



NORTHWEST ENVIRONMENTAL DEFENSE CENTER

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March 7, 2021

The Northwest Environmental Defense Center (NEDC) respectfully submits the following comments as public testimony **in support of the passage of HB2488, which incorporates climate justice into Oregon's land use planning process.**

NEDC is an independent, nonprofit environmental organization established in 1969 by a group of professors, law students, and attorney alumni at Lewis & Clark Law School. The organization's members include citizens, attorneys, law students, and scientists. NEDC's mission is to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and by engaging in education, advocacy, and litigation independently and in conjunction with other environmental groups. NEDC also recognizes and works diligently to combat the fact that environmental burdens and benefits are not distributed equally. The issues presented by this proposed bill go to the heart of NEDC's mission; they deal with the environmental health of Oregon's communities, particularly in the context of climate change.

HB2488 requires the Land Conservation and Development Commission (LCDC) to make changes to statewide land use planning goals to address climate justice by addressing climate change adaptation and mitigation and environmental justice for disadvantaged communities. It also requires the Department of Land Conservation and Development (DLCD) to establish an environmental justice advisory committee. Lastly, of particular importance is that it requires LCDC to establish and update measurable targets (and processes for obtaining the targets) for lack of access to healthful foods, which is the main component of HB2488 that we are commenting on today. For the reasons outlined below, NEDC believes that this bill would provide long-overdue state action addressing food access for our communities, especially in light of climate change.



I. Food access is an environmental justice issue for Oregon communities

Food access is a necessary component of environmental justice. In Oregon alone, almost 500,000 people are food insecure and struggle daily with hunger.¹ In particular, southeast, southern, and northeast Oregon face the highest rates of food insecurity, including 16% of Klamath County residents in southeast Oregon.² While food security statistics are important indicators of food access, they fail to account for many people's nutritional needs; no longer being hungry does not equate to nutritional nourishment. Access to healthy, nutritional, affordable foods is central to creating a more just food system, yet many face disparities in their access to healthy foods and the subsequent health consequences. Low-income communities and communities of color, "prone to obesity and dietary-related diseases, are also more likely to live in communities where nutritious food is hard to come by."³ Not only are these communities faced with a lack of places to purchase food, but the food options they do have are often not healthy and nutritious.

Food deserts are areas with low access to grocery stores or supermarkets and are particularly prevalent in low-income neighborhoods, as "the typical low-income neighborhood has 30 percent fewer supermarkets than higher-income neighborhoods."⁴ Geographically, these are places where there are long travel times before seeing the first grocery store with substantial food options beyond what one would find in a typical convenience store. In southeast Oregon, some residents have to travel "over 100 miles round-trip to the nearest full service grocery store."⁵ However, while the geographic distance to grocery stores is an important factor in food access, there are a number of causes of food inequalities; while "a new store will increase

¹ *Mind the Meal Gap: Food Insecurity in Oregon*, FEEDING AMERICA. (2018) <https://map.feedingamerica.org/county/2018/overall/oregon>

² Id.

³ Paige Parker. *Portland's low-income neighborhoods are city's 'food deserts'*. THE OREGONIAN. (Updated Jan 11, 2019) https://www.oregonlive.com/health/2008/11/living_in_a_food_desert.html

⁴ Id.

⁵ Oregon Food Bank and Spencer Masterson. *The State of Our Community Food System: A Summary of Community Food Assessments in Rural Oregon*. OREGON FOOD BANK. (2013) https://164xbp2ocd6p4enk8z35eujo-wpengine.netdna-ssl.com/wp-content/uploads/2016/08/The-State-of-Our-Community-Food-System_web.pdf

geographic proximity, it does nothing to address the structural drivers of food insecurity, like poverty, low wages, food pricing, segregated land-uses and inadequate and inequitable transportation options.”⁶ In both Klamath and Lake counties, located in southeast Oregon, “30 percent of survey respondents said ‘lack of transportation’ contributed to their inability to access adequate food.”⁷ Further, “residents of remote Christmas Valley are unable to refrigerate or cook food because they do not have access to electricity.”⁸

Additionally, many people who have grocery stores within close proximity are not able to shop at them. One woman in Portland who had a New Seasons Market within a 10 minute bus ride still takes a two hour bus journey to WinCo in search of affordable options.⁹ These situations are prevalent in cities like Portland, in which neighborhoods may have grocery stores, but gentrification has pushed out affordable options in the area. This creates situations in which “low-income households experience food insecurity while living within walking distance of a full-service grocery store.”¹⁰

Further, simply having access to food does not meet the goals of environmental justice. Food justice in a community accounts for “culturally relevant food for diverse communities (e.g., Halal meat or indigenous plants),”¹¹ and for households that lack the “capacity to be able to use fresh foods”¹² such as education in preparing foods or having access to working kitchens. Though health food stores bring more options for fresh fruits and vegetables, these stores are not always appropriate for communities; “Grocers like Whole Foods are selling, as one food justice activist put it, “\$8 kale,” which is neither affordable nor culturally relevant to many people. Thus Whole Foods has become to many a beacon of gentrification, not healthy food access.”¹³

⁶ Betsy Breyer and Adriana Voss-Andreae. *Food Mirages: Geographic and economic barriers to healthful food access in Portland, Oregon*. *Health & Place* 24, 131-39 (2013).

⁷ Oregon Food Bank and Spencer Masterson, *supra* note 5.

⁸ Id.

⁹ Paige Parker, *supra* note 3.

¹⁰ Betsy Breyer and Adriana Voss-Andreae, *supra* note 6.

¹¹ Id.

¹² Id.

¹³ Id.



Oregon's migrant farm workers in particular face these challenges in accessing healthy food, such as "inability to purchase culturally appropriate food, language barriers when shopping at grocery stores or accessing emergency food, and seasonality of work."¹⁴ Though farmworkers are the very people making fresh foods available to Oregon, they face discrimination in accessing the healthy options they have helped to create; "in Linn County, a group of Latinos needing food resources confessed that they were afraid of discrimination and language barriers faced at food bank agencies, and they were unaccustomed to the food given in emergency food boxes."¹⁵

The lack of culturally appropriate foods are particularly prevalent in Oregon's tribal communities. In the Klamath Basin, native communities "have poor access to Native foods: 93.25% of all households do not get all the traditional Native foods they want throughout the year."¹⁶ Many foods traditionally eaten by tribal communities of Oregon such as salmon have been environmentally threatened and have been harder for native communities to access: "in the fall of 2017, salmon were so depleted in the Klamath River that fishing the last surviving run of Chinook salmon during the fall was prohibited."¹⁷ Rules and permits around hunting and food gathering have presented serious challenges as well, as foods harvested for hundreds of years have now become illegal to gather. As a tribal member noted, "they turn around and label us as an outlaw, when we're doing what ... The Creator gives us these animals so we can live. Now you got to go buy a ticket, a tag, a license to go out and be who you are."¹⁸

Food justice should be a central component in enacting environmental justice, emphasizing that all deserve fair access to healthy, culturally appropriate foods. Food is a human right, but a healthy meal is not guaranteed for many people in Oregon. Making healthy food

¹⁴ Oregon Food Bank and Spencer Masterson, *supra* note 5.

¹⁵ Id.

¹⁶ UC Berkeley Collaborative. *Food Security Assessment of Native American Communities in the Klamath Basin with the Karuk Tribe, Klamath Tribes, Yurok Tribe, and Hoopa Tribe*. BERKELEY RAUSSER COLLEGE OF NATURAL RESOURCES. (May 2019). <https://nature.berkeley.edu/karuk-collaborative/wp-content/uploads/2019/05/Food -Security-Assessment-Web-5.20.pdf>

¹⁷ Id.

¹⁸ Id.



available in communities and neighborhoods is only the first step. Seeking community based solutions to removing barriers to healthy foods is critical to achieving environmental justice.

II. Climate change seriously threatens Oregon agriculture

Climate change represents a threat to Oregon's agricultural economy, and to access to local foods, particularly for Oregon's low income communities and communities of color. The threats to agriculture created by climate change include more frequent droughts in the Pacific Northwest, rising air temperatures which will reduce winter snowfall and bring earlier snowmelt with subsequently reduced summer flows, and longer crop-growing seasons caused by higher temperatures which will lead to increases in evapotranspiration and irrigation water demand which could exacerbate drought damage.¹⁹

The impacts of climate change will be felt with a particularly harsh edge by the specialty fruit crop industry in Oregon, which represents a substantial portion of the value of agricultural production in the state. Climate change may threaten access to water sources, extend the dry season, raise temperatures during both the winter chilling period and the growing season, and facilitate the spread of fungal diseases and harmful insects.²⁰ These changes have the potential to substantially reduce production and profits due to increased input costs and diminished yields and product quality. Fruit-producing areas worldwide are losing the ability to grow tree fruit successfully as a consequence of inadequate winter chill hours. Inadequate chilling can impair development of next year's fruit buds, reduce yield, and reduce fruit quality related to color, texture, and flavor.²¹

Specialty crops are important to the agricultural economy of the Pacific Northwest, but “the need to ensure the continued availability of these products to consumers at reasonable costs is equally important” as these crops “are critical to our quest for a more healthy and sustainable

¹⁹ Il Won Jung & Heejun Chang, *Climate change impacts on spatial patterns in drought risk in the Willamette River Basin, Oregon, USA*, 108 Theoretical and Applied Climatology 355–371 (2011).

²⁰ Laurie Houston et al., *Erratum to: Specialty fruit production in the Pacific Northwest: adaptation strategies for a changing climate*, 146 Climatic Change 173–173 (2017).

²¹ Byrne DH, Bacon T Chilling accumulation: its importance and estimation, Dept. Of Horticultural Sciences, Texas A&M University, College Station, TX pp 77843–2133., <http://aggie-horticulture.tamu.edu/stonefruit/chillacc.html>. (undated)



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diet.”²² A climate which does not present additional challenges to specialty crop and fruit growers is important not only to farmers and agricultural workers, but to Oregon’s local food access programs such as the Farm-to-School grant funding program. The policy has been lauded for increasing “the average total local food purchases for low-income districts, particularly fruits and vegetables.”²³ Study results have indicated that the number of nonwhite students attending a district participating in farm-to-school nearly doubled in the intervention, and 89% of children eligible for free and reduced-price meals attended schools in participating districts compared with 39% of eligible children at baseline.²⁴ Much of the local food being purchased under the auspices of the program is local fruits and vegetables. With climate change presenting growing challenges to farmers of these crops, their prices will inevitably increase, challenging the ability of schools to affordably incorporate meaningful amounts of local produce into their school meals.

Access to traditional foods for Oregon’s Indigenous communities will be particularly vulnerable.²⁵ Indigenous peoples have traditionally depended on a wide variety of native fungi, plant, and animal species for food, medicine, ceremonies, community, and economic health. In combination with other stressors, climate change may negatively affect tribes’ access to traditional foods by changing the availability of these foods. Tribes will be forced to alter harvesting strategies, and will be less able to store, process, and use foods in traditional ways.²⁶ Climate change is also impacting access to salmon for Indigenous groups, along with commercial and recreational fisheries, in the Pacific Northwest. The shifting temperature and weather patterns are exacerbating existing stressors on salmon and creating new ones, including extremes in stream flows and water temperatures that limit the survival of salmon fry.²⁷

²² Houston, 2017

²³ Kristen Giombi et al., *Farm-to-School Grant Funding Increases Children’s Access to Local Fruits and Vegetables in Oregon*, *Journal of Agriculture, Food Systems, and Community Development* 1–10 (2020).

²⁴ Ibid.

²⁵ Kathy Lynn et al., *The impacts of climate change on tribal traditional foods*, *Climate Change and Indigenous Peoples in the United States* 37–48 (2013).

²⁶ Ibid.

²⁷ Nathan Mantua, Ingrid Tohver & Alan Hamlet, *Climate change impacts on streamflow extremes and summertime stream temperature and their possible consequences for freshwater salmon habitat in Washington State*, *102 Climatic Change* 187–223 (2010).



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Our rapidly changing climate represents a challenge to food security and access that must be confronted. We know that on a global level climate change will effect food availability and quality through its influence on global food system activities such as food production, processing, packaging, transportation, and storage.²⁸ We know that across the U.S. while “massive crop failures due to climate change” are “unlikely, regional adjustments in crop production and resource use” will be necessary.²⁹ We know that within Oregon important portions of the agricultural and food production sector such as specialty tree fruit production and salmon fisheries are under threat, and that rising costs will price out the most vulnerable and disadvantaged of Oregon’s communities first.

III. The LCDC plays an important role in the fight for climate justice in Oregon

The Land Conservation and Development Commission (LCDC) is the ideal channel for HB2488’s bold initiative because land use planning is an indispensable tool for mitigating climate change impacts and addressing environmental injustice, and the LCDC is uniquely positioned to create comprehensive and enforceable land use mandates for every level of government in Oregon.

A community’s ability to adapt to a changing climate depends on how it uses its land.³⁰ The United States Global Change Research Program—an inter-agency federal program that collects information on climate change—has recognized the importance of local government power to guide development and plan for extreme weather.³¹ With respect to achieving environmental justice, land use planning is a tool well-suited to the job because it has been

²⁸ M.E. Brown et al., *Climate Change, Global Food Security, and the U.S. Food System*. http://www.usda.gov/oce/climate_change/FoodSecurity2015Assessment/FullAssessment.pdf. (2015).

²⁹ R. M. Adams et al., *Implications of Global Climate Change for Western Agriculture*, Western Journal of Agricultural Economics, 348–356. (1988)

³⁰ Keith H. Hirokawa & Jonathan D. Rosenbloom, *Land Use Planning in a Climate Change Context*, RESEARCH HANDBOOK ON CLIMATE ADAPTATION LAW 1, 30 (2013).

³¹ *Planning and Land Use*, U.S. CLIMATE RESILIENCE TOOLKIT, <https://toolkit.climate.gov/topics/built-environment/planning-and-land-use> (accessed Feb. 27, 2021).



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precisely through *inequitable* land use policies like exclusionary zoning that the disadvantages of marginalized communities have been magnified in the United States.³²

The LCDC creates, interprets and enforces binding rules governing land use planning throughout the state.³³ A fundamental part of the progressive land use planning framework Oregon created in 1973 with the passage of Senate Bill 100, the LCDC is unique among Oregon governmental bodies: its power to adopt mandatory administrative rules that govern land use plans enables it to shape the law throughout Oregon at the local, county, and state levels.³⁴

The LCDC is a successful model for limiting local control in favor of the consistency of statewide land use planning.³⁵ The 19 planning goals adopted to-date by the LCDC focus on protecting agricultural land, containing suburban sprawl, and conserving natural resources.³⁶ Assessments have shown that many of these goals are being effectively implemented.³⁷ However, the issues of climate change and environmental justice have not been adequately addressed by the commission. Following Gov. Kate Brown's [executive order] in March 2020,³⁸ the LCDC did develop transportation and housing planning rules to combat environmental impacts.³⁹ Yet none of the commission's 19 goals mentions climate change adaptation or environmental justice.⁴⁰

³² ANA ISABEL BAPTISTA, LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN 11 (Feb. 2019).

³³ OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, OREGON STATEWIDE PLANNING GOALS AND GUIDELINES 2 (July 2019) https://www.oregon.gov/lcd/Publications/compilation_of_statewide_planning_goals_July2019.pdf (accessed Feb. 27, 2021).

³⁴ LAND USE §§ 1.1, 1.2, 1.5 (Edward J. Sullivan et al. eds., 4th ed. 2010).

³⁵ See generally Robert L. Liberty, *Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States*, 22 ENVIRONMENTAL LAW REPORTER 10367 (1992) <https://elr.info/sites/default/files/articles/22.10367.htm>.

³⁶ Carl Abbot & Deborah Howe, *The Politics of Land Use Law in Oregon: Senate Bill 100, 20 Years After*, 94 Oregon Historical Quarterly 4, 8 (1993).

³⁷ OREGON STATE UNIVERSITY INSTITUTE FOR NATURAL RESOURCES, THE OREGON LAND USE PROGRAM: AN ASSESSMENT OF SELECTED GOALS viii (August 2008).

³⁸ Or. Exec. Order No. 20-04, (March 10, 2020).

³⁹ DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, *Climate-Friendly and Equitable Communities Rulemaking*, <https://www.oregon.gov/lcd/LAR/Pages/CFEC.aspx> (accessed Feb. 27, 2021).

⁴⁰ DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, *Oregon's Statewide Land Use Planning Goals*, <https://www.oregon.gov/lcd/OP/Pages/Goals.aspx> (accessed Feb. 27, 2021).



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HB2488 will ensure that the LCDC engages in long-term, substantive work to promote the goals of environmental justice and climate change adaptation.⁴¹ Because it is capable of creating rules and standards that are enforceable against local and county governments, LCDC will in turn be able to ensure that those goals are duly followed throughout the state.⁴²

In conclusion, NEDC encourages the passage of HB 2488. This bill's concrete mission to incorporate climate justice and food access into Oregon's land use planning process is a strategic approach that is long overdue. If, as our state legislators, you aim to protect *all* Oregonians, pieces of legislation such as this one are instrumental to that work. Thank you in advance for your consideration of our comments.

Sincerely,

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⁴¹ H.B. 2488.

⁴² *State Land Use Commission Issues Enforcement Order Against Washington County*, CEDAR MILL NEWS (June 6, 2020) <https://cedarmillnews.com/article/state-land-use-commission-issues-enforcement-order-against-washington-county/> (accessed Feb. 27, 2021).