

DLCD's New Transfer of Development Rights Pilot Program

√ The 2009 legislature enacted the Oregon Transfer of Development Rights (TDR) Pilot Program (HB 2228), to be implemented by the Department of Land Conservation and Development (DLCD) and local governments, working with the Oregon Forestry Department and other state agencies. TDRs have been a popular and successful planning tool in other states but have had little use in Oregon. The 2009 legislature also enacted SB 763, to encourage and develop TDRs in Oregon.

√ While SB 763 is a broad enabling statute for TDRs in general, the TDR pilot program established by HB 2228 is more focused. It is specifically intended to explore and develop local TDR projects that conserve private forestlands for timber production and for other forest uses. To do this, the program encourages the transfer of potential residential development rights from forest land ("sending areas") to other areas that may be more appropriate for development ("receiving areas"), such as urban growth boundaries, rural communities, or rural residential areas. The program especially seeks to protect productive forest land likely at risk of conversion to rural residential use. The pilot program may be particularly attractive to forest land owners and local governments because it relaxes certain land use laws in order to encourage local participation.

√ The pilot program authorizes the Land Conservation and Development Commission (LCDC) to select up to three local government-initiated pilot projects that arrange for the transfer of development rights from certain forest land to land that is either (in order of priority):

- Inside an urban growth boundary (UGB),
- In an "exception area" adjacent to a UGB, or
- In an unincorporated community designated in the county plan as either a "rural community" or an "urban unincorporated community."

√ These "priorities" encourage local governments to first consider potential receiving areas within a UGB. However, if a local government demonstrates that a UGB receiving area is not likely to result in the transfer of a significant proportion of development rights within five years, LCDC may authorize lower priority land as the receiving area – such as land in exception areas adjacent to a UGB or in unincorporated communities.

√ To nominate a pilot project, a local government and other participants must propose both a "sending area" and a "receiving area" to which development rights would be transferred. Sending areas must be forest land outside UGBs, cannot exceed 10,000 acres and may not be currently developed at a density that exceeds four dwelling units per square mile. Potential receiving areas are not limited in size but cannot be located within 10 miles of the Portland metropolitan area UGB.

√ Development rights must be transferred at a one-to-one ratio if the receiving area is outside a UGB, but LCDC may authorize a higher ratio when the receiving area is inside a UGB. Thus, a right to a dwelling on forest land may turn into rights for two or even more dwellings in a receiving area – a substantial potential benefit for forest land owners. Furthermore, under the pilot program, an exception area adjacent to a UGB may be designated as a receiving area and

added to the UGB notwithstanding current UGB amendment requirements in Goal 14 and related laws (and also qualify for a higher transfer ratio). As such, up to three UGBs that might not be eligible for expansion today could be expanded through the pilot program as long as the expansion area is designated as a receiving area.

√ There are several requirements for participating local governments and for receiving areas. In general, these are intended to encourage efficient residential development in receiving areas. For example, a local government must agree to authorize residential development in exceptions areas and/or UGB expansion areas at 10 units per acre or more (at such time as public services and facilities are available). The legislation does not require that transferred development actually occur at this density, but such density must be allowed at the owner's/developer's discretion. Transferred development rights may be held (or "banked") rather than exercised immediately.

√ Participating owners of land in a sending area must grant conservation easements or otherwise obligate themselves to ensure that residential development of the forest land property does not occur once the development rights are transferred. This means that the local government or a local land trust must be willing and able to hold and monitor the conservation easements that would be created. Local outreach and effective partnerships among local government, land trusts and others are common in other states that have effective TDR programs.

√ In January, LCDC adopted rules to establish criteria and timelines for the selection of pilot projects (see OAR 660-028-0010 to 0030). These rules set a deadline of June 1, 2010, for submittal of pilot project nominations by local governments. A local government application to establish a pilot project requires a completed application form, a letter of interest and a concept plan (concept plans are described in these rules). If a pilot project is selected by LCDC, a local government would then amend its comprehensive plan and land use regulations to implement the project.

√ The department strongly encourages local governments, forest land owners, land trusts and other interested parties to consider participating in a pilot project. These pilot projects will help the department and the legislature further refine state laws and rules in order to improve TDR methods in Oregon.

√ For further information or to arrange for DLCD to meet with officials and interested landowners in your community, please contact Katherine Daniels at katherine.daniels@state.or.us or 503-373-0050 ext. 329.