

F.A.Q. -- Amended LCDC Rules

OAR 660, Division 28

Transfer of Development Rights Pilot Program

On January 27, 2012, the Land Conservation and Development Commission (LCDC) amended Administrative Rules in OAR 660, division 28, concerning the Oregon Transfer of Development Rights (TDR) Pilot Program. These rules implement Oregon Laws 2009, chapter 636, which established the pilot program. These laws were amended by the 2011 legislature; the recent rule amendments align the rules with the newly-amended Oregon Laws. The amendments to Oregon Laws took effect May 27, 2011. The amended rules took effect on February 14, 2012.

1. **What is the purpose of the pilot program?** This program encourages market-based non-regulatory options for property owners and local governments to protect resource lands. The transfer of development rights (TDR) pilot program is intended test different approaches to transferring development rights from forest lands to more appropriate development sites.
2. **Why did the legislature amend this process?** To date, the Department of Land Conservation and Development (DLCD) has received no qualifying applicants for a TDR pilot project. Communication with forest landowners and local governments indicate that the incentives for participation in a pilot project were insufficient. In particular, additional incentives were needed to make receiving areas more attractive. DLCD therefore initiated legislation that would provide for additional incentives in HB 2132.
3. **What types of additional incentives are provided in Oregon Laws and rules?**
The new incentives are as follows:
 - A. **More types of receiving areas** - Prior to HB 2132, TDR receiving areas could only include UGBs, exception areas adjacent to UGBs, urban unincorporated communities and rural communities. Now, TDR receiving areas may also include resort communities and rural service centers that include at least 100 dwellings, and exception areas adjacent to urban unincorporated communities and rural communities if the county agrees to bring the receiving areas within the boundaries of the community and to provide the community with water and sewer service. The law and rule changes significantly increase the types, numbers and locations of potential qualifying receiving areas and properties.

- B. **Lower receiving area densities** - Prior to the recent law changes, the minimum residential density authorization for non-UGB receiving areas was 10 net dwellings per acre. Now, the minimum residential density authorization for receiving areas adjacent to a UGB and subject to an exception is either five dwelling units per net acre or 125 percent of the average residential density allowed within the UGB, whichever is greater. This change reduces the required density authorizations in receiving areas to a level considered more reasonable by local governments.
 - C. **Increased transfer ratios** - Prior to the recent law changes, transfer ratios inside UGBs were unlimited and outside UGBs were limited to 1:1, meaning that one severed development interest from a property in a sending area would permit one development right to be applied to a property in a receiving area. Now, transfer ratios within unincorporated communities may use transfer ratios up to 1:2, if consistent with plans for public facilities and services. This change increases the incentive for participation by sending area property owners.
 - D. **Deletion of public access requirement** - Prior to changes in this law, reasonable public access to the sending area property was required. This requirement was a significant concern to private forest landowners for a variety of reasons (liability, fire hazard, damage, etc.) and has been deleted. Further, access to protected lands under TDR programs does not typically include public access. This change should increase the incentive to participate by forest landowners.
 - E. **Wider variety of receiving area zoning** - Prior to the amendments, the law referred to “residential” receiving areas. Those references have been deleted. Now, receiving areas may be residential, commercial, industrial or other. This change will increase the number and type of potential receiving areas and appeal to more local governments and a wider range of property owners.
 - F. **Authorization for revenue sharing** - Finally, prior to these law changes, there was no provision in law for revenue sharing between local governments or special districts that might be financially adversely affected by a TDR program (for example, because development rights and associated tax revenues are transferred to a different local government. Now, local governments can adopt intergovernmental agreements that provide for revenue sharing. This change should assure local governments at either the sending or receiving area end of TDR transactions that any anticipated financial impacts can be equalized.
4. **Is there a new deadline for submission of a TDR pilot project application?**
No, the application deadline was eliminated. However, DLCD is required to report to the 2013 legislative session on the progress of the pilot project program and we don't know how long the authorization for the program will continue. Therefore, any local governments that are interested in submitting an application are encouraged to do so in 2012.