

Department of Land Conservation and Development
Order Approving Major Progress Report Submitted by City of Millersburg
DLCD Order 001944

August 26, 2024

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I. Decision

For the reasons explained in this order, the Department of Land Conservation and Development (DLCD or department) approves the major report on progress toward meeting the requirements in Oregon Administrative Rule (OAR) chapter 660 divisions 12 and 44 submitted by City of Millersburg on May 31, 2024.

II. Review Procedures and Criteria

OAR 660-012-0915 provides for the review of submitted major progress reports.

OAR 660-012-0915(2) provides for the director to make a determination of completeness upon submission of the major progress report. If the report is not deemed complete, the rule provides for the director to notify the submitter and for the submitter to send additional information.

OAR 660-012-0915(3) provides for the director to post a copy of the major progress report on the department website and for the director to provide notice and opportunity to provide comment regarding the submitted major progress report.

OAR 660-012-0915(4) provides for the director to make one of four findings upon review of the major progress report and submitted comments. The director shall:

“(a) Find that the submitter has met the performance targets set as provided in OAR 660-012-0910, and has adopted local amendments to implement any approved land use and transportation scenario plan as provided in OAR 660-044-0130;

“(b) Find that the submitter has proposed adequate corrective actions to address any performance targets that were not met and adequate to meet any performance targets set as provided in OAR 660-012-0910;

“(c) Find that the submitter has not met a performance target set as provided in OAR 660-012-0910 and has proposed inadequate corrective actions; or

“(d) Find that the submitter has not implemented an approved land use and transportation scenario plan as provided in OAR 660-044-0130 and proposed inadequate corrective actions.”

OAR 660-012-0915(5) provides for the director to issue an order approving the report if the director makes a finding as provided in OAR 660-012-0915(4)(a) or (b).

OAR 660-012-0915(6) provides for the director to refer the report to the Land Conservation and Development Commission (commission) for a compliance hearing if the director makes a finding as provided in OAR 660-012-0915(4)(c) or (d).

III. Overview of Requirements for a Major Progress Report

A. Submission and Review

The City of Millersburg submitted the major progress report to the department on May 31, 2024. The department determined the major progress report was complete. The department delivered notice to provide comment regarding the major progress report as provided in OAR 660-012-0915(3) on June 27, 2024. The notice provided for comments to be submitted, with a deadline of July 18, 2024.

B. Elements of Major Progress Report

The following elements must be included in a major progress report, as provided in OAR 660-012-0900(7):

“(a) All information required in a minor report, as provided in [OAR 660-012-0900(6)].”

Section (6) requires a minor progress report to include:

“(a) A narrative summary of the state of coordinated land use and transportation planning in the planning area over the reporting year, including any relevant activities or projects undertaken or planned by the city or county;

“(b) The planning horizon date of the acknowledged transportation system plan, a summary of any amendments made to the transportation system plan over the reporting year, and a forecast of planning activities over the near future that may include amendments to the transportation system plan;

“(c) Copies of reports made in the reporting year for progress towards centering the voices of underserved populations in processes at all levels of decision-making as provided in OAR 660-012-0130 and a summary of any equity analyses conducted as provided in OAR 660-012-0135; and

“(d) Any alternatives reviews undertaken as provided in OAR 660-012-0830, including those underway or completed.”

OAR 660-012-0900(7) continues:

“(b) For reporting cities and counties:

“(A) A description of what immediate actions the city or county has considered to be taken to reduce greenhouse gas emissions as provided in ORS 184.899(2); and

“(B) A description of the consultations with the metropolitan planning organization on how the regional transportation plan could be altered to reduce greenhouse gas emissions as provided in ORS 184.899(2).

“(c) Reporting for each regional and local performance measures as provided in OAR 660-012-0905 or OAR 660-044-0110 including:

“(A) Baseline data;

“(B) Baseline projections of expected outcomes from acknowledged plans;

“(C) An assessment of whether the city, county, or Metro has met or is on track to meet each performance target for each reporting year between the base year and planning horizon year set as provided in OAR 660-012-0910;

“(D) For any performance targets that were not met, a proposal for the corrective actions that will be taken to meet the performance target by the next major progress report;

“(E) An assessment of whether the reporting city or county has adopted local amendments to implement the approved land use and transportation scenario plan as provided in OAR 660-044-0130;

“(F) For any amendments to implement the approved land use and transportation scenario plan as provided in OAR 660-044-0130 that have not yet been adopted, a proposal for the corrective actions that will be taken to adopt the amendments; and

“(G) The status of any corrective actions identified in prior reports.”

The City of Millersburg submitted a major progress report that included each element required in OAR 660-012-0900(7)(a) and (b). The City of Millersburg received an exemption from reporting

elements included in OAR 660-012-0900(7)(c), as described below. As such, the submitted major progress report does not include this information.

IV. Exemption from Reporting

OAR 660-012-0900(8) provides for the director to grant a city or county an exemption to including any required element of a report.

“(8) Upon a written request for an exemption submitted to the department prior to the due date of a report, the director may grant a city or county an exemption to a requirement to include any required element of a report under sections (6) or (7) when the director determines that the requestor has established that collection and reporting of the information would not be possible or would place an undue burden on the city or county.”

The director granted an exemption to the City of Millersburg on July 9, 2024 for those requirements set forth under OAR 661-012-0900(7)(c), which includes requirements about performance targets and requirements about local implementation of a regional plan. The exemption is for the 2023 major progress report only.

A. Performance Targets

The exemption included requirements for reporting on performance targets in OAR 660-012-0900(7)(c)(A) through (D). The City of Millersburg is part of the Albany metropolitan area. Cities and counties within the Albany metropolitan area are currently developing performance targets. Accordingly, there are no existing adopted performance targets to meet this reporting year. The department expects the city to set targets in the near future so that the city can report on targets in its next major progress report.

B. Local Implementation of a Regional Plan

The exemption included requirements for local implementation of a regional plan in OAR 660-012-0900(7)(c)(E) through (G). OAR chapter 660, division 044 defines a process for cities and counties to prepare a regional land use and transportation scenario plan, and then amend local plans to implement the regional plan. The rules require this regional planning in several larger metropolitan areas (not including the Albany metropolitan area), and provides a voluntary opportunity for other cities and counties to undertake regional planning. The cities and counties within the Albany metropolitan area have not yet chosen to prepare a regional plan. Therefore, cities and counties within the Albany metropolitan area (including Millersburg) are not required to amend local plans to implement a regional plan as provided in OAR 660-044-0130. Accordingly, there is nothing for the City of Millersburg to report on implementation of a regional plan this reporting year.

V. Comments Received

The department delivered notice and solicited comments within a 21-day period as provided in OAR 660-012-0915(3)(b). One comment was received from:

- James Feldmann, Oregon Department of Transportation

Comment Summary: The comment stated that the report should have referred to the Albany Area Metropolitan Planning Organization as the metropolitan planning organization, not the Oregon Cascades West Council of Governments.

Department Analysis: The Oregon Cascades West Council of Governments provides the staff to support the functions of Albany Area Metropolitan Planning Organization, so it is easy to confuse the two entities. The commenter is correct that the Albany Area Metropolitan Planning Organization is the entity that makes transportation planning decisions, and the report would be more accurate to refer to it. The mistake does not affect the accuracy of the data included in the major progress report.

VI. Director's Review

A. Jurisdiction

The director and, if appealed, the commission have authority to review major progress reports as provided in OAR 660-012-0915 and Oregon Revised Statutes (ORS) 197.040. *See also* ORS 197.012.

B. Scope of Review

The relevant review criteria are in OAR 660-012-0915(4). The director must review the major progress report and make one of the four findings provided in the rule.

C. Director Evaluation

The director reviewed the submitted major progress report, one comment on that report, and a previously approved exemption to reporting requirements. The director finds that both elements of OAR 660-012-0915(4)(a) have been met because the City of Millersburg is exempt from both elements. The exemption from the requirements of OAR 660-012-0900(7)(c) cover requirements to report on performance targets as provided in OAR 660-012-0910, and requirements to report on local amendments to implement any approved land use and transportation scenario plan as provided in OAR 660-044-0130.

VII. Conclusion

The major progress report submitted by the City of Millersburg is approved as provided in OAR 660-012-0915(4)(a).

Signed this 26th day of August 2024

Brenda D Bateman

Brenda Bateman, Director

VIII. Appeal of Order

As provided in OAR 660-012-0915(5), this order may be appealed to the commission. This order may only be appealed by parties who submitted written comments on the major progress report,

as listed above. Any appeal must be received by the department no later than 5:00 p.m., Monday, September 30, 2024.

The director will review any appeals received to determine if the appeal is valid. The director shall use the following criteria to determine if an appeal is valid:

- Did the potential appellant submit written comments on the major progress report?
- Was the potential appeal received in a timely manner?
- As provided in OAR 660-012-0915(5)(b), does the potential appeal clearly identify a deficiency in the submitted report based on the requirements of OAR chapter 660, division 12 on issues raised in the written comments?

Any submitted appeal should contain enough information to allow the director to make a determination of validity based on these criteria.

As provided in OAR 660-012-0915(5)(c), the director shall determine if the appeal is valid, and that determination shall be final.

As provided in OAR 660-012-0915(5)(d), if no valid appeals are received in response to this order, the order shall be deemed final.

As provided in OAR 660-012-0915(5)(e), appeals that are found to be valid shall be referred to the commission for a compliance hearing as provided in OAR 660-012-0920. As provided in OAR 660-012-0920(4)(b), the compliance hearing will provide an opportunity for the city and any persons who provided written comment to provide written and oral testimony to the commission.

IX. Certificate Of Service

I certify that on August 26, 2024, I served the attached “Department of Land Conservation and Development Order Approving Major Progress Report Submitted by City of Millersburg” to the addresses listed below by email and by mailing in a sealed envelope with first-class postage prepaid.

Party	Email	US Postal Service
City of Millersburg	matt.straite@millersburgoregon.gov	Matt Straite City of Millersburg 4222 Old Salem Rd NE Millersburg OR 97321
James Feldmann	james.feldmann@odot.oregon.gov	James Feldmann ODOT Region 2 3700 Philomath Blvd Corvallis OR 97333



Brandi Elmer, Executive Assistant to the Director