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Colin McConnaha
Manager, Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
Via email to CapandReduce@deq.state.or.us

Re: Comments on Climate Protection Program Rulemaking Advisory Committee Meeting No. 3 on Community Climate Investments

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. We greatly appreciate the opportunity to participate in the Rulemaking Advisory Committee (RAC) for the Department of Environmental Quality's (DEQ) Climate Protection Program, and respectfully submit these comments on issues relating to the proposed Community Climate Investment program.

Our comments aim to respond to the following discussion questions presented by DEQ during the March 18, 2021 RAC meeting:

1. *What are your thoughts about integrating potential community climate investments in the CPP? Should there be a limit on how much regulated entities are allowed to use community climate investments?*
2. *What types of projects should be funded by community climate investments? How could DEQ ensure and prioritize investments in environmental justice and other impacted communities?*
3. *How could DEQ incorporate community input throughout this process?*

1. Introduction: DEQ Should Incorporate Community Climate Investments into the Climate Protection Program

In several previous comments submitted throughout this rulemaking process, we urged DEQ to incorporate flexibility mechanisms into the Climate Protection Program that would enable regulated entities to meet a portion of their compliance obligations through investments in GHG-reduction projects that benefit Oregon's impacted communities.[1] We are very encouraged by

[1] *See* GEI Comments on Cap and Reduce Technical Workshop 3: Alternative Compliance Options (Sept. 10, 2020); GEI Comments on Cap and Reduce Technical Workshop 5: Cost Containment (Oct. 2, 2020); GEI Comments on Cap and Reduce Illustrative Scenarios (Dec. 9, 2020); GEI Comments on the Climate Protection Program RAC Meeting 2: Flexibility Mechanisms (March 1, 2021).

DEQ's proposed Community Climate Investment (CCI) mechanism, which has the potential to further the program's environmental and equity objectives by incentivizing investments in technologies and infrastructure that benefit impacted communities.

Oregon's impacted communities, including environmental justice, BIPOC, low-income, and other frontline communities, face disproportionate risks from the impacts of climate change, yet are also at risk of being left behind or burdened by the transition to a low-carbon economy. The proposed CCI mechanism would fill an important gap in the Climate Protection Program by incentivizing Oregon's largest sources of greenhouse gas (GHG) emissions to invest in projects and programs that provide just and equitable benefits to communities and the climate.

To design an effective CCI program for Oregon that supports the state's climate and equity goals, we encourage DEQ to consider incorporating design elements from similar programs that have been successfully implemented by other jurisdictions. For example, the California Climate Investment program has comprehensive criteria and guidelines to ensure that funded projects achieve strict equity and climate objectives. Section 2 of these comments provides a brief overview of the California program. Section 3 urges DEQ to incorporate similar guidelines and criteria into a CCI program to drive investment in a wide range of projects that reduce GHG emissions in Oregon while also providing meaningful benefits and co-benefits to impacted communities across the state. Section 4 describes some strategies for identifying communities and populations that have the greatest needs for CCI projects, and section 5 encourages DEQ to develop community engagement guidelines that give residents the opportunity to influence investment decisions in their communities. Sections 6 and 7 describe some important considerations relating to the use and procurement of CCI credits. We conclude our comments by encouraging DEQ to incorporate the proposed CCI mechanism into the Climate Protection Program.

2. The California Model

Oregon's Community Climate Investments program should be tailored to meet Oregon-specific needs and objectives, DEQ should consider incorporating components from other successful climate investment programs into the CCI. The California Climate Investments program presents a particularly useful model for DEQ to draw from due to its robust community-centered, benefits-oriented processes. This section briefly summarizes the key elements of the California program.

California Climate Investments funds nearly 40 programs administered by 19 state agencies.[2] The initiative is funded by auction revenues collected under the state's cap and trade program. California law requires that at least 35% of investments benefit disadvantaged and low-income communities, but the program has dramatically exceeded this threshold—as of 2019, 57% of the program's investments were projected to benefit those priority populations.[3]

[2] Cap-and-Trade Auction Proceeds Third Investment Plan: Fiscal Years 2019–20 through 2021–22 at 11 (2019), https://ww2.arb.ca.gov/sites/default/files/classic//cc/capandtrade/auctionproceeds/2019_thirdinvestmentplan_final_021519.pdf?_ga=2.182242151.198233417.1616712492-218237969.1610481227.

[3] Cal. Air Resoures Bd., *California Climate Investments Provided More than $1 Billion for Underserved Communities in 2019* (April 22, 2020), https://ww2.arb.ca.gov/news/california-climate-investments-provided-more-1-billion-underserved-communities-2019.

Under the California Climate Investments program, administering agencies design and implement targeted funding programs in accordance with state criteria and funding guidelines. The agencies first consult with the California Air Resources Board (CARB) to develop project evaluation methodologies and community benefit criteria, then develop project evaluation criteria to determine whether eligible projects will provide direct, meaningful, and assured benefits to priority populations. Each agency designates a community liaison to engage with priority communities and identify community needs.[4]

To determine which projects will provide "direct, meaningful, and assured benefits" and qualify for California Climate Investments funding, administering agencies (1) identify a priority population or populations, (2) engage with members of the population to identify an important community or household need that can be meaningfully addressed through climate investments, and (3) apply evaluation criteria to identify at least one benefit from the project that will directly address an identified need.[5]

Through this process, California Climate Investments fund a broad variety of projects ranging from grants and rebates for equipment upgrades, to large capital projects, such as transit and intercity rail projects.[6] Consumers, small businesses, non-profit organizations, local governments, and state agencies are all eligible to receive funding under the program, though specific eligibility requirements vary between investment subprograms.[7]

California and Oregon are two very different states with unique economic and social dynamics, and regulatory mechanisms that work well in one state may be suboptimal for the other. We therefore do not mean to imply that an Oregon Community Climate Investments program should mirror the California Climate Investments program. However, certain mechanisms from California's program are designed to achieve similar objectives to those identified by DEQ for the Climate Protection Program, and we encourage DEQ to consider incorporating similar mechanisms into a CCI program. The following sections provide some additional examples of relevant substantive and procedural mechanisms from California's program.

3. Eligible Projects

Rather than create a prescriptive list of projects eligible for Community Climate Investment funding, we encourage DEQ to establish general project eligibility criteria and guiding principles that ensure investments support the program's goals while giving communities an opportunity to

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[4] CAL. AIR RESOURCES BD., FUNDING GUIDELINES FOR AGENCIES THAT ADMINISTER CALIFORNIA CLIMATE INVESTMENTS 7 (2018), https://ww2.arb.ca.gov/sites/default/files/classic//cc/capandtrade/auctionproceeds/2018-funding-guidelines.pdf?_ga=2.259552259.809046808.1617037184-218237969.1610481227 [hereinafter CARB 2018 FUNDING GUIDELINES].

[5] CAL. AIR RESOURCES BD., CALIFORNIA CLIMATE INVESTMENTS EVALUATION CRITERIA FOR PROVIDING BENEFITS TO PRIORITY POPULATIONS: SUSTAINABLE TRANSPORTATION 1 (2019), https://ww2.arb.ca.gov/sites/default/files/classic//cc/capandtrade/auctionproceeds/criteria-table-sustainabletransportation.pdf?_ga=2.224537049.258146968.1615833213-1802687480.1513294504.

[6] *See* Cal. Air Resources Bd, *CCI Quantification, Benefits, and Reporting Materials,* https://ww2.arb.ca.gov/resources/documents/cci-quantification-benefits-and-reporting-materials.

[7] CARB 2018 FUNDING GUIDELINES, *supra* note 4, at 8.

influence investment decisions. Under this model, CCI funds would be available for projects that meet general eligibility criteria and are selected through robust public engagement processes that ensure investments meet community needs and provide the greatest benefits to impacted communities.

To ensure that CCIs support the Climate Protection Program's goals and objectives, DEQ should establish ***general eligibility criteria*** that direct CCI funds to projects that: (1) are located in Oregon; (2) achieve real, measurable, additional, verifiable, and permanent reductions in anthropogenic greenhouse gas emissions from fossil fuel combustion; (3) provide direct and meaningful benefits to priority communities in the state; and (4) to the maximum extent feasible, provide measurable economic, environmental, or public health co-benefits, such as reductions of local co-pollutant emissions and improved air quality, equitable job and/or training opportunities, and/or equitable access to clean and affordable transportation.[8]

In addition to the general eligibility criteria, DEQ should develop ***guiding principles*** that direct CCI administrators to engage with priority communities to determine community needs and identify eligible projects that would maximize community benefits and co-benefits and avoid substantially burdening impacted communities. For example, the California Climate Investment program's guiding principles "provide direction to help administering agencies target investments to benefit priority populations, with a focus on maximizing disadvantaged community benefits; maximize economic, environmental, and public health 'co-benefits'; and provide fiscal and program transparency and accountability."[9]

The general eligibility criteria and guiding principles described in this section will help ensure that the CCI program funds projects that reduce anthropogenic GHG emissions while meaningfully benefitting communities impacted by the program and by climate change in general. But to ensure that CCI-funded projects provide meaningful benefits in the communities that need them the most, DEQ must first identify the communities across the state that should be prioritized in investment decisions.

4. Prioritizing Investments in Impacted Communities

To prioritize Community Climate Investments in environmental justice and other impacted communities, DEQ first must identify the communities and populations across the state that have the greatest needs for eligible projects and will experience the greatest benefits from CCI funding. Priority communities should include communities of color and low-income communities that have been historically disadvantaged, are disproportionately burdened by pollution or other environmental impacts, and/or are disproportionately vulnerable to cost increases resulting from the program, the energy transition, or climate change.

There are several available models and data sets that DEQ could draw from to help the agency identify (or develop processes for identifying) historically disadvantaged and/or at-risk populations across the state. The following models and mapping tools may provide useful data

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[8] For example, the California Climate Investment program's general criteria ensures that funded projects contribute to the state's climate goals and provide direct and meaningful benefits to priority populations. *Id.* at 2.
[9] *Id.* at 9.

sets for identifying priority CCI communities in Oregon, or serve as models for state-specific tools that may be developed in the future:

- ***EPA EJScreen:*** EPA's environmental justice screening and mapping tool allows users to map and identify environmental justice communities based on demographic indicators (including race, linguistic isolation, income, education, and age), environmental indicators (such as proximity to traffic, hazardous waste, or wastewater discharges) and public health risks (such as cancer risk, respiratory hazards, and exposure to dangerous air pollution).[10]
- ***CalEnviroScreen:*** The California Climate Investments program uses the California Communities Environmental Health Screening Tool (CalEnviroScreen) to identify priority communities based on demographics and pollution burdens.[11] While CalEnviroScreen only maps communities located in California, it could serve as a model or template for a similar Oregon-specific screening tool.
- ***Regional Equity Atlas:*** The Regional Equity Atlas for the Portland Metro region provides a series of maps and an interactive mapping tool to identify communities based on demographic profiles, access to health care and exposure to public health risks, and access to opportunity as determined by a variety of factors, such as access to public transit, education, housing affordability, proximity to food stores, and environmental health.[12]
- ***PBOT Equity Matrix:*** The Portland Bureau of Transportation's Equity Matrix and demographic indicator maps apply census tract data on race, income, and English language proficiency to identify equity communities in Portland.[13]

After DEQ identifies communities and populations that have the greatest needs for CCI projects, DEQ should develop community engagement guidelines to ensure that members of those communities have ample and meaningful opportunities to provide input and help identify priority CCI projects for their communities.

5. Incorporating Community Input

Community climate investments will provide the greatest public benefits when members of impacted communities have ample opportunities to engage in the program's development, participate in deliberative processes, and influence investment decisions. To achieve these objectives, the Climate Protection Program needs functional mechanisms to promote robust community engagement in communities that may often lack the resources or capacity to participate in public processes.

Community outreach and engagement are critical elements of the California Climate Investments program, and we encourage DEQ to consider incorporating elements from California's program

[10] U.S. Envtl. Protection Agency, *EPA EJScreen,* https://ejscreen.epa.gov/mapper/.
[11] Cal. Office of Envtl. Health hazard Assess., *CalEnviroScreen 3.0,* https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.
[12] *Regional Equity Atlas,* http://www.equityatlas.org.
[13] Portland Bureau of Transport., *PBOT Equity Matrix and Demographic Indicator Maps,* https://pdx.maps.arcgis.com/apps/MapSeries/index.html?appid=2e2252af23ed4be3a666f780cbaddfc5&utm_medium=email&utm_source=govdelivery.

into the Climate Protection Program. As we noted in section 2, when selecting projects for California Climate Investments funding, administering agencies must (1) identify a priority population, (2) identify an important need within that population that a climate investment project can help meet, and (3) identify a direct, meaningful, and assured benefit that the project will provide to the priority population.[14] To ensure that these criteria are met, each agency administering California Climate Investment funds must designate a community liaison to engage with communities and conduct outreach efforts to identify community needs. These liaisons also provide technical support to help priority populations access funding opportunities, navigate application processes, and leverage additional funding from other sources.[15]

To promote engagement by a broad variety of community members, the California program directs administering agencies to conduct a variety of outreach efforts, such as hosting regular workgroups with community organizations, as well as public workshops and community meetings that are widely publicized at local schools, libraries, community centers, medical clinics, bus stops and grocery stores.[16] Agencies must also provide regular updates via list serves, phone calls, videos, social media, radio, television and newspapers, and maintain connections with leaders in the community outside of formal processes.[17] In addition, every administering agency must maintain a website that provides information on funding opportunities, public outreach events, all submitted applications, final project selections, points of contact and resources for information and technical assistance, project outcomes, and opportunities for continued public engagement.[18] To make information accessible to a wide public audience, agencies are encouraged to coordinate with community groups to convey information at existing community meetings, host events at public locations such as schools and community centers that are accessible by public transportation, host meetings during convenient times, such as evenings and weekends, and invite diverse groups of stakeholders to participate in public events.

In addition to engaging directly in public outreach, administering agencies are directed to encourage funding applicants and recipients to engage with the community as much as feasible. Depending on the nature of the projects and funding opportunities, applicants may be encouraged to convene public steering committees to help oversee the design and development of a funded project, or partner with community-based organizations to solicit input on a project's design or selection.[19]

DEQ has put a commendable amount of effort into designing processes and creating opportunities for public engagement through the Climate Protection Program rulemaking, and the agency should certainly apply the lessons it has learned throughout this process into the draft rules. Oregon's impacted communities each have unique needs, objectives, and capacities to participate in public processes, so DEQ should avoid creating a rigid "one-size-fits-all" approach

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[14] CAL. AIR RESOURCES BD., CALIFORNIA CLIMATE INVESTMENTS EVALUATION CRITERIA FOR PROVIDING BENEFITS TO PRIORITY POPULATIONS: SUSTAINABLE TRANSPORTATION 1 (2019), https://ww2.arb.ca.gov/sites/default/files/classic//cc/capandtrade/auctionproceeds/criteria-table-sustainabletransportation.pdf?_ga=2.224537049.258146968.1615833213-1802687480.1513294504.
[15] CARB 2018 FUNDING GUIDELINES, *supra* note 4, at 7.
[16] *Id.* at 26–27.
[17] *Id.*
[18] *Id.* at 23–25.
[19] *Id.* at 27.

to community engagement. Instead, a CCI program should have adaptive, responsive community engagement guidelines that can be easily tailored to fit the needs and resources of the communities the program aims to serve.

6. Limiting the Use of Community Climate Investment Credits

Several factors relating to the program's design and available sector-based compliance pathways will influence the utility and risk of Community Climate Investment credits, and DEQ should account for those variables when setting limits for the use of CCI credits. For example, CCI credits could undermine the integrity of the cap if they are additional to compliance instrument allocations that represent the entire quantity of GHG emissions permitted under the cap. CCI credits could also deter some sectors from directly reducing emissions, which could potentially deter or delay compliance activities that would otherwise improve air quality in local communities.

As an overarching principle, DEQ should limit the use of Community Climate Investment credits if the availability and use of CCI credits could undermine the integrity of the Climate Protection Program's emissions caps. This outcome could occur if the compliance instruments allocated by DEQ equal the total quantity of allowable emissions under the program cap, and regulated entities are permitted to use CCI credits in addition to their allocated compliance instruments. Under this scenario, total GHG emissions would exceed the cap during a given compliance period, which would undermine the integrity of the program.

However, if the program includes mechanisms to protect the integrity of the cap, limiting the use of CCI credits may not be necessary for some sectors or regulated industries. For example, DEQ could limit the number of compliance instruments it allocates to regulated entities, and then allow entities to use up to an equal number of CCI credits as those withheld by the agency. If DEQ withholds compliance instruments in direct proportion to the amount of CCI credits that may be created under the program, it would ensure that CCIs never undermine the integrity of the cap. Under this model, CCI credits would simply represent GHG emissions reductions that provide additional benefits to Oregon communities.

DEQ should also limit the use of CCI credits by certain sources and sectors if the use of such credits would deter or delay emissions reductions that would otherwise benefit local communities. For example, industrial sources that are subject to regulation due to their process-based GHG emissions should be restricted from using CCI credits if doing so would result in co-pollutant emissions that degrade air quality in vulnerable communities. Similarly, because transportation fuels represent the largest source of GHG emissions in Oregon and a primary source of air pollution in environmental justice communities, transportation fuel suppliers should be required to invest in projects that directly reduce transportation emissions in Oregon.

7. Procuring Credits

Rather than establish a specific dollar amount that regulated entities would be required to pay to receive a CCI credit, we encourage DEQ to authorize a designated third party administrator to set CCI credit rates based on market costs that exist at the time of issuance. The costs to implement emissions reduction projects will vary over the course of the program, and rates established by regulation may not reflect the actual cost of reducing one ton of carbon. This dynamic has played out in other regulatory offset programs. For example, through 2019, the average cost spent by the Climate Trust to offset one ton of carbon dioxide (CO_2) emissions was more than double the CO_2 monetary offset rate established by the Oregon Energy Facility Siting Council.[20] To prevent this outcome, the program should allow CCI rates to fluctuate in response to real-world conditions.

If a CCI credit represents a one-ton reduction in GHG emissions, the entity administering CCI funds must have the flexibility to set CCI fees that reflect real-world project costs. This does not mean that CCI fees must necessarily reflect the *entire* cost of reducing one ton of carbon; a CCI-administering organization should be encouraged to seek additional funding from outside sources to maximize investments in eligible projects. But the program should not establish set CCI rates that could prevent fund administrators from investing in projects that achieve the level of emissions reductions reflected in CCI credits.

8. Conclusion

We strongly encourage DEQ to establish a Community Climate Investment program in Oregon's Climate Protection Program, and to incorporate some of the mechanisms we have described in these comments into the program to encourage investments in projects that further the state's climate goals while providing direct and meaningful benefits to impacted communities across Oregon.

We appreciate your consideration of our comments.

Sincerely,

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[20] Prior to 2020, EFSC's monetary offset rate was $1.90 per ton CO_2. In June 2020, EFSC increased the monetary offset rate to $2.85 per ton. Or. Admin. R. § 345-024-0580. Offset fees collected by EFSC are allocated to the Climate Trust, an independent nonprofit organization qualified by EFSC to administer the state's offset funds. As of December 31, 2019, the Climate Trust had invested a total of $50,279,293 in offset projects that were estimated to offset 12,590,656 tons of CO_2. THE CLIMATE TRUST, 2019 ANNUAL REPORT 5 (2020), https://climatetrust.app.box.com/s/b23ica2rohs6fno8pqg5f3tkmd2uyid1; *see also* OR. ENERGY FACILITY SITING COUNCIL, OREGON EFSC'S CARBON DIOXIDE EMISSIONS STANDARDS (2018), https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2018-03-21-CO2-RAC-Background.pdf.