



Oregon

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TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
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SUBJECT: Agenda Item 12, November 5–6, 2009, LCDC Meeting

REQUEST TO INITIATE RULEMAKING REGARDING TRANSFER OF DEVELOPMENT RIGHTS PILOT PROJECTS

I. AGENDA ITEM SUMMARY

Under this agenda item, the commission will hold a public hearing to initiate rulemaking regarding a transfer of development rights (TDR) pilot project program. The Land Conservation and Development Commission's (LCDC) will consider and possibly adopt rules at its January 2010 meeting. In its 2009–2011 Policy Agenda, the commission directed the department to adopt these rules early in 2010.

For additional information on this item, please contact Bob Rindy at 503-373-0050 ext. 229, or by email bob.rindy@state.or.us, or Katherine Daniels at 503-373-0050 ext. 329, or by email katherine.daniels@state.or.us

II. BACKGROUND

House Bill 2228 was the department's proposed legislation to create a TDR "pilot program." This bill passed, although the department's initial proposal was substantially amended by the legislature (see Attachment A). The legislation authorizes the department to oversee a TDR pilot program that includes up to three pilot projects to test TDRs, primarily to conserve forest lands that may be under threat of conversion to other uses (see Agenda Item 7).

HB 2228 requires LCDC to adopt rules to implement the pilot program and to "establish a process for selecting pilot projects from among potential projects nominated by local governments. The process must require local governments to nominate potential projects by

submitting a concept plan for each proposed pilot project, including proposed amendments, if any, to the comprehensive plan and land use regulations implementing the plan that are necessary to implement the pilot project.”

According to this legislation, the TDR pilot program is intended to:

“(a) Explore alternative methods to encourage the continued management of private forestlands for timber production.

“(b) Protect water quality, wildlife habitat and other important natural resources by limiting location of dispersed residential development on forestlands.

“(c) Provide for an orderly and efficient transition from rural to urban land uses by establishing locations at which residential development rights or development opportunities transferred from forestlands may be used.” (HB 2228)

As demonstration projects, the three pilots will provide insight and guidance to LCDC and to other local governments that are potentially interested in developing TDR programs. Senate Bill 763, also adopted in the 2009 legislative session, provides general enabling legislation that permits any Oregon community or communities to adopt a TDR program. The DLCD pilot program includes similar provisions, but includes additional provisions not available to the general TDR program.

III. DESCRIPTION OF PROPOSED RULEMAKING

The department intends to propose rules that are limited to addressing the selection process for pilot projects. HB 2228 provides the commission with additional rulemaking authority to address other issues. However, at this time, the department does not recommend additional rules.

The department recommends that no rulemaking work group is necessary because this rulemaking will simply establish procedures for selecting projects consistent with statutory provisions.

IV. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The commission’s procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC’s procedural rules at OAR 660-001-0000. The commission generally does not appoint a rule advisory committee, or “work group” for projects that involve simple rulemaking to carry out clear legislative provisions, such as for the proposed rules described in this report.

The commission is also guided by ORS 197.040, as follows:

“...The Land Conservation and Development Commission shall...adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197, [and] shall:

- (A) Allow for the diverse administrative and planning capabilities of local governments;*
- (B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;*
- (C) Assess the likely degree of economic impact on identified property and economic interests; and*
- (D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.*

The commission has also approved its own “Citizen Involvement Guidelines for Policy Development” (the “CIG”) “...to provide and promote clear procedures for public involvement in the development of commission policy on land use,” which LCDC has committed to follow “to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.”

The CIG also recommends that, as part of a rulemaking process, the department “shall, to the extent practicable:

- *Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;*
- *Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the department’s website, and provide copies via paper mail upon request; and*
- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”*

The CIG also authorizes the commission to: “Choose to not establish an advisory committee or workgroup, provided LCDC and the department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of commission minutes.”

V. RECOMMENDATION

The department recommends the commission initiate rulemaking and authorize the department to submit proposed rules for LCDC adoption at its January 2010 meeting.

ATTACHMENT

HB 2228 (see Section 6 regarding TDR Pilot Program).

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled House Bill 2228

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to transfer of development rights from resource lands; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly finds that:

(1) Providing for rural unemployment reductions and living wage job opportunities brings stability to economically distressed rural communities.

(2) Sections 1 to 9 of this 2009 Act are intended to reduce unemployment and create living wage jobs in economically distressed counties.

(3) Working forests make vital contributions to Oregon by providing jobs, timber, timber products, tax base and other social and economic benefits, by helping to maintain soil, air and water resources, by reducing levels of carbon dioxide in the atmosphere and by providing habitat for wildlife and aquatic life.

(4) Population growth, escalating land values, increasing risks due to wildfire and invasive species, and changes in land ownership and management objectives, with a resulting increase in conflict caused by dispersed residential development, require that new methods be developed to facilitate continued management of private lands zoned for forest use for timber harvest.

(5) It is the public policy of the State of Oregon to:

(a) Explore alternative methods to encourage the continued management of private forestlands for timber production.

(b) Protect water quality, wildlife habitat and other important natural resources by limiting location of dispersed residential development on forestlands.

(c) Provide for an orderly and efficient transition from rural to urban land uses by establishing locations at which residential development rights or development opportunities transferred from forestlands may be used.

(d) Provide for a limited number of demonstration projects for small-scale recreation communities that:

(A) Create incentives for economic development in areas that are in need of long-term job creation;

(B) Enhance the state's leadership in sustainability and natural resource stewardship;

(C) Encourage appropriate public access to and stewardship of recreational resources on public lands consistent with the carrying capacity of the lands and resources; and

(D) Provide for additional sources of long-term funding for stewardship of natural resources.

SECTION 1a. Sections 1 to 9 of this 2009 Act may be cited as the Rural Unemployment Reductions and Living-Wage Job Opportunities Bring Stability Act or the RURAL JOBS Act.

SECTION 2. As used in sections 2 to 5 of this 2009 Act:

(1) "Management plan" means the management plan for the Metolius River Basin that was recommended to the Legislative Assembly on April 2, 2009, by the Land Conservation and Development Commission.

(2) "Metolius resort site" means land mapped as eligible for destination resort siting under ORS 197.455 by Jefferson County that has not been developed as a resort.

(3) "Overnight lodgings" has the meaning given that term in ORS 197.435.

(4) "Tract" has the meaning given that term in ORS 215.010.

SECTION 3. (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation communities may be established on forestlands as specified in sections 2 to 5 of this 2009 Act.

(2) If, within 90 days after the effective date of this 2009 Act, the owner of a Metolius resort site notifies the Department of Land Conservation and Development that it has elected to seek approval of a small-scale recreation community, the owner may, within two years after the effective date of this 2009 Act, apply to a county for approval of a small-scale recreation community.

(3) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act may be established only in conjunction with a transfer of development opportunity from a Metolius resort site. A transfer of development opportunity must be carried out through an agreement between the owner of a Metolius resort site and the owner of the site proposed for development of a small-scale recreation community. In the agreement, the owner of the Metolius resort site must:

(a) Agree to limit the use of the Metolius resort site, consistent with the management plan in consideration for the opportunity to participate in the development of the small-scale recreation community; and

(b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:

(A) Limits the use of the Metolius resort site to be consistent with the management plan;

(B) Allows public access to that portion of the site that is not developed; and

(C) Contains other provisions, as required by the Department of Land Conservation and Development, that are necessary to ensure that the conservation easement is enforceable.

(4) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act must be sited on land that is:

(a) Planned and zoned for forest use; and

(b) Within a county that has a seasonally adjusted average annual unemployment rate over the preceding 10 calendar years that is more than 110 percent of the unemployment rate for the entire state over the same period, as reported by the Employment Department.

(5) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act may not be sited on land that is:

(a) Within an area identified as "Area 1" or "Area 2" in the management plan.

(b) Within an area described in ORS 197.455 in which destination resorts may not be sited.

(c) Within an area protected by or inventoried as a significant resource in an acknowledged comprehensive plan provision implementing statewide land use planning goals relating to:

(A) Open space, scenic and historic areas and natural resources;

(B) Estuarine resources;

(C) Coastal shorelands; or

(D) Beaches and dunes.

(d) Within an area identified as subject to a natural hazard by an acknowledged comprehensive plan provision implementing a statewide land use planning goal relating to protection from natural hazards.

SECTION 4. (1) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act must meet the following development standards:

(a) The community must be located on a tract that contains 200 or fewer acres of land.

(b) The community must consist of 240 or fewer units and have as its primary purpose the provision of overnight lodging units.

(c) The community may contain one restaurant containing 5,000 or fewer square feet, and accessory uses necessary to the operation of the community, including accessory recreational facilities.

(d) The owner of the property must spend at least \$1.5 million on off-site resource enhancement or restoration projects on nearby public lands that will be used by individuals from the community.

(e) The community may not include a golf course or related facilities.

(f) The community must be developed and operated in a sustainable manner by meeting the following criteria:

(A) When fully developed, the community must use reclaimed water as the primary source of water for any irrigation of grounds.

(B) Facilities for snowmobiling or other motorized recreational activities are not permitted.

(C) At least 50 percent of the tract on which the community is located must be dedicated to permanent open space that is contiguous and demonstrates the biological viability of the site as habitat or that provides ecosystem services to the area.

(D) Significant natural resource functions and values on the site must be preserved.

(E) Impervious surfaces, including rooftops and paved roads, trails and parking areas may not exceed 35 percent of the total site area.

(F) Potable water usage must achieve a 20 percent reduction below standard code-built developments. Reclaimed water usage for nonpotable water needs may account for the entire reduction required.

(G) Stormwater must be managed on-site. Off-site runoff must be limited to predevelopment runoff rates.

(H) A restaurant, lodge or other nonresidential building must be designed and constructed to meet regionally or nationally recognized design standards for sustainable design that are acceptable to the county having land use jurisdiction over the proposed development site.

(I) Residential buildings must be designed and constructed to meet regionally or nationally recognized design standards for sustainable design that are acceptable to the county having land use jurisdiction over the proposed development site. The developer must achieve certification for all buildings, with at least 50 percent of the buildings achieving a top-tier rating under the rating system selected.

(J) Additional housing capable of housing at least 50 percent of the peak season employees must be provided on-site.

(2) In addition to the development standards described in subsection (1) of this section, a small-scale recreation community must:

(a) Develop an environmental operations manual that describes core practices for operating the small-scale recreation community, including:

(A) Waste reduction, recycling and diversion practices.

(B) Cleaning and site maintenance practices.

(C) Staff education practices.

(D) Commitment of the community to environmental stewardship.

(b) Establish a conservation stewardship organization, as a separate nonprofit entity funded through income generated by the development, that is charged with:

(A) Development of a baseline study that establishes the current level and condition of the local environment. As part of the baseline study, the organization must develop a long-term stewardship plan that targets net creation and rehabilitation of resources, on-site and off-site.

(B) Ongoing review, election and management of habitat restoration projects that implement the goal of the long-term stewardship plan.

(C) Education and outreach on environmental stewardship.

(c) Organize and manage volunteers working to conserve local resources.

(d) Monitor performance of energy and water usage and site development standards versus actual practice.

(e) Audit and publish annually a report of the community's performance result for the preceding year.

SECTION 5. (1) An application for a small-scale recreation community under sections 2 to 5 of this 2009 Act may be filed only by the owner of a Metolius resort site and the owner of the site on which development of the small-scale recreation community is proposed and must be filed jointly by the owners. The owners shall file a copy of the application with the Department of Land Conservation and Development at the same time that the owners file the application with the county having land use jurisdiction over the proposed development site.

(2) A county shall review an application for a small-scale recreation community under sections 2 to 5 of this 2009 Act as a conditional use in a forest zone and as a land division under ORS chapter 92.

(3) In addition to the standards set forth in sections 2 to 5 of this 2009 Act, the small-scale recreation community must meet the land division standards and other development standards of the county, including standards for streets, utilities and services, unless the standards conflict with sections 2 to 5 of this 2009 Act. If the development standards of the county are dependent on the zoning of the site, the county shall apply the development standards for an urban residential zone with the highest population density.

(4) If more than two applications for a small-scale recreation community are filed under sections 2 to 5 of this 2009 Act and a county has not yet approved an application, the department shall determine which of the applications may proceed, taking into consideration:

(a) The time at which each application was filed;

(b) The unemployment rate in the counties, if more than one county is involved; and

(c) The findings set forth in section 1 of this 2009 Act.

(5) When two applications for small-scale recreation communities have been approved, additional applications may not be considered.

(6) A county may charge a fee to cover the costs of processing an application.

SECTION 6. (1) There is established the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development. Working with the State Forestry Department, the State Department of Agriculture and local governments and with other state agencies, as appropriate, the Department of Land Conservation and Development shall implement the pilot program.

(2) The Land Conservation and Development Commission shall adopt rules to implement the pilot program. The commission, by rule, may:

(a) Establish a maximum ratio of transferable development rights to severed development interests in a sending area for each pilot project. The maximum ratio:

(A) Must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending area to participate in the pilot project; and

(B) May not exceed one transferable development right to one severed development interest if the receiving area is outside of an urban growth boundary.

(b) Require participating owners of land in a sending area to grant conservation easements pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional residential development of their property does not occur.

(c) Require participating owners of land in a sending area to allow reasonable public access to the property.

(3) The commission, by rule, shall establish a process for selecting pilot projects from among potential projects nominated by local governments. The process must require local governments to nominate potential projects by submitting a concept plan for each proposed pilot project, including proposed amendments, if any, to the comprehensive plan and land use regulations implementing the plan that are necessary to implement the pilot project.

(4) When selecting a pilot project, the commission must find that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state;

(b) Designed to avoid or minimize adverse effects on transportation, natural resources, public facilities and services, nearby urban areas and nearby farm and forest uses; and

(c) Designed so that new development authorized in a receiving area does not conflict with a resource or area inventoried under a statewide land use planning goal relating to natural resources, scenic and historic areas and open spaces, or with an area identified as a conservation opportunity area in the "Oregon Conservation Strategy," 2006, by the State Department of Fish and Wildlife.

(5) The commission may select up to three pilot projects for the transfer of development rights under sections 6 to 8 of this 2009 Act.

(6) A sending area for a pilot project under sections 6 to 8 of this 2009 Act:

(a) Must be planned and zoned for forest use;

(b) May not exceed 10,000 acres; and

(c) Must contain four or fewer dwelling units per square mile.

(7) The commission may establish additional requirements for sending areas.

(8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government participating in a pilot project shall select a receiving area for the pilot project based on the following priorities:

(A) First priority is lands within an urban growth boundary;

(B) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception from a statewide land use planning goal relating to agricultural lands or forestlands;

(C) Third priority is lands that are within an urban unincorporated community or a rural community in an acknowledged comprehensive plan.

(b) The commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a pilot project only if the local government has established, to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(c) If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving area in a pilot project, the minimum residential density of development allowed under sections 6 to 8 of this 2009 Act must be at least 10 dwelling units per net acre.

(d) A receiving area may not be located within 10 miles of the Portland metropolitan area urban growth boundary.

(9) The commission may establish additional requirements for receiving areas.

(10) The commission, by rule, may provide a bonus in the form of a higher ratio if a substantial portion of the new development in the receiving area of the pilot project is affordable housing within an urban growth boundary.

SECTION 7. (1) Notwithstanding contrary provisions of statewide land use planning goals relating to public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use regulations implementing the plan to allow residential development in a receiving area consistent with sections 6 to 8 of this 2009 Act if the Land Conservation and Development Commission has approved a concept plan for the pilot project.

(2) The local governments having land use jurisdiction over lands included in the sending area and the receiving area for the pilot project shall adopt amendments to their respective comprehensive plans and land use regulations implementing the plans that are consistent with subsection (3) of this section.

(3) When the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations implementing the plan that identify the additional residential development allowed through participation in the pilot project. The Department of Land Conservation and Development shall review the overlay zones and corresponding comprehensive plan amendments in the manner of periodic review under ORS 197.628 to 197.650.

(4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relating to urbanization, a local government may amend its urban growth boundary to include adjacent lands in a receiving area, consistent with an approved concept plan, if the net residential density of development authorized in the receiving area is at least 10 dwelling units per acre.

(5) Local governments or other entities may establish a development rights bank or other system to facilitate the transfer of development rights.

(6) A county shall review an application for a pilot project under sections 6 to 8 of this 2009 Act as a comprehensive plan amendment. A county may apply other procedures, including master plan approval, site plan review or conditional use review as the county finds appropriate to subsequent phases of review of the pilot project.

SECTION 8. (1) The Department of Land Conservation and Development, the State Forestry Department, a local government participating in the Oregon Transfer of Development Rights Pilot Program or a third-party holder identified by the Department of Land Conservation and Development may hold, monitor or enforce a conservation easement pursuant to ORS 271.715 to 271.795 or other property interest to ensure that lands in sending areas do not retain residential development rights transferred under sections 6 to 8 of this 2009 Act.

(2) An entity that is eligible to be a holder of a conservation easement may acquire, from a willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry out a use of land authorized under rules of the Land Conservation and Development Commission implementing the pilot program.

SECTION 9. (1) As used in this section:

(a) "Community forestlands" has the meaning given that term in ORS 530.600.

(b) "Skyline Forest" means that certain real property consisting of approximately 33,000 contiguous acres in Deschutes County owned on June 1, 2009, by Cascade Timberlands (Oregon) LLC and located within sections 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, township 16 south, range 10 east; sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 35 and 36, township 17 south, range 10 east; and sections 6, 7, 8, 9, 17, 18, 19, 20, 29, 30, 31, 32 and 33, township 17 south, range 11 east.

(c) "Skyline Forest Sustainable Development Area" means a portion of up to 3,000 contiguous acres of the tract known as the Skyline Forest that is located in township 16 south, range 10 east, Deschutes County: portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 7; portions of the northwest quarter, southwest quarter, southeast quarter of section 8; portions of the southwest quarter of section

16; portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 17; portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 18; section 19; portions of the northwest quarter, southwest quarter, northeast quarter of section 20; portions of the northwest quarter of section 21; portions of the northwest quarter of section 29; and portions of the north half of section 30.

(d) "Skyline Conservation Tract" means the portion of the Skyline Forest consisting of approximately 30,000 contiguous acres that is not included within the Skyline Forest Sustainable Development Area.

(e) "Southern Conservation Tract" means that certain real property consisting of approximately 34,700 contiguous acres in Deschutes and Klamath Counties owned on June 1, 2009, by Cascade Timberlands (Oregon) LLC and located within one of the following areas:

(A) "Area one" consists of approximately 14,000 acres of land located within sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34 and 35 of township 22 south, range 9 east, Deschutes County; sections 5, 6, 7, 8, 17, 18, 30 and 31 of township 22 south, range 10 east, Deschutes County;

(B) "Area two" consists of approximately 9,700 acres of land located within sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 17, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33 and 34 of township 23 south, range 9 east, Klamath County and the portion of Parcel 3, Partition Plat No. 34-08 located in township 23 south, range 9 east, Klamath County; and

(C) "Area three" consists of approximately 11,000 acres of land located within sections 14, 23, 24, 25, 26, 34 and 35 of township 23 south, range 9 east; sections 3, 4 and 9 of township 24 south, range 9 east; section 1 of township 25 south, range 7 east; sections 1, 2, 3, 4, 9, 10, 12, 13, 14, 15, 16 and 17 of township 25 south, range 8 east; Parcel 1, Partition Plat No. 34-08 located in township 24 south, ranges 7 and 8 east, Klamath County; the portion of Parcel 3, Partition Plat No. 34-08 located in township 24 south, ranges 8 and 9 east, Klamath County and the land lying west of U.S. Route 97.

(f) "Land trust" means the Deschutes Land Trust, an Oregon nonprofit corporation or another nonprofit conservation organization that is either accredited by the Land Trust Accreditation Commission or is nationally recognized as a land conservation organization, the primary mission of which is land conservation.

(2) Contingent upon satisfaction of the requirements of subsection (3) of this section, the Skyline Forest Sustainable Development Area may be developed and used for the following purposes:

(a) The Skyline Forest Sustainable Development Area may contain up to 282 residential units, a caretaker's residence, a restaurant, a small community store, a small-scale community conference center, an equestrian facility, small-scale recreational, commercial and basic service uses, and all utility, maintenance and security facilities necessary to support the development. The residential units may be permanent residences, rental units or lodging units. The specific number of residential units allowed within the Skyline Forest Sustainable Development Area, up to a maximum of 282, is dependent upon the number of acres of the Skyline Conservation Tract and the Southern Conservation Tract conveyed to a land trust or a federal or state agency pursuant to this section. Up to:

(A) 137 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract to a land trust;

(B) 183 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract and area one of the Southern Conservation Tract to a land trust or to a federal or state agency;

(C) 224 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract, area one and area two of the Southern Conservation Tract to a land trust or to a federal or state agency; or

(D) 282 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract, area one, area two and area three of the Southern Conservation Tract to a land trust or to a federal or state agency.

(b) The Skyline Forest Sustainable Development Area may not contain a golf course or golf-related facilities.

(c) All development, not including access roads and utility lines to the Skyline Forest Sustainable Development Area and up to five acres for maintenance and security facilities, shall be located on 1,200 contiguous acres within the Skyline Forest Sustainable Development Area. The owner shall use the remaining undeveloped 1,800 acres of the Skyline Forest Sustainable Development Area for the primary purposes of minimizing the risk of wildfire and maintaining wildlife habitat value. However, an equestrian facility may be located within the otherwise undeveloped 1,800 acres if the facility is located on no more than 40 acres contiguous to the developed portion of the Skyline Forest Sustainable Development Area. The owner shall cause a conservation easement pursuant to ORS 271.715 to 271.795 to be recorded on the entirety of the undeveloped 1,800 acres prohibiting partitions and development, but allowing recreational uses, such as picnic grounds, trails and restrooms. The equestrian facility permitted by this section shall also be allowed within the conservation easement. The conservation easement must be held by a land trust and shall contain terms agreed to by the State Department of Fish and Wildlife and the State Forestry Department.

(d) Roads, utility corridors and all utility facilities necessary to serve the Skyline Forest Sustainable Development Area shall be allowed as outright permitted uses within the Skyline Forest Sustainable Development Area, the Skyline Forest and on nearby lands regardless of the comprehensive plan or zoning designation of the lands.

(e) The uses allowed by this subsection shall be allowed only upon approval of a master plan as provided by subsection (5) of this section. The master plan shall contain design criteria and standards to ensure that sustainability principles will be incorporated into the development and operation uses within the Skyline Forest Sustainable Development Area. The design criteria and standards shall promote sustainable building design, water conservation and energy conservation.

(f) The master plan described in subsection (5) of this section shall incorporate design criteria and standards to ensure that there will be negligible visual impacts under normal daylight viewing conditions from Awbrey Butte and the Plainview scenic turnout located on the McKenzie-Bend Highway No. 17, also known as U.S. Route 20, near milepost 9. The design criteria and standards shall also require all outdoor lighting to be downward facing, to the extent practicable.

(g) The Skyline Forest Sustainable Development Area shall be served by one primary access route and by one or more emergency and secondary access routes that use existing roads as much as practicable. The access routes may be private or public roads, including roads managed by the United States Forest Service. The primary access route shall intersect the McKenzie-Bend Highway No. 17, also known as U.S. Route 20, between mileposts 3 and 6 to provide access from the eastern boundary of the Skyline Forest Sustainable Development Area to the referenced highway.

(h) The Skyline Forest Sustainable Development Area, including all access roads, must be developed in consultation with the State Department of Fish and Wildlife to minimize impacts on wildlife, particularly deer and elk populations.

(i) The Skyline Forest Sustainable Development Area, including all access roads, must be developed in consultation with the State Forestry Department and the United States Forest Service to minimize wildfire risks.

(j) The owner of the Skyline Forest Sustainable Development Area shall provide adequate firefighting facilities and services to address the needs of the development. All structures shall be designed and maintained consistent with the default wildfire safety standards of the

Oregon Forestland-Urban Interface Fire Protection Act of 1997, as set forth in administrative rules of the State Forestry Department.

(k) Any wells used to provide water for uses within the Skyline Forest Sustainable Development Area shall be sited to minimize impacts of groundwater use on Whychus Creek and Melvin Springs.

(3) The land uses described in subsection (2) of this section shall be allowed within the Skyline Forest Sustainable Development Area upon the satisfaction of the following conditions:

(a) The owner of the Skyline Forest and the Southern Conservation Tract transfers:

(A) The Skyline Conservation Tract to a land trust for the purpose of creating community forestlands; and

(B) The Southern Conservation Tract, whether to a single buyer or multiple buyers, to a land trust for the purpose of creating community forestlands or to a federal or state agency. However, the owner may choose to retain all or a portion of the Southern Conservation Tract, in which case the number of residential units allowed within the Skyline Forest Sustainable Development Area shall be limited as set forth in subsection (2)(a) of this section.

(b) The consideration for any transfer does not exceed the fair market value of the property as established by an appraisal based on the hypothetical condition or assumption that all development rights on the properties, whether actual or potential, have been extinguished as contemplated by subsection (6) of this section. The appraisal must comply with the Uniform Standards of Professional Appraisal Practice. The appraisal shall comply with the Uniform Appraisal Standards for Federal Land Acquisitions if:

(A) The land trust or state agency proposes, in part or in whole, to use federal funds to purchase the property and has demonstrated a reasonable likelihood that federal funds will be secured for the purchase; or

(B) The property is being conveyed to a federal agency.

(c) The Skyline Conservation Tract and the Southern Conservation Tract will be managed so that wildlife and recreational values are safeguarded and the overall forest health, including sustainable timber production and wildfire prevention, is maintained over the long term.

(d) The owner of the Skyline Forest Sustainable Development Area obtains the land use approvals required by subsection (5) of this section.

(4) The uses authorized by subsection (2) of this section shall be allowed as outright permitted uses by Deschutes County, following approval of the master plan required by subsection (5) of this section by Deschutes County. The uses allowed by subsection (2) of this section are allowed notwithstanding those provisions of ORS 215.700 to 215.780 relating to lot size and dwelling standards on forestlands, those statewide land use planning goals relating to agricultural lands, forestlands, public facilities and services, transportation and urbanization and those provisions of Deschutes County's comprehensive plan and land use regulations limiting uses of forestlands. Approval of the master plan and land division applications required by subsection (5) of this section for the development and use of the Skyline Forest Sustainable Development Area and all associated road and utility corridors may not require exceptions to any statewide planning goal or amendment of any local comprehensive plan or land use regulation. Deschutes County shall apply only the provisions of this section as standards and criteria for an application for, or amendment to, a master plan or land division application or other development permit applications submitted pursuant to this section.

(5) The owner of the Skyline Forest Sustainable Development Area may submit an application to Deschutes County for approval of a master plan for the development and use of the area. The application must be submitted within five years after the effective date of this 2009 Act, subject to the following:

(a) The master plan shall demonstrate compliance with subsection (2) of this section and include a tentative land division application to create the lots within the Skyline Forest Sustainable Development Area.

(b) Deschutes County shall process the master plan and all land division applications pursuant to the procedural review provisions of its local land use regulations. However, Deschutes County shall approve the master plan and any tentative or final land division applications if the applications are consistent with subsections (2) and (3) of this section. No additional land use or land division standards shall apply to the approval and development of the Skyline Forest Sustainable Development Area.

(c) Deschutes County shall condition final approval of the master plan and land division applications on the execution of an agreement to record a conservation easement in accordance with subsection (2)(c) of this section, an agreement to transfer the Skyline Conservation Tract to a land trust for the purpose of creating community forestlands and, if applicable, an agreement to transfer all or a portion of the Southern Conservation Tract either to a land trust for the purpose of creating community forestland or to a federal or state agency. The agreements shall specify that recordation of the conservation easement, transfer of the Skyline Conservation Tract and transfer of all or a portion of the Southern Conservation Tract shall be contingent upon the following terms:

(A) The owner of the Skyline Forest Sustainable Development Area shall obtain all federal, state and local licenses, permits, rights and other entitlements necessary for development of the Skyline Forest Sustainable Development Area, each of which shall be final and no longer subject to appeal;

(B) The land trust or the federal or state agencies, as applicable, shall obtain adequate funding to purchase the Skyline Conservation Tract or the Southern Conservation Tract, as applicable, in accordance with subsection (3)(b) of this section; and

(C) The land trust or the federal or state agencies shall develop and implement management standards that provide reasonable assurance to the owner of the Skyline Forest Sustainable Development Area that the Skyline Conservation Tract and the Southern Conservation Tract will be managed to establish forest health, manage wildfire risk and maintain compatibility with the Skyline Forest Sustainable Development Area.

(d) The master plan and all associated land division plans shall govern development of the Skyline Forest Sustainable Development Area in perpetuity and shall not expire. Regulations requiring the submittal of final plats within a specified time period following tentative plan approval shall not apply to the Skyline Forest Sustainable Development Area. The master plan may be amended at any time following an administrative review by Deschutes County. Deschutes County shall approve the amendments if the amended master plan remains consistent with subsections (2) and (3) of this section.

(6) The Deschutes Land Trust, an Oregon nonprofit corporation, shall have a right of last opportunity to purchase the Skyline Conservation Tract and the Southern Conservation Tract, and any purchase agreement shall provide a minimum of three years for the Deschutes Land Trust to obtain funding for any purchase. If at any time after two years from the date of any purchase agreement or the date of filing of a master plan under subsection (5) of this section, whichever is later, the Deschutes Land Trust has failed to demonstrate a reasonable likelihood it will be able to obtain the funds necessary to complete the purchase, the owner of the Skyline Conservation Tract and the Southern Conservation Tract may seek alternative buyers for any property that is the subject of a purchase agreement under this subsection. The Deschutes Land Trust will in good faith notify the owner of the Skyline Conservation Tract and the Southern Conservation Tract if at any time during the period of any purchase agreement the Deschutes Land Trust concludes it does not wish to complete the purchase or will be unable to obtain the necessary funding to complete the purchase.

(7) Development and construction uses within the Skyline Forest Sustainable Development Area may proceed according to the approved master plan once the transfer of fee title of the Skyline Conservation Tract and, as applicable, all or a portion of the Southern Conservation Tract, is complete. Following transfer of fee title of the Skyline Conservation Tract and, as applicable, all or a portion of the Southern Conservation Tract, all development rights on the conveyed lands are extinguished and the conveyed lands shall be thereafter managed as community forestlands or as federal or state forestlands.

(8) At any time within five years after the effective date of this 2009 Act, the owner of the Skyline Forest Sustainable Development Area may either file an application for a master plan pursuant to subsection (5) of this section, or submit written notice to Deschutes County and the Deschutes Land Trust stating the owner's intent to relinquish the development opportunities authorized by this section. Until the owner of the Skyline Forest Sustainable Development Area files a master plan application or submits a notice of relinquishment under this subsection, the owner may not divide, develop, obtain a lot of record determination or prohibit public access to any portion of the Skyline Forest. If the owner of the Skyline Forest Sustainable Development Area submits a notice of relinquishment under this subsection, or the owner allows the five-year time period to elapse without taking any action under this subsection, the development opportunities authorized by this section shall expire and the owner may divide, develop and prohibit public access to any portion of Skyline Forest pursuant to the laws in effect at that time.

(9) If the owner of the Skyline Forest Sustainable Development Area does not file a master plan within five years of the effective date of this 2009 Act or if Deschutes County does not approve a master plan as provided in subsection (5) of this section within 15 years of the effective date of this 2009 Act, then the provisions of subsection (2) of this section shall cease to have any force or effect.

(10) The development opportunities provided by this section are fully transferable and will run with the land in the event of a change of ownership of the Skyline Forest or all or a portion of the Southern Conservation Tract.

SECTION 10. On or before February 1, 2013, the Department of Land Conservation and Development shall make a report to the Seventy-seventh Legislative Assembly, in the manner described in ORS 192.245:

(1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in sections 6 to 8 of this 2009 Act; and

(2) Recommending whether the pilot program should be continued, modified, expanded or terminated.

SECTION 11. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 12, 2009

Repassed by House June 16, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 12, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State