

**Enrolled**  
**Senate Bill 763**

Sponsored by Senator SCHRADER, Representative NOLAN; Senators BATES, DEVLIN, DINGFELDER, HASS, MORRISETTE, Representatives BAILEY, CLEM, GARRETT, GREENLICK, ROBLAN

CHAPTER .....

AN ACT

Relating to transferable development credits; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. (1) The Legislative Assembly finds that:**

**(a) Working farms and forests make vital contributions to Oregon by:**

**(A) Providing jobs, timber, agricultural products, tax base and other social and economic benefits;**

**(B) Helping to maintain soil, air and water resources;**

**(C) Reducing levels of carbon dioxide in the atmosphere; and**

**(D) Providing habitat for wildlife and aquatic life.**

**(b) Natural resources, scenic and historic areas and open spaces promote a sustainable and healthy environment and natural landscape that contributes to the livability of Oregon.**

**(c) Population growth, escalating land values, increasing risks due to wildfire and invasive species and changes in land ownership and management objectives, with a resulting increase in conflict caused between resource uses and dispersed residential development, require that new methods be developed to facilitate the continued management of private lands zoned for farm use, forest use and mixed farm and forest use for the purposes of:**

**(A) Agricultural production and timber harvest; and**

**(B) Preservation of natural resources, scenic and historic areas and open spaces for future generations.**

**(2) The Legislative Assembly declares that transferable development credit systems:**

**(a) Complement the statewide land use planning system in Oregon and encourage effective local implementation of the statewide land use planning goals.**

**(b) Provide incentives for private landowners, local, regional, state and federal governments and other entities to permanently protect farm land and forestland, including a land base for working farms, ranches, forests and woodlots, significant natural resources, scenic and historic areas and open spaces.**

**(c) Benefit rural land owners, including owners of working farms, ranches, forests and woodlots, that voluntarily provide stewardship of natural resources on private lands.**

**(d) Provide voluntary and effective methods to help improve the livability of urban areas and to mitigate and adapt to global climate change.**

**SECTION 2. As used in this section and section 3 of this 2009 Act:**

**(1) "Conservation easement" has the meaning given that term in ORS 271.715.**

(2) "Governmental unit" means a city, county, metropolitan service district or state agency as defined in ORS 171.133.

(3) "Holder" has the meaning given that term in ORS 271.715.

(4) "Lot" has the meaning given that term in ORS 92.010.

(5) "Parcel" has the meaning given that term in ORS 92.010.

(6) "Receiving area" means a designated area of land to which a holder of development credits generated from a sending area may transfer the development credits and in which additional uses or development, not otherwise allowed, are allowed by reason of the transfer.

(7) "Resource land" means:

(a) Lands outside an urban growth boundary planned and zoned for farm use, forest use or mixed farm and forest use.

(b) Lands inside or outside urban growth boundaries identified:

(A) In an acknowledged local or regional government inventory as containing significant wetland, riparian, wildlife habitat, historic, scenic or open space resources; or

(B) As containing important natural resources, estuaries, coastal shorelands, beaches and dunes or other resources described in the statewide land use planning goals.

(c) "Conservation Opportunity Areas" identified in the "Oregon Conservation Strategy" prepared in September of 2006 by the State Department of Fish and Wildlife.

(8) "Sending area" means a designated area of resource land from which development credits generated from forgone development are transferable, for uses or development not otherwise allowed, to a receiving area.

(9) "Tract" has the meaning given that term in ORS 215.010.

(10) "Transferable development credit" means a severable development interest in real property that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel or tract in a receiving area.

(11) "Transferable development credit system" means a land use planning tool that allows the record owner of a lot, parcel or tract of resource land in a sending area to voluntarily sever and sell development interests from the lot, parcel or tract for purchase and use by a potential developer to develop a lot, parcel or tract in a receiving area at a higher intensity than otherwise allowed.

(12) "Urban growth boundary" has the meaning given that term in ORS 195.060.

(13) "Urban reserve" has the meaning given that term in ORS 195.137.

**SECTION 3.** (1) One or more governmental units may establish a transferable development credit system, including a process for allowing transfer of development interests from a sending area within the jurisdiction of one governmental unit to a receiving area within the jurisdiction of another governmental unit.

(2) If the transferable development credit system allows transfer of development interests between the jurisdictions of different governmental units, the process must be described in an intergovernmental agreement under ORS 190.003 to 190.130 entered into by the governmental units with land use jurisdiction over the sending and receiving areas and, for purposes of administration of the process, the Department of Land Conservation and Development. The intergovernmental agreement may contain provisions for sharing between governmental units of the prospective ad valorem tax revenues derived from new development in the receiving area authorized under the system.

(3) A transferable development credit system must provide for:

(a) The record owner of a lot, parcel or tract in a sending area to voluntarily sever and sell development interests of the lot, parcel or tract for use in a receiving area;

(b) A potential developer of land in a receiving area to purchase transferable development credits that allow a higher intensity use or development of the land, including development bonuses or other incentives not otherwise allowed, through changes to the planning and zoning or waivers of density, height or bulk limitations in the receiving area;

(c) The governmental units administering the system to determine the type, extent and intensity of uses or development allowed in the receiving area, based on the transferable development credits generated from severed and sold development interests; and

(d) The holder of a recorded instrument encumbering a lot, parcel or tract from which the record owner proposes to sever development interests for transfer to be given prior written notice of the proposed transaction and to approve or disapprove the transaction.

(4) A transferable development credit system must offer:

(a) Incentives for a record owner of resource land to voluntarily prohibit or limit development on the resource land and to sell or transfer forgone development to lands within receiving areas.

(b) Benefits to landowners by providing monetary compensation for limiting development in sending areas.

(c) Benefits to developers by allowing increased development and development incentives in receiving areas.

(5) The governmental units administering a transferable development credit system must:

(a) Designate sending areas that are chosen to achieve the requirements set forth in this section and the objectives set forth in section 1 of this 2009 Act.

(b) Designate receiving areas that are chosen to achieve the requirements set forth in this section and the objectives set forth in section 1 of this 2009 Act.

(c) Provide development bonuses and incentives to stimulate the demand for the purchase and sale of transferable development credits.

(d) Require that the record owner of development interests transferred as development credits from a sending area to a receiving area cause to be record, in the deed records of the county in which the sending area is located, a conservation easement that:

(A) Limits development of the lot, parcel or tract from which the interests are severed consistent with the transfer; and

(B) Names an entity, approved by the governmental units administering the system, as the holder of the conservation easement.

(e) Maintain records of:

(A) The lots, parcels and tracts from which development interests have been severed;

(B) The lots, parcels and tracts to which transferable development credits have been transferred; and

(C) The allowable level of use or development for each lot, parcel or tract after a transfer of development credits.

(f) Provide periodic summary reports of activities of the system to the department.

(6) A receiving area must be composed of land that is within an urban growth boundary or, subject to subsection (7) of this section, within an urban reserve established under ORS 195.137 to 195.145 and that is:

(a) Appropriate and suitable for development.

(b) Not subject to limitations designed to protect natural resources, scenic and historic areas, open spaces or other resources protected under the statewide land use planning goals.

(c) Not within an area identified as a priority area for protection in the "Oregon Conservation Strategy" prepared in September of 2006 by the State Department of Fish and Wildlife.

(d) Not within a "Conservation Opportunity Area" identified in the "Oregon Conservation Strategy" prepared in September of 2006 by the State Department of Fish and Wildlife.

(7) Land within an urban reserve:

(a) May be the site of a receiving area only if:

(A) The receiving area is likely to be brought within an urban growth boundary at the next periodic review under ORS 197.628 to 197.650 or legislative review under ORS 197.626; and

(B) Development pursuant to the transferable development credits is allowed only after the receiving area is brought within an urban growth boundary.

(b) That is selected for use as a receiving area may be designated for priority inclusion in the urban growth boundary, when the urban growth boundary is amended, if the land qualifies under the boundary location factors in a goal relating to urbanization.

(8) The governing body of a governmental unit administering a transferable development credit system may, directly or indirectly through a contract with a nonprofit corporation, establish a transferable development credit bank to facilitate:

(a) Buying severable development interests from lots, parcels or tracts of resource land in a sending area.

(b) Selling transferable development credits to potential developers of lots, parcels or tracts in a receiving area.

(c) Entering into agreements or contracts and performing acts necessary, convenient or desirable to achieve the requirements set forth in this section and the objectives set forth in section 1 of this 2009 Act.

(d) Managing funds available for the purchase and sale of transferable development credits.

(e) Authorizing and monitoring expenditures associated with the system.

(f) Maintaining records of the transactions, including dates, purchase amounts and locations of severed development interests and development pursuant to transferred development credits, that are sufficient to manage and evaluate the effectiveness of the system.

(g) Providing periodic summary reports of activities of the system to the governing body of a governmental unit administering the system.

(h) Obtaining appraisals of development interests and transferable development credits as necessary and pricing transferable development credits for purchase or sale.

(i) Serving as a clearinghouse and information source for buyers and sellers of transferable development credits.

(j) Accepting donations of transferable development credits.

(k) Soliciting and receiving grant funds for the implementation of this section and section 2 of this 2009 Act.

(9) A holder of a conservation easement shall hold, monitor and enforce the conservation easement to ensure that lands in sending areas do not retain development credits transferred under this section and section 2 of this 2009 Act.

**SECTION 4.** The Department of Land Conservation and Development shall make a report, in the manner described in ORS 192.245, to the Seventy-seventh Legislative Assembly:

(1) Evaluating the transferable development credit systems that have been established under sections 2 and 3 of this 2009 Act; and

(2) Recommending whether the program should be continued, modified, expanded or terminated.

**SECTION 5.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

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**Passed by Senate May 5, 2009**

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Secretary of Senate

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President of Senate

**Passed by House June 3, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State