

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

(PROPOSED) DIVISION 28
OREGON TRANSFER OF DEVELOPMENT RIGHTS PILOT PROGRAM
January 21 Draft

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LAND CONSERVATION & DEVELOPMENT
COMMISSION
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1 660-028-0010

2 **Definitions**

3 For purposes of this division, the definitions contained in ORS 197.015 and the
4 Statewide Land Use Planning Goals (OAR chapter 660, division 015) apply. In addition, the
5 following definitions apply:

6 (1) "Conservation easement" has the meaning provided in ORS 271.715.

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

9 (3) "Receiving area" means a designated area of land to which a holder of
10 development rights generated from a sending area may transfer the development rights, and
11 in which additional residential uses or development, not otherwise allowed, are allowed by
12 reason of the transfer.

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

16 (5) "Transferable development right or TDR" means a severable residential
17 development interest in real property that can be transferred from a lot, parcel or tract in a
18 sending area to a lot, parcel or tract in a receiving area. This term has the same meaning as
19 "transferable development credit" under Or Laws 2009, ch 504, Section 2(10), except that,
20 for purposes of this division and the Oregon Transfer of Development Rights Pilot Program,
21 "severable development interests" are limited to residential uses, including ancillary uses
22 subordinate to residential uses.

23
24 Stat. Auth.: ORS 197.040

25 Stats. Implemented: sec. 6; ch. 636, OL 2009

26 Hist.:
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28 **660-028-0020**

29 **Selection of Pilot Projects**

30 (1) This rule establishes the process for the department and the commission to select
31 up to three TDR pilot projects from among projects nominated by one or more local
32 governments:

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

36 (a) A completed application form;

37 (b) A letter of interest along with the owner(s) of at least fifty percent (50%) of the
38 land in the proposed sending area;

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

41 (A) Proposed amendments to the local government comprehensive plan and land use
42 regulations necessary to implement the pilot project, a tentative schedule for adoption of the

1 amendments if the pilot project is approved, and a description of any other proposed actions
2 intended to implement the **proposed TDR pilot project concept plan**;

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

5 (C) Proposed transfer ratios as specified in OAR 660-028-0030(5) and other
6 incentives for participation, ~~a tentative schedule for adoption of the amendments if the pilot~~
7 ~~project is approved, and a description of any other proposed actions intended to implement~~
8 ~~the concept plan; and~~

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

12 (3) The commission may extend the deadline in subsection (2) of this rule if it finds
13 that additional time is necessary ~~in order to ensure a satisfactory pool of applications for~~
14 ~~consideration under this program.~~

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

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

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

26 (c) The demonstrated intent and ability of the local government and other
27 ~~participating governments and organizations~~ **participants** to implement the proposed TDR
28 **pilot project** within a reasonable timeframe; and

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

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

37 (6) When selecting a **TDR pilot project**, ~~as specified in Or Laws 2009, ch 636,~~
38 ~~Section 6(4),~~ the commission must find that the pilot project will comply with the
39 requirements specified in OAR 660-028-0030 and other requirements of law, and that the
40 pilot project is:

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

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

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

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

6 (B) Areas identified as conservation opportunity areas in the Oregon Department of
7 Fish and Wildlife's 2006 "Oregon Conservation Strategy,"
8

9 Stat. Auth.: ORS 197.040

10 Stats. Implemented: sec. 6; ch. 636, OL 2009

11 Hist.:

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13 **660-028-0030**

14 **Requirements for TDR Pilot Projects**

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

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

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

31 (c) Third priority is lands that are within a designated urban unincorporated
32 community or rural community, as defined in OAR 660, division 22, in an acknowledged
33 comprehensive plan.

34 (4) With respect to the priority of receiving areas described in subsection (3) of this
35 rule, the commission may authorize a local government to select lower priority lands over
36 higher priority lands for a receiving area in a TDR pilot project only if the local government
37 has established, to the satisfaction of the commission, that selecting higher priority lands as
38 the receiving area is not likely to result in the severance and transfer of a significant
39 proportion of the development interests in the sending area within five years after the
40 receiving area is established.

41 (5) The ratio of transferable development rights to severed residential development
42 interests in a sending area must be calculated to protect lands planned and zoned for forest
43 use and to create incentives for owners of land in the sending and receiving areas to
44 participate in the TDR pilot project. The ratio may not exceed one transferable development
45 right to one severed development interest if the receiving area is ~~land~~ outside of an urban
46 growth boundary, except that this maximum ratio does not apply to an exception area
47 described in subsection (3)(b) of this rule provided the TDR pilot project concept plan

1 ensures the inclusion of the receiving area within an urban growth boundary UGB, either
2 under applicable requirements of Goal 14 and other laws or the alternative provisions in
3 section (11) of this rule. The concept plan may allow the transfer of development rights
4 authorized in this subsection prior to the inclusion of the receiving area in an acknowledged
5 UGB urban growth boundary provided the amended comprehensive plan and land use
6 regulations ensure that the transferred rights cannot be exercised at a higher ratio than
7 specified in this rule until the receiving area is included in the urban growth boundary
8 UGB.

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

20 (7) The comprehensive plan and zoning land use regulations amendments required
21 by section (6) of this rule must specify the type and density of the additional residential
22 development to be transferred and allowed in a receiving area through participation in a
23 TDR pilot project, in accordance with the concept plan and schedule approved by the
24 commission and in accordance with other applicable requirements of this rule.

25 (8) In addition to ~~comprehensive plan and zoning regulations implementing the~~
26 ~~TDR pilot project~~ the requirements of section (6) of this rule, before any development
27 rights may be exercised in the receiving area, the participating owners of land in a sending
28 area must:

29 (a) Grant a conservation easement pursuant to ORS 271.715 to 271.795 or otherwise
30 ensure on a permanent basis that additional residential development does not occur in the
31 sending area; and

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

35 (9) If ~~lands selected for use as a~~ the receiving area for a TDR pilot project ~~is~~ is are
36 within an urban growth boundary UGB expansion area approved under section (11) of this
37 rule, or ~~is~~ is are in an exception area described in subsection (3)(b) and section (10) of this
38 rule, the amended comprehensive plan and land use regulations zoning ordinances to
39 ~~implement the approved pilot project~~ required by section (6) of this rule must authorize a
40 residential density of at least 10 dwelling units per net acre for the receiving area.

41 (10) Notwithstanding contrary provisions of statewide land use planning Goals 11
42 and 14, and related rules, and notwithstanding ORS 215.700 to 215.780, if the commission
43 approves a TDR pilot project, a local government may amend its comprehensive plan and
44 land use land use regulations to allow transferred rights under an approved TDR pilot
45 project to develop at urban levels of as urban level residential development, with urban
46 levels of public facilities and services, including transportation, sewer service, in a
47 receiving area that consists of lands that are adjacent to an urban growth boundary and

1 subject to an exception from a Goal 3 or Goal 4, consistent with subsection (3)(b) and
2 section (9) of this rule, ~~if the Land Conservation and Development Commission has~~
3 ~~approved a concept plan for the TDR pilot project.~~ The concept plan described under OAR
4 660-028-0020(2)(b) must indicate whether a local government intends to change
5 comprehensive plan and land use regulations to allow urban level of development and sewer
6 service **urban levels of public facilities and services** in the receiving area and must include
7 an agreement to rezone the receiving area to authorize a residential density of at least 10
8 dwelling units per net acre as provided in section (9) of this rule.

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

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

22
23 Stat. Auth.: ORS 197.040

24 Stats. Implemented: sec. 6; ch. 636, OL 2009

25 Hist.:

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