



METROPOLITAN
TRANSPORTATION
COMMISSION

Agenda Item 5
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Memorandum

TO: Partnership Board
FR: Executive Director
RE: Cap & Trade Update

DATE: October 13, 2016

This memo provides an overview of how the Bay Area has performed on cap and trade funding since the program began and an update on recent legislative, administrative and budgetary developments affecting the program.

Cap and Trade Funding in the Bay Area

Since California's cap and trade program launched in 2013, the Bay Area has received \$254 million, or 30 percent, from the three transportation-related programs, as shown in Attachment 1. Relative to the Commission-adopted Cap and Trade Framework, the region is underperforming on Transit and Intercity Rail Capital Program (TIRCP) (25% of funding, compared to 33% goal), on target for the formula-based Low Carbon Transit Operations Program (LCTOP) (funding and goal at 37%), and on target for the Affordable Housing & Sustainable Communities Program (AHSC) (37% of funding, compared to 40% goal, pending approval of round 2). Details by program are also included in Attachment 1. As noted later in this memo, it is an open question whether we can maintain this level of performance in light of continuing legislative changes to the definition of "disadvantaged community" and continued reliance on the CalEnviroScreen tool.

Legislature Appropriates \$900 Million in Cap and Trade Funds

In late August, the Legislature adopted AB 1613, a budget trailer bill appropriating \$900 million in cap and trade funds from prior auctions. The funds were distributed to a variety of programs, including programs focused on energy conservation, forestry, agriculture and waste reduction, but the majority of funds (\$508 million) were targeted at reducing transportation-related emissions, as shown in Table 1 on the next page. In addition to funding appropriated by AB 1613, state law requires that 60 percent of cap and trade funds generated each year be appropriated to four transportation-related programs, as follows:

- 25% to High Speed Rail
- 20% to the AHSC
- 10% to the TIRCP
- 5% to the LCTOP

Final funding levels for FY 2016-17 are unknown since cap and trade funds are generated at quarterly auctions, but funds have been on a downward trend. Legal uncertainty facing the overall cap and trade program has resulted in much lower auction revenue in the last two auctions. Auction proceeds rose and then fluctuated between \$71 million and \$138 million per quarter through 2013 and 2014. Starting in 2015, the Air Resources Board made significantly more allowances available, starting a streak of five auctions that raised between \$517 million and \$657 million. This trend ended at the May 2016 auction, which raised only \$10 million; August auction proceeds were similarly low.

Table 1: AB 1613 Funding for Transportation Emission Reduction

TIRCP	\$135 million
Active Transportation Program	\$10 million
Clean Vehicle Rebate Project	\$133 million
Enhanced Fleet Modernization Program	\$80 million
Heavy Duty Vehicles & Off-Road Equipment	\$150 million
Total	\$508 million

As a partial response to the legal uncertainty facing the program, the Legislature enacted SB 32 (Pavley) in late August, extending the state's greenhouse gas reduction target — originally established in AB 32 (Pavley, 2006) from 2020 to 2030, thereby extending the cap and trade program by 10 years. Nonetheless, a lawsuit alleging the program is an illegal tax still awaits final action in the Court of Appeals. Until this legal cloud is removed, most observers expect auction revenue to remain depressed.

Transformative Climate Communities Program

In addition to the \$508 million awarded to transportation-related programs referenced earlier, AB 1613 appropriated \$140 million for a new Transformative Climate Communities Program (TCCP), established by AB 2722 (Burke, 2016). The TCCP, to be administered by the Strategic Growth Council (SGC), funds “neighborhood-level transformative climate community plans that include multiple, coordinated greenhouse gas emissions reduction projects that provide local economic, environmental, and health benefits.” AB 2722 limits eligibility to areas identified as disadvantaged communities (DACs) based on the state's CalEnviroScreen (CES) tool and for this reason, MTC opposed the bill. Unfortunately, AB 2722 was enacted and signed by the Governor as part of a series of cap and trade related bills that were negotiated as a package.

The SGC recently announced a Notice of Proposed Rulemaking to guide allocation of TCCP funds. SGC proposes to award the funds in phases, with funds from the first phase to be distributed 50 percent to the City of Fresno, 25 percent to the City of Los Angeles, and the remainder to an undetermined third location. In supporting documents to the draft rule, the SGC noted that the City of Fresno and Los Angeles have the highest number of census tracts scoring in the top 5 percent of CES, i.e. worst 5 percent statewide. This threshold eliminates all but one Bay Area census tract (located in east Oakland) from qualifying for TCCP funds. Notably, the draft rule does not indicate how much funding would be dispersed in the first phase.

MTC staff finds the proposal to be inconsistent with the language of AB 2722. The law does limit the program to plans and projects that benefit disadvantaged communities and authorizes SGC to give priority to areas that have a high proportion of DACs and focus on communities that are the most disadvantaged. However, limiting the first round of funding to just three jurisdictions and setting a threshold that excludes almost the entire Bay Area is a major overreach. MTC staff intends to submit a comment letter criticizing this flawed approach and to engage the Bay Area state legislative delegation as well. Comments are due by November 7.

AB 1550 (Gomez) Narrows Disadvantaged Community Target Geography

Another cap and trade bill enacted at the end of session was AB 1550 (Gomez), which requires that 25 percent of cap and trade funds be spent on projects located within DACs (rather than “benefiting them,” the original SB 535 (De León, 2012) requirement that encompassed a broader geography for investments that could qualify). In addition, the bill requires 1) an additional 5 percent of funds to be spent on projects that benefit low-income households located outside the boundaries of but within ½-mile of a DAC and 2) an additional 5 percent be spent on low-income households or low-income communities located anywhere in the state. MTC and the Bay Area Air Quality Management District (BAAQMD) opposed this bill, but similar to AB 2722, it was approved as part of a package deal.

Proposed Update to CalEnviroScreen Omits Even More Bay Area Communities

Immediately after the conclusion of the legislative session, the Office of Environmental Health Hazard Assessment (OEHHA), released a proposed update to CalEnviroScreen (CES), known as “CES3.0.” The new version updates the information used for all the variables, adds rent burden and cardiovascular disease as new factors in the population characteristics portion of the formula, and eliminates age as a factor. Despite the Bay Area’s extremely high rents and challenges with displacement, 29 *fewer* Bay Area census tracts are identified as DACs under CES3.0 in comparison to CES2.0, as shown in Attachment 2. The greatest reduction in DACs is in Alameda and Contra Costa Counties. The only positive development from the Bay Area’s perspective is the addition of four more census tracts in San Francisco in the Bay View area. Comments on CES3.0 are due by October 21, 2016, and we intend to mount our soapbox yet again.

Background on MTC’s Objections to CalEnviroScreen

MTC has challenged the use of CES as the state’s sole method of defining DACs because it excludes far too many of the Bay Area’s low-income communities and Communities of Concern (CoC). Specifically, only 23 percent of the Bay Area’s 233 census tracts with a median income at or below 80 percent of the statewide median are included in CES2.0. On the other hand, 38 percent of the limited number of census tracts (85 regionwide) designated as DACs under CES2.0 are *not* low-income. The mismatch between census tracts that would be considered disadvantaged on the basis of socioeconomic factors and those identified as DACs in CES results from an overreliance on 12 pollution burden variables in the final score. In essence, unless a census tract has a high enough level of pollution across multiple variables, it doesn’t matter how socioeconomically disadvantaged it is, it may still be excluded from the state’s definition of a disadvantaged community.

As a result, some census tracts in the Bay Area (including in Oakland, Antioch and Concord) with very high rates of unemployment, asthma, diesel PM, and poverty are excluded simply because their scores for hazardous waste, solid waste, and impaired water bodies aren't high enough. We find this to be a highly flawed way of determining how the state's cap and trade funds should be distributed, given that the effectiveness of transportation and affordable housing investments in terms of greenhouse gas reduction bears little relationship to the pollution variables.

Next Steps

Staff will submit comments expressing our concerns about the proposal for distributing TCCP funds and likewise, our objections to the draft CES3.0. We will continue to work with local stakeholders, the BAAQMD and the Bay Area legislative delegation on a remedy that ultimately broadens the state's definition of disadvantaged communities for the purpose of cap and trade so that it includes those that are the most socioeconomically disadvantaged, regardless of their pollution burden.

Steve Heminger

Attachments

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Bay Area Cap & Trade Program Awards to Date*

Program	Statewide Amount	Bay Area Awards	Bay Area Share of Statewide Amount	MTC Target
Transit and Intercity Rail Capital Program (TIRCP)	\$615,171,000	\$152,288,400	25%	33%
Affordable Housing and Sustainable Communities (AHSC)	\$443,856,770	\$162,213,450	37%	40%
Low Carbon Transit Operations Program (LCTOP)	\$99,662,306	\$37,342,085	37%	37%
Total	\$1,158,690,076	\$351,843,935	30%	

*AHSC totals include Strategic Growth Council staff recommendations for FY 2015-16, which has not yet been approved by SGC.

Details by Program

Transit and Intercity Rail Capital Program (TIRCP)

Through the first two programming rounds, projects in the Bay Area have captured 25% of awarded funds. This includes funding for major regional priorities identified in the regional Cap and Trade framework (SFMTA Light Rail Vehicle project, Peninsula Corridor Electrification Project, and BART Silicon Valley Phase II Extension), and other projects benefitting the region (SMART Rail Car Capacity project, Capitol Corridor Travel Time Reduction Project, Capitol Corridor Service Optimization and Standby Power Investments, ACE Near-Term Capacity Improvement Program).

Transit and Intercity Rail Capital Program (TIRCP)	FY 2015-16 Program	FY 2016-17 Program	Total
Statewide Amount Awarded	\$224,278,000	\$390,893,000	\$615,171,000
Statewide Amount Awarded - Disadvantaged Community Setaside	\$213,278,000	\$381,689,000	\$594,967,000
<i>Percent of Statewide Total</i>	<i>95%</i>	<i>98%</i>	<i>97%</i>
Statewide No. Projects Awarded	14	14	28
Statewide No. Awarded - Disadvantaged Community Setaside	13	13	26
<i>Percent of Statewide Total</i>	<i>93%</i>	<i>93%</i>	<i>93%</i>
Bay Area Amount Awarded	\$56,801,000	\$95,487,400	\$152,288,400
<i>Percent of Statewide Total</i>	<i>25%</i>	<i>24%</i>	<i>25%</i>
Bay Area No. Projects Awarded	3	5	8
<i>Percent of Statewide Total</i>	<i>21%</i>	<i>36%</i>	<i>29%</i>
Bay Area No. Projects Awarded - Disadvantaged Community Setaside	2	5	7
<i>Percent of MTC Total</i>	<i>67%</i>	<i>100%</i>	<i>88%</i>

The TIRCP program has a goal of providing at least 25% of available funding to projects that provide a direct, meaningful, and assured benefit to disadvantaged communities. Thus far, 93% of the projects awarded statewide, and 88% of the projects with funding for the Bay Area meet this criterion.

The following table illustrates TIRCP awards compared to the adopted framework.

Agency	Project/Category <i>(all amounts \$ millions)</i>	Adopted Framework, April 2016	Awards through first two rounds
BART	Train Control	250	0
	Hayward Maintenance Center	50	0
	Fleet Expansion	200	0
	<i>BART Total</i>	500	0
SFMTA	Fleet Expansion	481	86
	Facilities	67	0
	Core Capacity Study Projects/ BRT	237	0
	<i>SFMTA Total</i>	785	86
AC Transit	Fleet Expansion	90	0
	Facilities	50	0
	Major Corridors	200	0
	<i>AC Transit Total</i>	340	0
VTa	BART to San Jose	750	20
Caltrain	Electrification*	100	0
	EMUs	125	20
	<i>Caltrain Total</i>	225	20
Multiple Operators	TBD Expansion Projects: High Rider-ship Bus, Rail and Ferry Corridors	400	26
Region Total		\$3,000	152

*Assumes an equal or greater contribution from Cap and Trade High Speed Rail category, and an FTA Core Capacity Commitment of \$447 million.

Affordable Housing and Sustainable Communities Program (AHSC)

Including Strategic Growth Council staff recommendations for the 2015-16 program, the Bay Area has captured 37% of program funding. The Strategic Growth Council is expected to award the 2015-16 program at its meeting on October 11.

AHSC has a funding set-aside of at least 50% of the program for projects benefitting Disadvantaged Communities. Including SGC staff recommendations, 82% of awarded funds and 80% of awarded projects have met this criterion. In the Bay Area, 64% of the awarded projects have met this criterion despite the region's very limited number of CalEnviroScreen census tracts.

Affordable Housing and Sustainable Communities Program	2014-15 Program	Fall 2015 Limited Round	2015-16 Program*	Total
Statewide Amount Awarded	\$121,955,460	\$32,461,479	\$289,439,831	\$443,856,770
Statewide Amount Awarded - Disadvantaged Community Setaside	\$91,836,695	\$25,282,773	\$246,875,943	\$363,995,411
<i>Percent of Statewide Total</i>	<i>75%</i>	<i>78%</i>	<i>85%</i>	<i>82%</i>
Statewide No. Projects Awarded	28	8	25	61
Statewide No. Awarded - Disadvantaged Community Setaside	21	6	22	49
<i>Percent of Statewide Total</i>	<i>75%</i>	<i>75%</i>	<i>88%</i>	<i>80%</i>
Bay Area Amount Awarded	\$47,291,464	\$17,461,479	\$97,460,507	\$162,213,450
<i>Percent of Statewide Total</i>	<i>39%</i>	<i>54%</i>	<i>34%</i>	<i>37%</i>
Bay Area No. Projects Awarded	11	4	7	22
<i>Percent of Statewide Total</i>	<i>39%</i>	<i>50%</i>	<i>28%</i>	<i>36%</i>
Bay Area No. Projects Awarded - Disadvantaged Community Setaside	5	2	7	14
<i>Percent of MTC Total</i>	<i>45%</i>	<i>50%</i>	<i>100%</i>	<i>64%</i>

*Strategic Growth Council Staff recommendations – pending approval of Strategic Growth Council on October 11, 2016.

Low Carbon Transit Operations Program (LCTOP)

Through the State Controller's Office population-based and revenue-based funds distributions, MTC and Bay Area transit operators have been allocated 37% of the program's funds through the first two rounds, leading to a total of 40 projects in the region. SCO's release of estimated amounts available for the FY 2016-17 LCTOP program has been delayed due to overall funding uncertainty.

LCTOP requires that for agencies whose service area includes disadvantaged communities, at least 50% of the total moneys received must be expended on projects that will benefit disadvantaged communities. Thus far, 65% of the region's projects benefit disadvantaged communities. Some operators either don't have a disadvantaged community in their service area, or are doing multiple projects with their allocation, not all of which benefit a disadvantaged community.

Low Carbon Transit Operations Program (LCTOP)	FY 2014-15 Program	FY 2015-16 Program	Total
Statewide Amount Awarded	\$24,985,645	\$74,676,661	\$99,662,306
Amount Benefiting Disadvantaged Communities	\$22,816,053	\$70,417,792	\$93,233,845
<i>Percent of Statewide Total</i>	<i>91%</i>	<i>94%</i>	<i>94%</i>
Number of Projects Awarded Statewide	95	131	226
Amount Benefiting Disadvantaged Communities	71	85	156
<i>Percent of Statewide Total</i>	<i>75%</i>	<i>65%</i>	<i>69%</i>
Bay Area Amount Awarded	\$9,175,832	\$28,166,253	\$37,342,085
<i>Percent of Statewide Total</i>	<i>37%</i>	<i>38%</i>	<i>37%</i>
Number of Projects Bay Area Awarded	18	22	40
<i>Percent of Statewide Total</i>	<i>19%</i>	<i>17%</i>	<i>18%</i>
Amount Benefiting Disadvantaged Communities	13	13	26
<i>Percent of MTC Total</i>	<i>72%</i>	<i>59%</i>	<i>65%</i>

Comparison of MTC's Communities of Concern for Plan Bay Area 2017, CalEnviroScreen 2.0 & Draft CES3.0

	Plan Bay Area Communities of Concern (2017)		CalEnviroScreen 2.0 (25% Threshold)		CalEnviroScreen 3.0 (25% Threshold)		
County	Census Tracts	Population	Census Tracts	Population	Census Tracts	Population	Change from CES 2.0
Alameda	120	505,457	32	124,352	17	60,910	(15)
Contra Costa	45	243,955	23	121,204	12	65,409	(11)
Marin	3	14,443	0	-	0	-	-
Napa	4	12,245	0	-	0	-	-
San Francisco	48	191,894	3	11,045	7	22,634	4
San Mateo	22	135,040	2	14,837	2	17,652	-
Santa Clara	84	433,275	23	105,604	16	69,935	(7)
Solano	28	112,367	2	11,385	2	5,500	-
Sonoma	11	59,584	0	-	0	-	-
Total	365	1,708,260	85	388,427	56	242,040	(29)
Total CES Tracts Statewide	--	--	1993		1982		
Total Bay Area Population		7,338,962					
Percent of Bay Area population		23.3%		5.3%			3.3%
Bay Area Share of CES3.0 Disadvantaged Communities Statewide	--	--	4.3%	--	2.8%	--	--

Comparison of Draft CalEnviroScreen Version 3.0 with Version 2.0 and Communities with $\leq 80\%$ of Adjusted Median Income (AMI)

Legend

CLASSIFICATION



Census tract with income $\leq 80\%$ of Adjusted Median Income (AMI)



2014 DAC



2016 DAC



2014 DAC + Tracts $\leq 80\%$ of AMI



2016 DAC + Tracts $\leq 80\%$ of AMI

2010 POPULATION

Oakland

> 350,000

Sunnyvale

50,000–350,000

San Anselmo

< 50,000

CalEnviroScreen+CoCs.ai | 9.30.16 pb

SOURCE: Office of Environmental Health and Hazard Assessment (OEHA) and MTC

