



Oregon

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TO: Land Conservation and Development Commission

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SUBJECT: **Agenda Item 12, July 23-24, 2020, LCDC Meeting**

CLIMATE FRIENDLY AND EQUITABLE COMMUNITIES RULEMAKING

I. AGENDA ITEM SUMMARY

Purpose. Staff from the Department of Land Conservation and Development (department or DLCD) will provide the Land Conservation and Development Commission (commission or LCDC) with an update on progress toward reducing climate pollution per Governor Brown's Executive Order 20-04: Directing State Agencies to Take Actions to Reduce and Regulate Greenhouse Gas Emissions. Staff is looking to confirm and receive guidance on the objectives for and desired outcomes of rulemaking, as well as phasing options and interests to be represented on a rulemaking advisory committee. Staff seeks this direction in order to finalize a rulemaking charge and phasing structure to present at the September commission meeting. Staff plans to request LCDC initiate rulemaking at their September meeting.

Objective. Staff seeks guidance on rulemaking outcomes and objectives, interests for a rulemaking advisory committee, and feedback on phasing options presented in this memo. Staff also hope that commissioners will be familiar with the range of concurrent activities that department and associated agency staff are pursuing to reduce climate pollution.

This staff report includes:

- An overview of multi-agency actions underway within [Every Mile Counts](#) two year work plan, including scenario planning scoping and financing;
- A report on the results from DLCD and ODOT-led interviews and a survey on approaching rulemaking;
- Proposed outcomes for the rulemaking;
- Options for phasing the rulemaking; and
- Interests to be included on the rulemaking advisory committee.

For further information about this report, please contact Matt Crall, Planning Services Division Manager, at 503-934-0050 or matthew.crall@state.or.us; or Palmer Mason, Senior Policy Advisor, at 503-934-0020 or palmer.mason@state.or.us.

II. **BACKGROUND**

Oregon's goals for climate pollution reduction are ambitious: 45% below 1990 levels by 2035, and 80% below 1990 levels by 2050. A wide range of ambitious actions across all sectors of society, economy, and the government are required in order to meet these targets. Governor Brown's Executive Order 20-04 makes it clear that a substantial number of state agencies and commissions, including DLCD and LCDC, must take whatever actions we can in order to meet Oregon's goals.

Transportation has become the largest sector of climate pollution in Oregon because transportation pollution has increased while pollution from electric generation has decreased. Transportation and land use are intrinsically connected, and how we plan our communities directly affects the movement of people and goods.

The department's role is to help Oregon communities plan for a future that reduces driving while ensuring that all Oregonians enjoy improving access to jobs, housing, and services. The last ten years of studies and planning show that this is accomplished by:

- More development in climate-friendly locations, including city centers and town centers and transit corridors, where services are located and driving is reduced;
- Investments in facilities for walking, bicycling, carpooling, and transit so that people can reach destinations without depending on single occupancy vehicles;
- System performance measures that achieve community livability goals rather than exclusively focusing on motor vehicle capacity; and
- Managing parking to avoid over-building parking which subsidizes driving and uses space needed for housing and other services, as well as increasing housing costs.

The department's role in helping to achieve the state's climate pollution reduction goals will be through rule amendments and a supporting program to update how land use and transportation system plans are developed and implemented at the local and regional level. With an equity lens of addressing historically disproportionate impacts in the land use and transportation system, department staff will help ensure that these changes reduce disparities at the local level. Historically disadvantaged communities generally include Black, Indigenous, people of color, people with low incomes, disabled community members and other populations protected by Title VI of the Civil Rights Act of 1964.

A. RECENT COMMISSION MEETINGS

Beginning in November 2019, staff provided the commission with background information on the department's work in climate pollution reduction.

- [November 2019](#): Background on climate change activities; the Statewide Transportation Strategy; the Metropolitan Greenhouse Gas Reduction Target Rules (Oregon Administrative Rules (OAR) Chapter 660, Division 44), and the Transportation Planning Rules (OAR Chapter 660, Division 12), including work on proposed rule amendments in 2018. This staff report also included a discussion on some key issues.
- [January 2020](#): More details on the Statewide Transportation Strategy, including land use actions that reduce pollution.
- [May 2020](#): Information on Governor Brown's Executive Order on climate; and scenario planning, including implementation in the Portland and Central Lane metropolitan areas.

B. EVERY MILE COUNTS WORK PROGRAM

DLCD, in partnership with the departments of Energy, Environmental Quality, and Transportation, is leading the [Every Mile Counts](#) work program. The four agencies submitted a joint work plan to the governor on June 30th (Attachment A). *Every Mile Counts* actions are short-term (the next 2 years or so) and multi-agency actions from the Statewide Transportation Strategy (STS). The *Every Mile Counts* work program includes a set of ten actions. DLCD is the lead agency for **three** actions:

- **Climate Friendly and Equitable Communities** (Rulemaking)
This is the central action that the department will undertake to guide Oregon's land use planning system toward making needed reductions in climate pollution. The action will consist of rulemaking across multiple divisions, touching on transportation planning, metropolitan greenhouse gas reduction, parking, housing, and potentially other areas; as well as ongoing programmatic work and technical assistance. This is a significant work task and is in collaboration with the Oregon Department of Transportation (ODOT).
- **Scenario and Climate Pollution Reduction Planning**
DLCD and ODOT staff will support regional scenario planning, and other associated efforts that reduce climate pollution. The nature of this program will be determined based on the DLCD and ODOT-authored policy memo commission will receive in September. That Policy Options Memo is described below.
- **Parking Management**

In addition to the regulatory elements included in the rulemaking described above, the department will develop guidance, information, educational materials, and services.

As the first steps towards implementing DLCD's actions in the Every Mile Counts program, staff is presently working on the following work products.

1. Scenario Planning Policy Options Memo

To set the scope for the Scenario and Climate Pollution Reduction Planning action in the *Every Mile Counts* work program, DLCD and ODOT staff are preparing a Policy Options Memo to identify the costs, funding sources, technical support needs, and implementation challenges and constraints of several potential policy options focused on scenario planning.

In June 2020, DLCD and ODOT staff conducted extensive stakeholder outreach to better understand local opportunities and constraints in reducing climate pollution through local planning and implementation. Staff have included a summary of responses from nearly one hundred informed participants in Attachment B. Staff will integrate the findings from this outreach with the financial analysis and lessons learned from the last ten years of scenario planning to present policy options recommendations to the commission in September 2020. Staff will include the question of metropolitan area decision making and enforcement in this memo. This memo is the final and significant piece of information to help LCDC and staff define the scope of the rulemaking effort.

2. Metropolitan Greenhouse Gas Target Rules Review

The Metropolitan Greenhouse Gas Reduction Target Rules in [OAR Chapter 660, Division 44](#) establish greenhouse gas reduction targets for metropolitan areas and define the methods for projecting pollution reductions through scenario planning. [OAR 660-044-0035](#) calls for the commission to determine if updates to the targets are warranted by June 2021. As part of scoping rulemaking, the commission review of the existing rules will serve to link commission desired outcomes to the rulemaking approach for specific updates of the rules. We have included a copy of Division 44 as Attachment C.

The criteria for review and evaluation of the target rules set forth in [OAR 660-044-0035](#) include a range of policy factors. These factors coincide with the work the department is currently conducting in response to Executive Order 20-04 and the *Every Mile Counts* program. Staff will bring the review to commission in September to further inform the scoping of the rulemaking. Staff will also provide advice if specific updates to the targets would be necessary to achieve the commission's desired outcomes.

LCDC adopted the initial metropolitan greenhouse gas reduction targets in Division 44 in 2011 before the Statewide Transportation Strategy (STS) was completed. At that

time, staff and a rulemaking advisory committee (RAC) developed reasonable assumptions about the future vehicle fleet, fuels, and technology. Since the commission amended the targets in 2016 to rely on the future assumptions in the STS Vision, there is less need to update those detailed technical assumptions. However, staff intends to conduct a policy level review, focusing on the methods for demonstrating compliance with the targets through scenario planning and performance monitoring. Again, we will report on these findings with any recommendation in September.

C. INTERVIEWS AND SURVEY REPORT

Since the May LCDC meeting, DLCD and ODOT staff have conducted in depth interviews and surveys with nearly 100 respondents representing a range of interests. Staff requests commission's review of these results, included in Attachment B. The results of these interviews and surveys are helping staff define the scope and options associated with the climate rulemaking process. The interviews and survey questions focused on practices and policies to help staff and commission understand implementation challenges and opportunities. The questions focused on how best to build climate friendly communities in ways that are inclusive, advance diversity, equity, and inclusion outcomes, and promote affordable living.

DLCD and ODOT staff are carefully considering this guidance to inform the Policy Options Memo and associated rulemaking efforts identified in the *Every Mile Counts* work program. Staff requests that commissioners use the information in Attachment B to help inform the commission's desired outcomes for rulemaking. In addition to the interviews and survey, DLCD and ODOT solicited guidance through the *Every Mile Counts* survey and webinars conducted in response to the Governor's Executive Order 20-04.

Key themes from interview and survey respondents include the following, with additional detail presented below:

- There is broad support for action to reduce climate pollution in the transportation sector;
- More equitable actions and outcomes need to be prioritized;
- Actions to reduce climate pollution can help provide other community benefits, including more equitable outcomes;
- There are a variety of climate pollution reduction strategies being employed at local and regional levels;
- Partnerships at the state, regional, and local levels are important to reduce pollution;
- The state should set overall goals, and provide local flexibility in meeting them; and

- The state needs to provide leadership in providing technical and financial support.

Equity in Climate Pollution Reduction Work

Respondents are clear that Oregon can learn from examples of newer local plans and policies that are putting an equity lens front and center. Their advice is that meaningfully addressing equity requires centering the needs of historically disadvantaged communities, including Black, Indigenous, people of color, people with low incomes, disabled community members and other disadvantaged populations. As described by interview respondents, these processes must be inclusive, and proactively recruit guidance from underrepresented communities utilizing a variety of strategies.

Opportunities and Challenges to Climate Pollution Reduction Work

Many local governments report working on or have a goal to reduce climate pollution, but the details of staffing, funding, and strategies vary widely. Respondents express that there are several significant barriers to reducing climate pollution, ranging from a lack of political leadership to systemic challenges in auto-oriented laws and engineering standards. There is also agreement among respondents that strategies to reduce climate pollution also produce other benefits and help communities meet important livability goals. Local governments report a clear need for technical and financial support from the state to support local implementation.

Respondents report that greenhouse gas inventories have mostly been conducted at the local level, though there is clear support expressed for regional planning due to the interconnections of the regional economy and transportation system. The majority of respondents say that a metropolitan planning organization or council of governments should provide more leadership on reducing climate pollution and support strong regional partnerships.

Rulemaking Strategy for Climate Pollution Reduction Work

Respondents indicate support for a phased rulemaking strategy and report a sense of urgency to tackle the climate crisis. There is also very clear support for building community support through a bottom up approach that engages local governments throughout the process and provides a flexible approach that can be responsive to the differences of each local context. Overall, respondents are supportive of strong state actions to reduce climate pollution.

III. **COMMISSION DIRECTION**

The department requests commission guidance in preparation for initiating rulemaking at the September commission meeting, with some core elements of a rulemaking charge and charter described below.

A. **WORKING DRAFT PROPOSED OUTCOMES**

Staff has prepared a working draft list of rulemaking outcomes for commission consideration and feedback. With this guidance, staff will draft a charge and charter or operating guidelines for a Rulemaking Advisory Committee (RAC).

- Meeting Oregon's climate pollution reduction goals and specifically, the Division 44 climate pollution reduction targets;
- Supporting affordable living, including measures to reduce transportation costs and increase housing choice and supply;
- Engaging community members to deliver more equitable outcomes;
- Improving the capability of local governments and regional entities to plan for and reduce climate pollution; and
- Recognizing EO 20-04's call for urgent action and a lasting programmatic response.

B. **POTENTIAL RULEMAKING PHASING**

The Climate Friendly and Equitable Communities Program rulemaking will include changes to the Transportation Planning Rules (TPR) (Division 12), the Metropolitan Greenhouse Gas Reduction Rules (Division 44). Amendments to housing rules (Divisions 7, 8, and 46) to implement the climate pollution reduction framework are expected to follow.

In May, the commission asked staff to assess the advantages and disadvantages of a two-phased approach. Staff have identified six potential options as described below for commission consideration and response. Each option differs only how the rulemaking process is structured. Staff expects the substantive policy content to be the same under each option. We are not asking commission to select an approach until the Policy Options Memo with funding strategies, is complete.

- Single-phase
- Two-phase: Adopt modified TPR 2018 draft first
- Two-phase: Require local TSPs in metropolitan areas to be consistent with regional targets first, then set a compliance schedule
- Two-phase: Performance measurement first
- Two-phase: Prohibit actions that increase pollution first

1. Single-Phase

In this approach, the rulemaking activities would be considered in a whole, phased throughout one process. The amendments would be adopted at one time. The rulemaking work, and staff's interaction with the commission, RAC, and stakeholders would be scheduled in succession over the course of the process. All of the major policy components, including compliance with the greenhouse gas reduction targets, would be included.

As an example, a version of this rulemaking would could start with an initial review of requirements on performance measurement and monitoring; then rules about implementing land use regulations; then the remainder of the rules.

Benefits of this approach:

- All of the rules may be developed together, more cohesively.
- The entire rulemaking process may run faster than a two-phase process.
- The approach accounts for current limitations such as COVID-related budget pressure on the full range of stakeholders.
- The process may be less confusing to participants and stakeholders.

Drawback to this approach:

- Rules would be adopted by the end of 2021.

2. Two-phase: Adopt modified 2018 TPR draft first

The 2018 TPR draft rules (Attachment D) were presented to the rulemaking advisory committee in June 2018, but were not presented to the commission. In November 2019, [staff reported in detail](#) (Attachment E) on the background of this work, and why staff does not recommend adoption of that draft.

To summarize, the rules as proposed by the staff and supported by the RAC would not have added any requirement for local governments to reduce pollution. The rulemaking project was intended to clarify existing requirements for local governments within Oregon's eight metropolitan areas. The rules were written to enable more rigorous climate pollution reduction requirements in the future, but would not have required local governments to meet pollution reduction targets. The memo to the RAC included an option for discussion (Option G3 on page 27 of Attachment D) that would have advanced the climate requirements somewhat. These were outside the scope of the rulemaking, and not supported by most of the RAC at that time.

At the May 2020 meeting, the commission received public testimony from Mr. Bob Cortright and Ms. Mary Kyle McCurdy with a modified version of Option G3 and a recommendation that the commission adopt this version immediately, and then proceed to address other issues through a full rulemaking process. However, as originally

drafted, the 2018 rules with Option G3 cannot be effectively implemented, as the state and local governments do not have the modeling tools or capacity to make the findings that would be needed to demonstrate or evaluate consistency with regional targets.

Benefits of this approach:

- While this approach would allow the commission to consider immediate action, some time and stakeholder involvement would be necessary to modify the 2018 language. LCDC's [2019 Guidelines for Public Participation](#) are included for reference as Attachment F.
- If any cities or counties update transportation plans between now and the adoption of the rest of the rules, they would be required to demonstrate how the plan would meet the pollution reduction target.

Drawbacks of this approach:

- The modified version of Option G3 is substantially different in policy impact from the rules that were discussed by the RAC in 2018, and has not been reviewed by any RAC. Adopting rules without a RAC could lead to legal challenges, and would be a major departure from the typical public participation process LCDC uses for rulemaking.
- Neither DLCD nor ODOT has funding for the scenario planning and the modelling that the interim rule would require.
- Without state funding, local governments may defer plan updates rather than spend local funds for scenario planning. As a result, they would continue using older plans that do not address greenhouse gas pollution.
- While climate pollution models such as VisionEVAL operate at a regional scale, the interim rule would apply to cities and counties individually. Neither DLCD nor ODOT staff presently have a way to effectively determine if a local plan meets the regional target. This would make our review potentially arbitrary and subjective, and subject to legal review.
- The rules adopted in the first phase would likely be significantly amended when the second phase rules are written to address all of the policy issues. This would create additional work for the RAC and staff, and additional uncertainty for local governments during the interim period.

Even though there are many drawbacks to immediately adopting a modified version of the 2018 draft, staff expects that many of the elements of the 2018 draft will be incorporated into the upcoming rulemaking.

3. Two Phase: Require local TSPs in metropolitan areas to be consistent with regional targets, then set a compliance schedule

In this approach, a first phase of rulemaking would require new or amended local transportation system plans for local governments in metropolitan areas to comply with Division 44 reduction targets. As there is presently no effective way to do this from a modeling and programmatic perspective, we would not expect to see any new TSP

amendments from metropolitan areas that would comply with such a rule during this time.

A second phase would set out a schedule for local governments to engage in coordinated planning to update their plans, based on available resources and other factors. This schedule would be determined by working with ODOT and local governments to determine a reasonable schedule for each local government in metropolitan areas to develop conforming plans. For example, local governments in the Central Lane metropolitan area could be set early in the process due to the completed, but not adopted, scenario plan that is designed to meet the climate pollution targets. Other remaining rulemaking would also occur in the second phase.

Benefits of this approach:

- The department would have the grounds to appeal plan amendments that do not demonstrate consistency with regional targets.
- Local governments would have some certainty about timing, and support when developing their next TSP update.
- This approach allows LCDC to take early action to reduce climate pollution.

Drawbacks of this approach:

- DLCD would need to appeal any non-compliant TSP submitted that do not demonstrate regional compliance.
- Accordingly, the first phase places an effective moratorium on TSP updates for a period of time. This may not be practically possible or legally feasible. If it is possible, it could have unintended consequences and certainly would cause frustration at the local level.
- There are issues that need to be resolved in rulemaking about how to adopt local TSPs within a framework of metropolitan-level targets.
- The second phase of rulemaking will require detailed coordination with a range of stakeholders, and may require additional rulemaking to change dates in future years.
- A two-phase approach may be more confusing for participants and stakeholders.
- While the first phase would be relatively quick, the second phase may not be adopted as quickly.

4. Two-Phase: Performance Measurement First

In this approach, a first phase of rulemaking would consist of refining the list of performance measures from the 2018 TPR rulemaking that were demonstrated to be good proxies for measuring progress in reducing pollution. LCDC would adopt rules requiring cities and counties in metropolitan areas to report on progress using these performance measures. These reports would be useful as a baseline for future improvement. The first phase rules would be adopted in early 2021. A second phase would follow, with all of the other needed rule amendments, in late 2021.

Benefits of this approach:

- Beginning a monitoring and evaluation program will give local governments a good idea about where we presently are, and where we need to go to meet reduction targets.
- Performance monitoring will eventually be required under all of the options.
- The performance measures identified in the 2018 TPR rulemaking were generally supported. Staff expects them to provide a solid base and momentum for more difficult policy discussions.

Drawbacks of this approach:

- Monitoring and evaluation do not, by themselves, reduce pollution.
- The 2018 work did not get far enough to set benchmarks and targets for performance. It only defined the methods that could be used to measure progress on specific elements.
- There is a potential that rules adopted in the first phase would ultimately need to be amended when the second phase rules are written.
- While the first phase could be relatively quick, the second phase work may not be adopted as quickly as a one-phase approach.

5. Two-Phase: Prohibit Actions that Increase Pollution First

In the first phase, LCDC would adopt rules to prohibit local governments from doing several types of actions that increase pollution by encouraging or enabling increased driving. Many existing local plans and regulations are based on an assumption that driving will increase in the future. The plans identify where to invest public money to accommodate increase driving. Accordingly, many associated regulations require private development be designed to accommodate this increase in driving.

While the first phase rules would not require local governments to prepare new plans or adopt new regulations, they would simply prohibit certain projects and not enforce certain development requirements, such as relaxing standards on congestion. The first phase rules would be adopted in early 2021. A second phase would follow, with all of the other needed rule amendments envisioned for adoption in late 2021.

Benefits of this approach:

- Some requirements would be implemented sooner, potentially resulting in better climate outcomes.
- Adopting prohibitions first will provide a clear signal to local governments about the direction they need to take.
- This approach allows LCDC to take early action to reduce climate pollution.

Drawbacks of this approach:

- There is a potential that rules adopted in the first phase would ultimately need to be amended when the second phase rules are written.
- While the first phase would be relatively quick, the second phase may not be adopted as quickly as a one-phase approach.

In summary, considering the five above options, staff expects that commission consideration of these benefits and drawbacks will be better informed with the Policy Option Memo, previously called a feasibility study, in September. We appreciate commission's consideration and discussion of these and other benefits and drawbacks in July. Commission feedback will help inform the Policy Options Memo.

C. RULEMAKING ADVISORY COMMITTEE

Staff recognize the benefits of a rulemaking advisory committee (RAC) that provides space for a range of interests and perspectives. These will include directly affected local governments as well as other community based and community serving organizations that stand to benefit, or be harmed, by these rules. We expect state agency partners, including ODOT, will participate with DLCD personnel as staff support for the committee. We request LCDC appoint one or two commissioner as liaisons to the advisory committee. We request commission guidance on the following draft range of interests to be represented on the RAC.

1. Local Governments
 - 1.1. Elected or Appointed Leader – Large City
 - 1.2. Elected or Appointed Leader – Medium City
 - 1.3. Elected or Appointed County Leader
 - 1.4. Planning Director – Large City
 - 1.5. Planning Director – Medium City
 - 1.6. County Planning Director
 - 1.7. League of Oregon Cities

2. Metropolitan Regions
 - 2.1. Metro regional government
 - 2.2. Metropolitan Planning Organization outside of Portland Metro

3. Development and Land Use
 - 3.1. Multifamily housing builder
 - 3.2. Planning professional association

4. Advocacy
 - 4.1. Land use and planning advocates
 - 4.2. Transportation choice advocates
 - 4.3. Housing advocates
 - 4.4. Representatives who serve or are members of historically marginalized populations
 - 4.5. Environmental Justice advocates/liaison to the Environmental Justice Task Force
 - 4.6. Representatives of organizations who serve communities who are mobility limited or are mobility limited
 - 4.7. Organizations who serve tenants or a tenant perspective
5. Research or academic
 - 5.1. University of Oregon
 - 5.2. Portland State University

IV. **CONCLUSION**

Considerations. Clear direction from the commission on the outcomes and approaches will be an important consideration for a successful effort. This rulemaking and the ultimate program implementation will be complex and require the balancing of multiple perspectives. Finally, successful implementation will depend, to a large degree, upon on the availability of resources, including whether the new staffing and technical assistance funding are appropriated in the 2021 Session.

Constraints. The rulemaking will be conducted with existing staff from DLCD and *Every Mile Counts* state agency partners. This constraint means that there are limits to the breadth, depth and timing of policy issues covered, the level of agreement that can be reached, and the range of interest groups engaged through the advisory committee method. Staff also are preparing an associated Communications and Engagement strategy which will cover a more full range of engagement and consultation strategies.

Staff requests the commission provide guidance and feedback on the following issues to help staff prepare for initiating rulemaking at the September meeting.

- Are the desired outcomes, described above, the right ones? If not, what would commission add or edit? Staff will use feedback to refine this list and develop a draft charge for the rulemaking for final commission consideration in September.
- A variety of potential methods of phasing the rulemaking process are described above. Are there other approaches that should be considered? Are there other benefits or drawbacks of the approaches? Which benefits and drawbacks are most important to the commission in selecting an approach?

- Does the list of potential participants to recruit for the rulemaking advisory committee look complete? Are we missing particular interests?
- At the commission retreat in August, could the commission identify one or two commissioners to be the commission liaison for this rulemaking process?

V. **ATTACHMENTS**

A. **EVERY MILE COUNTS WORK PROGRAM**

B. **CLIMATE FRIENDLY AND EQUITABLE COMMUNITIES INTERVIEWS AND SURVEY REPORT**

C. **OREGON ADMINISTRATIVE RULES CHAPTER 660, DIVISION 44 (METROPOLITAN GREENHOUSE GAS REDUCTION TARGET RULES)**

D. **JUNE 2018 RAC DRAFT RULES**

E. **NOVEMBER STAFF REPORT**

F. **LCDC 2019 PUBLIC PARTICIPATION GUIDELINES**