Oregon Department of Land Conservation and Development

Rules Advisory Committee for Transfer of Development Rights under Measure 49

Discussion Topics for Meeting #3

Wednesday, July 16, 2014

1. Receiving Area Options

Receiving areas are the places where we are willing to increase development density in order to avoid development on sending area properties with special attributes or hazard concerns. . Carefully-selected receiving areas are key to successful TDR programs. Receiving areas need to satisfy two requirements: 1) they must provide sufficient motivation for landowners or developers to want to purchase development rights to develop within them, and 2) they must create as few negative impacts as possible on nearby farm, forest and other resource lands. In addition, because we want to make this program as simple as possible, the fewer the types of potential receiving areas we offer, the better.

Existing TDR enabling legislation for general TDR programs and for the TDR forest pilot program (neither of which has been utilized to date) allow receiving areas to be within the following areas:

- Urban growth boundaries
- Urban reserves likely to be included in the next UGB expansion
- Rural Communities and Urban Unincorporated Communities
- Exceptions areas adjacent to UGBs, Rural Communities and Rural Centers
- Resort Communities and Rural Service Centers that include at least 100 dwellings

Any of these locations could also be potential receiving areas for the M49 TDR program. However, initial conversations with Metro and others indicate that designating receiving areas within UGBs or urban reserves would likely be more time-consuming and complex than designating receiving areas outside these areas, both because cities as well as counties would be involved and because designing effective development incentives would be more challenging. If we were to pursue this option, it would be a longer-term effort, perhaps a phase II of the program.

Unincorporated communities are unlikely to be effective receiving areas because they already permit any residential density that can be accommodated by community sewer and water systems.

Other potential receiving areas that have been suggested for the M49 TDR program include those listed below. Landowners in receiving areas may have two potential motivations to participate in a M49 TDR program: 1) they want to build or divide a parcel and are unable to do so under current zoning, or 2) they are willing to sell to a developer who would like to develop in a way not allowed by current zoning. We think that there would be good motivation for the following potential receiving areas:

- *Rural Residential zones (exceptions areas) zoned for 5- and 10-acre minimum lot sizes.* These areas could be allowed to be developed at 2- or 5-acre densities with the use of transferred development rights. Counties could decide which exceptions areas would be receiving areas. **Pros**: Strong demand for smaller acreages close in to Metro and cities; appeals to developers; simple and straightforward. **Cons**: Potential neighbor objections; increased densities close to farm areas.
- *EFU & forest parcels adjacent to Rural Residential zones.* These would be existing parcels of 5 acres or smaller that are contiguous to existing Rural Residential exceptions areas and not separated by a road or other topographic boundary. These are parcels that could arguably be added to existing exceptions areas anyway. **Pros:** Relatively simple; appeals to landowners. **Cons:** Challenge for developers because sites are scattered and few.
- *Build-out of partially developed subdivisions in EFU and forest zones if substantially developed.* **Pros:** Appeals to landowners; many counties are approving dwellings anyway. **Cons:** Conversion of resource land and potential impact to surrounding resource lands; difficult to develop clear and objective standards.
- *Authorization to separate two (or more?) existing, permanent, legally-permitted dwellings on a single parcel in an EFU zone* if the dwelling was established by the effective date of M49, Dec. 6, 2007. **Pros:** Appeals to landowners. **Cons:** Somewhat complex as caveats would be needed to restrict any new dwellings (e.g. relative farm help dwelling, accessory farm dwelling).
- *Existing Measure 49 properties that are less suitable for resource use than the sending area properties.* Pros: similar to existing clustering provision in M49. Cons: would increase density in receiving resource lands; could require a land use decision to determine "less suitable."
- *Other?*

We suggest that the group chose two or three of these options. Primary considerations should include ease of administration, minimal impact on nearby resource lands and ability to absorb large numbers of transferred development rights. We lean towards the first option – directing development rights into existing RR-zones.

Let's take a look at the first option and the relative capacity of rural residential zones to accommodate M49 development rights. Following are the five counties with the most M49 TDR authorizations, together with an estimate of the existing acreage within the RR zones in those counties.

County	# Dwelling Authorizations	RR-5 Acreage	RR-5 minimum available parcels for new dwellings*	RR-10 Acreage	RR-10 minimum available parcels for new dwellings**
Clackamas	1,155	59,086	11,817	9,886	988
Washington	607	>5,000	>1,000	>3,000	300
Lane	458	42,679	8,535	13,107	1,310
Jackson	444	29,890	5,978	891	89
Yamhill	393	3,164	632	14,064	1,406
totals	3,057	139,819	27,963	40,948	4.094

***Assuming all area is partitioned into 5-ac parcels, TDR permits a 2-ac minimum and each parcel already has one dwelling.**
**** Assuming all area is partitioned into 10-ac parcels, TDR permits a 5-ac minimum and each parcel already has one dwelling**

We don't know the remaining build-out capacity of these zones, but lowering a 5-acre minimum lot size requirement to 2 acres would allow a potential doubling of current density, while lowering a 10-acre minimum lot size requirement to 2 acres would allow a potential quadrupling of density. In addition, for an unknown number of M49 properties have either already been built or the landowners will choose not to sell their development rights.

We propose that designated receiving areas not include lands within identified hazard areas (e.g. 100-year flood plain, landslide areas and steep slopes over 40%) or restricted groundwater areas, and that they be outside designated Urban and Rural Reserve areas. Designated receiving areas could also exclude other attributes as may be desired by the committee. Designated receiving areas should ideally have an overlay zone applied to them by the applicable county.

2. **Interjurisdictional Use of Development Rights**

TDR programs normally motivate the purchaser of development rights to acquire the lowest-cost development rights available. These are usually on properties farthest from development pressure, which may or may not be the key areas desired for protection. A primary purpose of this M49 TDR program is to direct development away from the State's most productive resource lands, much of which is located in the Willamette Valley, close in to population centers. The proximity of many M49 properties to cities and UGBs makes them more attractive for development and less likely that landowners will sell development rights without additional compensation. When sending area properties differ widely in location, mechanisms can be used to help equalize development values either in the assignment of or use of development rights.

Assignment of development rights: In meeting #2, we discussed the assignment of transfer bonuses as sending site incentives for M49 properties with either positive attributes (e.g. high-value soils, important wildlife habitat) or negative attributes (development hazards). The purpose was to

encourage landowners to transfer development rights off of properties with these attributes. We could add to the list of attributes proximity to a UGB – say 10 miles, for example. This would provide an incentive for landowners with close-in properties to transfer their development rights. However, it would not be sufficient in itself to attract buyers who could obtain less expensive development rights from distant counties.

Use of development rights: To ensure that there is a market for development rights in key locations where resource land protection is most desired, here are four options for rulemaking:

1. Restrict the use of development rights to the counties from which the rights originate and adjacent counties;
2. Restrict the use of development rights to the counties from which the rights originate and locations within x miles of that county;
3. Restrict the use of development rights to within each of several regions to be defined; or
4. Not restrict the use of inter-jurisdictional transfer of development rights among counties.

Measure 49 statute permits Metro, cities and counties to enter into cooperative agreements under ORS chapter 195 to establish TDR programs. For this reason, M49 TDR rulemaking can probably not prohibit the inter-jurisdictional transfer of development rights. However, there may be good reasons to limit those transfers as described below.

Options #1, #2 and #3 would provide some assurance that counties or regions with the most M49 properties would see a level of land preservation proportionate to the level of development based on transferred rights, and would provide some flexibility for developers. These options would require cooperative agreements among counties. Some counties might be willing to accept development rights from other counties without reciprocation, while others would not.

A variation on one of the above options would be to allow development rights for a M49 property with more than y attributes to be transferred anywhere in the state. This would allow some unique but remote M49 properties a more realistic opportunity to transfer development rights.

Option #4 would provide the most flexibility for developers and counties would still be free to limit incoming transfers if they choose to. However, it is still possible that relatively fewer high-priority M49 properties would be protected under this option, for the reasons discussed above.

To restrict the use of development rights, TDR deeds would need to indicate the counties or regions to which the development rights may be transferred.

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