

TDR PILOT PROGRAM
(Portions of HB 2228)

EXHIBIT: 27 1 Item 12
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 11-5-09
PAGES: 4
SUBMITTED BY: Bob Rindy, DLCD

1 **SECTION 1:** The Legislative Assembly finds that:

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

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

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

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

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

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

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

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

23
24 (at this point language morphs into other topics of the bill not related to TDRs, including
25 Sections 2-5)

26
27 **SECTION 6:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (10) The commission, by rule, may provide a bonus in the form of a higher ratio if a
2 substantial portion of the new development in the receiving area of the pilot project is
3 affordable housing within an urban growth boundary.
4

5 **SECTION 7:**

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

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

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

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

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

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

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

45 (2) An entity that is eligible to be a holder of a conservation easement may acquire,
46 from a willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry

1 out a use of land authorized under rules of the Land Conservation and Development
2 Commission implementing the pilot program.

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4 *(SECTION 9 of the bill does not concern the pilot program)*

5
6 **SECTION 10:**

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

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

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

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16 **SECTION 11:**

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