

660-028-0010

Definitions

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

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

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

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

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

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

Stat. Auth.: ORS 197.040

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

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

660-028-0020

Selection of Pilot Projects

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

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

(a) A completed application form;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 as a result of the transferred development rights will not conflict with:

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

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

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660-028-0030

Requirements for TDR Pilot Projects

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

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

(3) In proposing a receiving area for a TDR pilot project, the local government must select the area based on consideration of 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 to Goal 3 or Goal 4. [;]

(c) Third priority is lands that are:

~~(A) [w]Within a designated urban unincorporated community or rural community [in an acknowledged comprehensive plan.]; or~~

(B) In a resort community, or a rural service center, that contains at least 100 dwelling units at the time the pilot project is approved.

(d) Fourth priority is exception areas approved under ORS 197.732 that are adjacent to urban unincorporated communities or rural communities, if the county agrees to bring the receiving area within the boundaries of the community and to provide the community with water and sewer service.

(4) With respect to the priority of receiving areas described in subsection (3) of this rule, the commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a TDR 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.

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

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

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

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

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

(a) [m]May not exceed one transferable development right to one severed development interest if the receiving area is outside of [an] urban growth [boundary] boundaries and outside unincorporated communities, except that this maximum ratio does not apply to an exception

area described in subsection (3)(b) of this rule provided the TDR pilot project concept plan ensures the inclusion of the receiving area within an urban growth boundary, either under applicable requirements of Goal 14 and other laws or the alternative provisions in section ~~[(11)]~~**12** of this rule. The concept plan may allow the transfer of development rights authorized in this subsection prior to the inclusion of the receiving area in an acknowledged urban growth boundary provided the amended comprehensive plan and land use regulations ensure that the transferred rights cannot be exercised at a higher ratio than specified in this rule until the receiving area is included in the urban growth boundary.

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

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

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

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

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

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

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

(10)~~(9)~~ If the receiving area for a TDR pilot project is **intended for residential development and is** within an urban growth boundary expansion area approved under section ~~(12)~~**(11)** of this rule, or is in an exception area described in subsection (3)(b) and section ~~(11)~~**(10)** of this rule, the amended comprehensive plan and land use regulations required by

section ~~(7)~~~~(6)~~ of this rule must authorize a residential density of ~~[at least 10 dwelling units per net acre for the receiving area.]~~;

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

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

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

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

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

(14) When development rights transfers authorized by the pilot project under Oregon Laws 2009, chapter 636, sections 6 to 8, ~~[chapter 636, Oregon Laws 2009,]~~ result in the transfer of development rights from the jurisdiction of one local government to another local government and cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under

ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving area.

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