



Oregon

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To: Housing Production Advisory Council

From: Ethan Stuckmayer, AICP, Housing Services Division Manager

Date: November 13, 2023

CC: Brenda Ortigoza Bateman, Ph.D., Director
Palmer Mason, J.D., Senior Policy Advisor

Subject: Feedback on the Housing Production Advisory Council's Climate-Friendly and Equitable Communities (CFEC) Recommendation



Dear Members of the Housing Production Advisory Council,

The Department of Land Conservation and Development (DLCD) is writing to provide comments on the "CFEC [Climate-Friendly and Equitable Communities] Recommendation" submitted to the Governor's Housing Production Advisory Council (HPAC) by the Codes and Design work group for consideration at your October 13 meeting.

We appreciate your dedication to addressing each HPAC recommendation, and we welcome the opportunity to engage in this matter. Given recently adopted CFEC rule amendments, the conversation around CFEC is complex and shifting quickly. We are providing comments to correct the record on fundamental misunderstandings of the process, goals, and requirements of the policy.

Many of the issues raised in the HPAC recommendation are out of date and most have been addressed through the CFEC rule amendments adopted by the Land Conservation and Development Commission (LCDC) at its November 2, 2023, meeting. We respectfully request the Governor's Housing Production Advisory Council withdraw the recommendation to repeal CFEC.

Oregon is facing a critical challenge in meeting [statutory goals and policy](#) aimed at reducing climate pollution. Approximately 36 percent of climate pollution stems from transportation, and the urgency of our response is heightened by the impacts of climate change already upon us. State and local efforts to date have been insufficient.

In 2020, DLCD, in partnership with the Oregon Department of Transportation (ODOT), initiated the [Climate-Friendly and Equitable Communities \(CFEC\) program](#). This program is the result of extensive research and robust consultation with local governments and Oregonians across the state. We firmly believe the CFEC program is indispensable in achieving both Oregon's climate and housing goals.

We understand there are concerns about the relationship between some CFEC requirements and Oregon's efforts to boost housing production, but we would like to clarify these programs are not in conflict. In fact, the CFEC program is specifically designed to remove barriers to

housing production in the state's metropolitan areas, making it a critical tool for expanding housing options in Oregon.

Some of the ways in which CFEC supports housing production include:

- **Allowing more housing units.** The CFEC program increases the number and types of housing units allowed in walkable, mixed-use areas and removes obstacles for development in those areas.
- **Reducing costly parking mandates.** Parking can take up much needed space for housing and can increase the cost of housing by up to 20 percent. Because CFEC has reduced parking mandates, several previously stalled housing developments are moving forward in Grants Pass, Beaverton, Eugene, and Troutdale.
- **Reducing the need for expensive transportation infrastructure, such as road expansions.** The updated transportation planning rules allow local governments to reduce the burden and cost of transportation analysis and overbuilding of the road system.
- **Helping Oregonians afford housing.** Housing and transportation are the top two expenses in most households' budgets. CFEC aims to reduce transportation costs by focusing housing in areas that are close to amenities and everyday services, thereby increasing budgets available for housing and expanding housing options.

To help local governments implement the CFEC program, DLCD and ODOT have provided direct staff guidance and technical assistance and have earmarked more than \$20 million in financial support for direct grants and consultant assistance. We remain committed to working closely with local governments to address their unique needs and concerns. DLCD has approved requests for alternative implementation dates for 25 jurisdictions and for rule exemptions for nine jurisdictions to date.

DLCD and local governments have largely come to agreement on how to move forward on our mutual goals on climate and housing. This includes some of the cities whose representatives are identified as subject matter experts in the HPAC recommendation form. The testimonials below from [LCDC's 2023 rule amendments hearing](#) illustrate the collaboration and partnership DLCD and local governments have worked hard to achieve:

Wilsonville, Exhibit 11, dated Sept. 14, 2023:

"Wilsonville applauds DLCD and the Commission, as well as the RAC and TAC, for giving due consideration of concerns from us and others regarding OAR 660-012-0210 [related to Vehicle Miles Travel (VMT)] and offering rule amendments that delay the implementation to December 2027 and, in doing so, allow for further clarifying rulemaking regarding a number of outstanding questions. The City looks forward to continuing to support the rulemaking process."

Eugene, Exhibit 12, dated Sept. 14, 2023:

"The City of Eugene supports the proposed CFEC rule amendments dated September 8, 2023. The amendments provide clarity and consistency, as well as increased flexibility for

local governments while maintaining a commitment to the intended outcomes of CFEC. For example, proposed amendments to Division 12 section -0315 Designation of Climate-Friendly Areas clarify the scope of necessary comprehensive plan amendments and provide necessary flexibility to meet locally specific needs. Additionally, revisions to Division 12 section -0405 Parking Regulation provide additional flexibility for local governments to realistically implement parking reforms.”

Tigard, Exhibit 13, dated Sept. 14, 2023:

“The City of Tigard wishes to express its continued support for the Climate Friendly and Equitable Communities work undertaken by DLCDC and ODOT. We appreciate the quick work and bold action taken by staff and the Commission to address the climate emergency we now face. We have continued as a state to miss the mark on reducing greenhouse gas emissions, and there is quite simply no justification left for continuing with the status quo in our approach to land use and transportation planning.”

Portland, Exhibit 20, dated Sept. 15, 2023:

“As previously expressed during this multi-stage process, the City of Portland appreciates the hard work done over the past many months and years by Department staff, rulemaking advisory committee members and the Commission to more strongly integrate carbon emission reduction and equity goals and outcomes into the statewide planning system, while ensuring sufficient clarity and flexibility in the rules and requirements to support timely and effective implementation by local partners.”

As many of the issues raised in the HPAC recommendation are out of date and most have been addressed through recent rule amendments, we respectfully request the Governor's Housing Production Advisory Council withdraw the recommendation to repeal CFEC and engage with DLCDC and other stakeholders to explore opportunities for further enhancement and strengthening of programs that work together to meet our housing, climate, and equity goals.

We include in “Attachment A” to this memo a detailed response to the perceived misalignment between the Oregon Housing Needs Analysis and CFEC programs.

Thank you for your attention to this matter. We look forward to the opportunity to work together to advance the cause of equitable housing in our state.

Sincerely,



Ethan Stuckmayer, AICP
Housing Services Division Manager, DLCDC

Attachment A: DLCD feedback on areas of concern raised by the HPAC's Codes & Design Work Group within their [CFEC standards of analysis recommendation](#).

Climate-Friendly Area Planning and Oregon Housing Needs Analysis Implementation (2023 HB 2001)

We want to assure you there is no inherent time conflict between the Climate Friendly and Equitable Communities (CFEC) and Oregon Housing Needs Analysis (OHNA) programs. While it is true both programs are operating on parallel timelines, they are intended and designed to complement each other, rather than compete or create inefficiencies. There is in fact a synergy between these initiatives. Additionally, **the CFEC rules allow for local governments to request implementation dates that best suit their local needs** and for jurisdictions under 10,000 in population to request exemptions from the requirements. To date the department has approved requests from 25 jurisdictions for alternative implementation dates and requests from nine jurisdictions for rule exemptions.

The January 1, 2025, deadline established in HB 2001 for the initial statewide housing analysis and housing need estimates represents a legislative mandate. The CFEC program's December 31, 2024 deadline for cities and counties to adopt land use requirements for climate-friendly areas is not in conflict with the OHNA timeline and may be adjusted by request. Cities that designate climate-friendly areas in accordance with the 2024 deadline will utilize their current adopted and acknowledged housing capacity analyses, which identify the total housing needs from which the 30 percent housing goal in climate friendly areas (CFAs) is calculated. If cities adjust their designation deadline to a date after January 1, 2025, they will utilize the OHNA housing need estimate to determine 30 percent of their total housing need. Subsequently, cities subject to CFEC will be required to maintain climate-friendly areas with sufficient zoned capacity to accommodate 30 percent of their housing needs in conjunction with the adoption of new housing capacity analyses, as provided in OAR 660-008-0010(2)(c) and ORS 197.296(2)(a).

CFEC's objectives are designed to support and enhance housing planning efforts across the state. The CFEC program offers local governments the tools and flexibility to accommodate housing development within the framework of climate-friendly and equitable communities. Rather than creating additional work, the CFEC program aligns with best practices in planning and development by streamlining housing regulations and offering options that enhance housing affordability and sustainability.

Climate-friendly area requirements supplement local government plans to meet a variety of housing needs. CFAs provide additional capacity for a variety of housing types (including middle housing) in walkable, mixed-use areas, but do not reduce a local government's ability to provide other residential lands for housing types that are not being built in CFAs. It is important to note the "needed housing statute" (Oregon Revised Statute 197.296) reflects planning for an abundance of housing and at the same time being skeptical of capacity estimates. While the CFEC program requires local governments to plan for 30 percent of their housing capacity in CFAs, they won't lose housing capacity elsewhere if CFAs remain underdeveloped, as the

requirement to determine “needed housing” under ORS 197.296 is on the actual construction of housing units rather than potential capacity.

The CFEC program integrates into the Oregon Housing Needs Analysis by ensuring that housing planning aligns with the state’s climate and equity goals. Local governments will integrate CFEC requirements into their existing housing strategies, enhancing rather than impeding their efforts to meet the needs identified by OHNA as directed through HB 2001.

Lastly, rule amendments adopted by the Land Conservation and Development Commission (LCDC) on November 2, 2023, clarify that cities may use their existing acknowledged Transportation System Plan (TSP) when expanding an urban growth boundary. Cities need not update their TSP just to accommodate a planned UGB expansion. Consequently, implementation of the CFEC rules will not interfere with needed UGB expansions.

Transportation System Plans (TSP), Vehicle Miles Traveled (VMT) Modeling, and Urban Growth Boundaries (UGBs)

The department has heard concerns regarding the interaction of CFEC rules regarding transportation system plan requirements and the “vehicle miles traveled (VMT) rule” (Oregon Administrative Rules 660-012-0210) and housing development. In response to these concerns, LCDC adopted rule amendments on November 2, 2023 to postpone the effective date of the VMT rule from June 30, 2024, to December 31, 2027. This postponement will allow time for further refinement of the rule and for the development of guidance and other assistance to ensure that the rule functions as intended, without impeding the development of needed housing or the necessary expansion of UGBs.

It is also important to note that, as currently adopted, the CFEC rules do not require a local government’s plans to demonstrate a VMT reduction if a UGB expansion does not involve a TSP update. The rules only require modeling of VMT at the overall city level, not for the specific UGB expansion area. Cities or counties that do not have a large street or highway expansion project in their financially constrained project list need not model VMT at all as provided in OAR 660-012-0160(5).

The department has also heard concerns raised that are based upon an analysis provided to LCDC at their July 2023 meeting by the city of Bend. In response to concerns that it would not be possible to develop a transportation system plan (TSP) in compliance with the CFEC rules, Dept. of Land Conservation and Development (DLCD) and Oregon Dept. of Transportation (ODOT) staff have reviewed Bend’s VMT analysis and corrected a misunderstanding of how the requirements work with the city. The Bend analysis demonstrates the existing City of Bend TSP is sufficient to meet the CFEC VMT requirements for TSPs without any changes to land use or transportation.

The department has further clarified with the City of Bend that division 44 includes requirements for cities and counties in the largest three regions to develop a regional land use and transportation scenario plan that will reduce vehicle miles traveled per capita by 20 to 30 percent. These requirements only apply in the Portland, Eugene-Springfield, and Salem-Keizer metropolitan areas (OAR 660-044-0015). Bend is not required to develop a scenario plan that

meets the greenhouse gas reduction target. Bend could, of course, chose to develop a scenario plan, but it is entirely optional. While Bend is not required to meet the reduction targets in Division 44, the city could likely identify a scenario that would meet these targets if the analysis used assumptions for federal and state actions consistent with Division 44. Scenario planning and strategic assessment projects in Portland Metro, Eugene-Springfield, Albany, Corvallis, and the Rogue Valley have consistently demonstrated that there are multiple pathways to meet the division 44 targets.

Flexibility to Local Governments

The CFEC rules have numerous layers of flexibility aimed at tiers of metropolitan area and city size to respond to the differences in capacities of local governments. The rules include opportunities for local governments to request alternative dates for implementation. For the smallest jurisdictions, the rules provide an opportunity to request exemptions. To date, the department has approved alternative implementation dates for 25 cities and counties and rule exemptions for nine cities and counties.

In addition to the examples provided above, the rule amendments adopted on November 2, 2023, provide additional flexibility in many areas, including:

- Clarifying when a major equity analysis or engagement-focused equity analysis is necessary (OAR 660-012-0135(2))
- Flexibility for setting the horizon year of local transportation system plans in the Portland Metropolitan Area to match the horizon date of the regional transportation plan (OAR 660-012-0140(5))
- Allowing local governments to apply mode-specific functional classifications to facilities (OAR 660-012-0155(4))
- Clarifying that transportation projects that happen along with development may be completed even if not on the financially-constrained project list (OAR 660-012-0180(2)(b))
- Simplifying the burden of proof for the “outcome-oriented” approach to development standards for climate-friendly areas, thereby allowing local governments more flexibility in scaling climate-friendly areas to local contexts (OAR 660-012-0320(9))
- Rule 660-012-0325 provides a much simpler and less expensive process for local governments to make amendments to comprehensive plans and land use requirements in climate-friendly areas and Metro Region 2040 Centers, as opposed to the review that would otherwise be required by OAR 660-012-0060
- Amendments to parking regulation improvements exempt small parking lots from preferential parking requirements, increase the threshold size for parking lot improvement requirements, and reduce tree maintenance requirements (OAR 660-012-0405)
- Remove a requirement for “unbundled parking” for multi-family residential units (OAR 660-012-0425)
- Provide more flexibility for how local governments administer parking reform near transit corridors (OAR 660-012-0440)

- Reduce requirements for parking management alternative approaches (660-012-0445)
- Reduce the minimum requirement for bicycle parking for multi-unit and mixed-use residential uses (OAR 660-012-0630(3))

Funding

The legislature allocated \$3 million to help local governments implement the CFEC program in the 2023-25 biennium, including nearly \$2.7 million for direct assistance. The department has worked directly with local partners to identify their needs and is allocating these funds and providing assistance to local partners. Staff time reimbursement is an eligible use of such funds. This amount brings the total amount for CFEC program implementation previously secured by ODOT and DLCD to more than \$20 million.

In the 2021-23 biennium, the department spent \$810,000 (\$768,900 provided by the legislature) to fund climate-friendly area studies and community engagement plans for nearly all of the fifteen jurisdictions that are required to designate CFAs (two communities opted to fund their own work). Additionally, the department funded development of a "Climate-Friendly Methods Guide" for use by local governments, as well as a market study to assist the City of Bend to better understand how climate-friendly areas might be zoned to best enable development under current market conditions.