CALIFORNIA STRATEGIC GROWTH COUNCIL

Final Statement of Reasons

Strategic Growth Council Transformative Climate Communities Program Allocation

November 23, 2016

Update

The Strategic Growth Council published a Notice of Proposed Rulemaking regarding the Transformative Climate Communities Program on September 23, 2016, on the Council's website. The notice also appeared in the Office of Administrative Law's "California Regulatory Notice Register." (REGISTER 2016, NO. 39–Z.) The express terms of the proposed regulation were made available for public review and comment. The review period closed on November 7, 2016. The Council also hosted a public hearing in the City of Fresno on November 7, 2016, in order to take verbal comments.

In total, the Council received input from 66 commenters. A summary of the comments and response to those comments is provided in Appendix A of this Final Statement of Reasons. Marked copies of the comments and hearing transcript are provided in Appendix B. Many of the comments raised similar issues, and so, pursuant to Government Code section 11346.9(a)(3), the Council aggregated similar comments and responses. For example, multiple comments supported the proposed allocation to the cities of Fresno and Los Angeles, while others suggested different allocations, broader geographies and different criteria. Further, many of the comments addressed selection criteria and the third location, both of which the Council will consider in a future phase of Program development. Having reviewed and considered all of the comments, and as explained in more detail in the responses to comments, the Council has concluded that no revisions to the proposed regulation are needed. The Council has added no new data or technical, theoretical or empirical study, report, or similar document to the rulemaking file.

No comments indicated that the proposed regulation would impose any new or different impacts on local agencies, private persons or small businesses. Therefore, the Council makes the following determinations initially set forth in the Notice of Proposed Rulemaking:

FISCAL IMPACT DETERMINATION REGARDING THE PROPOSED ACTION

The Council determined that the proposed regulatory action would not create costs to State agencies. The proposed regulatory actions would not create costs or savings in federal funding to the State, costs or mandates to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, Title 2, Division 4, Part 7 (commencing with section 17500) or other nondiscretionary costs of savings to State or local agencies. The regulation does not impose a mandate on any private individual, business or local government because participation in the Program is optional and voluntary. However, regulatory actions taken in subsequent phases that lay out guidelines for applying for and approving program proposals will likely have costs to these entities if they choose to participate.

The determinations of the Council concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below:

- Cost to any Local Agency or School District Requiring Reimbursement Pursuant to Government Code section 17500 et seq.: None
- Cost or Savings for State Agencies: None
- Other Non-Discretionary Costs or Savings on Local Agencies: None
- Costs or Savings in Federal Funding to the State: None

There is No Significant Effect on Housing Costs

The Council determined that the proposed regulatory action will not have a significant effect on housing costs because the proposed regulation only specifies where program funds may be allocated, it does not add new requirements under the law. There may be effects on housing costs from regulatory actions in subsequent phases, including if programs are implemented that affect development or transportation in targeted communities.

There is No Significant Adverse Economic Impact Directly Affecting Business, Including Ability to Compete and Declaration of Initial Determination of No Impact

The Council determined that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. Regulatory actions in subsequent phases could have positive economic impacts on businesses and individuals, and indeed these are the aim of the program. There is no impact because the proposed regulation only specifies where program funds may be allocated, and further action is needed before programs may be proposed or chosen.

There is No Effect on Small Business

Actions in subsequent phases could have positive economic impacts on small businesses. The Council determined that there is no impact of this phase, however, because the proposed regulation only specifies where program funds may be allocated, and further action is needed before programs may be proposed or chosen.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Council determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic and Fiscal Impact Analysis, which is a section in the Initial Statement of Reasons, ISOR. While Program funds are expected to result in economic benefits, this proposed action does not affect the total amount of funds available. Rather, it merely allocates where those funds may be awarded. They therefore have no benefit, either positive or negative.

COST IMPACTS TO REPRESENTATIVE PERSONS OR BUSINESSES, INCLUDING SMALL BUSINESSES

The Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Council determined that, pursuant to California Code of Regulations, Title 1, section 4, the proposed regulatory action would not affect small businesses because the proposed action only specifies where program funds may be allocated, it does not add new requirements under the law.

ALTERNATIVES CONSIDERED

In accordance with subsections 11346.9(a)(4) and (a)(5) of the Government Code, the Council must determine that no reasonable alternative considered by the Council or has otherwise been identified and brought to the attention of the Council that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons and small businesses than the proposed action, and/or would be more cost-effective to affected private persons and small businesses and equally effective in implementing the statutory policy or other provision of law.

Two alternatives were considered: one to award funds to neighborhoods judged on a competitive basis, and another to have a more even allocation of funds to Fresno, Los Angeles, and a third community to be determined. The first alternative was rejected as it would not allow for the scale of investments that are likely needed to catalyze transformation. The second was rejected as it would reduce the potential catalytic effects of large investments in Fresno.

The remainder of this Final Statement of Reasons contains the information presented in the Initial Statement of Reasons.

Background

Assembly Bill (AB) 2722 (Burke) establishes the Transformative Climate Community Program (Program), to be administered by the Strategic Growth Council (Council), to "fund the development and implementation of neighborhood-level transformative climate community plans that include multiple, coordinated greenhouse gas emissions reduction projects that provide local economic, environmental, and health benefits to *disadvantaged communities*, as described in Section 39711 of the Health and Safety Code." (Pub. Resources Code § 75240 (emphasis added).)

"Disadvantaged communities" are specifically targeted for investment of proceeds from the State's cap-and-trade program. In 2012, the Legislature passed Senate Bill (SB) 535 (De León) directing that, in addition to reducing greenhouse gas emissions, a quarter of the proceeds from the Greenhouse Gas Reduction Fund must go to projects that provide a benefit to disadvantaged communities.

SB 535 required the California Environmental Protection Agency (CalEPA) to identify disadvantaged communities based on geographic, socioeconomic, public health and environmental hazard criteria. CalEPA developed the California Communities Environmental Health Screening Tool (CalEnviroScreen), a science-based tool for evaluating multiple pollutants and population stressors throughout the state. (http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-20.) CalEnviroScreen uses environmental, health and socioeconomic information from state and federal government sources to produce scores for census tracts in California. An area with a higher score is one that experiences a higher burden from pollution and population vulnerability than an area with a lower score.

In awarding grants for the Program, AB 2722 further establishes that the Council "*may give priority to plans and projects that cover areas that have a high proportion of census tracts identified as disadvantaged communities and that focus on communities that are most disadvantaged*." (Pub. Resources Code § 75241(b)(2) (emphasis added).)

The cities of Los Angeles and Fresno experience substantially higher pollution burdens than other parts of the state.[1] Los Angeles has 85 census tracts in the top 5 percent of CalEnviroScreen – census tracts ranking above the 95th percentile – and Fresno has 40 census tracts. The next highest city has 17 census tracts with residents in the top 5 percent. Additionally, Los Angeles and Fresno have the largest populations of residents experiencing the highest pollution burdens, with approximately 328,331 and 188,307 residents in the top 5 percent, respectively.

Fresno in particular is exceptionally disadvantaged. Of the state's major population centers, the city has the largest per capita population of top 5 percent disadvantaged community residents in the state, at nearly 40% of the population.

Consideration of Neighborhood-level Transformation

The development and implementation of neighborhood-level, transformative climate community plans in the state's most disadvantaged communities requires significant public investment. AB 2722 identifies making "comprehensive public investments" such that "private resources can be more effectively catalyzed" to support transformation. Thus allocating a few large investments, rather than numerous and comparatively small investments, is needed for community transformation.

In order to accelerate greenhouse gas reduction and meet the state's climate goals, such transformation includes changing the way Californians think about transportation, housing, energy, water, natural resources and waste while simultaneously addressing growing equity issues, resource conservation, economic sustainability and climate resiliency.

Strategies to promote infill development, coordinated transportation and other infrastructure in existing urban boundaries can lead to such changes by delivering a broad range of benefits in addition to helping achieve regional greenhouse gas reduction goals set by SB 375.[2] These benefits include increased economic vitality; cleaner air and improved public health outcomes; decreased consumption of energy, water, and other natural resources; reduced conversion of farmland and natural habitat areas, which can provide carbon sequestration; and the opportunity for more efficient infrastructure investment and delivery of municipal services.

Infill development is particularly challenging in the state's most disadvantaged communities. Market demand, physical conditions, existing infrastructure, and community conditions are often problematic in these parts of the state, where

[1] The Council made this determination using CalEnviroScreen. The tool provided a ranking of all census tracts in the state according to indicators reflecting pollution burden and population vulnerability. Using the census tracts within the top 5% of the most disadvantaged communities, which are designated through the tool's mapping feature, populated census blocks, downloaded from the 2010 US census website, were then added and overlaid on city boundaries, obtained from city websites. Top scoring CalEnviroScreen tracts were identified as being within a city if their population weighted center fell within city boundaries. Populated blocks were summed within these identified tracts to get the populations of the disadvantaged census tracts within city boundaries. That data provided a list of communities with the highest proportion of census tracts in the top 5% and the highest total population within top 5% census tracts.

[2] *Moving California Forward*, 2015, Energy Innovation, Calthorpe Analytics

funding and financing options are commonly inadequate.[3] This in turn hinders local and regional agencies' ability to implement infill development plans.

In Fresno, for instance, infill development requires significant complementary investment to be economically feasible and to compete with suburban growth that has traditionally absorbed the majority of housing demand.[4] Such suburban growth works against more efficient land use and achievement of SB 375 goals. Without these complementary investments to make communities attractive, it is difficult for traditional developers and lenders to begin investing in infill projects. The most disadvantaged communities in Los Angeles share many of these characteristics.

A targeted, catalytic public investment can provide needed financial support and market stimulation. Such investment can also attract private resources to spur a re-orientation of markets toward low-carbon, healthy, and economically inclusive development.

Consideration of Transformative Climate Community Investment in Fresno, Los Angeles and a Third Location

Fresno exemplifies the challenges of long-term environmental and socioeconomic disparity. Since the mid-twentieth century, suburban sprawl has consumed more than 100 square miles in the city, including some of the state's most valuable and productive agricultural land. This has led to an economically-distressed urban core and historic neighborhoods that contain some of the highest concentrations of poverty in the nation.[5] Continuation of these trends would further contribute to the city's extreme fiscal distress.[6]

In the more recent past, a combination of local leadership and sustained commitment to helping achieve the state's climate goals has set the city on a different course. Fresno's new General Plan and Zoning Ordinance, adopted in 2014 and 2016, respectively, direct approximately half of new growth to infill areas, along with large-scale transportation investments. These include the state's first High-Speed Rail station, Bus Rapid Transit, and a $19 million redevelopment of the central artery of Downtown Fresno, all currently under construction. Additionally, the city has begun implementing ratepayer-funded water infrastructure including facilities for recycled water treatment and distribution and groundwater recharge. These major land use and infrastructure changes are expected to reduce greenhouse gases by over 20[7] percent over business-as-usual projections by 2030, and recharge an estimated 14,000 acre feet of

[3] *California Finance Infill Options Analysis*, 2014, Economic & Planning Systems, Inc.
[4] Ibid.
[5] *U.S. Concentrated Poverty in the Wake of the Great Recession*, 2016, Brookings Institution https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/
[6] *Fresno General Plan and Development Code Update: Fiscal Impact Analysis of Concept Alternatives.* 2012, City of Fresno. https://www.fresno.gov/NR/rdonlyres/A59BF398-1094-4743-9C54-EE18D319C1AA/0/EIRFiscalAnalysisReportMarch192012.pdf
[7] *Fresno General Plan Rapid Fire Scenarios: Scenarios and Co-Benefits Analysis for GP Alternatives,* 2012, Calthorpe Associates. http://www.fresno.gov/NR/rdonlyres/F3A16833-C4BE-4859-A8A6-1E3C80980F27/0/RapidFireReportMarch192012.pdf

groundwater in one year alone,[8] while preserving prime agricultural land. Meanwhile, the city has roughly halved both unemployment[9] and homelessness[10] since the Great Recession.

Due to Fresno's continued depressed market values and extensive additional deferred infrastructure needs, however, infill development continues to require significant complementary investment to reach financial feasibility. The most disadvantaged communities in Los Angeles share many of these characteristics. A coordinated, multi-year investment can provide the essential infrastructure to catalyze sustained market demand for efficient and equitable infill development.

Fresno's concentrated per capita poverty and depressed real estate market means that a higher level of state investment provides a greater chance of success. There may be greater funding options in Los Angeles, and there may be different opportunities in other locations. In addition, because this is a new program, the Council does not have complete data identifying all factors for determining the approach with the highest potential for success. This approach provides different levels of funding, which will provide meaningful differences in approach.

Proposed Regulation

The Council proposes to add the following section to Title 14, Division 6.5, of the California Code of Regulations:

> Transformative Climate Community Program funds shall be allocated in the cities of Los Angeles and Fresno, and a third location. A minimum of half of the funds shall be allocated in the City of Fresno. A minimum of one fourth of the funds shall be allocated in the City of Los Angeles.
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> Note: Authority cited: Section 75243, Public Resources Code. Reference: Sections 75240-75243, Public Resources Code.

Specific Purpose of the Regulation

This proposed regulation implements the Program created in Public Resources Code Section 75240. While the Legislature allocated $140,000,000 for the Program, in Assembly Bill 1613, it left to the Council's discretion the precise manner to allocate those funds. The proposed regulation, therefore, does two things. First, it would specify that Program funds shall be allocated in the City of Los Angeles, the City of Fresno and a third location. Second, it specifies that a minimum of fifty percent of the Program funds shall be allocated within the City of Fresno and a minimum of twenty five percent within the City of Los Angeles. Note: The third geographic location to receive priority will be determined in a separate, future, rulemaking. Additionally, all Program grants, including those within the cities of Fresno and Los Angeles and a third location, will be awarded pursuant to a competitive process. The Council will determine selection criteria for that process in a separate, future, rulemaking.

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[8] *Consideration of Recommendations for Water Rate Increase,* Presentation by Recharge Fresno, 2015. http://www.rechargefresno.com/wp-content/uploads/2015/07/StaffPresentation_02-26-2015.pdf

[9] Bureau of Labor Statistics: http://beta.bls.gov/dataViewer/view/timeseries/LAUMT062342000000004.

[10] *Feds call Fresno, Madera 'a shining example' in homelessness battle; local agencies say it's not that simple,* 2015, The Fresno Bee. http://www.fresnobee.com/news/local/article46944300.html

The problem the Council intends to address with this regulation is to ensure that California makes appropriate investments that reduce greenhouse gases and also demonstrate co-benefits for the economy, workforce, and the health of California's most vulnerable communities.

The proposed regulation is reasonably necessary to address the problem described above because limited funding is available for this program. As a result, the State must focus its initial investments on the communities that are most impacted by poverty and pollution where a substantial state investment can promote significant change. Therefore, the proposed regulation would focus investments in three geographic locations.

Public Resources Code Section 75241(b)(1) states: "the council may give priority to plans and projects that cover areas that have a high proportion of census tracks identified as disadvantaged communities and that focus on communities that are most disadvantaged."

According to data in the California Communities Environmental Health Screening Tool (CalEnviroscreen), of the major population centers in California, the City of Fresno has the highest proportion of census tracts that are in the top 5%. Specifically, 43% of its census tracts (40 of 103 census tracts) are in the top 5%. Therefore, allocating a portion of Program funds within the City of Fresno is consistent with the statute's priority for "areas that have a high proportion of census tracks identified as disadvantaged communities."

CalEnviroscreen data also indicate that the largest total population of people living within top 5% census tracts is found in the City of Los Angeles. Allocating a portion of Program funds within the City of Los Angeles is, therefore, consistent with the statute's priority for focusing on "communities that are most disadvantaged."

A third allocation may be appropriate based on a different view of the data and statutory priorities, and so the Council proposes to identify the third geographic area in a future rulemaking.

The Council proposes different allocations between the locations that it has identified. A larger allocation is appropriate within the City of Fresno. Among other reasons, concentrated per capita poverty and a depressed real estate market means that a higher level of state investment provides a greater chance of achieving a transformative effect. (See, e.g., Kieser, Walter. California Finance Infill Options Analysis. Economic & Planning Systems, Inc.: October, 2014.) A smaller allocation is proposed to be available within the City of Los Angeles because, in part, the real estate market there does not face the same degree of challenge as in Fresno. Different opportunities may be available in other locations. The proposed regulation's approach provides different levels of funding in different types of communities. By doing so, the Council expects to develop information to improve the Program over time.

The Council anticipates that the proposed regulation will achieve the legislative intent described in Assembly Bill 2722. As explained in more detail above, the Council intends for the Program to enable transformative change in disadvantaged communities. The Public Resources Code authorizes the Council to prioritize severely disadvantaged communities, and the cities of Fresno and Los Angeles have the largest populations living in the most severely disadvantaged communities as described in Section 39711 of the Health and Safety Code.

Additionally, this action proposes that Program funds be allocated in a few large investments, rather than numerous and comparatively small awards. This type of targeted investment is more likely to attract catalytic private resources.

Necessity

The Legislature directed the Council to develop guidelines and selection criteria for plan development and implementation of the program. (Pub. Resources Code § 75243(a).) In so doing, the Legislature authorized the Council to "give priority to plans and projects that cover areas that have a high proportion of census tracks identified as disadvantaged communities and that focus on communities that are most disadvantaged." (*Id*. at § 75241(b)(2).) In order to implement that direction, the Council must specify which communities are eligible for funding through the Program. The proposed regulation is, therefore, necessary to carry out this legislative directive.

Description of Alternatives Considered

Two alternatives were considered: one to award funds to neighborhoods judged on a competitive basis, and another to have a more even allocation of funds to Fresno, Los Angeles, and a third community to be determined. The first alternative was rejected as it would not allow for the scale of investments that are likely needed to catalyze transformation. The second was rejected as it would reduce the potential catalytic effects of large investments in Fresno.

Economic Impact Assessment, Including Impacts on Business

The proposed regulation allocates Program funds to Fresno, Los Angeles, and a location to be determined, but the economic impacts cannot be calculated with any precision until subsequent regulations on program requirements are adopted. However, the additional spending in these areas will at a minimum benefit the businesses that implement the programs, as well as workers hired to fill the additional demand. In addition, residents should benefit from the additional investments. As the stated intention of the program is to catalyze transformative growth in disadvantaged communities and improve environmental outcomes in the areas, benefits would also accrue to individuals from meeting these program goals.

This allocation allows Program funds be allocated in a few large coordinated investments, rather than numerous and comparatively small awards. This type of targeted investment is more likely to attract catalytic private resources. By leveraging public investments in inadequate infrastructure, the funds are intended to allow neighborhoods to become communities where businesses have access to workers, workers have access to jobs, and residents have access to safe, environmentally sound places to live.

Government Code section 11346.3(b)(1) requires an assessment of whether and to what extent the proposed regulation will affect the following: (A) the creation or elimination of jobs within the state; (B) the creation of new businesses or the elimination of existing businesses within the state; (C) the expansion of businesses currently doing business within the state; and (D) the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. Each of these factors is addressed below.

The creation or elimination of jobs within the state.

Funds made available within identified communities as a result of the Program may lead to the creation of jobs. The precise impacts, however, are indeterminate until selection criteria and program proposal requirements are adopted in subsequent regulations.

The creation of new businesses or the elimination of existing businesses within the state.

Funds made available within identified communities as a result of the Program may lead to the creation of new businesses within the state. The precise impacts, however, are indeterminate until selection criteria and program proposal requirements are adopted in subsequent regulations.

The expansion of businesses currently doing business within the state.

Funds made available within identified communities as a result of the Program may lead to the expansion of businesses currently doing business within the state. The precise impacts, however, are indeterminate until selection criteria and program proposal requirements are adopted in subsequent regulations.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Funds made available within identified communities as a result of the Program are expected to lead to the following benefits, among others: increased economic vitality; cleaner air and improved public health outcomes; decreased consumption of water, energy, and other natural resources; reduced conversion of farmland and other natural habitat areas; and more efficient infrastructure and delivery of municipal services.

Additional information regarding the assessment above is available in the Standard Form 399 and elsewhere in this Initial Statement of Reasons.

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