

OAR 660, DIVISION 28
OREGON TRANSFER OF DEVELOPMENT RIGHTS PILOT PROGRAM
Housekeeping Amendments
Draft December 7, 2011

1 **660-028-0010**

2 **Definitions**

3 For purposes of this division, the definitions contained in ORS 197.015 and the Statewide
4 Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following
5 definitions apply:

6
7 (1) “Conservation easement” has the meaning provided in ORS 271.715.

8
9 (2) “Local Government” means a city, county, metropolitan service district or state
10 agency as defined in ORS 171.133.

11
12 (3) “Receiving area” means a designated area of land to which a holder of development
13 rights generated from a sending area may transfer the development rights, and in which
14 additional residential **or other** uses or development, not otherwise allowed, are allowed by
15 reason of the transfer.

16
17 (4) “Sending area” means a designated area of resource land from which development
18 rights generated from forgone development are transferable, for residential uses or development
19 not otherwise allowed, to a receiving area.

20
21 (5) “Transferable development right or TDR” means a severable residential development
22 interest in real property that can be transferred from a lot, parcel or tract in a sending area to a
23 lot, parcel or tract in a receiving area. This term has the same meaning as “transferable
24 development credit” under Oregon Laws 2009, chapter 504, section 2(10)[~~except that, for~~
25 ~~purposes of this division and the Oregon Transfer of Development Rights Pilot Program,~~
26 ~~“severable development interests” are limited to residential uses, including ancillary uses~~
27 ~~subordinate to residential uses].~~

28
29 Stat. Auth.: ORS 197.040

30 Stats. Implemented: OL 2009, ch 636, § 6

31 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10

32
33 **660-028-0020**

34 **Selection of Pilot Projects**

35 (1) This rule establishes the process for the commission to select up to three TDR pilot
36 projects from among projects nominated by one or more local governments, **as provided in**
37 **Oregon Laws 2009, chapter 636.**

38
39 (2) A proposed TDR pilot project will be considered by the department and the
40 commission if the local governments with land use jurisdiction over the proposed sending and
41 receiving areas submit, on or before **September 1, 2012**[~~June 1, 2010~~]:

42
43 (a) A completed application form;

1
2 (b) A letter of interest along with the owner(s) of at least fifty percent of the land in the
3 proposed sending area;

4
5 (c) A concept plan consistent with the requirements of OAR 660-028-0030 that describes
6 the proposed TDR pilot project and that includes:

7
8 (A) Proposed amendments to the local government comprehensive plan and land use
9 regulations necessary to implement the pilot project, a tentative schedule for adoption of the
10 amendments, and a description of any other proposed actions intended to implement the
11 proposed TDR pilot project;

12
13 (B) Maps and other pertinent information describing the proposed sending areas and
14 receiving areas;

15
16 (C) Proposed transfer ratios as specified in OAR 660-028-0030(5) and other incentives
17 for participation; and

18
19 (D) A letter from a qualified entity as defined in ORS 271.715 expressing interest in
20 holding and monitoring any conservation easement or similar restriction to ensure that
21 development rights are transferred off of the proposed sending area.

22
23 (3) The commission may extend the deadline in [sub]section (2) of this rule if it finds that
24 additional time is necessary to ensure a satisfactory pool of applications for consideration under
25 this program.

26
27 (4) The department will review applications and submit its recommendations for review
28 by the commission within 120 days of the deadline established under section (2) or (3) of this
29 rule. The department will base its recommendations on its assessment of:

30
31 (a) The beneficial qualities and attributes of the lands in the proposed sending area for
32 forest management and the degree of risk that those qualities and attributes will be lost in the
33 absence of the proposed project based on information in the proposal and other available
34 information provided by the State Forestry Department and others;

35
36 (b) The location, attributes, size and configuration of proposed sending and receiving
37 areas, including the quality of the forest land intended to be conserved under the proposed TDR
38 pilot project;

39
40 (c) The demonstrated intent and ability of the local government and other participants to
41 implement the proposed TDR pilot project within a reasonable timeframe; and

42
43 (d) The likelihood that the proposed TDR pilot project will succeed and achieve the
44 purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009,
45 chapter 636.

1 (5) Upon review of the applications, the commission may select up to three qualified
2 TDR pilot projects for inclusion in the Oregon TDR Pilot Program. In deciding which TDR pilot
3 projects to select, the commission must consider the department's recommendations, the written
4 applications and concept plans, and any other available and pertinent information it deems
5 relevant to its decision.

6
7 (6) When selecting a TDR pilot project the commission must find that the pilot project
8 will comply with the requirements specified in OAR 660-028-0030 and other requirements of
9 law, and that the pilot project is:

10
11 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural
12 economy of this state and achieve the purposes and requirements of the Oregon TDR Pilot
13 Program expressed in Oregon Laws 2009, chapter 636;

14
15 (b) Designed to avoid or minimize adverse effects on transportation, natural resources,
16 public facilities and services, nearby urban areas and nearby farm and forest uses; and

17
18 (c) Designed so that new development authorized in a receiving area as a result of the
19 transferred development rights will not conflict with:

20
21 (A) Significant Goal 5 resources, including natural, scenic, and historic resources, open
22 spaces and other resources and resource areas inventoried in accordance with Goal 5 and OAR
23 chapter 660, division 23 or OAR chapter 660, division 16; or

24
25 (B) Areas identified as conservation opportunity areas in the Oregon Department of Fish
26 and Wildlife's 2006 "Oregon Conservation Strategy."

27
28 Stat. Auth.: ORS 197.040

29 Stats. Implemented: OL 2009, ch 636, § 6

30 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10

31
32 **660-028-0030**

33 **Requirements for TDR Pilot Projects**

34 (1) At the time the local government(s) submits an application for a proposed TDR pilot
35 project, the proposed sending area must be planned and zoned for forest use, may not exceed
36 10,000 acres, and must contain four or fewer dwelling units per square mile.

37
38 (2) At the time the local government(s) submits an application for a proposed TDR pilot
39 project, the proposed receiving area or areas may not be located within 10 miles of the Portland
40 metropolitan area urban growth boundary. The receiving area or areas must be only the
41 appropriate size necessary to accommodate the anticipated development rights that will
42 reasonably be generated and transferred from the sending area, with consideration of uses and
43 density to be authorized under the proposed amendments to the local government comprehensive
44 plan and land use regulations to implement the proposed TDR pilot project if it is selected.

45
46 (3) In proposing a receiving area for a TDR pilot project, the local government must
47 select the area based on consideration of the following priorities:

1 (a) First priority is lands within an urban growth boundary.^[;]

2
3 (b) Second priority is lands that are adjacent to an urban growth boundary and that are
4 subject to an exception to Goal 3 or Goal 4.^[;]

5
6 (c) Third priority is lands that are

7
8 (A) [w]Within a designated urban unincorporated community or rural community, [in an
9 acknowledged comprehensive plan.] or

10
11 (B) In a resort community or a rural service center, as defined in OAR 660-022-0010
12 and designated in an acknowledged comprehensive plan, that contains at least 100 dwelling
13 units at the time the pilot project is approved.

14
15 (d) Fourth priority is exception areas approved under ORS 197.732 that are
16 adjacent to an urban unincorporated community or rural community, provided the county
17 agrees:

18
19 (A)To include the receiving area within the boundaries of the community and

20
21 (B) To ensure the community is provided with water and sewer service.

22
23 (4) With respect to the priority of receiving areas described in subsection (3) of this rule,
24 the commission may authorize a local government to select lower priority lands over higher
25 priority lands for a receiving area in a TDR pilot project only if the local government has
26 established, to the satisfaction of the commission, that selecting higher priority lands as the
27 receiving area is not likely to result in the severance and transfer of a significant proportion of
28 the development interests in the sending area within five years after the receiving area is
29 established.

30
31 (5) The minimum residential density of development allowed in receiving areas
32 intended for residential development is:

33
34 (a) For second priority lands described in subsection (3)(b) of this rule, at least five
35 dwelling units per net acre or 125 percent of the average residential density allowed within
36 the urban growth boundary when the pilot project is approved by the commission,
37 whichever is greater.

38
39 (b) For third priority and fourth priority lands described in subsection (3)(c) and (d)
40 of this rule, at least 125 percent of the average residential density allowed on land planned
41 for residential use within the unincorporated community when the pilot project is
42 approved by the commission.

43
44 (c) For third and fourth priority lands described in subsection (3)(c) and (d) of this
45 rule that are within one jurisdiction but adjacent to another jurisdiction, the written
46 consent of the adjacent jurisdiction is required for designation of the receiving area.

1 **(6)**~~(5)~~ The ratio of transferable development rights to severed residential development
2 interests in a sending area must be calculated to protect lands planned and zoned for forest use
3 and to create incentives for owners of land in the sending and receiving areas to participate in the
4 TDR pilot project. The **maximum** ratio:

5 **(a)** ~~(a)~~ **May not exceed one transferable development right to one severed development**
6 **interest if the receiving area is outside of ~~(an)~~ urban growth ~~[boundary]~~ **boundaries and outside****
7 **unincorporated communities**, except that this maximum ratio does not apply to an exception
8 area described in subsection (3)(b) of this rule provided the TDR pilot project concept plan
9 ensures the inclusion of the receiving area within an urban growth boundary, either under
10 applicable requirements of Goal 14 and other laws or the alternative provisions in section (11) of
11 this rule. The concept plan may allow the transfer of development rights authorized in this
12 subsection prior to the inclusion of the receiving area in an acknowledged urban growth
13 boundary provided the amended comprehensive plan and land use regulations ensure that the
14 transferred rights cannot be exercised at a higher ratio than specified in this rule until the
15 receiving area is included in the urban growth boundary.

16
17 **(b) May not exceed two transferable development rights to one severed development**
18 **interest if the receiving area is in an unincorporated community; and**

19
20 **(c) Must be consistent with plans for public facilities and services in the receiving**
21 **area.**

22
23 **(7)**~~(6)~~ Within one year after the commission has approved a proposed concept plan, the
24 local governments having land use jurisdiction over the affected sending and receiving areas
25 must adopt overlay zone provisions and corresponding amendments to the comprehensive plan
26 and land use regulations to implement the concept plan and to identify and authorize the
27 additional residential development allowed through participation in the pilot project. The local
28 governments must submit and the commission must review the comprehensive plan and land use
29 regulation amendments in the manner of periodic review under ORS 197.628 to 197.650.
30 Transfer of development interests may not occur prior to the commission’s acknowledgment of
31 the comprehensive plan and land use regulation amendments.

32
33 **(8)**~~(7)~~ The comprehensive plan and land use regulation amendments required by section
34 **(7)**~~(6)~~ of this rule must specify the type and density of the additional ~~[residential]~~ development
35 to be transferred and allowed in a receiving area through participation in a TDR pilot project, in
36 accordance with the concept plan approved by the commission and other applicable requirements
37 of this rule.

38
39 **(9)**~~(8)~~ In addition to the requirements of section **(7)**~~(6)~~ of this rule, before any
40 development rights may be exercised in the receiving area, the participating owners of land in a
41 sending area must:

42
43 **(a)**~~G~~ grant a conservation easement pursuant to ORS 271.715 to 271.795 or otherwise
44 ensure on a permanent basis that additional residential development does not occur in the
45 sending area~~;~~ and

1 ~~(b) Allow reasonable public access to the property. The commission may agree to limits~~
2 ~~on public access in the event the landowner demonstrates there are significant risks to forest~~
3 ~~resources or management practices that would result without such limits.~~
4

5 **(10)[(9)]** If the receiving area for a TDR pilot project is **intended for residential**
6 **development and is** within an urban growth boundary expansion area approved under section
7 **(12)[(11)]** of this rule, or is in an exception area described in subsection (3)(b) and section
8 **(11)[(10)]** of this rule, the amended comprehensive plan and land use regulations required by
9 section **(7)[(6)]** of this rule must authorize a residential density of ~~[at least 10 dwelling units per~~
10 ~~net acre for the receiving area.]~~;

11
12 **(a) For second priority lands described in subsection (3)(b), at least five dwelling**
13 **units per net acre or 125 percent of the average residential density allowed within the**
14 **urban growth boundary when the pilot project is approved by the commission, whichever**
15 **is greater.**

16
17 **(b) For third priority and fourth priority lands described in subsections (3)(c) and**
18 **(d), at least 125 percent of the average residential density allowed on land planned for**
19 **residential use within the unincorporated community when the pilot project is approved by**
20 **the commission.**

21
22 **(11)[(10)]** Notwithstanding contrary provisions of statewide land use planning Goals 11
23 and 14 and related rules, and notwithstanding ORS 215.700 to 215.780, if the commission
24 approves a TDR pilot project, a local government may amend its comprehensive plan and land
25 use regulations to allow transferred rights under an approved TDR pilot project to develop as
26 urban level ~~[residential]~~ development, with urban levels of public facilities and services,
27 including transportation, in a receiving area that consists of land adjacent to an urban growth
28 boundary **or unincorporated community boundary** and subject to an exception to Goal 3 or
29 Goal 4, consistent with subsection (3)(b), **(c) and (d)** and section **10[(9)]** of this rule. The
30 concept plan described under OAR 660-028-0020(2)(b) must indicate whether a local
31 government intends to change comprehensive plan and land use regulations to allow urban level
32 of development and urban levels of public facilities and services in the receiving area and, **where**
33 **intended for residential development,** must include an agreement to rezone the receiving area
34 to authorize a residential density ~~[of at least 10 dwelling units per net acre]~~ as provided in section
35 **(10)[(9)]** of this rule.

36
37 **(12)[(11)]** Notwithstanding ORS 197.296 and 197.298, statewide land use planning Goal
38 14 and its implementing rules (OAR chapter 660, division 24), a local government may amend
39 its urban growth boundary **or unincorporated community boundary** to include land that is in a
40 receiving area of a selected TDR pilot project and that is adjacent to an urban growth boundary
41 and subject to an exception to Goal 3 ~~or~~ **and** Goal 4. The proposed concept plan described
42 under OAR 660-028-0020(2)(c) must indicate whether a local government intends to include
43 adjacent exception lands in a receiving area approved as a pilot project under this program, and,
44 **where intended for residential development,** must include an agreement to rezone the
45 receiving area to authorize a residential density ~~[of at least 10 dwelling units per net acre]~~ as
46 provided in section **(10)[(9)]** of this rule.
47

1 (13)~~(12)~~ Local governments or other entities may establish a development rights bank
2 or other system to facilitate the transfer of development rights.
3

4 **(14) When development rights transfers authorized by the pilot project under**
5 **sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights**
6 **from the jurisdiction of one local government to another local government and cause a**
7 **potential shift of ad valorem tax revenues between jurisdictions, the local governments may**
8 **enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for**
9 **sharing between the local governments of the prospective ad valorem tax revenues derived**
10 **from new development in the receiving area.**
11

12 **(15) When development rights transfers authorized by the pilot project under**
13 **sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights**
14 **from the jurisdiction of one local government to another local government and cause a**
15 **potential shift of ad valorem tax revenues between jurisdictions, the local governments may**
16 **enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for**
17 **sharing between the local governments of the prospective ad valorem tax revenues derived**
18 **from new development in the receiving area.**
19

20
21 Stat. Auth.: ORS 197.040

22 Stats. Implemented: OL 2009, ch 636, § 6

23 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10
24
25