Verde’s Position Paper on HB 2020: Oregon’s Cap-and-Trade Program

An Exploration of Environmental Justice Harms, Program Design, and Alternative Solutions
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SUMMARY

After careful consideration, Verde has determined that we cannot support HB 2020. While we appreciate the hard work legislators and other advocates put into the bill, especially to create elements centered on frontline communities and workers, we have concerns that the HB 2020 does not sufficiently address the potential harms it may cause to or exacerbate for those communities. We do not find that benefits and burdens of Oregon’s future cap-and-trade program are equitably balanced.

The costs of imbalance are significant. In California, greenhouse gas (GHG) emissions have decreased overall, but increased in frontline communities. Good climate policy does not create sacrifice zones. In general, a market-based system is economically extractive in nature and inherently favors industry over communities; the risk of harm will be ever-present and programmatic and policy vigilance will be necessary if Oregon is to go down this road.

It is not accurate to assert more than a correlation between cap-and-trade and disparities in emissions reductions. Yet, there are aspects of California’s market design and offset protocol that pose two related problems: they may lead to overestimates of emissions reductions program-wide without corresponding to actual point-source reductions and they pose a danger to long-term cap goals. If reflected by Oregon through implementation, those flaws will be exacerbated. This is further compounded were Washington to follow suit and adopt a cap-and-trade program intended to link with the Western Climate Initiative (WCI). Each new actor exponentially adds complexity and reduces transparency in the market; their decisions will affect the ability of other jurisdictions to reduce emissionsmeaningfully.

Oregon’s ability to meet emissions reduction targets will depend increasingly on the design of other markets unless we are willing to lead in the WCI rather than follow. We must make policy and program choices through or own lens to ensure that our frontline communities are not adversely affected, that our

1 Throughout this document “frontline,” “impacted,” and “environmental justice” communities will be used interchangeably, despite slight nuances in the differences between each distinction or preference for its use.
3 Communities that are exposed to environmental harms or disinvestment; these communities bear the systemic burden of economic progress that does not benefit them. In this case, the communities who have seen increased GHG emissions at the point-source are the cost of statewide emissions reductions. For more on sacrifice zones see: Learner, S. Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States. MIT Press (2010).
polluters are held accountable and sent meaningful price signals, and that we can achieve or exceed our emissions reduction goals.

Verde prefers other, more direct regulatory strategies for addressing emissions in Oregon and we will lay out a critical analysis of HB 2020 in the document that follows; but we also believe there are opportunities in implementation and future legislative session to correct missteps. A good first conduit is the forthcoming linkage study – provided that an unvarnished perspective of California’s program limitations is a cornerstone, as well as consideration for the risks to our state of joining the WCI. Verde stands ready to continue to provide analysis through an environmental justice lens throughout the future of the cap-and-trade program and we will hold policymakers accountable. Oregon must do right by its frontline communities. The following policy and program recommendations will forward this aim.

Current **aspects of the climate program that should be maintained** or expanded include:

- A declining cap on emissions.
- Allocation of 40% of the Climate Investment Fund to impacted communities and 10% to tribes.
- Few exemptions: marine, aviation, and railroad fuel — and a potential phase in of all of the aforementioned pollution sources—emissions attributable to landfills, cogeneration facilities operated by public universities or the Oregon Health and Sciences University, and fuel importers below a designated threshold.\(^4\)
- Strong labor and procurement standards, derived through input from labor advocates.

**Future modifications** to the program should include the following:

- **A cap that achieves ‘net zero’ by 2050 with interim targets** that help ensure a strong trajectory.
- Ensure that **governing bodies are vested with meaningful authority** to make changes to the program and set policies.
- A comprehensive **study of market supply and demand balance**, including the effect of current free allowance schema, as a precursor to rulemaking; continued monitoring and adjustment throughout the program must follow.

\(^4\) Excluding aggregation of multiple entities by a single holder.
• **Limitations on banking** or carrying forward allowances including **progressive cap adjustments** that account for or retire a certain number of allowances in private holding to ensure continued and meaningful reductions throughout the program.

• If Climate Investment Fund dollars are fully spent for **tribes and impacted communities, an increase in the allocation** along with funding prioritization for the full duration of the program (no sunset).

• **Expansion of the Highway Trust Fund** to fund projects through the Transportation Decarbonization Investment Account such as transit, the transition of medium-, heavy- duty and off-road diesel vehicles, solutions to expand transportation options for rural or environmental justice communities, and relief for transportation burden; regular transportation burden analysis may be necessary to help prioritize funding.

• **Eliminate offsets or reduce compliance allotments for offsets** while increasing the share of offset projects that must have “direct environmental benefit” in Oregon; in order to support projects that would otherwise qualify as offsets, increase Climate Investment Fund allocations for tribes and natural and working lands and prioritize these projects.

• Produce a report in advance of rulemaking that details the impact of removing the **Energy Facility Siting Council CO₂ emissions standards**. Consider reinstating the standards or developing an alternative method to address emissions through the siting process.

**Future climate policy work** should include:

• **A 100% renewable portfolio standard** (RPS).

• **A climate authority or department grounded in environmental justice and governed by the Environmental Justice Taskforce** (re-designated as a Commission) to ensure that Oregon’s climate, energy, and environmental policies lead with strong, community-focused analysis.

**BACKGROUND**

Verde is a community-based organization operating out of the Cully neighborhood in Portland. We build wealth and fight displacement for communities with lower incomes, black and indigenous people, and people of color through environmental projects, advocacy, and outreach. Verde has been engaged in conversations around a cap-and-trade program actively for three years, including participation the Work Group on Environmental Justice and Just Transition that preceded the 2018 short session. During that time, we helped draft elements of SB 1507 intended to benefit frontline communities.
We also contributed testimony in the 2019 session, both orally, during the first hearing for HB 2020, and through a letter co-signed with other environmental justice advocates. In it we proposed a set of harm reduction amendments and engaged in conversations with legislators in an effort to move the recommendations therein. But as our analysis suggests, we do not feel that those concerns were incorporated sufficiently. We do see future room – and necessity – for change.

PRINCIPLES OF ENVIRONMENTAL JUSTICE

The Oregon Environmental Justice Taskforce (EJTF) defines environmental justice as, “equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality, and play.” Environmental justice communities are black and indigenous people, people of color, communities with lower incomes, tribal communities, and other people marginalized in public process including youth, seniors, or people with disabilities. In order for policy to sufficiently address environmental justice concerns and to center environmental justice communities, communities must be given the opportunity to express self-determination by influencing decisions in a co-creative way grounded in the idea that communities best know how to solve the problems they face. This must occur throughout processes that uses plain language — not jargon — and includes continuous access points rather than a single arena for engagement. This must be supplemented by transparent accounting for how decisions are made, what feedback was incorporated, what was not, and why.

Environmental justice communities, like those in the Cully neighborhood, are most likely to live in highly polluted areas near point-source emitters or in the nexus of busy roads or railways. They are most likely to live in unweatherized homes with high energy bills. They are most likely to be farmworkers, truckers, or work in construction, factories, or other facilities that expose workers to hazardous conditions. Health impacts are significant and exacerbated by the growing climate crisis, and some environmental justice communities include people displaced by rising sea levels or other effects.

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5 It is worth noting that we do not speak for all environmental justice organizations, nor for any other, and we recognize that not all environmental justice organizations are aligned on HB 2020.
6 https://olis.leg.state.or.us/liz/2019R1/Downloads/CommitteeMeetingDocument/170773
Strong and just climate policy must account for all of this. It must hold polluters accountable and not exacerbate the harm already experienced by environmental justice communities, must keep workers who move to new industries whole, and must establish a just transition from an economy based in the extraction of resources, labor, and capital to one that is more regenerative and community-oriented.\footnote{Additional resources that informed this document include: “Principles of Environmental Justice,” \(\text{https://www.ejnet.org/ei/principles.html}\), “Jemez Principles for Democratic Organizing,” \(\text{https://www.ejnet.org/ei/jemez.pdf}\), and “Climate Justice Alliance Just Transition Principles” \(\text{https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf}\).}

\textbf{ANALYSIS OF HB 2020 POLICIES THROUGH AN ENVIRONMENTAL JUSTICE LENS}

Verde and other environmental justice advocates pushed for a set of eight policy recommendations to amend the initial draft of HB 2020. What follows is a brief summary of each point and an assessment of whether it was achieved in the final form of the bill, in addition to an examination of the HB 2020 process through an environmental justice lens.

\textbf{Decision-Making Structure}

\textit{Original Bill:} Too much power was vested in a single position, the Director of the Climate Policy Office that risked becoming politicized and lacked transparency around implementation and decision-making throughout the life of the program.

\textit{Final Bill:} The Oregon Climate Board will provide advice regarding the full cap-and-trade program. Supplemental advisory committees provide guidance on just transition and offsets (separate technical and compliance bodies) respectively, and a citizen’s advisory committee makes recommendations for the biennial climate action plan.

\textit{What Was Achieved:} While there are more voices who are positioned to make public recommendations about Oregon’s cap-and-trade program, the governance structure remains problematic. All bodies are merely advisory and are not vested with decision-making authority. The Oregon Climate Board does have oversight over the full program, but it’s function is not explicitly to establish policies for the Climate Policy Office as does the Environmental Quality Commission for the Department of Environmental Quality.\footnote{ORS § 468.015: “It is the function of the Environmental Quality Commission to establish the policies for the operation of the Department of Environmental Quality...” as opposed to the language of the bill which states, “The Oregon Climate Board shall: (a) Advise the Climate Policy Office...” (SECTION 10. Page 11, line 9. B-Engrossed)}
Exemptions and Energy-Intensive Trade-Exposed Industries (EITEs)

*Original Bill:* Fluorinated gases from semiconductor manufacturing, municipal waste incineration, electricity generated in the state but consumed out of state, and marine, aviation, and railroad fuel all received exemptions, as well as emissions attributable to landfills, cogeneration facilities operated by public universities or the Oregon Health and Sciences University, and fuel importers below a designated threshold. Fluorinated gases received an exclusion for the initiation of the cap-and-trade program.

*Final Bill:* Exemptions for fluorinated gases from semiconductor manufacturing, municipal waste incineration, electricity generated in the state but consumed out of state and the fluorinated gases exclusion were removed. The bill does allow for a phase-in of marine, aviation, and railroad fuel in 2027 with sufficient study.

*What Was Achieved:* This is the arena in which Oregon’s cap-and-trade program is most improved. We are grateful to legislators for working to remove exemptions and phase in all fuel types that produce significant carbon emissions.

Cap

*Original Bill:* A final emissions reduction target was set at 80% below 1990 levels by 2050 with an interim target of 45% below 1990 levels by 2035. The proposed environmental justice amendments favored an initial interim target of 25% reduction from 1990 levels by 2025, and more substantial targets of 55% by 2035 and 100% by 2050.

*Final Bill:* This element remained consistent throughout various amendments and is maintained in the final bill.

*What Was Achieved:* The Intergovernmental Panel on Climate Change (IPCC) found that we only have twelve years to take decisive action on climate change and in doing so must reach ‘net zero’ reductions by 2050. Oregon’s climate program is not designed to achieve this. Moreover, strong and multiple interim targets or cap adjustments are necessary to ensure that reductions remain on track.

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Allowances

Original Bill: Free allowances were given at 100% to electric utilities until 2030 and declining thereafter, electric system managers began at 100% with a step-down, and up to 100% for EITEs that utilize best available technology. Free allowances for natural gas utilities were equivalent to emissions derived from residential ratepayers with lower incomes. Free allowances attempt to address economic impacts of carbon regulation on both businesses and consumers, and in particular, the long period in which electric utilities receive free allowances is designed to curb potential rate impacts. There is substantial analysis available through the Governor’s Carbon Policy Office that details the potential economic impacts of Oregon’s climate program, but there is not sufficient, public modeling as to how free allowances may affect market price signals and emissions reductions over time. It is unclear how this issue was balanced with industry impacts in policy-making.

Final Bill: Free allowances remain at 100% for electric utilities until 2030 and electric system managers decline from 100%. EITEs receive up to 95% free allowances based on a benchmarking scheme designed to assess the degree to which different facilities and industries adopt best available technology. Natural gas utilities continue to receive free allowances based on low-income, residential load, but also receive additional free allowances up to 60% in the first year of the program and declining thereafter.

What Was Achieved: This arena is one in which Oregon’s cap-and-trade program stands to do the most harm. Free allowances present a number of problems: they do not reduce point-source pollution, they limit reinvestment dollars, and they affect market dynamics throughout the life of the program in such a way as potentially to impact future reductions. The below chart (fig. 1) shows the possible, initial impact of free allowances and offsets on available reinvestment dollars; we have found that $317M revenue will be lost to free allowances and $45M through offsets. This is not insignificant. As the program gets underway, too many compliance instruments in circulation or private holding mean fewer tangible, point-source reductions – and from an environmental justice perspective, continued or increased harm to communities. A glut of allowances also means an effective increase to the cap (if the total number of compliance instruments in circulation and private holding exceeds future targets), and will affect the later health of the market if supply is too great and demand insufficient.

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11 There are a number of reports hosted at the following link which inform program design, but we find that no reports account sufficiently for oversupply or other issues associated with the effects of free allowances and market design (https://www.oregon.gov/gov/Pages/carbon-supporting-research.aspx).
More concerning is that the legislative skeleton of Oregon’s market design closely mirrors California’s. There, an oversupply of allowances is inconsistent with and detrimental to the trajectory of reductions our neighbor to the south hopes to achieve. If Oregon follows suit and does nothing to adjust for the interplay between market dynamics and potential emissions reductions, it will magnify the problem, threatening its own targets, California’s, and any other actor who pursues linkage.

Oversupply means more than enough allowances in circulation or private holding than are needed to account for current and future compliance; it is worth repeating that this problem effectively raises the cap. Oversupply largely derives from banking allowances or offset credits. This practice has been touted as a way to encourage early emissions reductions and as a cost-control mechanism. But we have not seen sufficient evidence to suggest that banking causes and does not merely correlate with early reductions. Other factors may be at play including intersecting policies like the RPS, market factors that affect integrated resource planning or use of best available technology, or simply industry following Oregon’s policy conversations and preparing strategically for a cap-and-trade program. The risk of banking is that these early reductions – regardless of the reason — may be counteracted by entities releasing large numbers of allowances into the market for compliance later in the program in lieu of meaningful and tangible reductions. Oregon may be on track to reach or exceed cap goals at the start of the program but will later find that it stalls or is far behind projections.
In California, allowances in private holding in 2017 are equivalent to more than two-thirds of California ARB (ARB)'s worst-case projection for 2020.\textsuperscript{12} Oregon’s program similarly has no limitations on banking and by all rights will encourage it; this scenario is not outside the potential of our future program and risk increases for all linked jurisdictions if banking is in excess market-wide. Free allowances pose an especially big risk, as no market activity is necessary to acquire them and utilities in particular will begin the program flush. Free allowances may also mean that there are fewer Oregon compliance instruments in circulation in the market or that Oregon regulated entities do not participate robustly if they are banking, generating even less revenue for reinvestment.

Reinvestment

\textit{Original Bill}: 10\% of funds produced through auctions were to be set aside for tribes and an indeterminant but fixed number was to be allocated for a Just Transition Fund, but no moneys were allocated for impacted communities.

\textit{Final Bill}: 10\% of the Climate Investment Fund is designated for tribes, 40\% to impacted communities, 20\% for natural and working lands, $10 million for the Just Transition Fund, and no more than 1\% for technical assistance. These allocations sunset in 2027.

\textit{What Was Achieved}: Other advocates fought hard to achieve a 40\% tranche for impacted communities and we honor that effort. Yet, we had hoped to see 60\% for impacted communities. Reinvestment from an environmental justice perspective should direct most, if not all, of the money to those most harmed and in need of reparations. And as previously mentioned, free allowances impact the number of available reinvestment dollars – percentages matter less if the pot is too small.

Moreover, if “impacted communities” is not meaningfully — and narrowly — defined to encompass communities who have been historically, presently, or will bear coming harm, reinvestment may not be applied where it is truly needed. If, 50\% of census tracts are identified through a methodology, the benefit of targeted reinvestment is lost. There may also be need to determine how to capture individuals from environmental justice communities who are dispersed and not concentrated in specific census tracts, but still experience harms caused by the climate crisis or disinvestment.

Benefits for Rural and Low-Income Drivers

Original Bill: Rural communities and low-income communities who face greater transportation cost burdens and lack access to transportation alternatives will be most affected by any transportation cost increases and are least equipped to transition to less-emissions intensive transportation options. Initially, HB 2020 did nothing to address potential economic impacts of the climate program on fuel prices, thus creating future and new burdens on communities who could not afford them.

Final Bill: The Department of Transportation will develop a proposal for a program or process to offset potential fuel cost increases for motor vehicles through credits or refunds; these funds would be available for drivers below 250% of the federal poverty line or operators of motor vehicles used in farming or forestry. This is similar to the general concept behind HB 3425 (although it extended only to drivers with lower incomes) which would have created a low-income fuel rebate. In addition to the potential rebate protocol, funds unallocated in the Climate Investment Account and available for the Climate Action Investment Plan may be prioritized to reduce greenhouse gas emissions related to the repower, replacement, and retrofitting of nonroad equipment used in agriculture.

What Was Achieved: While the environmental justice amendments supported a transportation assistance fund or dividend, the current concept is lacking in that it does not account for the root causes of the transportation disparities at hand. Fuel cost increased are accounted for through a 100% refund equal to the projected impact; but impacts may include additional and complex burdens that may require more expansive or creative solutions. Moreover, were the funds in the Transportation Decarbonization Account made available to fund transit, the transition of medium-, heavy- duty and off-road diesel vehicles, solutions to expand transportation options for rural or environmental justice communities, and relief for transportation burden, there would be more opportunities to address underlying transportation challenges for rural drivers and drivers with lower incomes that extend beyond, but are intertwined with, the effects of the climate program.

Offsets

Original Bill: 8% of program compliance could be used for offset projects with a requirement that 4% must have “direct environmental benefit” in the state of Oregon. All projects are limited to locations in linked
jurisdictions to Oregon’s carbon market. Additional language suggested that rules could be made to limit the use of offsets for air contamination sources located in impacted communities.

**Final Bill:** The 8%/4% scheme is maintained, along with a similar offset protocol – with the exception of limitations placed on the use of offsets on state forest lands until 2027.

**What Was Achieved:** In their amendment recommendations, environmental justice advocates first asked that offsets be eliminated in Oregon’s climate program, and at least, insisted on no more than 2% offsets, calling for the state to find a way to ensure that these projects were located solely in Oregon.

An offset project site removes an equivalent amount of emissions at a regulated site – there is no actual net reduction in emissions,\(^\text{13}\) and thus, no net climate benefit. While we recognize that offset projects do create other benefits for our natural and working lands and for tribes, offsets do not reduce point-source pollution and create sacrifice zones; they pit the interests of environmental justice communities against one another. Just climate policy does not burden some communities while benefiting others. We support funding for the kinds of projects that could cover offset compliance, but believe that dollars should be invested through other means in the communities who seek offset projects, such as additional Climate Investment Fund allocations for tribes and natural and working lands. We must not encourage opportunities for polluters to keep polluting. ARB’s assertion that “a GHG reduction anywhere is a benefit everywhere”\(^\text{14}\) does not bear out for communities at the fenceline.

More problematic, in aligning Oregon’s offset program closely with California, we overestimate the environmental integrity and emissions reductions attributable to offsets. U.S. Forest offsets account for 76% of California’s offset projects.\(^\text{15}\) ARB’s U.S. Forest offset protocol addresses leakage – when the reduction of timber harvesting at one site leads to an increase elsewhere – through a methodology that undervalues its impact. It predicts 20% leakage, when 80% is likely more accurate\(^\text{16}\) and is the value

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\(^{14}\) ARB 2018b: 1

\(^{15}\) IEMAC (44).

\(^{16}\) As the leakage rate for US timber harvesting. (Gan, J. & B.A. McCarl. “Measuring transnational leakage of forest conservation”. Ecological Economics, 64(2), 423-432. (2007))
adopted by the Climate Action Reserve. How leakage is addressed over time also presents problems; credits are given for large, early reductions in harvesting but leakage is spread over a 100 year period. Significantly more credits are awarded than accounted for in actual, avoided emissions.

Oregon has yet to establish and offset protocol, but must carefully consider leakage in doing so. It must also ensure that there is clarity around the definition of “direct environmental benefits”: whether it means project-level emissions reductions or avoided emissions – and as has been noted above, if avoided emissions are included they must be accounted for accurately and presently. But even before the protocol is established, the sheer degree to which offsets can cover compliance mean they will overwhelm other program results in terms of their share of overall emissions reductions early in the program. The below graph (fig. 2) shows how this will play out over time within the cap-and-trade program.

Fig. 2

It is again worth stating explicitly that, based on the above modeling, a significant portion of emissions reductions attributed to Oregon’s cap-and-trade program will not come from improvement at the point-source. While research found increases in GHG emissions in environmental justice communities, it did not draw conclusions about what program elements may have contributed to the disparities. It also found that, overall, emissions reduced program-wide. Without further analysis we cannot make assertions about

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19 Assumptions made based on a prediction that 60% of Oregon’s cumulative emissions reductions from 2021 to 2030 will come from cap-and-trade. Potential offset use is assumed based on allowances for auction, as these compliance instruments are most likely to be displaced by offsets.
why this may be, but by logic, the nature of offsets may be one factor. In Oregon, the preponderance of offsets as a source of reductions in the early years of the program suggest that without vigilance and decisive flexibility, we may similarly meet or exceed our emissions reductions goals program-wide, but not for specific communities. For point-sources located in the airshed of environmental justice communities this perpetuates and potentially increases harm.

**No Disruption to Existing Regulation**

*Original Bill:* The bill fully repealed the EFSEC carbon emissions standards and fully transferred the duties, funds, and staff for the Department of Environmental Quality (DEQ) GHG reporting program to the new Climate Policy Office along with related functions and powers of the Environmental Quality Commission (EQC), which oversees DEQ.

*Final Bill:* The above elements were maintained, although a report was added to track the transfer of duties, funds, and staff of the GHG program and allows for recommendations to be made should this process require adjustment.

*What Was Achieved:* We have continued concern about alterations to existing regulation, both through the disruption of DEQ — which relies on coordination between program and policy staff and across departments — and through changes to EFSEC and EQC’s authority. Program disruption poses the risk of knowledge, resources, or relationships falling through the cracks. When this happens, environmental justice communities are most likely to be harmed through the loopholes that are created.

With regard to EFSEC, we have been told that the CO2 standards are redundant to a greater carbon program. We disagree with this position. Oregon’s climate program functions to address broad emissions reductions, whereas the EFSEC standards can mitigate carbon pollution at the point-source. Moreover, the EFSEC CO2 standards have fees and penalties attached which may be factored into utility integrated resource planning evaluated on a “least cost, least risk” (to the utility, rates, and the grid — not to communities or the environment) basis. Eliminating the potential costs associated with CO2-emitting energy sources and then attaching free allowances to those emissions means that natural gas could pencil out at less net cost than renewable energy; this runs counter to greater climate program goals. And as has become a running theme throughout this analysis, Oregon’s climate program cannot be viewed as a success if it follows California’s trajectory of increased emissions in impacted communities. A future
natural gas plant sited in the airshed of a community harms that community. Program-wide emissions reductions must not come at the cost of point-source increases.

ANALYSIS OF HB 2020 PROCESS THROUGH AN ENVIRONMENTAL JUSTICE LENS

In 2018, legislators convened a Work Group on Environmental Justice and Just Transition to give input into the cap-and-trade bills that ran that year. In particular, SB 1507 (2018) incorporated some of the recommendations made through that process, but overall this was counteracted by the input from three, other, industry-centric Work Groups, and even the stronger bills that ran in the previous session overly benefited industry.

This session, while there were opportunities to engage, environmental justice communities were not involved meaningfully in shaping the initial bill. We do not believe this was a co-creative process with communities, and find that industry had more resources and opportunities to influence the bill. It shows in the final product.

Some environmental justice organizations and tribes did engage with the coalition supporting HB 2020, and there are tangible impacts of their work in the final product. But the recommendations that environmental justice groups produced was largely ignored in the final product. Perhaps this was due to perceived ambivalence around cap-and-trade; yet, policymakers must be willing to work with multiple environmental justice stakeholders in a process, regardless of their position, and understand that as advocates, we will tell the truth about policy regardless of how that plays into politics. We will reject easy compromises that stand to do harm or not meet community needs; we can make policy stronger.

VERDE’S POSITION ON HB 2020

Verde has concerns about a market-based mechanism as the cornerstone of Oregon climate policy, therefore we engaged in conversations around cap-and-trade over several session in an attempt to bring forth harm mitigation and alternative solutions. Direct regulation, while less appealing to industry, stands to make the biggest impacts for environmental justice communities by creating true accountability for polluters and strong metrics by which to measure success. Even setting aside those misgivings, we find HB 2020 lacking through a lens of environmental justice.
The above analysis should make this clear: Verde and partner-advocates laid out strong recommendations for harm reduction, but they either were not integrated into the final bill, or when addressed, were done so in a way that could cause further problems. Biggest gains were made around reinvestment to impacted communities, removing exemptions, and reducing the authority of the Director of the Climate Policy Office while adding more citizen-focused governance. But no significant changes were made around free allowances or offsets, a significant flaw. This lack of action creates tension around whether the climate program will stay on track to meet its goals and maintain accurate emissions reduction projections and also whether emissions will be reduced meaningfully at the point source. There was also no meaningful action taken to align the program cap with IPCC recommendations, provide relief for transportation burden, nor address potential disruptions to existing regulation.

Some may say that the bill is “good enough” and that we are quibbling with details, but details matter most to environmental justice communities; a hairline crack in drafting becomes a deep fissure in implementation. Verde’s role in the building is to fight for the communities we represent, and in doing so, we cannot settle for policy that falls short, nor condone processes that do not follow in principles of environmental justice and further concentrate wealth and power in the hands of those who stand most to benefit from weakened policy.

FUTURE PROGRAM AND POLICY CONSIDERATIONS

**Decision-making Structure:** Future legislatures must give the Oregon Climate Board more direct authority to shape and amend Oregon’s climate program and must amend the make-up to include voting members who represent environmental justice communities. It currently lacks this lens and we fear implementation and administration will as well. The citizen’s advisory committee, offset committees, and just transition advisory committees must also be given impactful roles. Too often advisory bodies are superficial in nature and do not include the voices of communities — especially environmental justice communities — nor imbue participants with a meaningful ability to influence policy. Much has been said about how grounded in equity Oregon’s cap-and-trade program is versus other jurisdictions. This is talk only unless it bears out in who shapes future decisions and how.

**Exemptions and EITEs:** Marine, aviation, and railroad fuel must be phased into the program sooner. Communities, such as Cully, which are located near rail lines and airports are adversely affected by these pollution sources, as are fish, wildlife, and the people who culturally or economically rely on them. It is
not enough to reduce emissions statewide. A meaningful climate program in Oregon must also identify and target emissions reductions in environmental justice communities who are most harmed by any delay in regulation.

**Cap:** In a future legislative session, Oregon must adjust its climate program goals to achieve the IPCC ‘net zero’ recommendation and it must do so promptly. This lack of ambition in the face of scientific evidence is troubling. A stronger and definitive final objective must be supplemented with multiple interim targets. In addition, a flexible cap that may be adjusted to address market dynamics, including an excessive number of compliance instruments in private holding, may be necessary. The cap must be designed to ensure consistent reductions throughout the life of the program and maintain a strong trajectory.

**Allowances:** California has recognized the need to at least explore its allowance oversupply problem. AB 398 instructed ARB to “evaluate and address concerns related to overallocation in the state board’s determination of the number of available allowances for years 2021 to 2030, inclusive, as appropriate.” Oregon must take similar, voluntary action in advance of implementation, both engaging with ARB’s analysis, and developing its own lens for determining the correct calibration for free allowances. That means low energy rates and open businesses, but does not compromise reduction goals. To follow California’s initial program design is to go down a primrose path that will lead Oregon to value industry over the integrity of its climate program. A strong understanding of market supply and demand must be a foundation for cap-and-trade in Oregon – not a reaction or nor afterthought.

Oregon also should institute sideboards on banking if it is to be allowed. One option is holding limits that force regulated entities to stop banking once they release certain thresholds. There is caution around this suggestion. Some analysis has found that limited exemptions, which allow a compliance period allotment on top of a holding limit (as California has) do not effectively keep oversupply in check. If Oregon adopts banking rules, it must be thoughtful and relay on its market dynamics analysis to place the proper constraints.

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21 Cal. Health & Safety Code § 38562(c)(2)(D)
22 [https://www.arb.ca.gov/cc/capandtrade/limited_exemption.pdf](https://www.arb.ca.gov/cc/capandtrade/limited_exemption.pdf)
More effective would be cap adjustments or expirations for compliance instruments that adjust for excess allowances in private holding. If banking leads to an effective increase in the cap, then the program must account for this in order to maintain its trajectory toward interim and final targets.

**Reinvestment:** The sunset of the set allocations for Climate Investment Fund dollars is the first concern; there will be significant need to support tribes, impacted, and rural communities with program investments and that will not change in 2027. If all designated funds are not spent in a given year, technical assistance may need to be increased or the Climate Policy Office may need to hire capacity-building staff who can help connect and resource communities and small jurisdictions and advise on successful project development. If the alternative is true, that funds are fully utilized or oversubscribed, then future legislatures may need to increase the tranches. Attention must also be paid to ensure that the definition of “impacted communities” has a strong nexus with “environmental justice communities.”

**Benefits Flow to Rural and Low-Income Drivers:** At present, the climate program has restricted transportation dollars, tied only to the uses made available through Article IX, Section 3 of the Oregon Constitution.²⁴ This means only projects that involve the “construction, reconstruction, improvement, repair, maintenance, operation, or use” of roads and excludes transit or anything outside the right-of-way. Legal challenges have suggested that this may be flexible. Perhaps, but more certainty will come from fully untethering the Highway Trust Fund. It is the only way to ensure that there are sufficient funds to support a variety of transportation projects, and that those funds are targeted to address community solutions for transportation. In doing so, attention must be paid to workers who are supported by construction projects which receive Highway Trust Funds; good labor standards and living wage jobs must be maintained. Highway Trust Fund dollars must be available to support a just transition – local, small scale, and focused on moving people more collectively and creatively.

**Offsets:** Our first preference is to eliminate offsets from Oregon’s climate program and instead to direct the funds lost through compliance ($45M) toward a GHG Reduction Project Account which can be used for projects that might otherwise qualify as offsets, or increase allocations for tribes and natural and working lands within the Climate Investment Fund. We do not want to see the benefit lost to communities who might otherwise rely on offset projects.

An acceptable alternative would be to ramp down offset compliance over the life of the program. In truth, any reduction in offsets would be a welcome change, as would an increase in the number of offsets that must provide direct environmental benefit in Oregon. California will decrease total offsets from 8% to 4% for 2021-2025 and then set a threshold at 6% thereafter. With that in mind, Oregon’s desire to mirror California’s offset protocol for easier linkage is no longer a valid argument, and we must at least adapt to these new standards.

**No Disruption to Existing Agencies:** We support the report concerning the transfer of DEQ’s GHG program, and hope that the legislature will take any recommendations to heart that discourage or modify this move. It is also essential that DEQ staff have a strong voice in shaping recommendations and how the transfer is executed, and that input from the EJTF be sought as well to identify any potential harms or loopholes created through the process.

We also request a report on the repeal of the EFSEC CO2 standards to better understand the utility and potential effects, especially on the integrated resource plan weighting of natural gas versus renewable energy. If the report finds that a regulatory tool has been lost through the repeal, the legislature should reinstate the CO2 standards or develop an alternative method for addressing emissions during the siting process.

**POLICIES TO ADVANCE JUST CLIMATE ACTION**

**100% RPS:** Due to the number of free allowances given to utilities for the first nine years of Oregon’s climate program and the risks posed by allowance banking and the repeal of the EFSEC CO2 standard, a more aggressive RPS will be necessary to send needed regulatory signals. But this process must be grounded in environmental justice and must also increase opportunities for truly community-based and small-scale projects – not a superficial allocation based on capacity rather than generation and one in which “community” has no real meaning.

We look to Washington (SB 5116) for both the involvement of environmental justice stakeholders in shaping the policy and the evidence of their input: universal energy assistance, community investments, and good labor standards. The California Public Utilities Commission has also adopted equity principles and labor standards that could be emulated through legislative action on utility reform. It bears repeating
that both of the aforementioned processes valued input from environmental justice communities, and Oregon must begin conversations about a 100% RPS with community-based organizations who have an understanding both of the effects of our energy system on their communities and the great capacity those communities have to engage in that system.

**State Climate/Environmental Justice Body and Environmental Justice Mapping:** This legislative session, a bill ran to establish the Oregon Climate Authority (SB 928). The intent was to consolidate some functions of natural resources agencies and create an eventual home for the climate program. Verde did not support this work as we did not find that the transition reflected the input of agency staff sufficiently, nor did we determine that the agency had explicit direction to do environmental justice work. While we did not support this iteration of a comprehensive natural resources agency, we do want to see a thoughtful process that includes communities, workers, and other stakeholders to help shape what a new state agency would look like, one centered around environmental justice as a driving principle for all action. ORS § 182.535-550 lay statutory groundwork through the creation of the EJTF and assignment of duties to natural resources agencies with regard to incorporating principles of environmental justice into public process. There are not sufficient resources to support this work on the agency nor on the EJTF end to meaningfully fulfill Oregon statute.

We recommend the creation of a new agency that is governed in part by the EJTF (made a Commission rather than a Taskforce). It would oversee remote staff placed in other agencies or manage natural recourses and climate work in-house. HB 2020 initially included some resources for the EJTF, but those elements do not appear in the final bill, despite responsibilities of the EJTF around review of the biennial climate action plan. The EJTF must be resourced and given real authority in order to be impactful, and governance over program and policymakers in the state is a powerful way to do this.

In addition, Washington passed the Healthy Environments for All (HEAL) Act (SB 5489) which both defines environmental justice and makes it enforceable in the state. It is a model for how to codify this work into state policy and program development. Oregon should follow this aim, in addition to better understanding health, economic, and climate disparities in the state through comprehensive environmental justice mapping that could drive policy.
CONCLUSION

California ARB's Environmental Justice Advisory Committee supports replacement of California’s cap-and-trade program with a carbon tax or fee and dividend program.\(^\text{25}\) We agree that Oregon would be better served by more direct regulation rather than a complicated market system. And we do not find that Oregon’s climate program is sufficiently grounded in environmental justice in order to counteract potential harms that may come from a policy with many giveaways to industry – and a process that did not meaningfully, and co-creatively incorporate the voices of many environmental justice communities early in or consistently throughout the process.

We are disappointed, but recognize that cap-and-trade is what Oregon has chosen to embrace. We will work hard to ensure that faults are corrected and that the program may be adapted and altered so as not to do harm. We have laid out a number of potential changes that may be adopted through implementation and future sessions as well as other policies that we feel, on principle, are more likely to result in the climate crisis mitigation that we all seek. We encourage legislators who are committed to justice to take this analysis to heart, to meet with us and other environmental justice advocates – regardless of their position on HB 2020 – after the legislative session is over. We must begin developing next steps immediately.

Looking beyond the recommendations in this document, one environmental justice critique of current climate policy frameworks is that they often focus on carbon emissions alone and ignore other contributing factors. The problem is not molecular, it is massive and systemic. Future solutions must address economic and resource extraction on a larger scale, including how we develop materials and infrastructure for renewable energy and may mean dramatically reshaping or abandoning cap-and-trade in the future. We must begin bold vision that will mean redistributing wealth and power to invest in and truly empower environmental justice communities – that is, vesting them with decision-making authority. Portland’s Clean Energy Benefits Fund is a strong example of how to do that in a way that is both feasible and visionary. It is possible to do both. We must not let politics get in the way of meaningful action, nor merely look to other jurisdictions for model solutions. Oregon can fly on its own wings as a climate leader. To support environmental justice communities, it must.

\(^{25}\) “California’s 2017 Climate Change Scoping Plan.” (17).
<https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf>