



Oregon

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September 10, 2012

TO: Land Conservation and Development Commission

FROM: Robert Cortright, Scenario Planning Coordinator

SUBJECT: **Agenda Item 4, September 20-21, 2012, LCDC Meeting**

PUBLIC HEARING ON PROPOSED SCENARIO PLANNING RULEMAKING FOR THE PORTLAND METROLITAN AREA

I. AGENDA ITEM SUMMARY

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

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

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission receive public comment on the proposed rules and, based on public comments, identify issues requiring further information or possible changes to proposed rule language for consideration at the Commission's November 2012 meeting. The Department is proposing that the Commission adopt the proposed rules at the November meeting in order to meet the legislative deadline for rule adoption.

III. BACKGROUND

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

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

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

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

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

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

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

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

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

(HB 2001, Section 37(8))

The proposed rulemaking is part of a broader effort by the state; in cooperation with metropolitan areas, to evaluate changes to land use and transportation plans and policies to significantly reduce GHG emissions from light vehicle travel and to support meeting statewide goals to reduce GHG emissions to 75 percent below 1990 levels by the year 2050.

State-level efforts are being led by the Oregon Department of Transportation (ODOT) and DLCD through the Oregon Sustainable Transportation Initiative (OSTI). OSTI carries out directives from the Legislature set forth in HB 2001 and Senate Bill (SB) 1059 (2010). OSTI includes a series of efforts that are designed to reduce GHG emissions from light vehicle travel, and to support land use and transportation scenario planning by metropolitan areas to accomplish this goal. OSTI efforts that have been completed or underway include the following elements.

In February 2011, ODOT and DLCD submitted to the Legislature the **Scenario Planning Financing Report**. The report estimates the amount of funding that metropolitan areas are likely to need to conduct land use and transportation planning for GHG reduction. The report estimates that scenario planning would cost from \$250,000 to \$1.5 million for each metropolitan area.

In March 2011, ODOT, the Oregon Department of Environmental Quality (DEQ) and the Oregon Department of Energy (ODOE) provided the commission with the **Agencies' Technical Report** to support setting targets. The report estimates the amount of GHG reduction from light vehicles travel in metropolitan areas that is needed by 2035 to support meeting the state's 2050 goal. The report also estimates the likely contribution of improvements to vehicle technology, and changes to the vehicle fleet and fuels in achieving the 2035 emissions goal.

In May 2011, the commission adopted the **Metropolitan Greenhouse Gas Reduction Targets Rule**. The adopted targets call for a 17 to 21 percent reduction in GHG emissions per capita by 2035 in the state's six metropolitan areas to support achieving the statewide goal for 2050. The targets and target rule were developed by the Target Rulemaking Advisory Committee (TRAC) composed of metropolitan local officials, interest groups and other state agency commissions.

As directed by SB 1059, ODOT and DLCD are working with metropolitan areas to develop resources and information to assist metropolitan areas with scenario planning and other actions to reduce GHG emissions. These include: **scenario planning guidelines**, a **toolkit** of recommended practices and evaluation techniques for GHG emission reduction; and a **public education** effort to inform the public about the need to reduce GHG emissions and costs and benefits reducing emissions.

As directed by HB 2001, ODOT has provided funding and technical assistance to **Metro for scenario planning** to develop alternative land use and transportation scenarios to meet the GHG reduction targets adopted by the commission. Metro is conducting required scenario planning as part of its "Climate Smart Communities Project". Additional information about Metro's work is available on Metro's website:

<http://www.oregonmetro.gov/index.cfm/go/by.web/id=36945>

ODOT and the Oregon Transportation Commission are in the process of developing a **Statewide Transportation Strategy (STS)** that will outline recommendations for state actions to reduce greenhouse gas emissions from the transportation sector in support of the statewide 2050 goal of a 75 percent reduction in GHG emissions. (A briefing on the draft STS is provided as Agenda Item 5 at this Commission meeting.)

In December 2011, the commission established a Rulemaking Advisory Committee (RAC) to help the commission and the department develop an administrative rule to fulfill the commission's responsibilities for scenario planning rulemaking in HB 2001. The RAC included representatives of the following interests and groups:

- LCDC member (Chair of the rulemaking advisory committee)
- Metro
- Portland metropolitan area cities (4 members); with a mix of larger and smaller cities from around the region

- Metropolitan area counties
- Oregon Department of Transportation
- Oregon Department of Environmental Quality
- Oregon Global Warming Commission
- TriMet
- Port of Portland
- Land use and environmental interests
- Business and development interests
- Public health interest
- Representative from a nearby metropolitan area

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

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

The department provided notice of the proposed rulemaking through the Secretary of State's Bulletin published on August 1, 2012. A draft of the proposed rule has been distributed to interested persons and available on the department's website since August 1, 2012. Attached with this staff report is a revised version of the proposed rule – dated September 10, 2012 – that includes a number of minor, editorial changes to the proposed rule based on review by legal counsel.

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

IV. DEPARTMENT ANALYSIS

The proposed rules provide for the selection, adoption, review, implementation, and monitoring of a preferred scenario. The preferred scenario will be implemented through amendments to Metro's framework and functional plans, and local comprehensive plans and land use regulations. The commission will review these amendments. Metro will monitor progress on implementing the scenario and report concurrently with other required reports to the Commission.

The major elements of the proposed rules are outlined below:

Revised Purpose Statement. The existing purpose statement in Division 044 would be amended to include providing guidance to Metro and Portland metropolitan area local governments on the adoption and implementation of a preferred land use and transportation scenario. The purpose statement makes it clear that these new provisions apply only to the Portland metropolitan area (i.e. do not require scenario planning by other metropolitan areas or provide for Commission review and approval of scenario planning conducted by other metropolitan areas.)

New definitions. The existing rule, OAR 660-044-0005, is amended to include additional definitions that relate to Metro’s adoption of a preferred scenario.

Cooperative Selection of a Preferred Scenario. A new proposed rule, OAR 660-044-0040, will define the process for Metro and local governments to cooperatively select a preferred scenario, and for the initial adoption of the scenario. Metro will be required to undertake an extensive planning process with its partners to consider a number of factors, including criteria and measures aside from meeting GHG emissions targets, to prepare and evaluate a preferred scenario. The rule prescribes the elements that must be present in the preferred scenario, including both land use and transportation elements. The rule requires Metro to amend the regional framework plan to include the preferred scenario.

Regional Implementation through Functional Plan Amendments. A new proposed rule, OAR 660-044-0045, will define the process for Metro to adopt or amend regional functional plans to implement the preferred scenario. After the regional framework plan is amended to include the preferred scenario, Metro will be required to adopt detailed amendments to regional functional plans. The functional plans will include requirements for local governments to adopt implementing amendments to their comprehensive plans and land use regulations. The functional plans are required to include specifics on how local governments will accomplish these tasks in order to successfully implement the amended framework plan.

Commission review. A new proposed rule, OAR 660-044-0050, outlines the Commission’s review of Metro’s regional plans to implement the preferred scenario. The rule provides for the Commission to review amendments to the regional framework and functional plans in the manner of periodic review. The Commission’s review is intended to determine if the preferred scenario and amendments to the regional framework and functional plans can reasonably meet the GHG emissions reduction targets, as well as ensure consistency with the statewide planning goals. The rule provides that Commission review of framework plan amendments implementing the preferred scenario may be in conjunction with the review of a UGB or regional transportation system plan update.

Local Implementation. A new proposed rule, OAR 660-044-0055, guides the local implementation of the preferred scenario. Metro’s functional plans currently give local governments in the Metro area guidance on the development of amendments to their comprehensive plans and land use regulations. The rule requires local governments to update their comprehensive plans and land use regulations to implement the provisions of functional plans related to the preferred scenario. The rule also requires local governments to review any future amendments to ensure that they are consistent with the preferred scenario.

Monitoring and Update. A new proposed rule, OAR 660-044-0060, directs Metro to monitor implementation of the preferred scenario and report progress in meeting the measures and targets. The monitoring report to the Commission will be included in Metro’s existing performance report required every two years by ORS 197.301. The rule requires the Commission to either find that Metro is making satisfactory progress; or provide recommendations for corrective actions to be considered or implemented. The proposed new rule also fulfills the statutory requirement to establish a cycle for Metro to update the preferred scenario. The proposed rule requires Metro to update the preferred scenario in conjunction with UGB updates

The features of the proposed rules are also summarized in table form in Attachment 2.

V. DECISION-MAKING CRITERIA AND PROCEDURES

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

VI. DEPARTMENT RECOMMENDATION

The department recommends that the commission receive public testimony and provide direction to the department about any issues the commission wants staff to address before the commission’s November meeting, so that the commission can adopt the rule at that meeting, before the statutory deadline for adoption of January 1, 2013.

In identifying issues to be addressed, the commission may wish to extend time for public comment or receive additional review or recommendations from the RAC.

The department has identified the following options for commission action at the September meeting:

- (1) Close the public hearing on the proposed rule and reserve time at the November 14-16 meeting for commission deliberation and rule adoption (Department Recommendation);
- (2) Close the public hearing but allow additional time for interested persons to submit written comments in advance of the November 14-16, 2012 meeting. If this option is selected, the department recommends setting October 19th as a closing date for additional written comments, to allow the department time to respond to the comments and prepare options for the commission’s consideration at its November meeting;
- (3) Continue the public hearing to allow additional public testimony at the November 14-16 meeting. If the commission selects this option, the department recommends that the commission identify specific issues on which it would like to receive additional testimony in order to allow the department to prepare options for the commission’s consideration and focus commission deliberation toward adoption of the rule at the November meeting;
- (4) Combined with either option (2) or (3), request additional recommendation(s) from the RAC. If the commission selects this option, the department recommends that the commission identify specific issues or questions to be addressed by the RAC.

VII. DRAFT MOTION

Motion: I move to close the public hearing on the proposed rule and reserve time at the November 14-16 meeting for commission deliberation and rule adoption.

ATTACHMENTS

1. Proposed Rule Amendments and New Rules, Division 44, for Portland Metropolitan Area Scenario Planning, September 10, 2011
2. Summary of Proposed Scenario Planning Process for the Portland Metropolitan Area