

February 27, 2020

VIA ONLINE COMMENT PORTAL: <https://www.transportationandclimate.org/main-menu/tci-regional-policy-design-stakeholder-input-form>

Re: Comments on TCI Draft Memorandum of Understanding

The Southern Environmental Law Center (SELC) provides the following comments on the “Draft Memorandum of Understanding of the Transportation and Climate Initiative” (Draft MOU) that was released to the public on December 17, 2019.

SELC is a non-partisan, non-profit organization that is headquartered in Virginia and works throughout the Southeast to protect the region’s natural resources and the health and well-being of its people. Much of our work centers on mitigating both the causes and effects of climate change, and our Land and Community Program focuses, among other things, on promoting cleaner, more equitable, and more climate-resilient transportation solutions.

We appreciate the work the Transportation and Climate Initiative (TCI) jurisdictions have done to advance the initiative from the Framework for a Draft Regional Policy Proposal that was released last fall to the Draft MOU that is currently under review. With Virginia currently the only state in SELC’s region that is participating in TCI, we are particularly focused on the benefits the program could provide to Virginia’s communities and environment, and we continue to strongly support Governor Northam’s decision to have Virginia participate in the development of the TCI policy proposal.

As is the case in many other states and the nation as a whole, the transportation sector is the largest source of greenhouse gas pollution in Virginia, and there is an urgent need to reverse the negative effects that decades of automobile-oriented investment decisions and policies and poor land use planning are having on our communities, our economy, and our environment. A large-scale, regional approach like that reflected in the Draft MOU and Appendix offers significant potential to reduce the outsized climate impact of our transportation system by redirecting investments and policies toward cleaner vehicles, less auto-dependent development patterns, and more accessible and equitable transportation alternatives. We therefore support the work the TCI jurisdictions are doing to develop and finalize a MOU, and we strongly encourage the continued participation of Virginia, specifically, in that effort.

SELC is a signatory to the joint comment letter that members of the Our Transportation Future (OTF) coalition and several other organizations submitted on February 24, 2020, but we offer these additional comments both to touch on some aspects of the investment-related elements of the Draft MOU (which the OTF letter does not address) and to emphasize some of

the OTF letter's key points. We urge you to strengthen key aspects of the policy proposal before the MOU is finalized and more focused work on a Model Rule gets underway.

I. Ensuring Investment in Shared Priorities

As noted in our November 5, 2019 comment letter on the draft policy framework, we appreciate the need to provide the Participating Jurisdictions a significant degree of flexibility in determining how to invest the proceeds they would receive from the TCI program. Each jurisdiction has unique transportation needs and priorities, and those needs and priorities will shift over time as progress is made in some areas and other challenges emerge or grow. As a result, establishing rigid and detailed requirements for how Participating Jurisdictions must spend TCI proceeds is neither practical nor desirable.

However, as we read the Draft MOU, Participating Jurisdictions could have nearly unlimited discretion in how they invest the proceeds. For instance, the fourth Resolved clause states that the signatory jurisdictions will establish an objective methodology for apportioning proceeds to each Participating Jurisdiction "to invest at each jurisdiction's discretion to support the goals of the program." Similarly, Section 3.A of the Appendix states that "[e]ach Participating Jurisdiction shall invest the proceeds from the auction of allowances as determined appropriate by each Participating Jurisdiction to achieve TCI Program goals." That same section (3.A) then lists several examples of TCI goals (achieving CO₂ emissions reductions, improved air quality, public health, resilience, and more affordable access to clean transportation alternatives), but the list is clearly not meant to be exhaustive, and there is no place in the Draft MOU where all goals are clearly enumerated or identified. As a result, jurisdictions could arguably come up with their own TCI program goals and use them to justify whatever investment decisions they might wish to make.

Further, the goals that are listed in Section 3.A of the Appendix are broad enough that one could make a TCI-consistency argument for nearly any transportation expenditure a state might choose to make. For example, a state might argue that a proposal for a new highway that would generate significant new vehicle miles traveled (and the accompanying greenhouse gas pollution) and pave over wetlands or forested areas serving as valuable carbon sinks is needed to improve access to a hospital and therefore supports the goal of public health. Perhaps such a project could warrant state funding, but it would be counter to the entire purpose of the TCI program if TCI proceeds could be used for it.

By raising these concerns, we certainly do not wish to suggest that TCI should develop a list of projects and policies in each state that are permissible targets for investment of TCI proceeds. However, we do urge you to consider whether the MOU should require each state to invest a certain percentage of its TCI proceeds in projects and programs that would clearly advance identified TCI priorities.

Along these lines, Section 3.A of the Appendix allows Participating Jurisdictions to identify “shared or common priorities” for investment of proceeds, and Section 3.B then establishes one: an “Equity Shared Priority” to “expand low-carbon and clean mobility options in urban, suburban, and rural communities, particularly for populations and communities that are disproportionately adversely affected by climate change and transportation pollution and currently underserved by the transportation system.” We strongly support articulation in the MOU of a shared priority among participants to devote a significant portion of the proceeds from TCI to projects and policies that reduce transportation emissions in ways that directly address the myriad aspects of past and current transportation policies and decision-making that tend to generate more adverse impacts and fewer benefits for communities of color and lower-wealth neighborhoods. However, we are concerned that merely articulating a shared priority is not enough, as there is no practical significance to shared priorities in the Draft MOU. In other words, nothing requires states to do anything to advance the shared priorities once they are identified or established.

We recommend you consider including in the MOU a requirement that each state spend a minimum percentage (e.g., 25%) of its proceeds on projects and programs that clearly advance the shared priorities that TCI establishes. Further, we recommend that the Final MOU establish a process by which additional shared priorities can be established, and the minimum percentage investment requirements can be adjusted. The “Regional Organization” discussed in Section 4 of the Appendix could perhaps be the vehicle for adopting new shared priorities and adjusting the minimum percentage investment requirements, and we note that a clause establishing those authorities for the Regional Organization would likely need to be added to that section of the Appendix in the Final MOU to accomplish this.

Further, we encourage you to add to the Final MOU a second shared priority based on promoting transportation-efficient land use planning. If states and localities in the TCI region do not act to stem the sprawling development patterns that are driving unnecessary increases in vehicle miles traveled, deepening our automobile dependency, and paving over carbon sinks, the region will likely take two steps backwards for every step TCI propels it forward. And because there is a significant risk that this crucial goal, like equity, will too easily be overlooked or minimized in the TCI investment decisions states make, we believe it warrants special emphasis.

II. Increasing Transparency in State Investment of TCI Proceeds

Given our concern regarding the potential for states to make counterproductive or misguided investments of TCI proceeds, we also urge you to add to the Final MOU some ways in which it can require transparency over state expenditures of those proceeds. We strongly support the emphasis Section 6 of the Appendix places on the Participating Jurisdictions monitoring and regularly reviewing both their individual programs and the regional TCI program. In particular, we think the requirement that Participating Jurisdictions annually review *and report* the impacts of their individual program is extremely important.

However, to promote transparency regarding the investment of TCI proceeds, we urge you to go further and make clear in Section 6 of the Appendix that the impact reports each Participating Jurisdiction must provide shall include a list of the various projects and programs in which that jurisdiction invested its TCI proceeds during the prior year. This will allow the residents of each state to know how that state's TCI proceeds are being spent, to better advocate for the investments they deem the most important, and to hold their decision-makers accountable if they stray too far from TCI's main purposes. It will also encourage jurisdictions to view and treat the TCI proceeds differently from other revenues that are available for transportation—which should help reinforce the notion that these proceeds are to be allocated to projects that directly relate to reducing greenhouse gas emissions from the transportation sector and advancing cleaner, more accessible, and more equitable transportation options.

III. Setting a Meaningful Emissions Reduction Target

The Draft MOU does not set forth the Year 2032 target CO₂ emissions reduction percentage that the TCI program will be structured to obtain. However, the executive summary of the modeling results and the slides produced for the “Draft Memorandum of Understanding & 2019 Cap-and-Invest Modeling Results” webinar explain that the TCI jurisdictions modeled three Year 2032 cap reduction scenarios: 20%, 22%, and 25%. The modeling results presented make clear that the more aggressive the cap reduction, the greater the benefits in terms of the amount of economic growth, public health, avoided climate impacts, proceeds for investment, and, of course, CO₂ reductions. We therefore believe you are justified not only in considering the most aggressive of the cap reductions scenarios evaluated—25%—but also in evaluating impacts of more significant cap reductions before making a final decision on this critical aspect.

IV. Prohibiting or Clearly Limiting Offsets

Section 1.I(3) of the Appendix states that “[t]he Model Rule may provide, as a compliance alternative, the limited use of offsets.” We are generally wary about allowing the use of offsets as a compliance alternative for State Fuel Suppliers—particularly if the offset projects can include projects that reduce emissions from non-transportation sources. In our view, the TCI program is being implemented for two primary purposes: (1) to reduce greenhouse gas emissions from a specific sector (transportation) that now accounts for roughly 40% of those emissions in the affected region and is the largest source in the country as a whole, and (2) to invest proceeds from the program into developing cleaner, more efficient, and more equitable transportation options. Offset projects that reduce emissions from sources outside the transportation sector, and then allow the proceeds that may be realized from the sale of those offset allowances to be spent however the generator of the offset project may wish, are unlikely to accomplish either purpose.

If offsets are to be allowed as part of the TCI program, we strongly urge you to flesh out the term “limited” in the provision from Section 1.I(3) of the Appendix quoted above and, in line

with a recommendation in the OTF comment letter, expressly limit the amount of available allowances to a specified amount of a State Fuel Supplier's compliance obligation. We urge you to also consider limiting the overall amount of the TCI cap reduction commitment that can be satisfied by offset projects, so that there would be a cap both on the amount of offsets available to individual State Fuel Suppliers and on the overall amount of offsets available.

V. Ensuring Cost Containment Allowances are Subsequently Recaptured

We wish to echo a point from the OTF comment letter regarding the Cost Containment Reserve (CCR). Section 2.G(1) of the Appendix indicates that the TCI program may include a cost containment mechanism that would make a quantity of emissions allowances above the annual cap available for sale if allowance prices are higher than projected. If a CCR is to be included in TCI, then it is crucial that those additional allowances above the annual cap be subtracted from the cap in future years so that the 2032 emissions reduction cap remains valid.

Thank you for your consideration of these comments and for your ongoing and important work to develop the TCI program.

Sincerely,



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Morgan Butler
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