A. Purpose
The purpose of establishing this transfer of development credits (TDC) ordinance is to provide additional options to landowners with approved Measure 49 ("M49") claims in resource zones in __________ County to realize the value of their claims without developing the property to which their claim is attached. This ordinance is intended to permit these landowners, on a voluntary basis, to transfer their right to develop from a property with M49 approval to another property. This ordinance is further intended to reduce the potential adverse impact of scattered residential development on farmland, forest land and sensitive natural areas and habitat. Finally, this ordinance is intended to permit local governments to enter into cooperative agreements to implement this TDR program.

B. Authority
This ordinance is enacted pursuant to the authority granted by section 11, chapter 424, Oregon Laws 2007 (hereinafter referred to as Measure 49 or M49), which permits the transfer of severable development interests within or between local governments for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

C. Definitions

(1) “Exclusion areas” means parcels or lots that do not qualify for inclusion in a sending or receiving area.

(2) “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.

(3) “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.

(4) “Transferable development credit” means a severable development interest in real property that can be transferred from a lot or parcel in a designated sending area to a lot or parcel in a designated receiving area.

D. Sending Areas

(1) Sending Area Zones. All M49 properties with approved claims within the following areas are potential sending area properties:
(a) Natural resource zones; and
(b) Those properties identified in Subsection F(3) as receiving exclusion areas.

(2) Excluded Sending Areas. The following areas are not eligible to send development credits:

(a) Forest land on which all of a given lot or parcel is on slopes that exceed 40%;
(b) Lots or parcels that are more than x miles from a public road; or
(c) Parcels or lots that are determined to be unbuildable by the county.

E. Calculation of Transferable Development Credits

(1) The number of transferable development credits assigned to a M49 property in a qualifying sending area described in Section E shall be determined as follows:

(a) One transferable development credit for each dwelling authorized by M49 as determined in the “final order and home site authorization.”

(b) Additional fractional credits for each dwelling authorized by M49 as determined in the “final order and home site authorization” and as set forth in Table 1, provided that all original M49 dwelling authorizations at a given site are transferred:

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Bonus Credits per Dwelling</th>
<th>Map on DLCD M49 webpage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. High-value farm or forest land</td>
<td>+0.2 credits</td>
<td>M49</td>
</tr>
<tr>
<td>2. Rural Reserve within 3 miles of UGB</td>
<td>+0.2 credits</td>
<td>Adopted by county, acknowledged by LCDC</td>
</tr>
<tr>
<td>3. Scenic, historic, cultural or recreational resources</td>
<td>+0.2 credits</td>
<td>1. County Goal 5 protected sites acknowledged by LCDC 2. Scenic Waterway designations under ORS 390.826 or 390.855 3. Federal lands including national parks, monuments, forests, etc.</td>
</tr>
<tr>
<td>4. Wildlife habitat</td>
<td>+0.2 credits</td>
<td>Oregon Department of Fish and Wildlife Conservation Opportunity Areas (2006)</td>
</tr>
<tr>
<td>5. Natural hazards</td>
<td>+0.2 credits</td>
<td>1. Special Flood Hazard Area on Flood Insurance Rate map adopted by county, acknowledged by LCDC 2. Hazard overlay zone adopted by county, acknowledged by LCDC</td>
</tr>
<tr>
<td>6. Groundwater-restricted area</td>
<td>+0.2 credits</td>
<td>Oregon Water Resources Department</td>
</tr>
</tbody>
</table>

(c) A fractional credit of +0.2 shall also be assigned to authorized M49 properties that are adjacent to designated scenic historic, cultural or recreational resources.
(d) An authorized dwelling can receive only +0.2 credits for each of the six attribute categories, regardless of how many inventories on which it is included.

(e) Total transferable credits per authorized M49 dwelling are calculated and identified on the DLCD M49 TDR webpage.

F. Receiving Areas

Potential Receiving Area Properties. The County may designate appropriate receiving areas based on criteria in Subsections (1), (2) and (3):

(1) Receiving areas may include lands that are:

(a) Within Rural Residential exceptions areas zoned for 5- and 10-acre minimum lot sizes that are selected based on criteria in Subsection (2). Within these areas, transferred development credits may be used to permit a higher density of residential development than would otherwise be allowable in the underlying zone. Counties may utilize one of two approaches in determining allowable densities, including:

(i) The application of an overlay zone that permits either 5-acre or 2-acre minimum lot sizes with the use of transferred development credits; or

(ii) The assignment of a maximum number of transferred development credits that may be used for a given identified receiving area.

(b) Within substantially developed subdivisions in resource zones that are selected based on criteria in Subsection (2). Within these areas, transferred development credits may be used to permit development that would not otherwise be allowable in the underlying zone if:

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

(ii) All lots are five acres or smaller in western Oregon or 10 acres or smaller in eastern Oregon;

(iii) The subdivision is at least 50% built-out and at least 50% of the undeveloped lots are adjacent to a developed lot; and

(iv) One dwelling per parcel is permitted, with no new land divisions allowed.

(c) In resource zones, for the purpose of allowing a lot or parcel with two dwellings to be partitioned if:
(i) The dwellings existed as of December 6, 2007 and meet the standards in OAR 660-033-0130(8);

(ii) Neither dwelling was approved as an accessory farm dwelling or a family farm help dwelling;

(iii) At least one parcel is no larger than five acres; and

(iv) Deed restrictions are recorded for both parcels that prohibit subsequent property line adjustments or the approval of accessory farm dwellings or family farm help dwellings.

(2) Receiving areas identified in paragraphs (1)(a) and (b) shall be selected to minimize conflicts with nearby commercial farm and forest operations and shall omit exclusion areas identified in Subsection (1)(C). These areas may be designated in whole or in part as receiving areas. [Counties may add additional selection criteria].

(3) Exclusion Areas. The following properties are not appropriate for receipt of transferable development credits under paragraph (1)(a) because they are either predominantly within an identified natural hazard area or they are within or adjacent to land that possesses special identified attributes that merit protection. These are ands identified and mapped by DLCD on the M49 TDR webpage, including:

(a) Special Flood Hazard maps;

(b) Landslide area maps;

(c) High-risk fire areas;

(d) Groundwater-restricted areas;

(e) Conservation Opportunity Areas maps;

(f) Scenic, cultural, historic or recreational resources;

(g) Rural Reserves within three miles of a UGB; and

(h) Urban Reserves

(4) Designated Receiving Area Properties include those identified under paragraphs (1)(a), (b) and/or (c) and Subsection (2), omitting identified exclusion areas identified in Subsection (3). These properties are mapped and have been adopted by the County as ……
G. Protection of Sending Area Properties

(1) All lots or parcels with a M49 authorization from which development rights are to be severed shall be permanently restricted from future development by either a restrictive covenant or a conservation easement, as follows:

(a) A conservation easement shall be applied to all properties that are 20 acres or greater in size;

(b) Either a conservation easement or a deed restriction may be applied to properties under 20 acres in size.

(2) The restrictive covenant or the conservation easement, as applicable, shall permanently restrict the land from future development or land division for any purpose other than agricultural use, forest use, public parkland devoted to passive, low intensity uses, conservation areas and similar uses. [we’ll need more detail here]

(3) All owners of legal and beneficial interests in the M49 property from which development rights are severed, as well as any designated entity having enforcement rights under this section, shall execute the restrictive covenant or conservation easement. All lienholders of the M49 property from which development rights are severed shall execute a subordination agreement or a release of lien.

(4) Restrictive covenants shall:

(a) Designate an entity described in ORS 271.715(3) that is acceptable to the County as well as all future owners of the subject M49 property as having separate and independent enforcement rights with respect to the restrictive covenants; and

(b) Be approved by the County and recorded with the County Clerk.

(5) When a conservation easement is required under Subsection (1), the following criteria shall apply:

(a) The landowner shall notify appropriate area land trusts, the county, state agencies and soil and water conservation districts listed on the DLCD M49 TDR registry of the opportunity to acquire a conservation easement. If no response is received within 30 days, the landowner shall notify DLCD of the lack of response, in which case DLCD may either find an appropriate easement holder or allow the subject property to be subject to a restrictive covenant under Subsection (4);
(b) The conservation easement shall designate an entity described in ORS 271.715(3) as having a third party right of enforcement of the conservation easement:

(c) Conservation easements shall be recorded with the County Clerk.

H. Deed of Transferable Development Credits

(1) Following the recording of a deed restriction or conservation easement for a M49 property, development rights may be severed and acknowledged as credits by a Deed of Transferable Development Credits, subject to the following:

(a) A landowner may submit a copy of a recorded deed restriction or conservation easement for a qualifying M49 property together with a request for a Deed of Transferable Development Credits to DLCD;

(b) The request shall be accompanied by a legal description of the M49 property subject to the deed restriction or conservation easement and a title search sufficient to determine all owners of the property and all lienholders.

(c) DLCD shall issue a Deed of Transferable Development Credits in the amount indicated on the M49 TDR Registry webpage for the subject property to the landowner.

(d) The deed shall be recorded with the County Clerk.

I. Utilization of Transferable Development Credits

(1) Any person may purchase M49 development credits, may accept ownership of development credits through transfer by gift, or may accept land in fee simple for the purpose of severing development rights. All such development credits may be used, resold, held for future use or sale, or permanently retired.

(2) Development credits that have been conveyed from M49 properties may be utilized in designated receiving areas to increase the maximum residential density that is otherwise applicable, as set forth in Section G and Section N.

(3) A person who proposes to use transferable development credits on a property in a designated receiving area shall submit an application for the use of such credits as part of an application for a Type II development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

(a) A Deed or Deeds of Transferable Development Credits;
(b) A copy of the deed restriction or conservation easement on the M49 property that meets the requirements of section H of this Ordinance; and

(c) A note identifying the total number of dwelling units proposed on the receiving area site, the development that could be built not using TDRs, and the incremental difference between the two.

(4) Final approval for any development plan utilizing transferred development credits shall not be granted prior to the receipt of a Deed of Transferable Development Credits and the recording of a deed restriction or conservation easement for the required number of development credits.

J. TDR Record Keeping

The County shall:

(1) Keep a permanent record of deed restrictions and conservation easements that apply to M49 sending area properties under this Ordinance to ensure that they do not later issue development approvals for unauthorized uses or land divisions; and

(2) Provide notice to DLCD within 30 days of:

   (a) The recording with the County Clerk of deeds of transferable development credits, restrictive covenants and conservation easements as they apply to M49 sending area properties; and

   (b) The utilization of transferable development credits as they apply to receiving area properties.

K. TDC Bank Option

The County may establish a transferable development credits bank to facilitate:

   (A) Buying transferable development credits from M49 properties;

   (B) Selling transferable development credits to potential developers in a receiving area;

   (C) Managing funds available for the purchase and sale of transferable development credits;

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

   (E) Accepting donations of transferable development credits from M49 properties.
L. Interjurisdictional Transfer of Development Credits

(1) The County will/will not allow the transfer of development credits between or among other counties in the region, including…. [to include transfer among one group of the following counties]

[Metro: Clackamas, Multnomah and Washington Counties]

[Willamette Valley: Polk, Yamhill, Marion, Linn and Lane Counties]

[Coastal: Coos, Curry, Lincoln, Tillamook, Columbia and Clatsop Counties]

[Southern: Douglas, Jackson and Josephine Counties]

[Central: Hood River, Wasco, Jefferson, Deschutes, Crook and Klamath Counties]

[Eastern: Gilliam, Sherman, Morrow, Umatilla, Wallowa, Union, Baker, Grant, Wheeler, Malheur, Harney, Lake and Grant Counties]

The County shall notify DLCD of utilization of development credits from other counties within the applicable region within 30 days of approval of any such use.

(2) When development credit transfers authorized by this Ordinance result in the transfer of development credits from one jurisdiction to another cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving areas.

M. Amendment

The County reserves the right to amend this ordinance in the future, including the right to change the receiving area locations. No owner of land or development credits shall have any claim against the County for damages resulting from a change in this Ordinance. The County further reserves the right to terminate its transferable development credits program at any time. If, following notification of holders of outstanding development credits, the program is abolished, such holders shall have 12 months from the effective date of the termination of the program to apply to use their remaining development credits within designated receiving areas.