### 660-029-0000 Purpose

In 2007 Oregon voters approved Measure 49 (M49), which authorized certain property owners to develop additional home sites. M49 also authorized counties to establish a system for the purchase and sale of severable development interests (known as transferable development credits or TDCs) for the purpose of allowing development to occur in a location that is different from the location in which the M49 development interest arises (subsection 11(8) of chapter 424, Oregon Laws 2007 and ORS 94.531). The purpose of this division is to provide a framework for counties to adopt local ordinances to establish these systems. These systems will enable landowners to realize the value of their M49 authorizations without developing the property from which the claims arose. These systems will allow landowners, on a voluntary basis, to transfer...
their development interests under M49 from one property to another property at a more suitable location, reducing the adverse impact of scattered M49 residential development on farm, forest and other resource land.

660-029-0010
Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) “Conservation easement” has the meaning provided in ORS 271.715.

(2) “Measure 49” or “M49” means 2007 Oregon Laws Chapter 424 (Ballot Measure 49); 2009 Oregon Laws Chapter 855 (also known as House Bill 3225); 2010 Oregon Laws Chapter 8 (also known as Senate Bill 1049); 2011 Oregon Laws Chapter 612 (also known as House Bill 3620) and OAR 660-041-0000-0180.

(3) “Measure 49 Property” or “M49 property” means the entire property authorized for home site development as described either:

(a) In the final order issued by the Department of Land Conservation and Development (department) for the supplemental review of Measure 37 claims pursuant to Measure 49; or

(b) In a court order issued upon judicial review of a department M49 order described in subsection (a).

(4) “Receiving area” means a county-designated area of land to which a holder of development credits generated from a sending property may transfer the development credits and within which additional residential uses not otherwise allowed are allowed by reason of the transfer.

(5) “Sending property” means a M49 property that qualifies under OAR 660-029-0030, from which development credits generated from forgone M49 home site development are transferable, for residential uses not otherwise allowed, to a receiving area.

(6) “Substantially-developed subdivision” means a legal subdivision created prior to acknowledgment of the county comprehensive plan under ORS 197.251 in which more than 50 percent of the lots are developed with a dwelling and at least 50 percent of the undeveloped lots are adjacent to a developed lot.

(7) “Transferable development credit” or “TDC” means a severable development interest in real property that can be transferred from a sending property to a lot, parcel or tract in a receiving area.
660-029-0020
County Authority to Establish a M49 TDC System

Counties may establish a system, consistent with this division, to allow for the creation and transfer of TDCs from M49 properties. Counties that choose to adopt a M49 TDC system shall:

(1) Adopt a local ordinance that meets the requirements of this rule; and

(2) Amend the comprehensive plan and implementing ordinances to:

(a) Designate M49 properties that are eligible sending properties as provided in OAR 660-029-0030;

(b) Establish bonus credits, if any, that will apply to certain sending properties as provided in OAR 660-029-0040;

(c) Designate receiving areas as provided in OAR 660-029-0080;

(d) Adopt any applicable overlay zones or other measures necessary to implement the TDC system;

(e) Approve the use of the M49 Restrictive Covenant adopted as “Exhibit A” to this division; and

(f) Determine whether the TDC system will provide for transfer to other counties in the region, as provided in OAR 660-029-0100.

660-029-0030
Sending Properties

(1) A county may only designate sending properties consisting of M49 properties:

(a) For which new dwellings have been authorized by a M49 final determination;

(b) That have lawful access; and

(c) That are located:

   (A) Within a zone or overlay zone adopted pursuant to Goal 3, 4, 15, 16, 17 or 18;

   (B) Within a zone or overlay zone explicitly adopted for conservation or preservation of natural areas pursuant to Goals 5 or 8; or

   (C) In an area identified in OAR 660-029-0040(3)(b) through (e).
(2) Sending properties exclusions: Notwithstanding section (1), a county may designate areas or types of M49 properties that are not eligible as sending properties because the M49 property is not buildable or for other reasons. If a county excludes some M49 properties, it shall either:

(a) Include mapping of such excluded lands in the ordinance establishing the TDC system; or

(b) Adopt clear and objective standards in the ordinance for case-by-case determinations of sending area exclusions through a ministerial review.

660-029-0040
Calculation and Types of Transferable Development Credits

When an applicant submits an application to a county under OAR 660-029-0050, the county shall determine the number of credits that may be transferred from the applicable M49 property consistent with this rule.

(1) One credit is available for each new dwelling authorized in the M49 final order issued by the department, subject to the conditions of approval or court order.

(2) A county may grant bonus credits as provided in section (3) as an additional incentive to relocate potential development from M49 properties that are a high priority for conservation. Bonus credits may only be granted if the M49 property meets all of the requirements in subsections (a) through (c) below.

(a) The M49 property is within a zone or overlay zone described in OAR 660-029-0030(1)(c)(A) or (B).

(b) No dwellings authorized by M49 have been developed on the M49 property. A M49 property with one existing permanent dwelling as of January 1, 2005, may qualify for bonus credits.

(c) The M49 property in its entirety is subject to a conservation easement or restrictive covenant that prohibits future development in accordance with OAR 660-029-0060.

(3) A county may grant a bonus of up to 0.2 credits for each subsection (a) through (e) for which the M49 property qualifies, regardless of the number of specific attributes listed under each subsection. Bonus credits may be applied to each M49 dwelling authorization transferred. The bonus allowed in this section may not exceed an additional 1.0 credit per dwelling.

(a) The M49 property is high-value farmland or high-value forestland as defined in ORS 195.300 and OAR 660-041-0130.
(b) Recreational and Cultural Areas:

(A) Any portion of the M49 property is within a scenic, historic, cultural or recreational resource identified as significant on a local inventory as part of an acknowledged comprehensive plan or land use regulation.

(B) Any portion of the M49 property is within or shares a boundary with a National Park, National Monument, National Recreation Area, National Seashore, National Scenic Area, Federal Wild and Scenic River and associated corridor established by the federal government, State Scenic Waterway or State Park.

c) Environmentally Sensitive Areas:

(A) Any portion of the M49 property is within an area designated as Willamette River Greenway, estuarine resources, coastal shoreland, or beaches and dunes designated in an acknowledged comprehensive plan or land use regulation implementing Goals 15-18.

(B) Any portion of the M49 property is within or shares a boundary with a National Wilderness Area, National Area of Critical Environmental Concern, National Wildlife Refuge or Area, Federal Research Natural Area, National Outstanding Natural Area, State Wilderness Area, State Natural Area or Site, private conservation land designated for habitat or species conservation under a conservation easement, or a natural area or open space identified as significant on a local inventory as part of an acknowledged comprehensive plan or land use regulation as specified in OAR 660-023-0160 and -0220.

(C) Any portion of the M49 property is within an area designated by the Oregon Department of Fish and Wildlife (ODFW) as a Conservation Opportunity Area as mapped in 2006.

(D) Any portion of the M49 property is within or shares a boundary with a riparian corridor as defined in OAR 660-023-0090.

(E) Any portion of the M49 property is within a wetland listed on the statewide wetland inventory or a local inventory of significant wetlands adopted as part of an acknowledged comprehensive plan or land use regulation or wetland conservation plan as defined in OAR 660-023-0100.

d) Natural Hazard Areas:

(A) The M49 property is predominantly within the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami Inundation Maps published by the Oregon Department of Geology and Mineral Industries in 2014.
(B) Any portion of the M49 property is within a Special Flood Hazard Area or floodway on the Flood Insurance Rate Maps adopted by a county or on a preliminary map with a Letter of Final Determination (LFD) issued by the Federal Emergency Management Agency, whichever is most recent.

(C) Any portion of the M49 property has:

   (i) A fire hazard rating of “Very High: 2.2+” on the “Community at Risk: Hazard Rating” map published by the Oregon Department of Forestry (ODF) on October 1, 2006; or

   (ii) A fire hazard rating of “High: 1.9-2.1” on the “Community at Risk: Hazard Rating” map published by ODF on October 1, 2006 and that is outside of a local public fire protection district or agency.

(D) The M49 property is predominantly within an area identified as, or within the path of, a landslide or debris flow hazard or in which a geotechnical report would be required to site a dwelling as specified in the acknowledged comprehensive plan or land use regulation or an adopted Natural Hazard Mitigation Plan.

(E) The M49 property is predominantly within an area designated in an acknowledged comprehensive plan or land use regulation or an adopted Natural Hazard Mitigation Plan as a significant natural hazard pursuant to Goal 7.

(e) Any portion of the M49 property is within an area designated as a critical ground water area or as a ground water limited area by the Oregon Water Resources Department or Water Resources Commission before January 1, 2015, unless water can be provided by an existing community or public water system.

(4) If a M49 property qualifies for bonus credits under sections (2) and (3), a county may also grant bonus credits based on the size of the property protected from development as follows:

   (a) Fewer than 80 acres: No additional credit

   (b) 80 acres or more, and fewer than 120 acres: 0.2 credits

   (c) 120 acres or more, and fewer than 160 acres: 0.4 credits

   (d) 160 acres or more, and fewer than 200 acres: 0.6 credits

   (e) 200 acres or more, and fewer than 240 acres: 0.8 credits

   (f) 240 acres or more: 1.0 credit
(5) A TDC system adopted by Clackamas, Multnomah, or Washington County must establish two types of credits.

   (a) TDCs from sending properties within a rural reserve designated under OAR 660-027-0020(2) shall be known as type A credits and may be used in any receiving area; and

   (b) TDCs from sending properties outside rural reserves designated under OAR 660-027-0020(2) shall be known as type B credits and may only be used in receiving areas outside of rural reserves.

(6) A TDC system adopted by Douglas or Lane County must establish two types of credits.

   (a) TDCs from sending properties within the Oregon Coastal Zone as defined in OAR 660-035-0010(1) shall be known as type A credits and may be used in any receiving area.

   (b) TDCs from sending properties outside of the Oregon Coastal Zone shall be known as type B credits and may only be used in receiving areas outside of the Oregon Coastal Zone.

660-029-0050
Process for Creating Transferable Development Credits

(1) An applicant may apply to a county that has established a M49 TDC system under OAR 660-029-0020 to convert dwelling authorizations under M49 into TDCs. The county shall evaluate the application based on the locally-adopted M49 TDC ordinance and this division to determine whether the dwelling authorizations under M49 are eligible for conversion to TDCs, and how many credits will be created, including any bonus credits.

(2) When a county preliminarily approves an application, the county will:

   (a) Send notice to the department, including the application, the preliminary approval, any proposed restrictive covenant and any proposed conservation easement; and

   (b) Request an Amended Final Order and TDC certificates from the department.

(3) The department will review the county request and determine its consistency with this division. If consistent, the department will:

   (a) Issue an Amended Final Order documenting the number of dwelling authorizations under M49 that have been converted to TDCs and the number that remain; and

   (b) Issue the applicable number of TDC certificates to the county.
(4) If an applicant applies to convert dwelling authorizations under M49 to TDCs from a property that has already been divided pursuant to M49, then the partition or subdivision must be vacated by the county prior to final approval.

(5) **If an applicant receives preliminary approval** for bonus credits under OAR 660-029-0040, the applicant must convey a conservation easement or place a restrictive covenant on the property that meets the requirements of OAR 660-029-0060, record it with the county clerk and provide a copy to the county, prior to final approval.

(6) The Amended Final Order must be recorded in the deed records of the county.

(7) When all of the requirements of this rule have been met, the county shall give final approval, issue the TDC certificates to the applicant and provide the complete record of the decision to the department.

(8) The county will keep a permanent record of amended final orders, vacations, restrictive covenants and conservation easements that apply to M49 sending properties to ensure that unauthorized development does not occur.

**660-029-0060 Protection of Sending Properties**

(1) To qualify for bonus credits under OAR 660-029-0040, the M49 property must be permanently restricted from future development or land division for any purpose other than:

   (a) Farm use as defined in ORS 215.203;

   (b) Agricultural buildings as defined in ORS 455.315;

   (c) **Replacement dwellings as provided in OAR 660-033-0130(8) and OAR 660-006-0025(3)(p)**;

   (d) Farm stands as provided in OAR 660-033-0130(23);

   (e) Forest operations as defined in OAR 660-006-0005;

   (f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;

   (g) Conservation areas or natural resource uses that do not require a land use decision; and

   (h) **Land divisions that meet the minimum parcel requirement of the zone.**
(2) If the M49 property is fewer than 20 acres, then the restriction required by section (1) may be accomplished by either a restrictive covenant or a conservation easement.

(3) If the M49 property is 20 acres or more, then the restriction required in section (1) must be accomplished by a conservation easement conveyed to a willing holder identified in ORS 271.715(3). Exception: The restriction required by section (1) on a M49 property 20 acres or more may be accomplished with a restrictive covenant if the county provides notice to the department 60 days prior to final approval, and no eligible holder has accepted a conservation easement.

(4) A restrictive covenant must:

   (a) Meet the requirements of OAR 660-029-0020(2)(e);

   (b) Authorize the county and the department to independently enforce the restrictive covenant;

   (c) Be accompanied by a title search and a legal description of the property sufficient to determine all owners of the property and all lienholders; and

   (d) Be recorded in the deed records for the county in which the M49 property is located.

(5) A conservation easement must:

   (a) Be reviewed by the department for compliance with this rule prior to recording:

   (b) Authorize the department to independently enforce the conservation easement;

   (c) Be accompanied by a title search and a legal description of the property sufficient to determine all owners of the property and all lienholders; and

   (d) Be recorded in the deed records for the county in which the M49 property is located.

660-029-0070
Conveyance of TDC Ownership

(1) Prior to conveying ownership of a TDC, the owner of the TDC must submit notice of the conveyance to the department, using an online form provided by the department.

(2) On receipt of a notice of conveyance, the department shall acquire verification of the conveyance from the previous owner.

(3) Conveyance of a TDC is a conveyance for the purposes of subsection 11(6) of chapter 424, Oregon Laws 2007. Upon transfer of the TDC to a person other than the spouse of the owner who obtained the authorization or the trustee of a revocable trust in which the owner who
obtained the authorization is the settlor, the person receiving the TDC must use the TDC within 10 years of the conveyance. If the M49 property was conveyed prior to creation of the TDCs, the owner must use the TDCs within 10 years of the first conveyance.

660-029-0080
Designation of Receiving Areas

A county may only designate receiving areas as provided in sections (1) and (2) of this rule, subject to the limitations of sections (3) and (4).

(1) Rural Residential exceptions areas may be designated as receiving areas. A local TDC system may authorize a higher density of residential development on all or portions of such areas than is allowable by OAR 660-004-0040, as provided in OAR 660-029-0090(2).

(2) Substantially-developed subdivisions in areas that are planned and zoned for farm or forest use outside rural reserves may be designated as receiving areas. A local TDC system may authorize infill development not otherwise allowable in the underlying farm or forest zone, provided:

(a) The subdivision was approved prior to January 1, 1985;

(b) All existing lots in the subdivision are five acres or smaller if the property is in western Oregon as defined in ORS 321.257 or 10 acres or smaller if the property is in eastern Oregon as defined in ORS 321.805;

(c) At least 50% of the lots in the subdivision are developed with a dwelling and at least 50 percent of the undeveloped lots are adjacent to a developed lot;

(d) One dwelling per lot is permitted, with no new land divisions allowed; and

(e) The county approves a reasons exception pursuant to OAR 660, division 4.

(3) Receiving areas must:

(a) Meet the requirements of ORS 215.296; and

(b) Be selected so as to minimize conflicts with nearby commercial agricultural and forest operations. Methods for the county to minimize conflicts may include but are not limited to:

(A) Minimizing the selection of receiving areas that are adjacent to high-value farmland; and

(B) Restricting increases in allowed density to the interior of applicable exceptions areas.
(4) Receiving areas may not include any land:

(a) That meets the conditions in OAR 660-029-0040(3)(b) through (e), except that the term “M49 property” is replaced with “land”;

(b) That is a sending property designated as provided in OAR 660-029-0010;

(c) Within urban reserves designated under OAR 660, divisions 21 or 27;

(d) Within 100 feet of a riparian corridor as defined in OAR 660-023-0090;

(e) Within 100 feet of a wetland listed on the statewide wetland inventory or a local inventory of significant wetlands adopted as part of a comprehensive plan or land use regulation as defined in OAR 660-023-0100;

(f) Within any significant Goal 5 resource site documented and adopted by a local government as a part of a comprehensive plan or land use regulation as defined in OAR 660-023-0010(9);

(g) Within one mile of the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami Inundation Maps published by the Oregon Department of Geology and Mineral Industries in 2014;

(h) Within a Special Flood Hazard Area or within an area mapped as “shaded X” or designated “500 year flood plain” on the Flood Insurance Rate Maps adopted by a county or on a preliminary map with a Letter of Final Determination (LFD) issued by the Federal Emergency Management Agency, whichever is most recent;

(i) Within an area with a fire hazard rating of “High: 1.9-2.1” or “Very High: 2.2+” as designated on the “Community at Risk: Hazard Rating” map published by the Oregon Department of Forestry on October 1, 2006;

(j) Within an area identified as, or within the path of, a landslide or debris flow hazard or in which a geotechnical report would be required to site a dwelling as specified in the acknowledged comprehensive plan or land use regulation or an adopted Natural Hazard Mitigation Plan; or

(k) Within an area designated in an acknowledged comprehensive plan or land use regulation or an adopted Natural Hazard Mitigation Plan as a natural hazard pursuant to Goal 7.

(5) A county may exclude any additional land from receiving areas.
660-029-0090

Process for Using Transferable Development Credits

(1) A person who proposes to use TDCs on property in a receiving area shall submit an application to the county accompanied by TDC certificates sufficient to permit the proposed development.

(2) If an applicant proposes to use TDCs in a rural residential receiving area under the provisions of OAR 660-029-0080(1) the property may be divided to site the additional dwelling or dwellings. If an applicant proposes to create or develop on a lot or parcel smaller than five acres, the allowed density shall be based on the average lot and parcel size in existing exception areas within one-half mile of the edge of the subject property. In no case shall such use result in the creation of lots or parcels smaller than two acres.

(3) If an applicant proposes to use a TDC on a lot or parcel that is partially within the receiving area and partially outside of the receiving area, then the dwelling and all supporting infrastructure authorized by the TDC must be located entirely within the receiving area.

(4) The county shall evaluate the application based on the locally-adopted TDC ordinance and the provisions of this division in order to determine the type and number of credits that are required to be submitted. Based on this evaluation, the county may preliminarily approve the application and shall request verification from the department of the type and number of credits that belong to the applicant, using an online form provided by the department.

(5) The department shall verify the type and number of credits that belong to the applicant.

(6) Following department verification, the county may approve the application and shall notify the department within 30 days of any approval.

660-029-0100

Interjurisdictional Transfer of Development Credits

(1) Counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the transfer of TDCs between the counties that are parties to the agreement, subject to the limitations in section (2).

(2) TDCs may only be transferred within the regions described below:

(a) Metro, including Clackamas, Multnomah and Washington counties;

(b) Willamette Valley, including Benton, Linn, Marion, Polk and Yamhill counties, and that portion of Lane County outside of the Coastal Zone defined in OAR 660-035-0010(1).
(c) Coastal, including Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties and those portions of Douglas and Lane counties in the Coastal Zone defined in OAR 660-035-0010(1).

(d) Southern, including Jackson and Josephine counties, and that portion of Douglas County outside the Coastal Zone defined in OAR 660-035-0010(1).

(e) Central, including Crook, Deschutes, Hood River, Jefferson, Klamath and Wasco counties.

(f) Eastern, including Baker, Gilliam, Grant, Harney, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler counties.

(3) Interjurisdictional TDC programs that involve two types of credits may authorize the transfer of credits to another jurisdiction within the same region, in accordance with this rule and the provisions of OAR 660-029-0040(5) and (6).

660-029-0110
TDC Bank Option

A county or regional or state agency may establish a TDC bank to facilitate:

(1) Buying TDCs from M49 sending properties;

(2) Selling TDCs for potential use in receiving areas;

(3) Managing funds available for the purchase and sale of TDCs;

(4) Serving as a clearinghouse and information source for buyers and sellers of TDCs; and

(5) Accepting donations of TDCs from M49 sending properties.

660-029-0120
Amending or Abolishing a TDC System

If a county amends or abolishes a TDC system, the county shall notify the owners of all TDCs that have not been used. The county must allow at least 12 months for an owner of TDCs to use them under the prior system.