



Oregon

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October 24, 2012

TO: Land Conservation and Development Commission

FROM: Robert Cortright, Scenario Planning Coordinator

SUBJECT: **Agenda Item 5, November 14-15, 2012, LCDC Meeting**

PROPOSED SCENARIO PLANNING RULES FOR THE PORTLAND METROLITAN AREA

I. AGENDA ITEM SUMMARY

The commission will deliberate and consider adoption of proposed administrative rules to guide the Portland metropolitan area in the selection and implementation of a preferred land use and transportation scenario to meet their state-adopted target to reduce greenhouse gas emissions from light vehicle travel. The commission is required by statute to adopt rules by January 1, 2013. This rulemaking is identified as a priority in the commission's 2011–2013 policy agenda.

If you have questions about this report please contact Bob Cortright, Scenario Planning Coordinator, at (503) 373-0050 extension 241 or bob.cortright@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission adopt the proposed rules. The commission received public testimony at a public hearing held during its September meeting. The proposed rules have been revised to reflect comments received at that hearing. The department has not received any additional comments on the proposed rules, and consequently, recommends the commission adopt the proposed rules as set forth in Attachment 1.

III. BACKGROUND

House Bill (HB) 2001, adopted by the 2009 Legislature, requires that the commission adopt rules providing guidance to Metro and local governments in the Portland metropolitan area for the selection and implementation of a land use and transportation scenario that meets the greenhouse gas (GHG) reduction target adopted by the commission in May 2011. The commission is required to adopt the metro area scenario planning rules by January 1, 2013.

Provisions of HB 2001 that direct the scenario planning rulemaking are provided below.

(8) On or before January 1, 2013, the Land Conservation and Development Commission, in consultation with the Oregon Transportation Commission, shall adopt rules that establish a process for cooperatively selecting a land use and transportation scenario for each metropolitan service district to achieve the greenhouse gas emissions reductions identified in the rules adopted pursuant to subsection (6) of this section and a process for the adoption of regional or local plans to implement the scenario. The rules shall:

(a) Identify minimum planning standards for achieving reductions in greenhouse gas emissions through comprehensive plans and transportation system plans;

(b) Identify planning assumptions and approaches to meet minimum planning standards identified in paragraph (a) of this subsection that ensure the Department of Land Conservation and Development can approve the changes to the regional framework plan, comprehensive plans, and land use regulations implementing the comprehensive plans;

(c) Establish a cycle for initial adoption and updating of the transportation and land use scenario required by this section, including planning periods beyond 2035, relating the cycle to periodic review under ORS 197.628 to 197.650 and to urban growth boundary planning under ORS 197.296 or 197.298;

(d) Ensure that local standards and criteria for land uses and for land development and transportation plans that implement the scenarios selected under subsection (2)(b) of this section:

(A) Are contained in the amendments to regional framework plans, functional plans, comprehensive plans, and land use regulations required by subsections (3) of this section; and

(B) Do not have the effect of preventing, discouraging, or delaying the implementation of the scenarios, except as necessary to protect the public health and safety.

(HB 2001, Section 37(8))

The proposed rulemaking is part of a broader effort by the state; in cooperation with metropolitan areas, to evaluate changes to land use and transportation plans and policies to significantly reduce GHG emissions from light vehicle travel and to support meeting statewide goals to reduce GHG emissions to 75 percent below 1990 levels by the year 2050. Additional details on state efforts to reduce greenhouse gas emissions are included in the September 10, 2012 staff report on the proposed rule amendments.

In December 2011, the commission established a Rulemaking Advisory Committee (RAC) to help the commission and the department develop an administrative rule to fulfill the commission's responsibilities for scenario planning rulemaking in HB 2001. The RAC included representatives of Portland metropolitan area local governments, state agencies and a range of interest groups.

The RAC met four times from February through May 2012. The RAC developed a process to meet the metropolitan scenario planning requirements from HB 2001 that fits within the existing policy structures of Metro and local jurisdictions. RAC meeting materials are available on the department's website:

http://www.oregon.gov/LCD/Pages/Rulemaking_MSP_2012.aspx

The department provided notice of the proposed rulemaking through the Secretary of State's Bulletin published on August 1, 2012. A draft of the proposed rule has been distributed to interested persons and available on the department's website since August 1, 2012.

On September 19th, the department conducted a public hearing in Portland at Metro to receive public testimony on the proposed rules. In addition, the commission conducted a public hearing at the September 20th commission meeting. Revisions to the proposed rules to address comments received are discussed in the next section of this report.

The proposed amendments would be added to OAR Chapter 660, Division 44, which currently includes the GHG reduction targets for metropolitan areas adopted by the Commission in May 2011.

IV. DEPARTMENT ANALYSIS

The proposed rules provide for the selection, adoption, review, implementation, and monitoring of a preferred scenario. The preferred scenario will be implemented through amendments to Metro's framework and functional plans, and local comprehensive plans and land use regulations. The commission will review these amendments. Metro will monitor progress on implementing the scenario and report concurrently with other required reports to the Commission. Key elements of the proposed rules are outlined in the September 10, 2012 staff report on the proposed rule. (Attachment 2)

Revisions to the Proposed Rule in Response to Public Comments

At its September 20 meeting, the Commission conducted a public hearing on the proposed rule amendments. The Commission received testimony from Metro staff that recommended a several changes to proposed rule language in OAR 660-044-0045. In general, Metro recommended language changes that more accurately reference Metro plans or actions addressed by the proposed rule.

At the conclusion of the September 20th public hearing the commission directed the department to work with the department's legal counsel to review Metro's suggestions, and incorporate those changes that the department and legal counsel agree would improve the clarity of the proposed rules. The commission also directed that the department distribute the revised proposed rules and provide additional time – until October 19th - for interested persons to provide comments on the proposed rules.

On October 3, the department emailed a revised proposed rule to the Rulemaking Advisory Committee (RAC) members and other interested persons. The revised rules include several

changes to wording of 660-044-0045 in response to Metro's recommendations. (The proposed revisions are shown in red on pages 10-11 of Attachment 1.)

As of the date of this report (October 24), the department has not received any additional comments on the proposed rules.

V. DECISION-MAKING CRITERIA AND PROCEDURES

The proposed rules must be consistent with the provisions of ORS Chapters 196, 197, 183, and the Attorney General's Model Rules of Procedure. In addition, the proposed rules must carry out the relevant provisions of HB 2001 - including Section 37(8) – listed above in the Background portion of this report.

VI. DEPARTMENT RECOMMENDATION

The department recommends that the commission adopt the proposed rules as set forth in Attachment 1.

The department has identified the following options for commission action:

- (1) Adoption of the proposed rule as set forth in Attachment 1 (Department Recommendation);
- (2) Direct the department to make specified changes to the proposed rules. If this option is selected, the Commission would propose specific additions or deletions from the proposed rule language. Since no additional public comments have been received the department has not prepared optional language for possible adoption.

VII. DRAFT MOTION

Motion: I move that the commission adopt the proposed administrative rules as set forth in Attachment 1 to the staff report.

ATTACHMENTS

1. Proposed Rule Amendments and New Rules, Division 44, for Portland Metropolitan Area Scenario Planning, October 1, 2012
2. Department Staff Report, Agenda Item 4, September 10, 2012
3. Metro comments, Roger Alfred, Metro Legal Counsel, September 19, 2012.