



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

Request that the Governor's Office engage an objective third-party facilitator to work with DLCDC, impacted jurisdictions and housing developers to (1) examine the impacts of CFEC rules on housing policy; and (2) identify which CFEC rules could potentially conflict with objectives of OHNA, and stay those rules pending the completion of the OHNA rulemaking and subsequent agency action.

Areas in the rules to examine include, but should not be limited to:

- Whether there should be greater flexibility and/or clarity in land use regulations required of cities, so as not to interfere with affordable housing production goals and homeownership opportunities.
- Whether there are ways to simplify the rules so that they can be implemented without taking time away from essential housing production planning and approvals.
- Whether the rules related to transportation planning, performance standards for VMT reduction, and major TSP updates may create barriers to needed housing development and community growth.
- Whether the land use rules increase risk of gentrification and displacement, and stronger requirements for mitigation.

See attached documents.

Related Work Plan Topics

Review the potential for state level land use and building model codes for different housing densities, permit ready plans for different housing types, and other production tools for utilization at the local level. These tools could be optional or mandatory.

Adoption Date

Enter the date the work group adopted the recommendation.
Recommendation was approved by WG on September 22, 2023

Method of Adoption

Initial Recommendation was approved August 18, 2023 by WG and sent to Co-Chairs for considerations. The initial recommendation was returned to WG asking for additional information. The revised recommendation was approved by the WG and submitted on 9/22/23.

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

Cities that support addressing climate change through the Climate Friendly and Equitable Communities (CFEC) rules are reporting that components of rules are presenting unintended consequences, re-directing staff time from housing production related work, creating inherent conflicts between climate policies and the Governor's housing production goals and the goals of HB 2001 OHNA (Oregon Housing Needs Analysis).

2. Provide a quantitative, if possible, and qualitative overview of the housing production issue.

Conflicting goals and implementation between CFEC's and OHNA HB 2001 community housing needs analysis is resulting in elevated city staff time and a lack of housing units being produced. DLCD/LCDC drafted rules should ensure that a community's housing needs/capacity analysis continues to rely on practical production results and trends. This re-work will take time for DLCD to resolve and realign the numerous conflicts between CFEC and OHNA.

OHNA involves the utilization of data and analysis to determine the actual types of housing needed, considering affordability. This approach holds jurisdictions accountable for building the necessary housing units. This approach supports housing planning because the old way of focusing solely on theoretical land capacity did not result in providing enough housing for Oregon residents.

VS

CFEC appears innovative, but lacks sufficient evidence of housing production with theoretical goals such as 30% of units within CFAs (Comprehensive Factual Analysis). Objectives are based on unrelated factors such as VMT/GHG (vehicle miles traveled/greenhouse gas) reduction, rather than real housing needs or production realities.

This affects the cities over 50,000 people but have limited experience in high-density development, the density requirements of the densest CFAs may result in a slow-down in housing construction due to architects, engineers and developers in these communities not being ready to produce housing that adheres to CFEC rules.

If analyzing actual housing need requires expanding Urban Growth Boundaries (UGBs), CFEC's requirement to control VMT per capita with major transportation updates could hinder UGB expansions. This is true even if UGB expansions are exempt from the no net VMT increase requirement, because UGB expansion should align with transportation updates.

Solutions proposed separate transportation planning from housing planning, undermining the comprehensive land use system. This not only burdens local governments but also confuses policymakers and citizens. To avoid this, CFEC rules must be modified in the context of housing rules and HB 2001's legislative mandate. They can't operate separately. This disconnection burdens cities staff with trying to achieve both objectives, while complicating the land use system.

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

- **City of Bend. Melanie Kebler, Mayor:** In a 7/ 28/2023 letter/testimony to the Land Conservation and Development Commission addressed concerns about CFEC with these words, “To put it bluntly, we believe parts of these rules set cities up for failure. If this is how we plan to meet climate goals, we will fail to meet our housing needs...The proposed CFEC rules will lead to a land use system that is internally inconsistent and which pits unachievable climate policy directly against essential housing needs.” She asked that the state clearly model how it would be possible for Bend to achieve a 20 percent reduction in VMT while also meeting housing production goals. If it is not possible, the rules will need to be amended, she noted. See City of Bend Testimony 7/28/23 attached.
- 7/26/2023: HPAC member, Deb Flagan, verbally communicated with Mayor Kebler regarding the staff’s challenge to implement CFEC due to the conflict with the OHNA production goals. The Mayor shared that she was scheduled to provide testimony on 7/28/2023 at the LCDC commissioner meeting and a copy of the testimony was forwarded upon completion of testimony.
- **City of Beaverton. Anna Slatinsky, Planning Division Manager:** At the HPAC Codes Work Group on 7/25: “The rules are confusing and at times appear contradictory, requiring an enormous amount of staff time to evaluable and implement with unclear effect. The timelines proposed by the state and limited staff time create further barriers to implementing the rules as proposed”. *inclusion of this quote does not convey explicit support for this recommendation by the City of Beaverton.
- **City of Hillsboro. Andy Smith, Government Relations Manager:** Andy supplied the attached document clearly outlining the conflicts between CFEC and OHNA to the HPAC Committee on 9/6/2023 (see City of Hillsboro CFEC.OHNA Conflict) with the following correspondence “the CFEC regulatory scheme is interconnected and making surgical fixes to rule provisions is likely ineffective. That is why the CFEC recommendation of “pause and align with OHNA implementation.” is critical. The entire scheme needs to be reconciled. Not just individual rule provisions.”

4. Provide an overview of the expedited outcome of the recommended actions(s), including quantitative/qualitative context if available.

Cities will be able pause on the CFEC implementation until the OHNA rules are implemented in 2024. Giving city staff a reprieve from the ongoing mandates of HB2001, CFEC implementations and soon to be OHNA requirements.

5. Provide an estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time: Short/Medium: To be addressed and implemented with OHNA Rules 2024
 Feasibility: Medium
 Cost: Low

6. Provide a general overview of implementation, the who and how for the recommended action(s).

As CFEC was enacted through an Executive Order, this pause could be implemented through an Executive Order.
Direct DLCD to review CFEC rules, align and adjust with OHNA rules.
Extend implementation date to cities to coincide with OHNA implementation time frame.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

SME testimony has indicated that the CFEC rules are in conflict with HB 2001 and addressing Oregon's housing needs. This recommendation is hard to track because it is preventing conflicts between state mandates.

8. Identify any major unknowns, tradeoffs, or potential unintended consequences.

Codes have been enacted in cities preparing for CFEC (i.e reduced parking standards, etc). This may result in confliction with city role out and development timing.

CFEC was enacted to help with climate change as well as promote equality. This would delay the implementation of such rules.

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.

Rules Re: VMT Reductions; TSP Approval Being Contingent on VMT; If Either of the Prior Relate to UGB Expansions

OAR 660-012...

- -0100 (1) – Requires cities have TSP acknowledged prior to undertaking a UGB expansion
- -0105 (2)(c) – Authorization of a transportation facility requiring -0830 review triggers a major TSP update
- -0160 (4) – Cities/counties cannot adopt TSP unless projected VMT decreases over the planning period (in other words projected VMT of horizon year must be < VMT of base year)
- -0210 – Intent of most recent draft language: Local governments may not make a decision that models show would increase VMT per capita
 - *Staff will recommend postponing the effect of -0210 at the November LCDC meeting; timeframe to refine and put into effect TBD*
- -0350 (1)(a) – Cities must have an acknowledged transportation system plan prior to undertaking a UGB expansion
- -0350 (2)
 - (b) – TSP assumptions developed to make decisions about a UGB expansion must be consistent with -0910 performance targets
 - (c) – TSP assumptions developed to make decisions about a UGB expansion may not assume the construction of any facility required to be reviewed under -0830 if the proposed facility has not yet been authorized
- -0830 (2)(b) – Cities and counties choosing to authorize a proposed facility must include the authorization process as part of an update to a TSP
- -0910 (1) – Performance targets for the performance measures in -0905 **must be set at levels that are reasonably likely to achieve the regional performance targets** from an approved land use and transportation scenario plan as provided in OAR 660-044-0110 or the regional performance targets from the Statewide Transportation Strategy as adopted by the Oregon Transportation Commission

OAR 660-044...

- -0025 (2) – Targets for GHG emissions reductions from light vehicle travel by year; begins at 20% reductions by 2040, ends at . **Targets are the reductions beyond reductions in emissions that are likely to result from the use of improved vehicle technologies and fuels**
- -0110 – This is where -0910 (as referenced above) links to. A land use and transportation scenario plan must include
 - (3) – Policies and strategies intended to achieve the applicable greenhouse gas emissions reduction target in -0025
 - (7) – Projection of future greenhouse gas emissions for the planning period using a preferred land use and transportation scenario to meet the applicable greenhouse gas reduction target in -0025

Other Div 12 rules linked to performance targets in 012-0910 or reduction targets in 044-0025

- -0100 (8) – Cities and counties shall design TSPs to achieve the performance targets in -0910

- -0155 (3)(a) – Local governments and state agencies shall prioritize transportation facilities based on meeting GHG reduction targets in 044-0025 and 012-0910
- -0170 (4) – Cities and counties shall design TSPs to reduce VMT and achieve transportation performance targets -0910
- -0180 (3) – Project selection from a city’s financially-constrained project list dependent on whether the project would:
 - (a) – Reduce VMT (references -0160)
 - (c) – Make significant progress towards meeting the performance targets in 012-0910 or 044-0110
- -0215 – This rule applies to transportation performance standards that cities and counties use to review comprehensive plan and land use regulation amendments
 - (2) – Cities and counties adopted transportation performance standards must support meeting the targets for performance measures in -0910
 - (5) – The transportation performance standards must include findings for how the performance standard supports meeting the targets for performance measures
- -0820 (3) – Cities and counties shall use the following factors when prioritizing street and highway system projects:
 - (d) – Project will help meet the performance targets in -0910

Rules Needing Flexibility to Reduce Impacts on Housing Production

The following were listed by Brian Rankin of Bend in an email to us on June 23, 2023. His comments on each rule he listed are included below:

660-012-0905 – Land Use and Transportation Performance Measures & 660-012-0910 – Land Use and Transportation Performance Targets

Rankin – “This all but eliminates expanding UGBs for housing because expansion increases VMT.”

660-012-0350 – Urban Growth Boundary Expansions

Rankin – “Another mechanism to hit VMT targets when expanding UGBs. See previous comment [regarding -0905 and -0910] on this being difficult if not impossible.”

660-012-0340 – Land Use Assumptions

Rankin – “There is so much that is impractical and disturbing about these standards. One, they require two different plans for land use: one for housing, presumably employment (not explicit), and another for transportation planning. This is the opposite of how Bend does its work which is to tightly align land use assumptions with infrastructure planning. The mismatch suggests a bunch of downstream issues on CIPs, SDCs, and on-the-ground issues of a well-functioning system. These seem to require filling up CFAs with 30% of housing before assigning growth elsewhere. Practically, impossible because we are all using fixed totals for housing. Requires depopulating areas in the UGB to force unrealistic redevelopment rates in CFAs. Transportation analysis also can’t assume expanded UGBs.... obvious disconnect from OHNA and practically speaking a mess. Suggests transportation plans are purely theoretical rather than ‘real world’ creating all kinds of issues.”

Additional rules likely needing flexibility to avoid impacts to housing production

660-012-0320 – Land Use Requirements in Climate Friendly Areas

Includes minimum residential densities, which may be either outright or functionally prohibitive of certain types of housing in CFA (particularly housing which comes with land ownership) such as duplexes.

The following is my own recommendation for a CFEC rule needing flexibility/adjustment

660-044-0025 – Greenhouse Gas Emissions Reduction Targets for Other Metropolitan Areas

In light of the [City of Bend's study with DKS Associates](#) (see pages 3-end) to determine the feasibility of the city successfully complying with the VMT reduction targets established in CFEC, and due to the fact that the GHG emission reduction targets in 660-044-0025 are the same for all metropolitan areas in the state – aside from Metro – regardless of their projected population growth, the GHG Emission Reduction Targets should be reviewed in accordance with OAR 660-044-0035 (2).

Due to the complexity of the CFEC rules and their high potential to negatively impact housing production, emphasis should be placed on the consideration of the following provisions of OAR 660-044-0035 (2):

...

(f) Changes in population growth rates, metropolitan planning area boundaries, land use or development patterns in metropolitan planning areas that affect light vehicle travel;

(g) Efforts by local governments in metropolitan areas to reduce greenhouse gas emissions from all sources;

(h) Input from affected local and regional governments and metropolitan planning organizations;

(i) Land use feasibility and economic studies regarding land use densities; and

...

The statutory authority for 660-044-0025 comes from [SB 1059 \(2010 Special Session\)](#) §5, which stated, “The rules must also take into consideration methods of equitably allocating reductions among the metropolitan areas given differences in population growth rates.”

**Climate-friendly and Equitable Communities and Oregon Housing Needs Analysis
Issue Overview and Background Briefing
August 2023**

Overview

We prepared the following background to outline the conflicting provisions between certain Climate Friendly and Equitable Community (CFEC) rules and Sections 8 and 9 of House Bill 2001 (Oregon Housing Needs Analysis or OHNA), intended to support local governments in addressing the statewide housing crisis.

This document is only focused on the CFEC provisions that conflict with HB 2001/OHNA. Other concerns about CFEC continue to be discussed with DLCD. This background focuses only on the challenges of CFEC while advancing the statutory direction of HB 2001 to accelerate housing production to provide affordability and choice.

Background

Climate-Friendly and Equitable Communities: CFEC represents a set of rules adopted as a result of an executive order issued by Governor Kate Brown to reduce greenhouse gas emissions in Oregon's communities. DLCD created Climate Friendly and Equitable Community rules, which prioritize reducing vehicle miles traveled (VMT) as the primary strategy to accomplish that goal. This policy direction is evident throughout the rules in technical and complicated ways, but the ultimate goal is to reduce the number of cars on the roads and miles traveled by light passenger vehicles (individual cars as opposed to mass transit, bicycling, walking or other non-emission creating modes of transportation).

House Bill 2001/OHNA: The goal of HB 2001 is to prioritize and expedite responsible housing development to meet Oregon's housing crisis in a manner that also advances equity. The policy direction is to reduce burdens on local governments and provide flexibility and tools to local governments to reduce barriers and incentivize development, including middle housing development, promote affordable housing options and homeownership, and meet other short-term or transitional housing needs for Oregonians.

Concern

Land use, development, and transportation planning are complicated, interconnected technical systems. A change in policy or direction in one area can trigger other regulatory changes in another. This interconnection and lack of alignment between CFEC and OHNA are where the inherent conflicts collide, and without clear prioritization or alignment in the rules, several provisions of CFEC will delay and undermine the ability to accomplish the goals of HB 2001 and meet the housing needs of Oregonians.

The Balance of Oregon's Statewide Land Use Planning Goals

“The foundation of the statewide program for land use planning in Oregon is a set of 19 Statewide Land Use Planning Goals. The goals express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources. Most goals are accompanied by guidelines, which are suggestions about how a goal may be applied,” DLCD website.

These guidelines are not mandatory, but cities and local governments must get approval from DLCD on comprehensive plans to demonstrate that the plans meet the goals and programs are consistent and coordinated.

One challenge for local governments is that CFEC rules prioritize transportation planning over the other urban planning goals, including residential and employment land use planning, which disrupts the balance of the statewide planning system and is creating a situation where local governments cannot advance housing development targets or plans given the restrictions under these rules.

In particular, the CFEC rules are a challenge for Goal 10, the statewide housing goal. The prioritization of transportation planning above all other goals – including meeting housing needs – creates obstacles for local governments. The specific obstacles vary from community to community depending on public transportation infrastructure, the demographic of the population, economics, and workforce, and other considerations when creating livable, sustainable, and equitable communities.

As explained in more detail in the following examples, the CFEC rules in Division 12 require local governments to plan primarily around the concept of reducing vehicle miles traveled per capita (VMT) using hypothetical development assumptions divorced from market forces or actual housing needs. At the same time, state statute requires local governments to base housing planning on actual development patterns and trends (ORS 197.296). For some communities, development trends may lead to significantly more housing in walkable areas, but for others, the areas with the greatest opportunity to develop the highest density housing, including paths to home ownership and not just mixed-family rental units, would increase VMTs. This conflict between administrative rules and statutes is one example of the uncertainty for local governments created by these unaligned and parallel tracks.

More analysis is needed to fully understand how each community can work to reduce VMTs while meeting the housing needs as will be established through OHNA, which has yet to be established. The VMTs targets should be integrated after OHNA is complete, and with a more comprehensive evaluation of public transit and other transportation infrastructure that exists or is needed to meet those goals.

Climate-Friendly Area (CFA) -Planning and Implementation of CFAs & OHNA

The CFA planning and housing analysis timelines are parallel instead of integrated. HB 2001 § 6(2)(a) establishes a deadline of January 1, 2025, for the Department of Administrative Services (DAS) to “conduct the initial statewide housing analysis and the initial estimates and allocation of housing need.” The deadline established in CFEC under OAR 660-012-0012 (4)(c) for cities and counties to “adopt land use requirements for climate-friendly areas and a climate-friendly comprehensive plan element” is December 31, 2024.

Because this work will be occurring simultaneously but on separate tracks, the work by local governments to meet the CFEC deadlines could result in plans that do not meet the needs identified by the OHNA as directed through HB 2001. The expectation for local governments to continue the CFEC work to meet these deadlines without all the information needed from the OHNA is inefficient and wastes public resources. It needs to meet best practices in planning and development. Planning for this rule while the ongoing housing needs analysis is underway creates work for local governments that may or may not align with that community's needs or realistic market conditions.

There are other similar examples where CFEC rules and direction under HB 2001 have the potential to conflict. The Climate Friendly Area requirements in OAR 660-012-0320 place specific development requirements on CFAs, including minimum density requirements, detailed site design requirements in OAR 660-012-0330, and minimum bicycle parking requirements in OAR 660-012-0630. HB 2001 states that “[e]ach public body, as defined in ORS 174.109, shall use its authority to remove barriers to, and to create pathways for, the development of needed housing” and instructs LCDC to adopt rules that remove barriers to and promotes the production of, needed housing. Local governments and other stakeholders have repeatedly expressed concerns to DLCD that these requirements are a barrier to housing production in CFAs. Still, DLCD has responded that they will reevaluate the costs or impacts on housing production associated with CFEC as part of later rulemaking under HB 2001.

Another example is the disconnect between land use assumptions required for transportation system plan amendments under CFEC and land use assumptions required to plan for residential land and housing needs in ORS 197.296. OAR 660-012-0340 specifically requires transportation planning to use a different set of planning assumptions than used for housing planning when planning for “Climate Friendly Areas” or transportation system plan amendments. Population growth (e.g., planning for new housing units) must be allocated to CFAs according to *transportation* planning assumptions before it can be planned to be accommodated in other areas of an existing or expanded UGB. Because the transportation planning assumptions are not based on any assessment of housing needs or market conditions, it directly conflicts with the requirements under HB 2001 and the statewide housing goal 10.

To avoid conflicts between the CFEC mandates and HB 2001, housing and transportation planning rule-making must be coordinated and integrated, and timelines must be reconciled to produce the shared policy objectives. The current timelines and work plans are not aligned and create conflict, not progress.

Designation of New CFAs & Placement of CFA Compliant Housing after a UGB Expansion

The CFEC rules include new provisions in the Goal 10 housing regulations that require that, after June 30, 2027, new CFAs be implemented concurrently with the expansion of a UGB to maintain a sufficient supply of buildable lands for housing development. (See OAR 660-008-0010)

As described by the DLCDC, these new CFAs may either be within the pre-expansion UGB or the new expansion area. However, because of the VMT reduction criteria under CFEC, cities can't add a CFA in an expansion area. Doing so would reallocate a higher proportion of the population further away from the urban center, requiring more travel and potentially increasing VMT per capita.

For this reason, the most rational way to minimize VMT per capita while meeting housing needs would be only to allow the development of lower-density single-family housing in new expansion areas. The impact of this policy direction under CFEC could undermine the policy direction under HB 2001 because the rate and quantity of affordable housing production are often quicker and more efficient when new buildable lands are developed into housing than the redevelopment of existing lands.

Another critical issue with the CFEC rules is the need for alignment in housing assumptions made for CFAs versus the assumptions required to show compliance with the housing goal and UGB expansions. The CFEC rules in divisions 8 and 12 require cities to assign a certain level of development to a CFA regardless of the demonstrated housing need. This requirement assumes that all housing units are equally suited to meeting a community's housing needs.

The CFA analysis does not require or allow local governments to consider the need for different housing types (e.g., four-story multiple-unit buildings are favored over middle housing types or single-unit dwellings) or what housing types may be developed by the market in a CFA. The result is that CFAs may be required in areas where dense urban development is unlikely, excluding other less-dense but more affordable housing (such as middle housing).

Transportation System Plans, VMT Modeling, and Urban Growth Boundaries

Many provisions of the CFEC rules would cause local decisions to trigger a major Transportation System Plan (TSP) update due to urban growth boundary (UGB) expansions (OAR 660-012-0350(1)(a)) and associated transportation projects (OAR 660-012-0830(2)(b)) if the TSP is not compliant with the current CFEC rules. Additionally, under OAR 660-012-0160(4), a major TSP update may not be adopted if the projected VMT per capita of the final year of the planning period is not lower than the VMT per capita of the base year.

These triggers are significant as they relate to local governments' ability to expand their UGBs into otherwise development-ready lands that would support affordable, workforce, and market-rate housing and new employment lands. Again, cities often closely coordinate their planning for land needs for housing and employment, which will be critical under CFEC to ensure housing is closer to the jobs and services new residents will need and to support access by walking, cycling, or taking transit.

For example, the Regional Statewide Transportation Strategy (RSTS) requires cities to reduce VMT per capita by 20% by 2040. The CFEC rules in Division 44 require metropolitan areas to use this target when conducting land use and transportation planning (See OAR 660-044-0020 for the Metro region and OAR 660-044-0025 for all other metropolitan planning areas). If local governments do not make progress toward this target, the CFEC rules would allow DLCD and LCDC to withhold federal funding for roads or to 'unacknowledge' the jurisdiction's comprehensive plans. These consequences would have a significant effect on a jurisdiction's ability to further *any* development, not just related to UGB expansions.

The Division 44 greenhouse gas reduction targets are a problem for housing development because, while it may be possible to achieve a 20% reduction through land use planning, it is impossible to do so when UGB expansions are included. The City of Bend, for example, conducted a VMT per capita analysis related to its 2016 UGB expansion and implementation of CFA-like efficiency measures in its urban core. Greater than 600 acres of land were upzoned, designated as mixed-use, and had parking mandates removed – all of which are efficiency measures that would comply with the CFEC rules. This plan, now award-winning, is being implemented by the market but still increases VMT per capita by 5%.

Bend recently completed a VMT reduction analysis by DKS and Associates, which concludes that although a 20% VMT reduction in Bend is theoretically possible, it would require the relocation and removal of thousands of existing housing units and jobs from both populated and entitled lands currently inside Bend's UGB to centrally-located Climate Friendly Areas. The purpose of this analysis was to evaluate whether any real-world scenario could succeed in achieving these standards. The answer is that achieving the proposed standards takes an unrealistic scenario.

These concerns regarding VMT per capita and major TSP triggers conflict with HB 2001 § 8(1)(f), which states that “Housing production should not be undermined by litigation, regulatory uncertainty or repetitive or unnecessary procedures.” It also undermines the explicit goals of OHNA expressed in HB 2001 § 1(1): the production of housing to meet the need of Oregonians at all levels of affordability and the production of housing in a way that creates more housing choices by affirmatively furthering fair housing.

Ambiguous Terms and Phrases Increasing Regulatory Uncertainty & Litigation

This last issue is not a direct policy issue. Still, it is a concern that conflicts between CFEC and HB 2001 create legal liabilities for local governments, which could translate into increased costs and delays in housing development.

HB 2001 § 8(1)(f) states that “Housing production should not be undermined by litigation, regulatory uncertainty or repetitive or unnecessary procedures.” Terms and phrases that create regulatory uncertainty – like in OAR 660-012-0330 (6)(a), which states that “Ease of access to goods and services must be equivalent to or better than access for people driving a motor vehicle” – are highly subjective and therefore substantially increase the risk of litigation. This provision is worded broadly enough to create uncertainty regarding whether a local government’s decision demonstrates compliance with CFEC.

Under CFEC rules, the only way for a jurisdiction to be even relatively certain that they would comply with this provision would be to rezone every existing residential zone as mixed-use and plan for the sporadic placement of various types of businesses throughout existing residential neighborhoods. This action would decrease the number of residential buildable lands within UGBs, as an unknown portion would be needed for commercial uses. Ultimately, this would necessitate even more UGB expansions to ensure sufficient lands to meet residential needs, which runs entirely counter to the explicit purpose of the CFEC rules.

Another example of this type of ambiguous language is OAR 660-012-0330(5), which states that “Cities and counties shall have land use regulations in residential neighborhoods that provide for slow neighborhood streets comfortable for families, efficient and sociable development patterns, and provide for connectivity within the neighborhood and to adjacent districts. Cities and counties must adopt land use regulations to meet these objectives, including but not limited to setbacks, lot size and coverage, building orientation, and access.

“Comfortable for families” is not a legal standard but an entirely subjective one. However, the rules require cities and counties to adopt land use regulations to meet this standard, increasing regulatory uncertainty and the likelihood of litigation in contravention of HB 2001/OHNA.

In addition to subjective and unclear terms and phrases, the complex interconnected relationships in the CFEC rules create confusion and legal uncertainty. For example, OAR 660-012-0340(5) refers to future land use assumptions for transportation that are divorced from assumptions required for residential land needs under ORS 197.296 (discussed previously in this memo).

The transportation assumptions must assume existing acknowledged comprehensive plan designations and policies. This creates confusion if a city is considering a significant comprehensive plan update, e.g., to expand its UGB for housing, and transportation plan amendments will be needed to provide transportation facilities to serve the expansion areas. It needs to be clarified which set of assumptions is intended to take precedence. Uncertainty and confusion in the UGB expansion process is a well-known and longstanding cause of litigation and delays in the Oregon planning system.



CITY OF BEND

LOCATION

710 NW Wall Street
Downtown Bend

MAILING ADDRESS

PO Box 431
Bend, OR 97709

PHONE

(541) 388-5505
Relay Users Dial 7-1-1

FAX

(541) 385-6676

WEB

bendoregon.gov

MAYOR

Melanie Kebler

MAYOR PRO TEM

Megan Perkins

CITY COUNCILORS

Anthony Broadman
Barb Campbell
Ariel Méndez
Megan Norris
Mike Riley

CITY MANAGER

Eric King

VIA ELECTRONIC SUBMITTAL

July 27, 2023

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: Item 12 on July 28, 2023, Commission Agenda: CFEC Hearing on Clarifications, Corrections, and Adjustments

Dear Members of the Commission,

The City of Bend is writing to provide comments on the draft amendments dated June 20, 2023, to Division 12 regarding Climate Friendly and Equitable Communities. The City appreciates the Department's efforts to consider and propose amendments to the CFEC rules and provides comments both on a specific element of the proposed rules as well as much broader concerns.

The City supports the proposed new (1)(c) and the rules at (A), (B), (C), and (D) under 660-012-0830: Enhanced Review of Select Roadway Project, (See page 37 of 41). The proposed rule at 660-012-830(1)(c)(A) would ensure the projects included in the City's 2020 General Obligation Bond will not require further analysis and justification and help the City keep the promise made to Bend's voters in 2020. The City also believes projects where design has been started, or where lands for rights of way had been purchased or dedicated, should also be afforded a similar degree of protection from further review so limited fiscal resources are not wasted and community trust is not lost. The proposed temporary rules under (B), (C), and (D) would acknowledge the work that already went into completing these projects and ensure that cities (including Bend) can complete projects approved in their respective transportation system plans.

More broadly, however, we feel that the scope of what DLCD staff has been willing to consider within the current RAC process is insufficient to address what's needed for cities to implement the rules effectively and avoid direct conflicts with existing and anticipated state housing regulations. More specifically, the City believes that the proposed Vehicle Mile Traveled (VMT) reduction standards are unachievable as drafted and pose a direct conflict with the policy direction within Sections 8 and 9 of HB 2001 (2023) related to the provision of housing in expansion areas.

To date, the agency's focus has been on making fairly narrow technical changes, many of which are valuable and welcomed. The agency does not seem to have made any effort, however, to address concerns related to the proposed VMT reduction standards of 20% per capita which have been articulated clearly and consistently not just by the City of Bend, but by a broad range of other cities and stakeholders. Our recent work to create a concept plan for the Stevens Road Tract, which includes plans for dense housing and affordable housing within a transit-accessible complete community, still created an estimated overall increase in VMT of .25%. As the rule stands, there is no feasible way for Bend to meet our housing goals and state housing mandates without violating the current CFEC rules.

The City of Bend recently completed a VMT reduction analysis by DKS and Associates (attached) which concludes that although a 20% VMT reduction in Bend is theoretically possible it would require the relocation and removal of thousands of existing housing units and jobs from both populated and entitled lands currently inside the City of Bend's Urban Growth Boundary to centrally-located Climate Friendly Areas. The purpose of this analysis was to evaluate whether any real-world scenario could succeed in achieving these standards. The answer is that it takes an absurd scenario to achieve the proposed standards.

Bend is committed to achieving aggressive VMT reduction and climate mitigation goals. But we need a set of standards that is both achievable and does not hinder efforts to provide affordable housing for our residents or many other essential needs of our rapidly growing city.

To put it bluntly, we believe parts of these rules set cities up for failure. If this is how we plan to meet climate goals, we will fail to meet our housing needs. If we continue with our progress to meet housing needs in the most climate-friendly way possible, we will violate these rules. The proposed CFEC rules will lead to a land use system that is internally inconsistent and which pits unachievable climate policy directly against essential housing needs.

What we request is that DLCD and ODOT, who are partners in the land use and transportation modeling associated with CFEC implementation, demonstrate conclusively, via their own modeling and analysis, that our analysis of how we can meet 20% VMT reduction standards is correct or incorrect. DLCD should then either clarify or amend the rules to address our concerns. To date, we are not aware that either agency has pursued any detailed modeling or analysis of this nature.

There is too much at stake to rely on continued assurances of flexibility and workability, future rulemaking, and additional technical guidance. Please, show cities that these rules can be met as constructed so that we may develop plans consistent with both climate and housing goals. If that's not possible, please suggest amendments capable of accomplishing this outcome.

Sincerely,



Melanie Kebler
Mayor
Bend City Council
mkebler@bendoregon.gov



Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Damian Syrnyk, Senior Planner at dsyrnyk@bendoregon.gov or (541) 312-4919; Relay Users Dial 7-1-1, and (541) 385-6676.



November 17, 2023

Dear Housing Production Advisory Council (HPAC) Members,

The League of Oregon Cities (LOC) encourages your support for the CFEC Alignment Recommendation submitted at the October 13 HPAC meeting.

The LOC appreciates that the recent CFEC rule amendments adopted by the Land Conservation and Development Commission (LCDC) make some incremental improvements to the CFEC rules. However, **the amendments do not resolve the fundamental conflicts between the CFEC rules and the OHNA.**

The LOC represents all of Oregon's incorporated 241 cities, including the over 40 cities subject to the CFEC rules. Each city is unique in its way. Each city cares deeply about climate and mitigating the impacts of climate change for the people who live in their communities. Each city also cares deeply about advancing equity, promoting home ownership paths, and supporting those who have faced housing instability to secure permanent housing.

To be clear, the CFEC rules may work well in some communities. Differences between geographies, available transit, and existing built environments mean these rules have different impacts when applied on the ground in each unique community. The CFEC rules cannot be implemented effectively in *all* subject cities, which means more work is needed.

We encourage you to adopt this recommendation because aligning these two initiatives is imperative. The alternative is to continue with the current process, which will delay if not make meeting Oregon's housing development goals impossible. It represents smart governance and will establish a better path for us to work together to achieve a more climate friendly and equitable state where the path to homeownership is available, and housing is affordable.

Thank you for your consideration and leadership in addressing this critical issue.

Ariel Nelson
League of Oregon Cities



To: Housing Production Advisory Council

From: Andy Smith, Government Relations Manager

Date: November 17, 2023

Re: CFEC Recommendation

We appreciate the work that has gone into crafting a reasonable recommendation. Our interest over the last two plus years of engagement with DLCD and LCDC on the CFEC rules has been to ensure that statewide climate rules had their intended effect in our community while mitigating unintended consequences. Unfortunately, the latest update to the CFEC rules adopted earlier this month is a mere microcosm of the last two and a half years of work.

The latest updates to the CFEC rules do make some minor improvements. Yet none of the core issues we have raised have been addressed in a meaningful way. I recently asked our land use and transportation planning staff about the current state of the CFEC rules post update. In response, one staff member shared an example from a recent CFEC TSP Policy Guidelines Meeting.

- “I raised the same Section 0830 concerns. I said DLCD and LCDC either didn’t read or ignored our concerns that our city relies on developers to build our projects. My question was ignored, and the moderator quickly moved on to the next question. One example of many is the impact of the extension of Cornelius Pass Road through South Hillsboro (Oregon’s largest master planned community). We have invested millions of dollars in design and tax credits for developers to dedicate right of way and/or build a partial project. We should not have to go back and redo that work. At this point I’m exhausted from spending countless hours trying to be productive and provide solutions that ensure critical infrastructure that supports housing development can be constructed under these rules only to be ignored or dismissed.”

Our coalition of cities provided an extensive memo to HPAC in October that details the conflicts between CFEC and OHNA. Those conflicts remain with the updated rules.

The City of Hillsboro has always been committed to climate friendly and equitable planning and development practices. We are confident that the CFEC rules and the OHNA can align and result in increased housing production and more climate friendly and equitable communities. Unfortunately, our feedback continues to be dismissed, and the result of the current rules will be to significantly impede the delivery of road infrastructure to support needed housing.

The HPAC is the only body that seems to be taking these issues seriously, which is refreshing. We encourage you not to be worn down as our planning staff and local planning staff across the state have become after two plus years of engagement with the department. Please advance this recommendation for the sake of good government, and our shared priorities to meaningfully address climate change and deliver needed housing.



November 16, 2023

Housing Production Advisory Council

Re: Climate Friendly and Equitable Communities Recommendation

Members of the HPAC,

Thank you for the opportunity to provide comments today encouraging your support of the CFEC recommendation. By way of background, our organizations represent homebuilders, realtors, home buyers, and property owners across the state. Our organizations have been deeply involved in both the Climate Friendly and Equitable Communities (CFEC) rulemaking and HB 2001 (2023), which codified the Oregon Housing Needs Analysis. We will also be engaged in the OHNA rulemaking process.

Because of our commitment to increasing housing production and equitable housing outcomes, we appreciate this Council's recognition that CFEC and our Housing Goals are not aligned, and are encouraging DLCD to slow down the implementation of CFEC until proper implementation of OHNA is complete. Therefore, we support the HPAC moving the CFEC recommendation forward to the Governor.

Throughout the entire CFEC RAC process, we raised concerns about how the CFEC rules would have significant inequitable outcomes for housing development. We specifically raised concerns that the CFEC rules were being created in a vacuum without alignment with the upcoming OHNA legislation and rulemaking. Unfortunately, our concerns were not listened to, and to this day, continue to go unaddressed.

To be clear, these concerns are not merely "questions" as categorized at the last LCDC Commission hearing. We have significant concerns about the outcomes of these rules for housing development, which is why we continue to raise them and pushback against CFEC where it is appropriate.

We fear that without significant Legislative and Executive oversight, the conflicts between CFEC and OHNA will not be properly addressed. This will result in disastrous outcomes for our local government who are responsible for promoting needed housing development under OHNA, which in turn will have negative consequences for housing producers who will be caught in the crossfire of bureaucratic whiplash.

Attached to this letter is the comment letter we provided to LCDC at the last Commission meeting outlining our overarching policy concerns with CFEC and the OHNA rules. As we have worked in partnership with local governments and DLCD on implementing OHNA, we have come to find even more concerns with the two countervailing policies. We anticipate that as we go, we will find even more areas where these policies fail to align. This is why a stay on certain sections of the rules is imperative.

We are happy to provide additional information to the HPAC if requested, but for the purposes of this letter, we will just focus on two examples:

I. The housing portions of CFEC should not come into effect until after OHNA is in effect because doing otherwise puts the cart before the horse when planning for future housing need:

OHNA requires the state to assign local governments “housing need” allocations and targets by January 1, 2025. The allocation and targets are based on several factors, including the 20-year regional need, forecasted population and job growth, Metro’s needed housing projections under ORS 197.303, and need across various income levels. Under OHNA, local governments must plan to meet this need and their targets. They must take significant steps to update their comprehensive plans and zoning codes to try and meet these specific metrics.

Conversely, in the most recently adopted CFEC rules, OAR 660-012-0315 requires a subject local government to adopt a Climate Friendly Area “sufficient to accommodate at least 30 percent of the total identified number of housing units necessary to meet all current and future housing needs.” Cities must then adopt land use requirements for climate-friendly areas and a climate-friendly comprehensive plan by December 31, 2024. Cities are already completing their CFA studies. All “current and future housing needs” means something **very different** than what is contemplated in OHNA. Under the newly adopted CFEC rules, “housing need” is determined by the city’s most recently adopted and acknowledged “housing needs analysis” or “housing capacity analysis”, which is a very different articulation of housing need that does not take into consideration the factors outlined in OHNA. In fact, the entire reason we passed OHNA this Session was because how cities were planning for housing need previously was not furthering Oregon’s fair or equitable housing outcomes.

Why would we ask cities to designate large swaths of their jurisdiction as Climate Friendly Areas large enough to hold 30% of “all future housing need” based on old metrics and require them to update their zoning ordinances and comprehensive plans to promote this “housing need” all to turn around and hold the city accountable for completely different housing metrics two years later? How does this type of inconsistency and overburden on local planning staff help improve housing production? How does this help promote the outcomes OHNA statutorily requires cities to plan for? It simply does not.

There is no reason for the housing portion of the CFEC rules to come into effect before OHNA comes into effect. The best course of action is to stay the portions of the CFEC rules impacting

housing, allow the state to complete the OHNA rulemaking, allow OHNA to come into effect, and then allow local governments to plan their climate friendly areas after they know what their housing need allocations and targets are under OHNA.

II. CFEC does not simply “allow” more housing units, but imposes minimum density standards that create exclusive high-density zones, which will disallow important housing types promoted under OHNA and HB 2001 (2019):

The CFEC rules contain highly prescriptive and aggressive minimum density standards for Climate Friendly Areas. Specifically, some jurisdictions have a minimum density standard of 20-25 du/net acre. The reason for these standards, according to DLCDC, is that we need to require increased density in CFAs to reduce VMT at levels great enough to meet the VMT reduction targets. Stated plainly, if enough people are living in CFAs in high-rise apartments with no parking, the less likely they are to drive cars, and the more likely they are to take public transit. While we fundamentally disagree with this type of social engineering through planning, and question the efficacy of this policy, we also have consistently opposed the prescriptive density standards because of the negative outcomes they will have on housing development.

Given the standards outlined in the rules, we would realistically see near exclusive development of multistory housing. This means more expensive building materials and design requirements, which would work against the affordability goals of OHNA. We would see homogenous production of multistory apartments, which would work against the diverse housing goals of OHNA and HB 2001 from 2019, which sought to allow duplexes city-wide. There would be almost no opportunities for homeownership in CFAs, which works against the equity goals of OHNA and sets future generations up for a lifetime of being rent burdened. To top it off, DLCDC and local governments acknowledge that gentrification will be an inherent component of Climate Friendly Areas. See the [City of Eagle Point’s](#) quote from their CFA study:

“Due to the nature of the regulations, an area designated as a climate friendly area gains the capability to be redeveloped for a wide variety of uses and dense housing types. While these factors intend to promote nodes not reliant on personal automobile use, they also have the capability of creating modernized, attractive, and competitively priced developments which can subsequently displace protected classes.”

The density standards in CFA’s work completely against OHNA’s statutory requirement that OHNA be implemented under the principles of developing affordable and equitable housing, and that local governments can face enforcement orders for policies that inhibit equitable access to housing choice.

Again, why would we require cities to adopt certain policies knowing they will result in inequitable housing outcomes all the while passing legislation holding them accountable for adopting policies that result in inequitable housing outcomes? This is what we mean when we say that these two policies do not align.

While DLCD may have made some minor improvements to the rules, our concerns about the misalignment of these two policies have NOT been addressed. We have not been alone in raising these concerns and others. We urge the HPAC to please review the following comment letters submitted on the matter:

- [City of Bend's Study](#) highlighting concerns with implementation of rules.
- [City of Springfield's written comments](#) for the LCDC Commission meeting.
- [LOC's written comments](#) for the LCDC Commission meeting.
- [Hillsboro's & Cornelius' written comments](#) for the LCDC Commission Meeting.
- [OR, OHBA, OPOA, OBI, OTA comment letter](#) stating our concerns with OHNA in April.

For these reasons, we strongly urge the HPAC to move forward with their recommendation to the Governor that the CFEC rules related to housing be stayed until after OHNA rules come into effect. To do otherwise creates greater internal conflict for local governments being tasked with implementing opposing mandates, which puts the Governor's goal of 36,000 units a year in jeopardy.

As previously stated, we would be happy to provide the HPAC with more information if requested and are available to answer any questions members of the Council may have.

Jodi Hack
CEO
Oregon Home Builders
Association
Jhack@oregonhba.com

Jeremy Rogers
Director of Legal Affairs &
Public Policy
Oregon REALTORS®
jrogers@oregonrealtors.org

Samantha Bayer
General Counsel
Oregon Property Owners
Association
sbayer@oregonpropertyowners.org



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

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.