

Rules Advisory Committee for Transfer of Development Rights under Measure 49

Meeting Notes for July 16, 2014

RAC members attending:

Chair Greg Macpherson
Dan O'Connor (via phone)
Mike McCallister
Joe Fennimore
Steve McCoy
Gordon Root
Kelley Beamer
Gordon Root
Jim Johnson
Mike Running (COLT, future replacement for Kelley Beamer)

Staff attending:

Katherine Daniels
Matthew Crall
Sarah Marvin
Diane Lloyd - DOJ

Guests:

Joy Vaughan (Land & Water Use Coordinator, Oregon Department of Fish and Wildlife)

1. Welcome

Commissioner Greg Macpherson called the meeting to order welcomed the members of the rules advisory committee.

2. Introductions

Committee members briefly re-introduced themselves and their affiliation or interest in the rulemaking.

3. Topic 1: Receiving Area Options

- Existing TDR program receiving area options

- Potential M49 TDR program receiving area options?
- Receiving area exclusions?

Katherine explained that the M49 TDR rules need to expand potential receiving areas beyond the urban receiving areas listed in the current program. The existing TDR program has not been used. There has not been a single transfer. The receiving areas of the existing program are oriented to UGB's and unincorporated communities and adjacent. We asked communities about using these urban areas for M49 TDR. Metro representatives felt it would be too complicated and time-consuming to implement given that the M49 properties are being developed quickly. The M49 TDR program needs receiving areas that will be immediately available.

Steve asked why it would be more complicated to use urban receiving areas. Katherine explained that there is no motivation to transfer development where urban densities are already promoted. Developers don't need transfer credits to develop in the urban areas. It would be hard to find any urban receiving areas that are under-zoned. Gordon agreed that developers don't want to see 2-acre M49 McMansions transferred into the urban reserve, because this would prevent higher densities in the future. Katherine added that maybe in phase two of this program we could incorporate these urban options, using other development incentives instead of higher densities, but for now we want to get a program going before the transfers are too late to occur.

1- Rural Residential

Katherine explained that the receiving area choices are a range oriented for 1) facilitating development and being attractive to developers and 2) alleviating development for the seller/landowner. The most potential for absorbing development rights is in existing Rural Residential (RR) Exception Areas. RR zones are based on exceptions to increase density. (See table on page 3 of Discussion Topics.) It appears there is enough land in RR to absorb all M49 transfers, including bonus credits. Cons: increases densities in rural residential areas and these are near farm and forest lands.

Mike R. asked whether the TDR statute requires that receiving areas be only in the UGB and urban reserves. Diane answered that those restrictions do not apply to the M49 TDR which only references ORS 94.531. Greg added that the reason for allowing M49 TDR greater flexibility in receiving areas is because currently M49 development is allowed on the best of the best land, so we need greater freedom in receiving areas to move this development off the best lands. Greg explained that RR is the guts of what we envisioned when the original M49 was developed. He asked what other receiving areas would we add to it?

Gordon agreed RR is the core. It's where people want to live, closer to urban services. Steve expressed concern that if receiving areas are too close to the city, orderly urbanization becomes difficult. His other concern is conflicts with nearby ag and forest use. Katherine asked if we could identify parameters to address these concerns. Steve answered that much will depend on how the bonus works.

Jim said his concerns are that rural residential land is surrounded by intense ag. Impacts depend on type of ag, number of new dwellings. There are water supply and quality issues. He would object to RR receiving area in places like the middle of French prairie. Some areas of RR may be miszoned.

Steve added concerns about receiving areas along the coast. He wants to know if these zones, RR, exist on the coast, especially sensitive water edges. Sarah said we could rely on overlay zones to keep receiving areas away from the coastline. Katherine stated that a county would be looking at their RR zones, checking with neighbors, applying overlay zones and then picking part of the area, not the entire area. The selection of receiving areas would be parameterized. Gordon said that counties should do this. However, Jim added that there are too many political pressures at the county. Without established parameters there would be no basis for appeal.

Greg suggested that we can restrict selection of the RR zones by hazard overlays. He asked the group if we take these areas out, is it then sufficient to say any RR zoned lands can be a receiving area? Or do we need some other criteria?

Jim stated that we also need carrying capacity evaluation. For example, 5 acre lots are not large enough for septic in some places. No Goal 14 issues for infrastructure. We do not need measurable standards, just factors.

Joy expressed concern for including the Goal 5 resources, such as big game winter range, using existing or new ODFW mapping and estuarine zones on the coast. These need to be included in the analysis selecting receiving areas. Mike added that some Goal 5 should clearly not be a receiving area, but others may be okay, like a property with a stream with a setback for development.

Greg suggested that we organize our thinking into two enquiries: 1) Which are the potential receiving areas; and 2) What overriding restrictions then would apply. He stated that it appears there is generally consensus, conceptually, that the RR 5-10 acres is an acceptable receiving area. Steve responded that he still has concerns about the sphere of potential landing spots. He would like to see mapping of them.

Dan mentioned an RR-0 zone, the minimum lot is the existing lot, cannot be divided. He agrees with not clustering within the UGB or urban reserve, which would just be a hassle for future development, especially transit-oriented development.

2- Substandard sized Resource Lands Adjacent to Exception Areas

The initial reaction to this is that most of the group does not want to allow it. Gordon liked it and said he would eliminate the proposed restrictions. Mike M. said he talked to planning directors in eastern Oregon, and it might be appropriate in eastern counties, but he is conceptually, against the idea. Why move development from resource land to resource land? Greg added that the idea introduces complexity. Jim said if these parcels qualify for exception now, then take the exception and apply all the goals. Small parcels should not be assumed to be non-resource, especially in Washington Co. Steve added that this option involves a lot of acreage conversion and he would be very concerned.

Greg concluded that the weight of opinion is against this one.

3- Buildout of Substantially Developed Existing Subdivisions Zoned Resource

Katherine explained that development in these areas is already being allowed by counties as non-farm dwelling exceptions. Steve said that this one makes more sense in eastern Oregon than the valley due to soils. Jim was concerned about the language used to distinguish these receiving areas. How do we define “substantially” and “partially developed”? He knows of “subdivisions,” such in Wasco and Yamhill Counties, that are being used as farmland that could end up allowing development based on this language. We need a definition that protects undeveloped paper subdivisions being used as ag from being developed. Mike M. stated that this was his idea and that an inventory of ag land south of Canby there are many 1-2 acre lot subdivisions in which the majority of lots have a house and are not being farmed. Joe agreed there are some of these in Marion County. A 10-unit subdivision where only two lots are undeveloped should be fair game.

Greg asked what parameters should be established. Jim reiterated his concerns that the criteria, as written in the discussion paper, could allow unintentional development, for example if the west half of a subdivision is developed and the east half is not, it should not qualify. There are some quite large speculative RR plats. Mike M. said we should not allow any land divisions on these lots.

Greg concluded that the group says yes to this option, but subject to a substantial level of development and no further division allowed. Jim added that we could work backward, we know them when we see them (the appropriate candidates), so we can define the criteria based on those examples.

Mike R asked if these subdivisions were in all counties. Jim answered not all, but a surprising number. Gordon added that these subdivisions began to be developed in the 1970s and 1980's; then land use regulations passed leaving the rest of the lots undeveloped. The landowner should be entitled to develop it. It's a served lot. Jim added that the counties didn't want to do the work to apply for exceptions. Katherine stated that some of these might not pass an exception test, but still may be appropriate for TDR. Steve said soils are still important, even if on small parcels.

Greg again concluded that this is still on our list as a potential receiving area, subject to refinement: The level of development already in place and some other considerations. These could be the same considerations as in number 2 (hazard and Goal 5 overlays, etc.).

4- Separate Existing Dwellings on a Single Parcel

Katherine explained that non-conforming, pre-existing dwellings on forest land could be divided using a M49 TDR. In EFU zone you can already legally get multiple farm dwellings on your property. Dan brought this issue up to Katherine, because it is a contentious issue in Jackson and Josephine Counties. This option would require a deed restriction to disallow subsequent additional farm dwellings on the divided property. That would be the end of the dwellings on the property.

Dan explained that there are many small EFU parcels, such as around Phoenix and Talent, that have two dwellings built before the 1980's. Landowners want to split the parcel like you can in an RR zone. There is a lot of contention. Counties ran out of money doing exception areas so these properties qualify, but

exception was never done. He doesn't know if this applies outside of Jackson and Josephine Counties. Jim said these exist around the state, but mostly in Jackson County. He agrees this could work if there was a limit on future non-farm dwellings and on the size of the break-off parcel. Matt suggested the existing M49 parcel size maximums of 5- and 2-acres. Jim agreed that could be right. Steve said restrictions on size and future development should be in a deed restriction.

Greg asked if these situations were not a big enough deal or were too complicated and small. Jim answered that this option should be included because it would provide a relief valve for a sticky little issue. These are the stories we hear in the legislature. There is no other way to deal with it. Mike M. is okay with it because it is not likely to be abused and it is so specific. Most people are going to use their M49 credit for a new house someplace else.

Jim said that if the additional dwelling was approved as a farm help dwelling, you cannot get a TDR to divide it off. The dwelling has to be pre-existing. Katherine said we will have a date built in, probably the M49 activation date or something earlier. You cannot use it on new farm dwellings. Steve wants to think about southern Oregon where there are many claims, may have an effect on the RPS. Greg said this is consuming too much time; leave it on the list for now.

5- Existing M49 Properties

Greg said that this next bullet is serious. Are we going to make judgment values about the quality of the property being sent from and being sent to (as is required in the cluster/transfer provision in M49)?

Gordon said we should allow it. This is where we want to facilitate development, on 20-acre parcels with three M49 home sites already, not being farmed, for senior level executive housing to attract jobs to the area. This is the ultimate clustering of M49 home sites.

Katherine asked how do you determine suitability? Gordon replied that you eliminate any suitability test and allow transfer to any M49 development. Jim said he could not support this; it could have a big impact on ag use of the property and neighboring area. Just because land is not being farmed doesn't mean it cannot be farmed. Gordon conceded that he would be okay keeping a suitability test, but we should allow transfers to these properties because they are already being developed. Joe said it would be a problem determining suitability. How do you do it? Dan said he has done some clustering of home sites on non-contiguous M49 properties. They did an analysis to determine the least productive properties. Katherine said the county will have information on the sending property. Matt was concerned that all credits need to be equal once they are created, and that when a credit is applied to a receiving property, it should not be treated differently depending on which sending property it came from.

Greg stated that many people have problems with this, even though there is some support. Gordon stated that as long as you are consolidating scattered claims, it should be okay. We are ignoring market demand. This is not "build it and they will come." You are only going to transfer from an area with less demand to higher demand. He feels this option is very important for jobs, because there is a shortage of senior management housing, large lot housing near the UGB, to attract new business owners. Jim

replied that there is no state policy to provide large lot rural housing, which is what exception areas are for.

Greg concluded that there is strong support from one quarter, but no broad support.

6- Exclusions that Disqualify Receiving Areas

Greg stated that our work here is to define a list of hazard areas and other areas that would override the selected receiving areas. Joy listed Goal 5 and the coastal goals. Jim suggested something like how Deschutes and other counties who don't allow dwellings in areas not protected from fire.

Katherine asked how we identify the Goal 5 resources. Jim said we could use language from the solar rule to recognize ODFW maps that will be more up-to-date in the future. Joy said they have some of the data now. Steve was concerned about including scenic and historic resources, such as the Lake Wallowa Moraine, which has existing M49 home site approvals. It would be a disaster to allow more M49 development to "cluster" there. Jim added that oyster cultivation is a resource needing consideration due to rural septic tanks ruining the oyster beds, such as at Netarts Bay. Katherine added sage grouse listing. Steve said the language for sage grouse is in the solar and youth camps rulemaking.

Gordon reiterated that he is against rural reserves being excluded as receiving areas; he says there is too much rural reserve and excluding it from receiving areas will put a damper on M49 transfers. He believes that this is the only way to consolidate M49 development into urban-ish areas. Steve objected, stating that we start building in the rural reserves, we blow away the reserves process. Gordon said this is exception land within the rural reserve. Katherine noted that rural reserves are huge in Washington County. Steve said this is a non-starter, 1000 Friends will not go along with developing in the 50-year rural reserve. Greg said he agrees with what Gordon is saying, but we should park the unresolved issue of exception areas within rural reserves for now. Joy said we should focus development in the urban reserves through incentives or bonus.

4. Topic 2: Interjurisdictional Use of Development Rights

- Assignment of development rights
- Use of development rights
- To restrict or not to restrict?

Diane explained that upon review of the question of restricting interjurisdictional transfers of development rights, she concluded that the statute, Section 11(4), allows jurisdictions to enter into any agreement they want, without state involvement. Katherine explained why we would want to limit these transfers, that developers would be buying cheap credits from an area where property values are low to use in expensive areas.

Greg said he would prefer the state to have one way of doing these transfers so counties don't have to go through the complex process of setting up agreements. He suggested that we adopt a rule that facilitates certain transfers, but is silent on intergovernmental agreements. If we did this, which would

we want to use for this “facilitation” of transfers, knowing that we cannot restrict what counties want to do with each other outside of the state’s grasp?

Mike M. said that counties should have some options. He prefers option 1, transfer with contiguous counties. Joe also likes option 1 because it is simple. Greg thought that the “adjacent” option could be problematic. Clackamas County borders on Jefferson County which is quite different. He prefers the idea of regions. Greg also said not to expect counties to be interested in transfers; they will see it as a potential loss of economic activity. Joy asked how would counties that don’t have any claims fit into this?

Greg suggested regions by dividing counties as: Willamette Valley, coastal, southern, central, tri-county area, and everything else. Some pointed out that Lane and Douglas Counties are in the coast and the Willamette Valley. Greg said these counties can be split into regions for this purpose, because we are not talking about IGA’s. Another jurisdiction can still transfer to Lane County, just not to the coast of Lane County.

5. Next Meeting

Next meeting will be August 12, at Stoel Rives. The topics will include protection methods and a draft of a sample ordinance.

Mike requested that we find maps of Goal 5 overlay areas and asked that we produce a laundry list identifying the receiving area restrictions so we can agree on exclusions to include in the rule. Then leave the rest of the potential exclusions to the counties to decide.

Greg adjourned the meeting.