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Subject: Transformative Climate Communities Program (TCC) - Investment Framework for Disadvantaged Unincorporated Communities (DUCs)

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Summary:

The Transformative Climate Communities Program's (TCC) Investment Framework for Disadvantaged Unincorporated Communities (DUCs) is being developed in response to Senate Bill 351 (Hurtado, 2019). Senate Bill 351 (Hurtado, 2019) required SGC to expand the program to unincorporated areas. TCC developed the following framework over a year including a comprehensive literature review, a state-wide working group made up of DUC experts, and consultations with academics, community organizations, data analysts, and local, state, and federal agencies. The process and Methodology for Development of the DUC Investment Framework is included in the Attachment B. TCC staff is asking the Council to provide initial feedback on suggested criteria that will be incorporated into the next Guidelines update.

TCC will utilize the DUC framework to further expand eligibility to unincorporated communities during the program's Round 4 Guidelines update. TCC will seek public comments on the investment framework during the Round 4 Guidelines public comment period. All recommendations listed below are developed within the context of the TCC Program. All program guidelines changes need to remain within the TCC Program's and the State's shared goals of sustainable growth. Furthermore, these recommendations are only additive to what is already built within the program's design.

All applicants, incorporated or unincorporated, will need to demonstrate deep, meaningful engagement and demonstrate that projects were selected by the community. Given the information provided and the initial assessment of characteristics associated with DUCs, the TCC Program will incorporate the DUC Investment Framework into the Round 4 TCC Guidelines, which will then be made open to a public comment process. Not all DUCs will be able to meet the objectives of the TCC legislative mandate, however, TCC deems all DUCs worthy of investments and will continue to work with partners to research and develop an appropriate path forward for them if TCC is not an option. Clear minimum criteria for DUC eligibility will help ensure the investment is sustained, will have a meaningful impact, and uplifts the communities that the TCC Program is intended to support.

The following includes suggested criteria to be incorporated into TCC's Round 4 Guidelines for DUC eligibility:

- I. **Eligibility Criteria:** There are four ways to establish eligibility for DUCs.



- a. All communities that have verified DUC status through their Local Agency Formation Commission (LAFCo) or another public agency and are located within top 25 percent (25%) disadvantaged communities (DAC) per CalEnviroScreen (CES)¹ are eligible to apply for TCC.
- b. Due to lack of data and local verification processes, communities can also use an alternative process explained below to verify eligibility, which is built into an online tool that will be publicly accessible during the Guidelines update process. The DUC Data Spatial Analysis Tool utilizes the following combined metrics to determine eligibility:
 - i. Top 25% disadvantaged communities (DAC) census tracts on CalEnviroScreen²
 - ii. California Hard to Count Index Top 2-3 Decile³ (CA-HTC)
 - iii. 250 parcels per square mile⁴ layer, or additional measures to identify population and density defined by a neighborhood level assessment.
- c. Alternatively, applicants who don't have verified DUC status or don't show up on the DUC Data Spatial Analysis Tool may submit additional measures, including localized data, to identify population characteristics and density defined by a neighborhood level assessment at the application pre-proposal phase to establish eligibility.
- d. DUC communities that have received TCC Planning grants in previous rounds will be eligible for TCC implementation grants.

Project Area Eligibility requirements of the Guidelines will apply to all applicants including applicants from DUCs. At least 51 percent (51%) of the Project Area must overlap with the areas that have verified DUC status or are identified by the DUC Data Spatial Analysis Tool. SGC will have both CES 3.0 and the new CES version (if available) built into DUC Data Spatial Analysis Tool. If a new CES version applies to the Guidelines, then only the communities that received TCC Planning grants in previous rounds can use the CES 3.0 layer in the DUC Data Spatial Analysis Tool to define the project area. All other applicants must use the most updated CES version to determine eligibility. The remaining 49 percent (49%) or less of the Project Area must overlap

¹ The [CalEnviroScreen](#) tool is developed and administered by the California Office of Environmental Health Hazard Assessment. The TCC program utilizes the latest version published during the guideline update.

² SGC will use the most recent version of the CalEnviroScreen Tool available at the time of application along with definition of Disadvantaged Communities.

³ A score of 57 (top-3 deciles) is considered "hardest-to-count." A tract or block group with a CA-HTC Index >69 (top-2 deciles) was considered among the "very hardest-to-count."

⁴ TCC Program utilized Policy Link's framework in "California Unincorporated: Mapping Disadvantaged Communities in the San Joaquin Valley" where they selected areas with a density of 250 parcels per square mile because "it is comparable to the density of Census Designated Places (unincorporated communities tracked by the Census Bureau).

either with DUC Data Spatial Analysis Tool or a low-income community as defined by AB 1550.

Further information about the DUC Data Spatial Analysis Tool is provided in ATTACHMENT, APPENDIX A.

- II. Infrastructure Criteria:** TCC Program-funded water and wastewater infrastructure is limited to Housing Related Infrastructure (HRI) under the Equitable Housing and Neighborhood Development TCC Strategy.⁵ TCC applicants will need to demonstrate access to community water and sewer that is in compliance with State Water Board standards or have a developed plan to become compliant reviewed by State Water Board.⁶ Staff will work with potential applicants during the pre-proposal application phase to help make connections to other funding programs or resources that may help them meet the minimum requirements.

- III. Operations and Maintenance Plan Criteria:** TCC eligibility criteria for incorporated communities require applicants to meet readiness requirements including site control, permits, project designs, operations and maintenance plans and more to ensure the investment is sustained. This criterion will be especially challenging to many DUCs that do not have basic infrastructure. All applicants from DUCs should still demonstrate an operations and maintenance plan for basic infrastructure to provide assurance that the State investment will provide long term benefits to the community. Staff will work with potential applicants during the pre-proposal application phase to help make connections to other funding programs or resources that may help them meet the minimum requirements. TCC staff will also continue researching innovative infrastructure models that are better suited for less populated areas.

- IV. Program Alignment Criteria:** DUC applicants need to demonstrate alignment with program objectives. TCC may need to establish specific requirements for DUC applications including:
 - Applications for investment in DUCs will need to demonstrate the availability of affordable and accessible transit, active transportation, and/or clean vehicle sharing program that are either currently available or

⁵ For more information on HRI see page 14 of AHSC Guidelines
https://sgc.ca.gov/meetings/council/2021/docs/20210224-AHSC_Round_6_Guidelines.pdf

⁶ Other funding programs that help cover water and sewer infrastructure costs include the Safe and Affordable Funding for Equity and Resilience [SAFER] and Wastewater Consolidation Programs for consolidation and upgrades.

will be funded through TCC that would connect the community to major job centers and regional service hubs.

- DUCs that are within a City's Sphere of Influence will need to demonstrate that the investment will not result in further sprawl.

- V. Planning Criteria:** Planning will remain an integral part of the TCC Program through the DUC investment framework. DUCs who apply will need to demonstrate previous planning focused on community visioning and infrastructure development priorities for the community. DUCs who lack the pre-planning work necessary for successful implementation will remain eligible for TCC Planning Grants but will be advised during the application phase about the competitiveness of their application. TCC recommends increasing the traditional amount of funding available for Planning Grants for DUCs to support both planning and pre-development costs. The DUC Planning Grant structure and requirements may be refined to include planning for community visioning, operations and maintenance feasibility analyses, pursuit of other funding programs for deep infrastructure upgrades, and other planning criteria that would help ensure successful implementation of infrastructure projects in DUCs.
- VI. Pre-proposal application and technical assistance:** A pre-proposal option will provide an opportunity for staff to provide technical assistance, thus refining applications to encourage readiness and competitiveness during the full application process. A pre-proposal phase can be particularly beneficial for DUCs that are usually under-resourced. Additionally, TCC recommends establishing a tailored technical assistance program for DUCs to help them achieve their individual, unique goals. Furthermore, DUCs subject to portions of the Program Alignment criteria may utilize the technical assistance to help coordinate with the LAFCo, City or County to identify growth management policies or strategies that they will pursue or identify a plan to pursue a Sustainable Agriculture Land Conservation grant, to help them meet the TCC "Program Alignment Criteria".

Background:

Assembly Bill 2722 (Burke, 2016) authorized SGC to administer the TCC Program in order 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 (Public Resources Code Sec. 75240-75243)." TCC focuses on the State's most disadvantaged communities, per the CalEnviroScreentool.

External stakeholders, including those who advocated for the creation of the TCC Program through the Legislature, have advocated for DUC eligibility since the program's



inception. However, due to programmatic circumstances, feasibility, and Council priorities, DUCs remained ineligible for Implementation Grant funding in the first two rounds of the program. Coinciding with the Council adoption of the Round 3 Program Guidelines, advocacy groups worked with the Legislature to pass [SB 351 \(Hurtado, 2019\)](#), which now requires TCC and the “Council to consider applications for projects undertaken in unincorporated areas of a county (Public Resources Code Sec. 75241).”

Overview of California DUCs

Disadvantaged Unincorporated Communities are the byproduct of neglect and systematic inequalities in California growth planning. These communities often face multiple issues ranging from lack of recognition to representation and access to basic services. While DUCs’ needs vary, they generally need basic infrastructure and services such as clean and safe drinking water, sewage systems, sidewalks, and streetlights.

Although legislators required infrastructure deficiency assessments, implementation of the legislation is challenging due to lack of oversight and accountability of local agency implementation, and lack of tracking, monitoring, and funding availability. This is further described in section “Research and Background on DUCs, Legislation”. Moreover, there is little incentive for local agencies to extend their services to DUCs, fiscal challenges due to service consolidation, and some DUCs resist city incorporation despite wanting and needing resources.

The variable characteristics of DUCs coupled with the existing infrastructure deficiencies, and the historical political and racial motivations in some communities, requires due diligence to ensure that TCC investment in DUCs will achieve its intended goal of a more resilient, equitable, and prosperous community that advances the State’s priorities.

Research and Background on DUCs

This section outlines the land use history that shaped the formation of DUCs, the geographic types of DUCs that exist, and the key legislation and stakeholders that govern land use and infrastructure in DUCs. The information provided in this section references the robust research conducted by many, but especially the following: University of California, Davis Center for Regional Change “The Struggle for Water Justice in California’s San Joaquin Valley: A focus on Disadvantaged Unincorporated Communities” (London et. al. 2018) and “Land of Risk/Land of Opportunity” (London et al. 2011), Policy Link’s “California Unincorporated: Mapping Disadvantaged Unincorporated Communities in the San Joaquin Valley” (Flegal, et. al. 2013), and the Governor’s Office of Planning and Research “Senate Bill 244: Land Use, General Plans, and Disadvantaged Communities” Technical Advisory memo (2013).

I. Land Use History

DUCs are a result of historic and systemic racial and economic inequalities dating back to early settlement.⁷ The ongoing underinvestment in DUCs, including forgone annexations, has roots in structural racism.⁸ Generations of immigrants and low-income people settled in California in the 1900s⁹ and remained excluded from urban areas through redlining and exclusive housing policies, even as cities around them began to build out. Obtaining investment and connection to essential services continues to be a challenge for DUCs, as cities often “cite the financial burden of annexing poor communities as a rationale for selective incorporation.”¹⁰

The same principles that disenfranchised unincorporated communities continue to perpetuate their current state, as DUCs lack the economic resources and political clout to gain the governmental representation necessary for annexation and/or incorporation.¹¹ PolicyLink’s report “California Unincorporated: Mapping Disadvantaged Unincorporated Communities in the San Joaquin Valley” states it simply: “Concentrated poverty, institutional and individual racism, and California’s systems of public finance and land use regulation exacerbate the plight of disadvantaged unincorporated communities.”¹²

For example, the small (1200 residents) primarily Latino DUC in the Central Valley, Matheny Tract, lacked governmental representation when the City of Tulare sought to annex 500 acres of land adjacent to Matheny Tract to accommodate a large industrial site. The California Rural Legal Assistance (CRLA) mobilized residents and petitioned the LAFCo to condition the annexation to include extension of portable water and sewer services to the residents. The community was not initially included in the annexation and strongly opposed the industrial site placement when made aware. While the CRLA stepped in to mobilize the community, this example illustrates how lack of direct governmental representation can further exacerbate environmental and health inequities.¹³ The community today continues to seek resources for the provision of basic services and environmental clean-up.

⁷ https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf

⁸ https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf; original citation: (Aiken 1987; Lichter 2007, Anderson 2008)

⁹ https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf

¹⁰ https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf; Original Citation: (Romney 2005; Mukhija and Mason 2013; Molina 2014)

¹¹ https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf

¹² https://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

¹³ https://www.crla.org/sites/all/files/content/uploads/Resources/Report_Land_of_Risk_Land_of_Opportunity.pdf

Additionally, a 2004-2011 legal settlement between the City of Modesto and legal representation of residents affirmed that DUCs face racial discrimination and are not ensured equitable distribution of resources. The court case found that the City of Modesto refused annexation and infrastructure investment in the unincorporated community on the basis of race. The case set precedent by asserting that “that previous exclusion was the result of intentional discrimination by the City and the County”¹⁴. The Plaintiffs argued that, amongst other things, “service deficiencies in street lighting and waste disposal, have made their communities magnets for criminal activity and illegal dumping by Modesto residents”^{15 16 17}

II. DUC Definitions

Disadvantaged Unincorporated Communities (DUCs) are defined by Section 79505.5 of the Water Code (2002) as “an area of inhabited territory located within an unincorporated area of a County in which the annual median household income is less than 80 percent of the statewide median household income”. State law considers an area with 12 or more registered voters to be an inhabited territory.¹⁸ This is the official definition determined by California legislation, however, there are also a few other definitions established and utilized by academics.¹⁹

Although DUCs vary in geography and size, three geographic types of DUCs can be defined. The three types of DUCs defined by SB 244 (Wolk, 2011) include: **Fringe**, **Island**, and **Legacy** communities²⁰ (Public Resources Code Sec. 65302.10). Island, Fringe, and Legacy communities are described below, and depicted in Image 1. Prior to SB 244, DUCs were not so distinctly defined.

¹⁴ The suit was filed against the City of Modesto by Lawyers' Committee for Civil Rights, California Rural Legal Assistance (CRLA), and many other organization on behalf of Latino residents. <http://www.crla.org/110630-pr-residents-reach-settlement>

¹⁵ <https://caselaw.findlaw.com/us-9th-circuit/1499226.html>

¹⁷ Two other California court cases related to annexation include Sunset Beach and the question of whether annexation is conditioned on voter approval, which was also applied to San Mateo. The published opinions can be found on CALAFCo's website: <https://calafco.org/lafco-law/court-decisions-and-legal-opinions/court-decisions>. Many DUCs who request annexation do not submit a formal request and receive acceptance or denial of proposed annexation, which could result in a legal case.

¹⁸ A [2019 Amendment to the Cortese-Knox-Hertzberg Act of 2000](#) established this definition:

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=56046

¹⁹ A 2008 study describes unincorporated urban areas (nationwide) as inhabiting the following characteristics: 1)

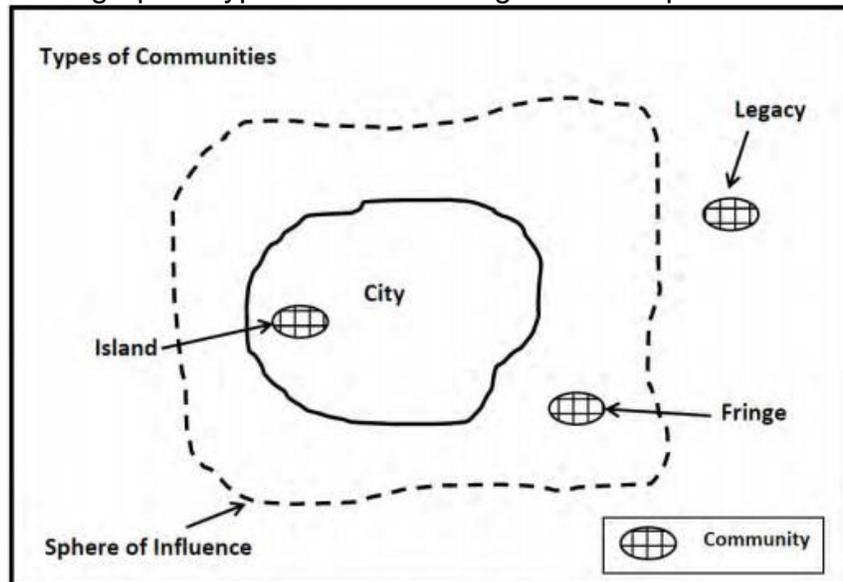
Unincorporated (lying outside the borders of any incorporated city), 2) Contiguous on one or more sides with a municipal border or lying within the area legally designated for a city's expected growth (denoted in some states as a sphere of influence or extraterritorial zoning jurisdiction); 3) Primarily residential, with densities greater than or similar to adjacent incorporated land; and 4) Low-income, as defined by census tract data. Additionally, the author finds that urban DUCs typically lack vital services, have undesirable land uses (such as contamination from past land uses, and/or uncontrolled vulnerability to natural disaster), and, while race is not factored into these definitions, every community with an urban unincorporated area was predominantly African American or Latino.

<https://www.uclalawreview.org/cities-inside-out-race-poverty-and-exclusion-at-the-urban-fringe/>

²⁰ “Community” means an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another. SB 244 also bestowed CALAFCo with the responsibility of reviewing and approving DUC classifications and the ability to, or to not, annex a DUC (Section III. DUC Legislation).

- **“Island community”** means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean. As seen in Image 1, island communities are within the interior boundaries of cities.
- **“Fringe community”** means any inhabited and unincorporated territory that is within a city’s sphere of influence (SOI). As seen in Image 1, fringe communities are on exterior boundaries of cities.
- **“Legacy community”** means a geographically isolated community that is inhabited and has existed for at least 50 years.

Image 1: Geographic Types of Disadvantaged Unincorporated Communities



Source: OPR SB 244 Technical Advisory Image created by PolicyLink and CRLA Community Equity Initiative

DUCs also vary in size and population, but the lack of data accuracy has resulted in many DUCs not being formally defined under the U.S. Census.

Census Designated Places (CDPs) is the term the federal government uses to account for unincorporated areas in the U.S. Census. However, as explained in further detail below, CDPs and DUCs are not synonymous, as many DUCs do not appear on CDP designations and maps. CDPs are “statistical geographic entities representing closely settled, unincorporated communities that are locally recognized and identified by name. They are the statistical equivalents of incorporated places, with the primary differences being the lack of a legally defined boundary and an active, functioning governmental structure, chartered by the state and administered by elected officials.”²¹

²¹ <https://www.federalregister.gov/documents/2018/11/13/2018-24571/census-designated-places-cdps-for-the-2020-census-final-criteria>

The United States Census solicits local jurisdictions to “review and verify selected statistical area boundaries” that are later categorized as CDPs.²² The term “place” encapsulates several meanings such as a populated place, a neighborhood, community, zip code, or named locations that are points on a map.²³ Although these mechanisms are in place, many DUCs are not designated as CDPs, partly due to lack of accurate data, public awareness, and representation, and therefore do not appear on maps. This lack of data makes policymaking efforts directed toward these communities challenging. According to Policy Link, approximately 25 percent of all Californians are living in low-income CDPs.²⁴ Furthermore, the 2000 census counted 3.6 million Californians living in CDPs but left out nearly 2.8 million people living in non-characterized unincorporated areas.²⁵ This lack of data representation is one of several that contribute to difficulties of standardizing an approach or gaining a full understanding of the characterizations for all California DUCs.

DUC population size, geography, and political landscape vary greatly. Based on previous research, it is estimated 3,669,329 Californians (10.8% of the total population) were living in CDPs in 2010. In the San Joaquin Valley, CDPs consist of 64% low-income communities. Additionally, 65% of the population living in DUCs statewide were people of color, compared to 57% of the population living in cities.²⁶ However, the full scale is not known due to data inconsistencies. DUC communities can be very small or large and may have rural or urban characteristics.

III. DUC Legislation

As mentioned, DUCs are largely underinvested in, underrepresented, and are sometimes “invisible” due to lack of data, monitoring, and presence in the U.S. census. As a result of these systematic inequities, Senate Bill 244 (Wolk, 2011) established an official set of definitions for the various geographic types of DUCs, and required Local Agency Formation Commission (LAFCo) to identify DUCs in Sphere of Influence (SOI) updates, and altered reviews of municipal service provisions, and annexation actions. Furthermore, SB 88 (2015) and SB 1215 (Hertzberg, 2018) provided the State Water Board the authority to require municipal consolidation of water and sewer system extensions to nearby DUCs.

Although legislation has provided DUCs with more visibility and inclusion in growth planning, SB 244 legislation has no implementation oversight, and SB 88 and 1215 both face implementation challenges due to lack of political will and appropriate funding. The following section outlines each key legislation’s requirements in further detail:

²² <https://www.census.gov/programs-surveys/decennial-census/about/psap.html>

²³ <https://www.census.gov/content/dam/Census/data/developers/understandingplace.pdf>

²⁴ https://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

²⁵ https://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

²⁶ All figures in this section were derived from Policy Link’s Analysis from the 2000 U.S. Census Data: https://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

- **Cortese-Knox-Hertzberg Act (CKH) - (2000)** requires a Local Agency Formation Commission (LAFCo) to develop and determine the sphere of influence (SOI) of each local governmental agency in the county or other area designated by the commission. It also requires the LAFCOs to prepare a municipal service review (MSR), which is a written statement of the commission's determinations with respect to the growth, services, and population projections for the affected area.²⁷ The CKH Act instructs LAFCOs to produce an MSR every five years or as needed. However, slow growing communities do not receive a MSR as frequently. As a result, many communities have not had a MSR for over five years, leaving many communities without a proper analysis of infrastructure inadequacies.²⁸
- **Senate Bill (SB) 244 - (2011)** impacted both local government and LAFCo requirements for governing DUCs. SB 244 is the first major legislation requiring a city or county to update their general plan to include the presence of island, fringe, or legacy unincorporated communities, assess existing infrastructure conditions in DUCs, and evaluate potential funding mechanisms that would make service extensions feasible concurrently with or before the adoption of an updated housing element.²⁹ The Governor's Office of Planning and Research's [Technical Advisory memo](#) provides an in-depth analysis of all the requirements SB 244 imposed on local governments and LAFCOs.

SB 244 requires LAFCOs to prepare a Municipal Service Reviews (MSR) for DUCs in or adjacent to a Sphere of Influence (SOI). Additionally, a city or county must include specified information about the unincorporated community in their general plans if the unincorporated community is located within the Sphere of Influence, as defined by the [California Association of Local Agency Formation Commissions \(CALAFCo\)](#).

SB 244 requires LAFCOs to identify and determine "location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence." (Gov. Code, § 56430(a)(2).). SB 244 requires local governments and local agency formation commissions (LAFCOs) to account for unincorporated communities in their updated planning documents if they are in the jurisdiction's SOI.³⁰

The SB 244 land use determinations and assessments are intended to shed light on existing deficiencies in DUCs and, as a result, ensure local agencies either annex the DUC and account for them in future investment planning, extend municipal

²⁷ https://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

²⁸ This information is based on anecdotal information from select LAFCOs. Because there is no single known organization overseeing the quality and frequency of MSRs across the state, TCC Staff have no knowledge of how many communities have not received a MSR.

²⁹ <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/ProposedAmendmenttoChapter3oftheGeneralPlan.pdf>

³⁰ https://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

services, or identify funding opportunities for the DUC that will result in community enhancement.

SB 244 analyses are published on an ongoing basis, however, are not monitored or reviewed by any regulatory agency, and evaluation methodologies and policies vary from jurisdiction-to-jurisdiction. As a result, there is no standardization, quality control, or oversight of the SB 244 analyses. Without any monitoring of SB 244 analyses, it is unclear how many and which LAFCoS have complied, as many LAFCo websites do not have this information readily available. For example, staff could not identify any reference to DUCs in the MSRs on the Sacramento LAFCo website.³¹

Although DUCs can be designated by type, it is important to contextualize the DUC's locality, since DUC type designation varies regionally and, on a case-by-case basis. For example, the definition of "close proximity" can vary.³² Furthermore, TCC should consider both the determination and the context behind the designation.

- **Senate Bill (SB) 88 - (2015)** authorizes the State Water Board to order extensions of water services to areas (unincorporated communities) that do not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The bill requires an initial public meeting and a public hearing and to make specified findings prior to ordering consolidation. Stakeholders suggest political unwillingness to consolidate has created implementation challenges. According to the State Water Board's website, two water consolidation projects have been completed as of 2020, and there are several active voluntary and mandatory consolidation projects.³³
- **Senate Bill (SB) 1215 – (2018)** authorizes the State Water Board to require a special district, city, or county to provide sewer service to unincorporated communities under specified circumstances. The legislation also requires the state board to develop a process by which members of disadvantaged communities may petition the regional board for consideration of provision of sewer service. Although the Wastewater Consolidation Program is still in its early stages of implementation, there are several active projects, many of which are voluntary consolidations.³⁴

³¹ <https://saclafco.saccounty.net/MunicipalServiceReviews/Pages/default.aspx>

³² https://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

³³ https://www.waterboards.ca.gov/drinking_water/programs/compliance/

³⁴ https://www.waterboards.ca.gov/centralvalley/water_issues/wastewater_consolidation/

IV. Implementation Stakeholders

There are several implementation stakeholders involved in DUCs due to the disparate nature of services provided to DUCs by municipal governments. The following list is not exhaustive. State legislation, as mentioned in Section “Research and Background on DUCs, Legislation”, has provided LAFCoS with additional responsibility - acting as a broker and decision-maker in cases of annexation. Legislation has also provided the State Water Board with great regulatory powers to force water and sewer consolidation amongst local agencies. SB 244 has required cities and counties to become more active in planning for DUCs. Other agencies, such as special districts, groundwater sustainability agencies, and community services districts, are also largely present in DUCs as they intend to fulfill gaps in infrastructure³⁵ Stakeholders identified here are defined as those who play a role in administering services or coordinating services and activities in and around DUCs. Although not defined below, Counties and County Service Areas (CSAs) oversee DUC activities.

- **Local Agency Formation Commissions (LAFCoS)** – The Legislature bestowed their power to regulate local government boundaries in 1971. LAFCoS’ primary responsibilities include making sphere of influence and annexation determinations, conducting municipal service reviews to determine efficacy of delivery of those services, and encouraging overall formation of local agencies. LAFCoS approve boundary changes through proposal reviews and determining the efficacy of services subsequent to the boundary change. LAFCoS also often serve as a watchdog of local agencies and special districts³⁶. No local government, nor the voters, can unilaterally change or modify the boundaries without LAFCo approval. LAFCoS can also be described as a broker of “city-county relationships concerning growth.”³⁷
- **State Water Resources Control Board (State Water Board):** The State’s Water Board is responsible for overseeing California’s water resources. SB 88 and 1215, water and sewer consolidation, gives the Water Board the authority to require jurisdictions to extend existing services to unincorporated disadvantaged communities. The Safe and Affordable Funding for Equity and Resilience (SAFER) program [is one of the implementing programs.](#)
- **Special Districts:** State law defines a special district as “any agency of the state for the local performance of governmental or proprietary functions within limited

³⁵ For example, the disadvantaged unincorporated North Dos Palos community located in southern Merced County utilizes the North Dos Palos Water District (NDPWD) to provide domestic water to 41 connections, and has an additional Joint Powers Agreement (JPA) with three water districts and the City of Dos Palos to provide water to residents. Furthermore, the community currently relies on individual septic systems for sewer sanitation, and there are no existing curbs or gutters to support stormwater capture. The mix of service providers needed to extend water to 5,445 residents demonstrates the many stakeholders needed to support infrastructure to even small populations.

See population data citation here: <https://ejscreen.epa.gov/mapper/demogreportpdf.aspx?report=acs2017>

³⁶ <https://lafco.smcgov.org/sites/lafco.smcgov.org/files/50%20Years%20of%20LAFCOs.pdf>

³⁷ <file:///C:/Users/Gov%20User/Downloads/SSRN-id1560065.pdf>

boundaries.”³⁸ DUCs often have one or several special districts to provide residents with essential services. Special districts can be difficult to identify and in 2016, the Legislature charged the CA Little Hoover Commission to investigate special districts and provide recommendations for improvement. The [Final Report](#) found that, although 58 Local Agency Formation Commissions are charged with oversight, they are “not uniformly effective at initiating dissolutions and consolidations when necessary to improve service delivery and efficiency.”³⁹

- **Groundwater Sustainability Agencies (GSAs):** The Sustainable Groundwater Management Act (SGMA) established a new structure for managing California’s groundwater resources at the local level by local agencies.⁴⁰ The GSA structure is meant to be a collaborative governance structure in nature. Stakeholders state that it is critical that DACs and DUCs be represented in GSA governance structures to ensure equitable decision making.⁴¹
- **Community Services Districts (CSDs):** Community Services Districts are a “form of independent local government used to provide services in unincorporated areas of a county.”⁴² Once a CSD is formed, the residents elect a board of local residents to oversee CSD management and operations.⁴³ Through board meetings and local presence, the community has a direct say in what types and levels of service it receives.

³⁸ https://calafco.org/sites/default/files/resources/Whats_So_Special.pdf

³⁹ <https://lhc.ca.gov/report/special-districts-improving-oversight-transparency>

⁴⁰ <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies>

⁴¹ The Paper “Collaborative Governance and Environmental Justice: Disadvantaged Community Representation in California Sustainable Groundwater Management” (Dobbin, Lubell 2019), states that many DACs and DUCs are underrepresented in SGA structures. http://www.wpsanet.org/papers/docs/WPSAconferencepaper_DobbinLubell_2019.pdf

⁴² <http://www.californiataxdata.com/pdf/CSD.pdf>

⁴³ <http://www.californiataxdata.com/pdf/CSD.pdf>



Summary of Key Challenges to Infrastructure Investments in DUCs

This section outlines the four key challenges to infrastructure investment and maintenance in DUCs. The key challenges reflect on-the-ground realities of infrastructure investments in DUCs and were informed by a comprehensive literature review, a state-wide working group, and consultations with academics, community organizations, data analysts, and local, state, and federal agencies. These key findings provide the basis for the TCC DUC Investment Framework recommendations for the Round 4 Guidelines update in the section “TCC DUC Recommendations for Round 4 Guidelines”.

1. DUCs lack key infrastructure present in many incorporated communities, as well as financial capital to maintain and operate existing and future investments.

- Infrastructure inefficiencies: DUCs tend to lack key infrastructure features such as sidewalks, streetlights, adequate waste processing, and safe and affordable drinking water. The agencies who administer the existing services are typically uncoordinated and non-uniform. Due to the infrastructure inefficiencies, new capital investments may require some deep infrastructure upgrades. Lastly, the existing services, as well as types of services, within DUCs vary greatly. For example, Merced County’s SB 244 Analysis demonstrates the complicated nature of existing infrastructure services.⁴⁴ Of the 18 legacy DUCs, two have service extensions from a nearby city, six are serviced by an independent special district, and ten are isolated concentrations of dwellings with individual wells and septic systems.⁴⁵
- Lack of funding for infrastructure and annexation incentivization: There is little to no funding or incentivization for a local agency to incorporate or extend services to a DUC or invest in infrastructure. Local agencies used to benefit from DUC annexation through the Vehicle License Fee (VLF), but the incentivization portion of the policy has since ceased. CALAFCo has seen a significant decrease in DUC annexation since then. The issue of access to services is exacerbated by prohibiting the service provider from changing the rate for existing customers as a result of any annexation or consolidation.⁴⁶ While the State Water Board has limited funds available for DUC water and

⁴⁴ <https://www.co.merced.ca.us/DocumentCenter/View/12199/Merced-County-SB244-Analysis?bidId=#:~:text=As%20part%20of%20the%20SB,%2C%20fringe%2C%20or%20legacy%20community.#:~:text=As%20part%20of%20the%20SB,%2C%20fringe%2C%20or%20legacy%20community.%22%20%5C%20%22:~:tex t=As%20part%20of%20the%20SB,%2C%20fringe%2C%20or%20legacy%20community.%22%20%5C>

⁴⁵ https://calafco.org/sites/default/files/resources/2017_Staff_Workshop/DUCs%20Part%20I%20Presentation.pdf

⁴⁶ Senate Bill 88 (2015) includes language that prevents the receiving water system to increase rates on existing customers to cover costs associated with the consolidation of a subsumed water system: “the consolidated water system shall not increase charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit”. Other local initiatives may also prevent prohibition of rate increases under specified circumstances.

sewer consolidation (SB 1215, Hertzberg, 2018), there is no funding available for operations and maintenance of those systems.

II. Implementation of DUC legislation face challenges

- Current DUC legislation implementation lacks uniformity, making it difficult to build from those improvements: Key DUC legislation such as SB 244 (Wolk, 2011), which requires local agencies to work with CALAFCo to assess DUC infrastructure inefficiencies, is not regulated by an oversight entity. After consultations with CALAFCo, HCD, OPR, and the State Water Board, it is determined that none of these agencies are tasked with intaking and monitoring these assessments. Furthermore, stakeholders suggest lack of oversight and clarity in the legislation make the available SB 244 assessments non-uniform and sometimes inaccurate of the realities on the ground.

III. Lack of reliable DUC data presents challenges for developing an investment framework

- DUCs spatial data is inconsistent and outdated: There are multiple issues that pose challenges to having a uniform and standard approach for analyzing DUC communities. These small communities are often located within census tracts where they are overshadowed by more numerous and detectable data within the same tract. While the granularity of small communities may be better represented at smaller geographies such as a block group, block group level data poses its own challenges often having significantly larger margins of error than Census Tracts, once again making it difficult for these communities to be represented in data. Furthermore, the granular data needed to better understand characteristics in DUCs is limited in the many available statewide datasets. Finally, LAFCOs are varied in developing a DUC database and designation. This raises the question on how unincorporated areas are governed, represented, and formed.

IV. Political, Relational, and Capacity Challenges

- Political challenges and fraught relationships make annexation and consolidation efforts challenging. There can be a lack of political will on the community and local government sides. Local governments often cite exorbitant infrastructure costs and the inability of lower-income DUC residents to support them as the key reason for refusing incorporation or service extensions. Community-based stakeholders suggest this reasoning is based in racial bias and present in mostly conservative agencies – at least one court case lent credence to this assertion in the City of Modesto. On the other hand, according to key stakeholders, some DUCs also do not want to be annexed, even if it means they are not



extended city services, because of impacts to their way of life which often include agricultural activities.

Next Steps

The TCC team has identified that further research is needed to improve the mapping tool that was developed for identifying DUCs that don't have verified status, and for the development of unique and effective infrastructure and maintenance models in DUCs . SGC will continue research and development on these key issues to provide further support for low resource applicants.

ATTACHMENTS:

APPENDIX A: Detailed Metrics to Define Eligibility

APPENDIX B: Methodology for Development of the DUC Investment Framework

APPENDIX A: Detailed Metrics to Define Eligibility

DUCs are largely underrepresented in data due to the granularity of small communities and many other significant challenges and disparities in data availability. Additionally, [Section 75240](#) of the Public Resources Code establishes the Transformative Climate Communities Program and states the program shall “fund the development and implementation of neighborhood level transformative climate community plans...”. As a result, it is important to understand the characteristics of DUCs through mapping data to help ensure the investment is sustained, reaches the communities it is intended to (historically disadvantaged), and can meet the program’s established objectives.

TCC staff conducted a DUC Data Spatial Analysis which included the evaluation of additional layers of granular data that could be added onto the CalEnviroScreen tool that is currently required for the program to help identify DUCs that may be eligible for TCC investments. The goal of the DUC Data Spatial Analysis was to help communities without verified status by local agency to have an alternative to verify DUC status within the top 25% Disadvantaged Community (DAC) threshold per the CalEnviroScreen tool and to identify the semblance of a community, since some DUCs have seasonal inhabitants or appear to be a DUC on a mapping tool but is actually farmland or waterbodies. This tool will also help TCC staff to screen and disqualify new sprawl developments in larger census tracts that fall within top 25% DAC.

- **Identification of reliable Statewide data sets to display in addition to CalEnviroScreen**

Due to the unreliable data challenges presented in many DUCs, TCC staff, with support from the TCC DUC working group, evaluated several data sources to help to identify block group level data that may be added to the CalEnviroScreen tool to uncover DUCs that are overshadowed in census tracts. The primary data challenge was to find reliable granular level data below the Census Tract level with Statewide coverage. The secondary challenge was to ground truth data as best as possible with the stakeholder group by examining suggested target communities more closely and understanding how they fared given the variety of data. While TCC staff had to exhaust many data sets due to limited data available, TCC staff successfully incorporated the California Hard-to-Count Index as an additional layer to the CalEnviroScreen tool.

TCC staff selected the California-Hard to Count (CA-HTC) Index statewide database as an additional overlay to CalEnviroScreen because the 14 variables contain many characteristics of disadvantaged communities. Furthermore, the fact that this data set is at the block group level and census tract level means there is potential to further decipher small communities that are not as readily identifiable within census tracts, which is the most granular level of data CES uses. While we understand that block group data on its own has higher margins of error than census tract data, because these block group data are analyzed together and re-weighted as an index with a single value minimizes the error of any of the 14 block group values on their own. Additionally,

the fact that there is statewide coverage means all areas in the State have a value and thus inclusive of all DUCs. We also appreciated the transparent and interactive nature of the mapped data, which allow users to select any block group in the state and understand how it scored under the HTC as well as how it scored under each of the 14 block group level data.

The California-Hard to Count (CA-HTC) Index is based on 14 demographic, housing and socioeconomic variables correlated with an area being difficult to enumerate for the US 2020 Census. The HTC was developed by the California Department of Finance Demographic Research Unit.⁴⁷ Additional information on the HTC Index and analysis can be found in APPENDIX A: Detailed Metrics to Define Eligibility.

- **Statewide Unincorporated Area Parcel Density Analysis and Mobile Home Parks Inclusion**

In order to identify DUCs that contain the semblance of a neighborhood, a threshold of 250 parcels per square mile was set as a minimum threshold for identifying DUC clusters. The 250 parcels per sq. mile threshold is a close resemblance of how unincorporated communities are defined as a US CDP. A similar analysis conducted in 2013 by Policy Link titled “California Unincorporated: Mapping Disadvantaged Communities in the San Joaquin Valley” used the same 250 parcel per square mile threshold and has been lauded as sound research by rural disadvantaged communities.

All parcels in the State were filtered to ensure they were located in unincorporated areas and did not contain farmland nor water bodies. A density analysis was then used to identify clusters of parcels that contained no less than 250 parcels per sq. mile. A total of 401 clusters of parcels state-wide were identified as having at least 250 parcels/sq. Mile. These clusters contain 128,555 parcels.

After the Parcel Density analysis was conducted, TCC staff shared the findings with the TCC DUC Working Group. While some DUCs were identified on the mapping tool that were not originally appearing on the CalEnviroScreen tool, Working Group members observed that the parcel density findings did not appear accurate for some DUCs. TCC staff found that because mobile home parks are typically situated together on a single parcel, they were not captured in the parcel analysis. The working group suggested that TCC staff insert mobile home data as a layer.

TCC staff inserted a layer to help inform how many mobile home parks are located in unincorporated areas. As a result, all 5,218 permitted Mobile Home and RV parks were mapped in the state and then filtered out according to their location in an unincorporated area. These points were further filtered to remove campgrounds from the data set. At total of 1,932 parks were identified, estimated to contain 98,151 mobile home or RV spaces. The permitted mobile home parks, mobile homes, and Recreational Vehicles

⁴⁷ <https://www.dof.ca.gov/Forecasting/Demographics/>

(RVs) were all incorporated into the overall parcel density analysis. It is important to note that TCC team did not have information on non-permitted mobile home parks that exist throughout the State.

- **DUC Data Spatial Analysis Findings**

The joint parcel density and mobile home analysis affirmed that many DUCs traditionally overshadowed by more numerous characteristics within the same tract can be identified and better understood if overlaid with additional data sets that are granular, such as the HTC Index. Additionally, while not all DUCs were identified through the spatial data analysis, TCC staff determined that the top 25% disadvantaged communities census tracts on CES, overlaid with the Hard to Count Index and clusters with 250 parcels per square mile, identify plentiful amount of DUCs that provide a strong basis for TCC DUC applicant eligibility.

Applicants that do not have verified DUC status could alternatively utilize a publicly accessible mapping provided by the TCC Program that will be available during the application phase. The spatial data overlays will include:

- a. Top 25% disadvantaged communities (DAC) census tracts on CalEnviroScreen 3.0
- b. The California Hard to Count Index Top 2-3 Decile (CA-HTC) Index⁴⁸
 - i. Percent of households without broadband subscriptions
 - ii. Percent of households that are non-family
 - iii. Percent of occupied housing units that are renter-occupied
 - iv. Percent of total housing units that are vacant
 - v. Percent crowded
 - vi. Percent of population that is foreign-born
 - vii. Percent of adults (25 or older) who are not high-school graduates
 - viii. Percent of population with income below 150 percent of poverty level
 - ix. Percent of households receiving public assistance income
 - x. Percent of persons (ages 16 or older) unemployed
 - xi. Percent limited-English households
 - xii. Percent of persons who moved from outside county in past year
 - xiii. Percent of population under 5
 - xiv. Percent of total housing units with 3 or more units in a multi-unit structure
- c. County Unincorporated Areas
- d. Communities defined as containing 250 parcels per square mile
- e. Mobile Home Parks in Unincorporated Areas

⁴⁸ CA-HTC Index Data, <https://census.ca.gov/california-htc/#:~:text=The%20California%20Hard%2Dto%2DCount,area%20being%20difficult%20to%20enumerate.&text=The%20California%20Census%20Office%20has,census%20tracts%20and%20block%20groups.>

APPENDIX B: Methodology for Development of the DUC Investment Framework

TCC staff took a three-pronged approach for developing a TCC framework for infrastructure investment in DUCs. First, TCC staff reviewed relevant research materials published by academics and organizations, as well as relevant court cases that have impacted DUCs, and relevant legislation that has impacted or named DUCs directly. Additionally, TCC staff consulted with many experts to gain better insight into the relevant stakeholders representing several regions within the state, understand which people and organizations would be interested in and could contribute to participating in a working group to help shape TCC's DUC Investment Framework, and ground-truth the information presented in academic research and reports. Finally, as a result of the key findings presented in section "Summary of Key Challenges to Infrastructure Investment in DUCs", TCC and Office of Planning Research (OPR) staff conducted a data spatial analysis that included indicators suggested by the working group to uncover communities typically unidentified in traditional mapping tools. The data spatial analysis will be used to inform DUC applicant eligibility moving forward. During the development of the DUC investment approach, TCC staff built on the lessons learned over the past few years of investments in disadvantaged communities, as well as SGC's racial equity and Health in All Policies (HiAP) approaches.

I. Research Review and Consultations

TCC staff researched and reviewed several key documents and white papers to help inform the underlying themes of DUC characteristics and barriers to investment, and to identify the key stakeholders that could inform the development of the TCC DUC Investment Framework. Staff then consulted with a wide range of DUC subject matter experts, including environmental justice organizations, academic researchers, data analysts, and state and local government staff. Those identified below do not include the TCC DUC Working Group participants who were also consulted.

- Jonathan K. London, PhD., University of California, Davis Center for Regional Change
- Marina Perez, Office of Public Participation, State Water Resources Control Board
- Pamela Miller, California Association of Local Agency Formation Commissions
- Pedro Peterson, California Air Resources Board
- Miguel Vazquez, Riverside County Department of Public Health
- Eric Lardy, San Diego County Advance Planning & Development Services
- Jane Clough and Seth Litchney, San Diego Association of Governments
- Jim Miller and Nicholas Garcia, Department of Finance Demographics Unit at California Census Hard to Count Index
- Lorelei H. Oviatt, Kern County Planning Director



- Steven Ingoldsby, Tulare County Local Agency Formation Commission
- Joanna Nishimura, Geographic Information System Company

II. *Develop and Convene TCC DUC Working Group*

TCC staff convened a TCC DUC Working Group to incorporate perspectives across the state to develop an approach for infrastructure investment in DUCs. Several of the people consulted during the research review and consultation phase agreed to serve on the working group or referred staff to others with DUC-specific expertise.

TCC staff took a consensus-building approach to developing the working group’s priorities and intended outcomes. Before the working group was convened, TCC staff met with each working group participant individually to obtain feedback on the potential research questions the working group should prioritize, referred to as “Big Picture Questions”. Additionally, TCC staff obtained feedback on the initial draft outline of “Summary of Key Challenges to Infrastructure Investment in DUCs” to ensure that it accurately captured all of the perceived issues identified through research and consultation. Finally, TCC staff deferred to the working group to contribute data sets or ideas for data that should be considered as a layer in the data spatial analysis to help ensure DUCs are accounted for in a mapping tool, and also conducted partial ground-truthing of the data spatial analysis findings with working group participants.

The working group also convened to help answer critical outstanding “Big Picture Questions” including:

- Development of criteria for DUC applicant eligibility to ensure a concentrated investment at the neighborhood level
- Exploration of successful long-term operations and maintenance financing structures for infrastructure development in DUCs
- Identification of proper DUC definitions and official designation by a local government
- Ground-truth DUC communities based on existing data to better understand DUC characteristics and to ensure TCC investments are reflective of the needs of most vulnerable populations

TCC DUC Working Group Members

Name	Organization
Laila Atalla	California Air Resources Board
Paul McDougall	California Department of Housing and Community Development
Larry Rillera	California Energy Commission
Tiffany Eng	California Environmental Justice Alliance
Walker Wieland	California Office of Environmental Health Hazard Assessment
Monica Palmeira	California Public Utilities Commission
Mike McCullough, Phd.	California Polytechnic University

Marisol Aguilar	California Rural Legal Assistance
Dania Jimmerson	California State Water Board
Caitlin Juarez	California State Water Board
Caroline Farrell	Center for Race Poverty and the Environment
Grecia Elenes	Leadership Counsel for Justice & Accountability
Julia Jordan	Leadership Counsel for Justice & Accountability
Rebecca Zaragoza	Leadership Counsel for Justice & Accountability
Heather Anderson	Los Angeles County
Chione Flegal	PolicyLink
Sergio Carranza	Pueblo Unido Community Development Corporation
Jessi Snyder	Self-Help Enterprises
Aaron Bock	Tulare County Resource Management Agency

III. Working Group Feedback on the Overall TCC DUC Investment Framework

The working group agreed that TCC requirements for DUCs should remain flexible to the extent possible to account for the variant characteristics and unique needs of DUCs. Additionally, acknowledging the need to demonstrate readiness and capacity for large, integrated investments, the working group communicated that any parameters applied to unincorporated communities should also apply to incorporated communities. The working group also agreed that because of imperfect data, ground truthing of existing data with the current working group and community members over time will be critical. Additionally, parameters surrounding transportation should take into consideration places of gathering beyond workforce centers, including service areas and community gathering centers. On the issue of sprawl as a result of the investment – we heard that it is important to coordinate conservation and housing elements, but not be too prescriptive. In addition, we discussed any DUC applicant should demonstrate strong prior planning efforts that includes community visioning process and infrastructure evaluation and prioritization. The working group also urged TCC staff to have additional flexibility on shovel-ready projects and infrastructure readiness requirements, as this set of criteria would exclude many DUCs. While not all of the feedback was incorporated, due to the program’s constraints and objectives, TCC staff incorporated much of the feedback into the TCC Recommendations for Round 4 Guidelines.