supplant another source of funds,”²⁰ the Draft Guidelines do not provide instructions on how to meet this non-supplantation requirement, or on how Caltrans will monitor compliance. They simply state that “[a]gencies have the ability to fund ‘new or expanded services’ with a single or multiple years of LCTOP funding as long as the agency is not supplanting funds,” and that Caltrans will ensure that an “agency is not proposing to supplant funds and that the LONP [letter of no prejudice] is necessary as LCTOP provides upfront project funds.”²¹

Caltrans should provide further guidance on how it will ensure that LCTOP funds do not supplant existing sources of transit funding. First, Caltrans should clarify that the no supplantation requirement applies to all projects, as established under SB 824, in the introduction section of the Draft Guidelines. Caltrans should also include language requiring agencies to provide the budget information necessary to ensure they comply with the no supplantation obligation, both at the application process at the front end and the reporting process at the back end. Again, Caltrans should post all funding allocation requests and reports submitted by agencies on its website, to increase information available for public review.

7. Improve community outreach and engagement in project selection, design, and implementation.

The ARB Guidelines also *require* all projects that are located in and/or benefitting disadvantaged communities to “provide benefits that meaningfully address an important community need.”²² We appreciate that the Draft Guidelines reflect Caltrans’ recognition of its obligation to “[e]nsure approved projects, where applicable, are benefiting and meeting a community need.”²³ However, the Draft Guidelines also include language that simply *encourages* agencies to demonstrate projects meet community needs, which conflicts with the mandatory nature of such obligations as established under the ARB Guidelines.²⁴ Thus, Caltrans should revise the Draft Guidelines to explicitly articulate this requirement.²⁵

Furthermore, the Draft Guidelines include no discussion on whether and how agencies need to solicit project ideas and help shape projects in a manner that meets community needs and, in particular, in a manner that meets the needs of, provide direct benefits to, and avoid harms to low-income disadvantaged community residents. Caltrans should establish community engagement criteria in the LCTOP Guidelines, and require agencies to engage communities in the selection, design, and implementation of the projects funded by this program, with a focus on engaging low-income disadvantaged community residents.

²⁰ Pub. Res. Code Section 75230(e).

²¹ Draft FY 2016-17 Guidelines, at 11 and 16.

²² ARB Guidelines, at 2-6.

²³ Draft FY 2016-17 Guidelines, at 8.

²⁴ Draft FY 2016-17 Guidelines, at 14.

²⁵ Draft FY 2016-17 Guidelines, at 14.

In order to fund projects that truly address important community needs to comply with requirements established in the ARB Guidelines, Caltrans should include the following community engagement criteria in the FY 2016-17 guidelines:

1. At minimum, require agencies to demonstrate that they have directly solicited input by community members, in particular low-income disadvantaged community residents, for project ideas based on community-articulated needs;
2. Require agencies to document and report on the progress and results of their public outreach and engagement efforts in interim and final reports to Caltrans, and articulate that insufficient reporting will result in denied funding from the LCTOP;
3. At the state level, establish a public evaluation board consisting of community members (e.g. low-income disadvantaged community residents, low-income riders) that has influence over which LCTOP applications are ultimately selected for funding; and
4. Encourage recipient agencies to consider allocating some or all of their LCTOP funds within disadvantaged communities in their service areas through participatory budgeting processes. Participatory budgeting has been implemented successfully in California around the globe and, if adopted for LCTOP investments, could provide the opportunity for the most underserved members of disadvantaged communities to prioritize their needs and to vote on the use of program funds that would best address these priority needs.²⁶

Finally, we are very disappointed that Caltrans' own process in connection with this guidelines update continues to fall far short of our expectations for an inclusive, transparent and accountable process, and we will be detailing our concerns and reiterating our recommendations for future processes in a separate letter.

We appreciate the opportunity to comment on the Draft Guidelines, and look forward to seeing these recommended changes adopted in the final guidelines, so as to ensure that the new round of LCTOP funding fully meets the objectives and requirements of the statute while promoting the goals that led our organizations and coalitions to champion the adoption of this program. We also look forward to further discussing how to implement the above recommendations with you.

Please also see more details regarding our assessment of and recommendations for the program in a report on the program by Public Advocates and TransForm, *Investing in Mobility: Strengthening California's Low Carbon Transit Operations Program*.²⁷

Sincerely,

Chris Finn
Amalgamated Transit Union California Conference Board

[additional names and organizations on next page]

²⁶ See, e.g., Participatory Budgeting in Vallejo: Cycle 4 Rulebook (2016), available at: <http://www.ci.vallejo.ca.us/common/pages/DisplayFile.aspx?itemId=3790771>.

²⁷ Available at: <http://www.publicadvocates.org/resources/library/investing-in-mobility-and-equity/>.

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Enclosures: Letter of Dec. 18, 2015
Letter of Mar. 15, 2016

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December 18, 2015

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Re: Proposed Low Carbon Transit Operations Program (LCTOP) Guidelines, FY 2015-16

Dear Ms. Priebe:

Thank you for the opportunity to comment on the proposed new Guidelines for the Low Carbon Transit Operations Program (LCTOP), made available to the public on December 1, 2015.

The undersigned organizations, members and supporters of the Sustainable Communities for All Coalition and the SB 535 Coalition, proposed and helped shape the LCTOP. First, we successfully proposed this program for inclusion in the 2013 Investment Plan.¹ We then helped shape the program that the Legislature created in SB 862 (2014) and funded with a continuous budget appropriation. Our aim in doing so was to create a program that reduced GHG emissions by increasing transit service and ridership levels.

¹ See *Cap-and-Trade Auction Proceeds Investment Plan* (May 14, 2013), p. 27. See id., pp. A-7 and A-8 for our coalition priorities, including our priority to “[e]xpand or improve public transit service, with significant funding for operations to quickly expand service and increase ridership.”

Transit operations are inadequately funded, relative to the importance of frequent and affordable transit service both to low-income riders and to California's climate policy. Declining transit service levels and rising fares have deprived low-income people of mobility and the access to opportunity – jobs, schools, health care and groceries – it brings. And we wholeheartedly agree with the assessment in the draft California Transportation Plan that significant VMT and GHG reductions will be achieved if “[a]ll transit services [are] doubled ... [with] free transfers [and] reduced transfer wait times.”²

SB 862, the legislation that created the LCTOP, directly addressed our goals and objectives. The Legislature created the program in order to “provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and *improve mobility, with a priority on serving disadvantaged communities.*” Pub. Res. Code § 75230(a). Accordingly, the statute requires “[t]he recipient transit agency [to] demonstrate that each expenditure *directly enhances or expands transit service to increase mode share*” and “that each expenditure reduces greenhouse gas emissions.” Id., §§ 75230(d)(2), (3). Finally, “[f]or transit agencies whose service areas include disadvantaged communities ... , at least 50 percent” of the LCTOP funds received “shall be expended on projects or services that ... benefit the disadvantaged communities, consistent with the guidance developed by the State Air Resources Board” Id., §§ 75230(e).

In other words, by statute, LCTOP program funds:

- may only be spent by “transit agencies,”
- may only be spent on projects that both (a) “directly” enhance or expand transit service and (b) increase transit ridership, and
- must improve mobility for residents of disadvantaged communities.

In addition, like all GGRF programs, the reduction of GHG emissions achieved by LCTOP investments must be *in addition to* reductions already achieved through other funding sources, and may not supplant those other sources.

We applaud several improvements in the new Guidelines over the 2014 version. The new Guidelines, for instance, now explicitly *exclude* many purely capital investments that do not “directly” increase service and ridership levels.³ They also *maintain* eligibility for projects with components that reduce fares and promote active transportation, although the active transportation component can be strengthened. We recommend revising item B.2. on the Eligible Project List (which currently reads “Install new transit stop/station that connect[s] to bike paths/pedestrian paths”) to read: “Improve bicycle and pedestrian facilities (bike lanes, sidewalks, multi-use paths, traffic calming measures, street crossings, etc) in the direct vicinity of new or existing transit stops/stations.”

² California Transportation Plan 2040 (draft, March 2015), p. 91, Table 17.

³ For instance, the 2014 Guidelines permitted the purchase of transit vehicles and the installation of infrastructure, without any direct tie to the operation of expanded or enhanced new transit service. Those project types have now appropriately been excluded from the Eligible Projects List.

Several other important changes are necessary to ensure that the Guidelines faithfully implement the statutory requirements. Specifically, the Guidelines should make it clear that (1) purely capital projects that do not operate enhanced or expanded transit service are not eligible; (2) LCTOP funds may not supplant other revenue sources; (3) LCTOP funds may only be spent by “transit agencies”; and (4) LCTOP projects that do not provide direct and meaningful mobility benefits to residents of disadvantaged communities may not be counted toward SB 535 requirements.

1. Capital uses of LCTOP must be incidental to the operation of more service.

While the new Guidelines exclude some of the purely capital projects on which much of the first year’s funding was inappropriately spent, they do not yet clearly meet the objectives and requirements of the statute. *The Guidelines should be modified in two respects to achieve consistency with the statute.* First, they should make it clear from the very start, and reiterate throughout, that *every* project funded with LCTOP support must “*directly enhance or expand transit service.*” And second, project types included in the “Eligible Project List” in Attachment A should be modified to implement this overarching principle. In particular:

- Operational Project A.1. includes as an eligible use “increase capacity [e.g., add more buses or railcars to existing routes]” without specifying that this refers to operating more service on those existing routes, and only secondarily to buying new transit vehicles.
- Capital Project B.1. makes the addition of “new stops/stations for local bus, intercity rail, commuter bus or rail service” an eligible use. This, too, should be modified to make the addition of new stops eligible only when coupled with increased service levels.

These changes will not only bring the Guidelines into conformity with the statute, but also ensure that the program maximizing GHG cuts by shifting more drivers onto transit.

2. Like all GGRF funds, LCTOP funds may not supplant other revenue sources:

The Guidelines should explicitly require project sponsors to demonstrate that their proposed use of LCTOP funds will not supplant other funding sources. The LCTOP is meant to “directly enhance or expand transit service,” not to backfill service or capital projects that are already in service or already planned to be funded from other sources. Moreover, the GHG reductions to be achieved by funds provided from *any* Greenhouse Gas Reduction Fund program are intended to be new reductions. The Guidelines, however, do not make this non-supplantation requirement clear, nor does the application process at the front end and the reporting process at the back end require transit agencies to provide the budget information necessary to ensure transparent compliance with this requirement.

3. Only transit agencies are eligible to expend LCTOP funds:

By statute, LCTOP grants may only be expended by “*transit agencies*.” At the same time, the funding formula, taken from the State Transit Assistance program, provides “population based” funding to cities, counties and regional agencies, some of which do not operate transit service. The Guidelines should be revised to expressly address the process by which agencies that receive an LCTOP allocation but that do not operate service directly provide those funds to eligible transit agencies. And future Caltrans reports of the “final projects” on which LCTOP funds are expended should transparently indicate the transit agency that used the funds to enhance or expand its transit service.

4. Disadvantaged communities must receive “direct and meaningful” *mobility* benefits:

Finally, the Legislature has implemented SB 535 in the context of the LCTOP by requiring half those funds to benefit disadvantaged communities within a transit agency’s service area. Since the primary benefit of LCTOP projects is to “improve mobility” by “directly enhancing or expanding transit service,” no dollar spent on a project that does not provide *mobility* benefits to residents of a disadvantaged community can be counted toward that 50 percent.

Other co-benefits to residents of disadvantaged communities, of course, include diminished emissions of harmful co-pollutants in their communities. The Guidelines, however, imply that a project can count toward SB 535 if it provides *no other benefit* to a disadvantaged community than the indirect one of reducing the emissions occasioned by mobility benefits received directly by *other* residents. That “trickle down” approach to disadvantaged community benefits runs contrary to the spirit of SB 535. And it runs directly contrary to the express requirement of ARB’s SB 535 guidance that SB 535 investments provide “*direct, meaningful, and assured benefits*” to disadvantaged communities.

Attachment B to the new Guidelines includes a list of criteria taken from a completely different GGRF program – the Low Carbon Transportation Program (p. 27). The Guidelines should clarify that benefits in that list of criteria other than “project provides greater mobility ... for disadvantaged community residents” (bullet D) are relevant only to the question of “maximizing” co-benefits, but may not, in and of themselves, qualify as the “direct” and “meaningful” benefits required by the ARB guidance.

We appreciate the opportunity to comment on the December 1 draft, and look forward to seeing these changes implemented right away, so as to ensure that the new round of LCTOP funding fully meets the objectives and requirements of the statute while promoting the goals that led our organizations and coalitions to champion adoption of this program.

Sincerely,

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December 18, 2015

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March 15, 2016

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Re: Low Carbon Transit Operations Program (LCTOP) Guidelines

Dear Brian, Jila and Joshua:

Thank you for discussing with us the concerns we raised in our December 18 letter (attached) commenting on the recent update of the Low Carbon Transit Operations Program (LCTOP) Guidelines.

We continue to believe that the next Guidelines update should reflect the changes we enumerated in our letter, and appreciate that you will be taking our comments into account at that time.

At the same time, we were encouraged to learn that, as you review pending LCTOP funding applications, you will be evaluating proposals on a case-by-case basis consistent with our understanding of the program requirements. In particular:

- As Brian stated, “ridership is a requirement,” not just the reduction of greenhouse gas (GHG) emissions. That is clear in the statute itself which requires recipient transit agencies both to “demonstrate that each expenditure *directly enhances or expands transit service to increase mode share*” and “that each expenditure reduces greenhouse gas emissions.” Pub. Res. Code §§ 75230(d)(2), (3).
- As Brian also confirmed, you share our understanding that “not supplanting is a key principle” for implementing LCTOP, as for all GGRF-funded programs.
- Finally, we were pleased to learn that you do not accept projects as counting toward SB 535 if the affected transit route “passes through disadvantaged communities without stops in those communities.”

As you review pending LCTOP applications, we wanted to reiterate two sets of recommendations we made during our discussion that we believe are necessary to implement those points of shared understanding:

First, transit agencies that propose a capital use of LCTOP funds must demonstrate how that capital use will increase service levels and ridership.

In most cases, operators proposing capital projects must demonstrate not simply that operating revenue is available for the capital asset or improvement, but that sufficient additional operating revenue is available to increase service and ridership with that capital investment. As we mentioned, LCTOP is the first new source of transit operating support in a very long time; in fact, the other major source of operating support, the State Transit Assistance program, has been shrinking.

In short, if a capital investment of LCTOP funds were to be proposed without that additional operating support, that proposal would have to be rejected in virtually all cases, for two reasons: first, the investment would not meet the ridership requirement, and second, because – by merely supplanting existing uses of existing operating funds - it would create no new GHG reduction.

In a very limited set of scenarios, we can conceive of a capital project that would increase service levels and mode share with little additional operating revenue. One scenario we can imagine is a capital purchase of higher-capacity buses or additional rail cars for use on a route on which existing service is overcrowded to the point of turning away a significant number of riders. In that case, the use of LCTOP funds for that capital purchase might be justified by demonstrating that the investment in higher-capacity vehicles, when run on an existing route without increasing service frequency, would result in increased ridership and transit mode share.

Brian gave the example of another potential scenario: a capital investment that results in running faster trains. Faster trains could be part of a program to increase ridership if they allow the transit agency to operate more trains. That, in turn, requires a demonstration of additional operating revenue. If, on the other hand, the basis for claiming that faster trains equals more ridership is that new riders will be attracted by shorter trip times, then an empirical basis for that claim should be provided.

These limited exceptions, however, simply prove the rule. Short of a demonstrable empirical basis to expect that a capital investment will result in a meaningful ridership increase, the investment of LCTOP funds in a capital asset without additional operating support to run more service should not be an eligible use of LCTOP grants.

Second, to meet the disadvantaged community benefits requirements of the LCTOP program and SB 535, an LCTOP project must not only invest in a route with a stop or station in a disadvantaged community, but must demonstrate actual mobility benefits for riders who reside in that community.

The statute requires these investments to “reduce greenhouse gas emissions and *improve mobility, with a priority on serving disadvantaged communities.” Pub. Res. Code § 75230(a). The priority on “serving” disadvantaged communities means “improv[ing] mobility” for residents of those communities, as well as reducing emissions in those communities.*

But the fact that a transit route has a station within a disadvantaged community does not necessarily mean that any significant number of residents living in that community actually gain mobility benefits from that route. This is particularly likely to be the case for rail transit that carries riders from more affluent areas to jobs located in a disadvantaged community, many of which are near urban downtowns or suburban business centers. Accordingly, transit agencies should be required to demonstrate ridership of a significant number of disadvantaged community residents in order to satisfy Section 75230 (a). FTA requirements for rider demographic surveys mean that most transit agencies should already have the data they need to make this showing.

Finally, as Jeanie mentioned, projects should count mobility benefits and GHG/air quality benefits separately. The LCTOP Guidelines currently allow an either/or approach to SB 535 compliance, when in fact relevant statutes require a “both/and” approach.¹

As we mentioned in our discussion, the SB 535 Coalition’s “[disadvantaged community benefits tool](#),” attached, provides a framework that the Air Resources Board has largely incorporated in its GGRF Funding Guidelines. The Funding Guidelines also incorporate, nearly verbatim, a chart of disadvantaged community co-benefits from a companion 535 Coalition “[principles](#)” document, also attached. (Compare with Table 2-2 in volume 2 of ARB’s guidelines.)

¹ First, AB 32 provides that it is the intent of the Legislature that GHG reduction measures “maximize[] additional environmental and economic co-benefits for California, *and* complements the state’s efforts to improvement air quality.” Health & Saf. Code § 38501 (h) (emphasis added). The companion bill to SB 535, AB 1532, in turn provides that all GGRF allocations must further the regulatory purposes of AB 32. Health & Saf. Code § 39712 (a) (2). AB 1532 also requires that GGRF investments, to the extent feasible, “maximize economic, environmental, and public health benefits”; “improve air quality”; *and* “direct investment toward the most disadvantaged communities and households in the state.” Health & Saf. Code §§ 39712 (b) (1), (3) & (4). Finally, Section 75230 (a) of the Public Resources Code requires LCTOP investments to prioritize improving mobility for disadvantaged communities.

Brian C. Annis, Undersecretary, CalSTA
Jila Priebe and Joshua Pulverman, CalTrans
March 15, 2016

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We look forward to continuing to work with you on two fronts to ensure that LCTOP investments maximize mobility, GHG reduction and other co-benefits for transit riders in general, and residents of disadvantaged communities in particular:

First, we will be in touch as we identify pending applications that raise unanswered questions about key issues, such as the source of additional operating revenue to increase ridership or the extent to which residents of disadvantaged communities receive a fair share of mobility benefits. To that end, we request that Caltrans and CalSTA follow the best practice of some other agencies (such as the Strategic Growth Council, for the Affordable Housing and Sustainable Communities grant program) by posting [a searchable database](#) of all pending and funded applications online for the GGRF programs they administer.

And second, we will continue to work with you as you prepare a draft of the next guidelines update that we understand you anticipate releasing in September.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Marcantonio".

Richard Marcantonio
Chelsea Tu
Public Advocates Inc.

Josh Stark
Ryan Wiggins
TransForm

Jeanie Ward-Waller
California Bicycle Coalition