Enrolled
Senate Bill 997

Sponsored by Senator SCHRADER (Presession filed.)

CHAPTER .....

AN ACT

Relating to transferable development; amending ORS 94.536 and 94.538 and section 6, chapter 636, Oregon Laws 2009; and declaring an emergency.

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

SECTION 1. ORS 94.536 is amended to read:

94.536. As used in this section and ORS 94.538:

(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*] **adopted by the State Fish and Wildlife Commission and published** by the State Department of Fish and Wildlife **in September of 2006**.

(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 2. ORS 94.538 is amended to read:

94.538. (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 ORS 94.534.

(b) Designate receiving areas that are chosen to achieve the requirements set forth in this section and the objectives set forth in ORS 94.534.

(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 recorded, 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*] **adopted by the State Fish and Wildlife Commission and published** by the State Department of Fish and Wildlife **in September of 2006**.

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

(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 ORS 94.534.

(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 ORS 94.536.

(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 ORS 94.536.

SECTION 3. Section 6, chapter 636, Oregon Laws 2009, is amended to read:

Sec. 6. (1) There is established the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development. Working with the State Forestry Department, the State Department of Agriculture and local governments and with other state agencies, as appropriate, the Department of Land Conservation and Development shall implement the pilot program.

(2) The Land Conservation and Development Commission shall adopt rules to implement the pilot program. The commission, by rule, may:

(a) Establish a maximum ratio of transferable development rights to severed development interests in a sending area for each pilot project. The maximum ratio:

(A) Must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending area to participate in the pilot project; and

(B) May not exceed one transferable development right to one severed development interest if the receiving area is outside of an urban growth boundary.

(b) Require participating owners of land in a sending area to grant conservation easements pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional residential development of their property does not occur.

(c) Require participating owners of land in a sending area to allow reasonable public access to the property.

(3) The commission, by rule, shall establish a process for selecting pilot projects from among potential projects nominated by local governments. The process must require local governments to nominate potential projects by submitting a concept plan for each proposed pilot project, including proposed amendments, if any, to the comprehensive plan and land use regulations implementing the plan that are necessary to implement the pilot project.

(4) When selecting a pilot project, the commission must find that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state;

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

(c) Designed so that new development authorized in a receiving area does not conflict with a resource or area inventoried under a statewide land use planning goal relating to natural resources, scenic and historic areas and open spaces, or with an area identified as a Conservation Opportunity Area in the [*"Oregon Conservation Strategy," 2006,*] **"Oregon Conservation Strategy" adopted by the State Fish and Wildlife Commission and published** by the State Department of Fish and Wildlife **in September of 2006**.

(5) The commission may select up to three pilot projects for the transfer of development rights under sections 6 to 8**, chapter 636, Oregon Laws 2009** [*of this 2009 Act*].

(6) A sending area for a pilot project under sections 6 to 8**, chapter 636, Oregon Laws 2009** [*of this 2009 Act*]:

(a) Must be planned and zoned for forest use;

(b) May not exceed 10,000 acres; and

(c) Must contain four or fewer dwelling units per square mile.

(7) The commission may establish additional requirements for sending areas.

(8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government participating in a pilot project shall select a receiving area for the pilot project based on the following priorities:

(A) First priority is lands within an urban growth boundary;

(B) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception from a statewide land use planning goal relating to agricultural lands or forestlands;

(C) Third priority is lands that are within an urban unincorporated community or a rural community in an acknowledged comprehensive plan.

(b) The commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a pilot project only if the local government has established,

to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(c) If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving area in a pilot project, the minimum residential density of development allowed under sections 6 to 8**, chapter 636, Oregon Laws 2009,** [*of this 2009 Act*] must be at least 10 dwelling units per net acre.

(d) A receiving area may not be located within 10 miles of the Portland metropolitan area urban growth boundary.

(9) The commission may establish additional requirements for receiving areas.

(10) The commission, by rule, may provide a bonus in the form of a higher ratio if a substantial portion of the new development in the receiving area of the pilot project is affordable housing within an urban growth boundary.

SECTION 4. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 9, 2010

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Secretary of Senate

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President of Senate

Passed by House February 17, 2010

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Speaker of House

Received by Governor:

.....M.,....., 2010

Approved:

.....M.,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2010

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Secretary of State