TCI Technical Memo:
Percent-Based Equity Investment Provisions

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Introduction

This document provides two essential language provisions for the Transportation and Climate Initiative (TCI) regional MOU to ensure that a percentage-based investment requirement for overburdened and underserved (OAU) communities functions as intended. Following those two provisions, this document also provides two additional optional measures that could further improve the ability for TCI investments to deliver on equity and environmental justice. Each of these four provisions are mapped to what is a strategic level of detail in the regional MOU versus at the state level.

This memo is not exhaustive. It is targeted towards two of the three equity provisions that TCI state governments outlined on their September 29th webinar:

1. **Establish a minimum investment requirement of 35%.** Jurisdictions would agree to an investment requirement to ensure that overburdened and underserved (OAU) communities benefit equitably from clean transportation projects.

2. **Ensure transparency.** The participating jurisdictions shall annually review and report the impacts of each participating jurisdictions individual program, including with respect to equity. This includes how program proceeds are spent, a list of projects and programs supported, and the levels of investment received by each project.

The details behind how this requirement is codified and implemented could determine how tens of billions of dollars are invested, and need to be treated with utmost care and precision.

Vital work beyond this memo is needed on equity advisory bodies and how community engagement is codified in the program moving forward. In addition, it's important to clarify that TCI does not replace the need for state-level direct EJ mandates and local emissions reduction plans. However, the percentage-based guardrail is a crucial accountability measure for controlling and distributing TCI resources equitably.

Additionally, this document includes two possible ways in which the TCI process could be used to accelerate other EJ practices in signatory states, such as data practices on measuring EJ outcomes, as well as capacity-building programs for communities.

Summary of Key Investment Provisions

We identify two vital demands to ensure TCI's investment equity provision functions properly in the regional MOU:

1.1 **Require *proportionately higher* investment into OAU communities.** Whether a percentage requirement is equitable depends on what portion of the state population qualifies as an OAU community. However, each individual state is left to arrive at their own definition of an OAU community. A key regional MOU language provision is to require that, in each state, a *greater* percentage of TCI investments flow to OAU communities than the percentage of the state population that qualifies as OAU.

1.2 **Require investment dollars be *located within and directly benefiting* OAU communities.** To count towards percentage requirements, investment dollars must be invested in projects that are located within AND directly benefiting an OAU community. Projects that span multiple communities must be broken down into the dollars that take place inside/outside of OAU communities.

Second, we identify two additional considerations at the state level that could further refine how TCI funds are distributed and controlled equitably. These provisions could also accelerate additional EJ policies at the state level by providing better data and capacity to communities:

2.1 **Modernize our environmental justice data.** Tracking environmental justice outcomes and priorities requires comprehensive datasets on socioeconomic and environmental factors. Currently, no TCI state has an open source screening tool to the detail and rigor of CalEnviroScreen in California. Additionally, an effective approach to air pollution disparities requires significant investment into community air pollution monitor networks.

2.2 **Fund capacity building and ground-up governance models.** If TCI revenue can be used to build new capacity-building and ground-up governance programs for communities, we can then expand those ideas across other TCI states and beyond the constraints of TCI funding. States could consider establishing novel ways of empowering communities to democratically invest TCI revenue.

Strategic Asks for Regional MOU vs State Level Action

<table>
<tr><th>Provision</th><th>Regional MOU</th><th>State-Level Regulation/Legislation</th></tr>
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<td>1.1 - Require proportionately high investment into OAU communities</td>
<td>Signatory state must guarantee to set/adjust investment percentages such that they are significantly higher than the percentage of the state population that qualifies as OAU</td>
<td rowspan="2">Essential provisions:

More specific demands are possible, i.e. “50% must go to the 25% most overburdened and underserved communities.”
Additional layers are possible, i.e. “an additional X% must low-income communities, EJ communities, etc.”
See AB 1550 (2016)
Legislation that codifies TCI spending provisions into law and protects from funding raids/ensures funding stability.

Optional considerations:

Earmark dedicated funding for large long-term public transit projects, with program-specific equity requirements
See SB 862 (2014)

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<td>1.2 - Require investment dollars to be located within and directed benefiting OAU Communities</td>
<td>Projects must be located within and directly benefiting OAU communities for investment dollars to count towards percentage requirements

See AB 1550 (2016)

States must report every census tract that a project touches. Portions of the project outside of OAU communities do not count towards requirements.</td>
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<td>2.1 - Modernize environmental justice data</td>
<td>A timeline for signatory states to:

Develop modernized measures of socioeconomic and environmental burden
Build comprehensive community air pollution monitor networks
Establish local air districts and community GHG reduction plans

</td>
<td>Legislation to develop a comprehensive open-source screening tool for cumulative socioeconomic and environmental impacts

See CalEPA Environmental Justice Action Plan (2004), Section 2.2 and SB 535 (2012)

Significant investment into air monitoring networks, establish local air district approach to air pollution

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<td>An earmark of TCI revenue for capacity building and new community governance models

(More likely in State Model Rule)</td>
<td>Codify a TCC-style program that pulls together funds from TCI and other sources.

See AB 2722 (2016)</td>
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Key Investment Provisions - Further Detail

1.1 Require *significantly high* investment into overburdened and underserved communities.

The percentage of TCI revenue invested into underserved and overburdened communities must be greater than the percentage of the state population that qualifies.

The states intend to insert a provision into the regional MOU will require 35% of revenue to be invested in and benefiting overburdened/underserved communities. This is a key step, but since states will individually determine their own definitions of a qualifying community, it is impossible to pin down what is the “correct” minimum to strive for.

The challenge is that these two sides of the provision — the investment minimum and the definition of qualified recipient — are crucially interdependent. For example, if 50% of TCI revenue is required to flow to OAU communities, but the state arrives at a definition that qualifies 50% of the population as overburdened and underserved, then the program requirements are not *equitable*. Equitable requirements would call for a *significantly higher* portion of revenue to be invested in and benefiting OAU communities.

This problem arose in California, where 25% of cap-and-trade funds are required to benefit “disadvantaged communities.” After this requirement was set, CalEPA designated 25% of the state’s census tracts as disadvantaged, based on which communities experience the worst cumulative socioeconomic and environmental burdens. Requiring that 25% of investments go to 25% of the state’s population is not an equitable mandate — either the definition of a disadvantaged community needs to be narrowed, or the 25% investment minimum needs to be increased.

Similarly, in California an additional 10% of investments must be located within and benefiting low-income communities and households. However, low-income communities and households constitute an additional 25% of California’s population. This does not constitute an equitable investment requirement.

In total, disadvantaged communities and low-income populations, collectively referred to as priority populations, make up about 51% of California’s population — but the minimum requirement for investments that benefit priority populations is only 35%. Thus, the investment requirements in California are underwhelming and need to be exceeded significantly to achieve an equitable distribution of funds.

Regional vs State-Level Provisions

This can be safeguarded with clear and concise language in the regional MOU that requires states to set equity investment minimums that *exceed* the percentage of the population that qualifies under an OAU community.

A regional MOU minimum will serve as a vital backdrop in the subsequent state-by-state implementation. However, we can expect the regional negotiations of governors to result in a baseline percentage that is lower than what we can achieve at the state level. The most crucial provision for states to agree upon is that the equity investment requirement is *greater* than the percentage of the state's population that will qualify as overburdened and underserved.

Policy Level	Potential Asks/Demands
Regional MOU	Signatory state must guarantee to set/adjust investment percentages such that they are *higher* than the percentage of state population that qualifies as OAU
State-Level Regulations or Legislation	Essential provisions: ● More specific demands are possible, i.e. "50% must go to the 25% most overburdened and underserved communities" ● Additional layers of percentage requirements, i.e. "additional X% must benefit EJ communities, low-income households, etc." *See AB 1550 (2016)* ● Legislation that codifies TCI spending provisions into law and protects from funding raids/ensures funding stability. Optional considerations: ● Earmark dedicated funding for large long-term public transit projects, with program-specific equity requirements *See SB 862 (2014)*

Additional considerations

State Model Rules, or other bills/promulgations in the state, can get more specific and ambitious with these guardrails, since they can be designed with the specific definition/cutoff point of OAU communities in mind. They can also add more layers to the percentage requirements, such as additional provisions to benefit low-income communities and households.

At the state level, TCI funds can also be earmarked for long-term, large infrastructure projects with their own upped equity requirements. For example, should TCI dedicate a continuous portion of revenue to a public transportation agency, that revenue can be required to have a higher investment equity requirement than the Model Rule for TCI investment as a whole.

1.2 Require investment dollars to be *located within and directly benefiting* overburdened and underserved communities

- **Investment dollars must *directly benefit and be located within* an underserved and overburdened community to count towards investment minimums.**
- **Administrators must report *all* census tracts that an investment touches, and differentiate what proportion of funds take place within/outside of OAU communities.**

The states have signaled that the regional MOU will require that a minimum of 35% of investments *benefit* underserved and overburdened communities. However, requirements based solely on benefits — which can be vague and need proper definition — will not ensure that funding reaches the communities that need it most. The TCI investment minimums should be based on what percentage of *TCI dollars* are directed to projects that are *located within and benefiting* OAU communities.

SB 535 (2012) in California required that at least 25% of investments be invested in programs that benefit disadvantaged communities, but only 10% of investment had to be invested *within* disadvantaged communities. Lacking a strong requirement for investments *within* communities and clear measures to ensure benefits, CARB and other state agencies could not guarantee that these investments delivered tangible improvements to communities — and could only identify hypothetical benefits.

AB 1550 (2016) updated this requirement such that only investments that are located *within* priority population census tracts can be counted towards the investment benefit minimum. This was a crucial change to tie resource deployment to specific locations and communities, and requires that community's needs to be directly addressed by an investment.

The state uses a three-step process to identify and verify community benefits from investments:

1. **Identify the priority population(s),** using the state's CalEnviroScreen tool and/or low-income calculators.
2. **Address a need.** Agencies are required to demonstrate how their project meaningfully addresses an important community or household need in the

identified priority population. This is done through direct engagement with local residents and groups through community meetings, workshops, consulting organizations, community surveys, and other outreach efforts. As an alternative, agencies can identify individual factors that most impact priority populations and/or refer to the following list of common needs and select a need that has broad support from residents/community groups.[1]

3. **Provide a benefit.** The agency must identify at least one direct, meaningful, and assured benefit that the project provides. The benefit must directly address the identified need. While the project may provide multiple benefits, the agency is only required to report one benefit criteria.

This conceptual three step process could be replicated in TCI jurisdictions to determine where and how investments are made — with particular emphasis on steps 1 and 2 to identify and invest in communities where transportation and air quality improvements are needed most.

Administrators must report *all* census tracts involved

Ensuring that only projects located within underserved and overburdened communities can be counted towards achieving investment requirements requires extensive, transparent reporting on projects.

To expedite the investment process, California state agencies are required to report only one census tract for a project's location — regardless of a project's size. The reported census tract is typically the priority population identified in step 1 of the three-step process above so a given project can be counted towards the minimum benefit requirements.

Project benefits are also evaluated based on this reported census tract, without accounting for the size of a project or its location (i.e. if a project is located in one census tract vs. spanning over 20 census tracts). If a project is located within *at least one* disadvantaged or low-income census tract, then 100% of funding is reported as benefiting priority populations — if not, then 0% of funds benefit priority populations.

This is problematic for large multi-census tract transportation investments. For example, if a $50 million rail expansion passes through *only one* disadvantaged community, then the entire project could be reported as benefitting that community — regardless of how many wealthy communities the rail line passes through as well. This binary, 0% or 100% benefit approach means that CARB is overestimating the amount of funding that is located within and directly benefiting priority populations.

[1] Qualified benefits can be related to public health, economic opportunity, or environmental exposure. For a full list of qualified benefits in California, see: "Funding Guidelines for Agencies that Administer California Climate Investments." (CARB, 2018).

If TCI jurisdictions are committed to transparency as stated on the September 29th webinar, reporting only one census tract does not meet this commitment. Signatory states must report every census tract that investments take place in, and only count the proportion of investment that takes place *within* OAU communities.

Regional vs State-Level Provisions

The regional MOU must require investment equity to be measured by dollar and by location. Based on the current language presented on September 29th, resource allocation in communities can depend solely on a nuanced definition of a "benefit" determined by states, and this alone cannot ensure equitable TCI investments. Coupling benefits directly to funding, and controlling how and where resources are being deployed on the basis of dollars spent, rather than by tracking benefits alone, becomes a more straightforward process.

Policy Level	Potential Asks/Demands
Regional MOU	• Projects must be *located within and directly benefiting* OAU communities for investment dollars to count towards percentage requirements *See* [AB 1550 (2016)] • States must report every census tract that a project touches. Portions of the project outside of OAU communities do not count towards requirements.
State-Level Regulations or Legislation	Essential provisions: • More specific demands are possible, i.e. "50% must go to the 25% most overburdened and underserved communities" • Additional layers of percentage requirements, i.e. "additional X% must benefit EJ communities, low-income households, etc." *See AB 1550 (2016)* • Legislation that codifies TCI spending provisions into law and protects from funding raids/ensures funding stability. Optional considerations: • Earmark dedicated funding for large long-term public transit projects, with program-specific equity requirements *See* *SB 862 (2014)*

Additional Considerations for Transparent Reporting

During the September 29th regional equity webinar, transparency was listed as one of the strategies to pursue, but did not provide any information on this beyond an annual report on investments. At the very least, an annual report must include:

1. Funding located within and benefiting OAU communities, and what those benefits are.
2. Expected greenhouse gas emissions reductions from projects.
3. Expected co-pollutant emissions (NO_x, $PM_{2.5}$, Diesel PM, etc.) reductions from projects.
4. Additional co-benefits from investments, such as job creation, economic benefits, health benefits, and increased safety. This can provide more details on what changes are being made in communities where investments occur.

TCI jurisdictions should strive to make data as accessible as possible. The California Climate Investments website provides downloadable maps and data on project locations, disadvantaged and low-income community census tracts, and a database with all project information reported by state and local agencies since the first reporting year in 2015. Information is also made accessible through an interactive data dashboard on project results. A semi-annual data release with detailed project information and a data dashboard similar to California's should be considered by TCI jurisdictions to complement an annual report.

2.1 Modernize our environmental justice data

Mandate the government to create and maintain a comprehensive screening tool for environmental justice metrics at the census tract level or smaller.

It should be the responsibility of the state to aggregate and democratize the underlying data that informs our environmental justice solutions. States looking to set definitions of OAU communities for the purpose of TCI should bring together comprehensive screening tools, at the census tract level or smaller, that measure cumulative socioeconomic and environmental impacts on the community. Such a tool would not only be a vital underlying dataset for TCI, but for all policy decisions related to environmental justice in a given state.

California is the only state that currently has a tool of this detail and rigor. CalEnviroScreen is an open source program that scores each census tract in the state according to 20+ measures of pollution exposure, environmental effects, health sensitivities, and socioeconomic factors.

Figure 1. CalEnviroScreen 3.0 Indicator and Component Scoring

	Pollution Burden			Population Characteristics		
Exposures	Ozone Concentrations PM2.5 Concentrations Diesel PM Emissions Drinking Water Quality Pesticide Use Toxic Releases from Facilities Traffic Density	×	*Sensitive Populations*	Cardiovascular Disease Low Birth-Weight Births Asthma Emergency Department Visits	=	CalEnviroScreen Score
Environmental Effects	Cleanup Sites Groundwater Threats Hazardous Waste Impaired Water Bodies Solid Waste Sites and Facilities		*Socioeconomic Factors*	Educational Attainment Linguistic Isolation Poverty Unemployment Housing Burdened Low Income Households		

NOTE: This is an example, not a prescription of what metrics would be most suitable for a given state.

These criteria are combined into a number score for each census tract, with CalEPA designating the top 25% scoring communities as “disadvantaged” for the purpose of cap-and-trade investments. However, this data can be weighed and spliced differently according to a wide variety of policy uses. CalEnviroScreen has since been integrated across other programs in the state to guide equity outcomes.

However, as with all aspects of program design, political interest can influence data-driven tools that determine resource allocation. For example, different regions of a state may benefit from increasing or decreasing the weighting of particular indicators to influence their score. These conflicting voices need to be hashed out through due diligence and public workshops in order to arrive at a final product that is fair for all communities in the state.

Regional vs State-Level Provisions

How OAU communities are *defined* with this data depends on unique state contexts, and for the purposes of TCI will take place at the state level. Some states (such as Massachusetts and New Jersey) have existing EJ definitions to consider as well. As such, language on developing a comprehensive screening tool will be difficult to insert into TCI’s regional MOU with much detail.

A signatory state could build this tool to serve as a model for other TCI states to follow in modernizing their environmental justice data, as well as accelerate the adoption of modern EJ screening practices across other policies in the state.

Policy Level	Potential Asks/Demands
Regional MOU	A timeline for signatory states to: • Develop modernized measures of socioeconomic and environmental burden • Build comprehensive community air pollution monitor networks • Establish local air districts and community GHG reduction plans
State-Level Regulations or Legislation	Legislation to develop a comprehensive open-source screening tool for cumulative socioeconomic and environmental impacts *See CalEPA Environmental Justice Action Plan (2004), Section 2.2 and SB 535 (2012)* Significant investment into air monitoring networks, establish local air district approach to air pollution *See AB 617 (2017)*

2.2 Fund capacity building and ground-up governance models

One of the key EJ opportunities with a program like TCI is to accelerate the development of forward-looking models for community self determination. If TCI revenue can be used to build new capacity-building and ground-up governance for communities, we have the precedent to then expand those approaches.

One of those programs could be for dense, placed-based investment controlled democratically by local residents. In California this has been under development with cap-and-trade dollars, and is called the **Transformative Climate Communities (TCC)** Program.

The program was authorized in 2016 by AB 2722 to fund neighborhood-level transformative climate community plans that include multiple, coordinated projects that provide local economic, environmental, and health benefits to disadvantaged communities. This is a particularly compelling model when dealing with air pollution from transportation, which is a product of the built environment and more receptive to investment than pollution from facilities.

The TCC is novel because of 3 signature elements:

1. **A dense, place-based, community-driven approach.** Proposals must come from a robust community engagement process that brings residents and stakeholders together to create a shared vision on how to invest TCC funds.

2. **Robust, holistic programming.** The approach integrates many California programs into a single, placed-based initiative — including transit-oriented affordable housing, low-carbon transportation access, renewable energy, urban greening, waste reduction/diversion, sustainable land use, etc.

3. **Cross-sector partnerships.** Applicants are required to form a coalition of organizations that would implement the community vision. This includes an oversight committee of project partners, community members, and local organizations to ensure transparency and accountability of investments, and build new capacity in communities that have been historically underinvested in.

The Strategic Growth Council in California awards TCC grants and administers the program. They administer two types of grants through the TCC:

1. **Planning grants**: Funds planning activities in disadvantaged communities that are eligible for future TCC implementation grants and other CCI programs. These are funded through Proposition 84 funds.

2. **Implementation grants**: Funded through CCI, Implementation Grants are awarded to sites that have demonstrated a clear, community-led vision for how they can use funding to achieve program objectives in their communities.

Regional vs State-Level Provisions

Because of the novelty of this type of program, it will likely have to begin at the individual state level. However, funding a TCC program with TCI funds could be an example for other TCI states to follow.

Policy Level	Potential Asks/Demands
Regional MOU	An earmark of TCI revenue for capacity building and new community governance models *(More likely in State Model Rule)*
State-Level Regulation/Legislation	Codify a TCC-style program that pulls together funds from TCI and other sources. *See AB 2722 (2016)*