



Oregon

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February 27, 2015

TO: Land Conservation and Development Commission

FROM: Katherine Daniels, Farm and Forest Lands Specialist
Sarah Marvin, Measure 49 Specialist
Matt Crall, Planning Services Division Manager

SUBJECT: **Agenda Item 7, March 12-13, 2015 LCDC Meeting**

RULEMAKING – TRANSFER OF MEASURE 49 DEVELOPMENT CREDITS

Continuation of Public Hearing and Proposed Adoption of Administrative Rules Regarding Transfer of Development Credits (TDC) for Dwellings Authorized by Measure 49

I. AGENDA ITEM SUMMARY

The Land Conservation and Development Commission (LCDC and/or commission) held a hearing to consider adopting new administrative rules (division 29) and amending existing administrative rules (divisions 4 and 27) on January 23, 2015, at which time it reviewed the staff report, heard public testimony, discussed the proposed amendments and continued the hearing to the March 12-13, 2015 commission meeting to allow time for a revised proposal.

If you have questions about this report please, contact Sarah Marvin, M49 Specialist, at 503-934-0001, or by email at sarah.marvin@state.or.us or Katherine Daniels, Farm and Forest Specialist at 503-934-0069 or by email at katherine.daniels@state.or.us.

II. REVISED RULE LANGUAGE

The full description of the proposed rules is in the staff report for the January commission meeting, which is available online:

http://www.oregon.gov/LCD/docs/meetings/lcdc/012215/Item_6_M49_TDC_Rulemaking.pdf

The proposed rules were substantively revised to address three issues described below, and were revised throughout to correct errors, clarify language, or conform to legal format. Attachment B shows all of the revisions. The substantive issues include:

- A. Restrictive Covenant
- B. Refined Bonus Areas and Excluded Receiving Areas
- C. New Rule within Division 4

A. Restrictive Covenant

The requirement to use a specific form for a restrictive covenant (OAR 660-029-0020(e)) was deleted to allow counties to write restrictive covenants specific to their needs.

B. Refined Bonus Areas and Excluded Receiving Areas

The rules defining sending properties that may receive bonus credits (OAR 660-029-0040(3)) and receiving area exclusions (OAR 660-029-0080(4)) were revised in response to comments and information from the rulemaking advisory committee and other state agencies. The revisions are primarily related to mapping environmentally sensitive lands and natural hazard areas. Specifically, the revisions:

1. Added six state recreational and cultural area designations to section OAR 660-029-0040(3)(b)(B);
2. Removed the reference to private conservation lands due to the state's inability to control for the conservation priorities in private easements;
3. Revised the identification of riparian corridors in section OAR 660-029-0040(3)(c)(D) to include the safe harbor provisions in OAR 660-023-0090(5);
4. Added mapping and refined the identification of significant wetlands in OAR 660-029-0040(3)(c)(E) and OAR 660-029-0080(4)(e);
5. Changed language from "any portion" to "predominantly" in OAR 660-0290040(3)(d)(C) and OAR 660-029-0040(3)(e) to narrow the qualification for bonus credits in fire hazard and ground water restricted areas;
6. Changed the description of landslide hazard areas to refer to DOGAMI's Statewide Landslide Information Database of Oregon (SLIDO) in OAR 660-029-0040(3)(d)(D) and OAR 660-029-0080(4);
7. Deleted references to Natural Hazard Mitigation Plans (OAR 660-029-0040(3)(d)(e)) because these plans do not designate hazards areas with sufficient specificity for granting bonuses;
8. Added a minimum mapping unit of 5 acres in OAR 660-029-0080(4)(i) to reduce error in identifying fire hazard exclusion areas;
9. Refined language throughout OAR chapter 660 division 29 to clarify that receiving and exclusion areas are areas of land rather than parcels or lots; and
10. Clarified that all new lots or parcels created by use of TDC's must have sufficient receiving area (outside of exclusion areas) for dwellings and supporting infrastructure (OAR 660-029-0090(1)).

C. New Rule within Division 4

One type of receiving area for transferred development credits in division 29 is a substantially developed subdivision that is approved through a reasons exception to Goals 3 or 4 under OAR chapter 660, division 4. The Department of Land Conservation and Development (DLCD and/or department) recommends that a new rule 023 in division 4 be adopted to accomplish this. This

rule would require that substantially developed subdivisions meet the statutory requirements for reasons exceptions that are embodied in division 4, while providing flexibility in meeting some of the current rule requirements for reasons exceptions. Specifically, the requirement for the consideration of alternative areas not requiring a new exception would be limited to rural residential exception areas, as they are the only other type of authorized receiving area not requiring a new exception. Similarly, the requirement for an analysis of long-term environmental, economic, social and energy consequences of other sites requiring an exception would be limited to other substantially developed subdivisions.

III. TESTIMONY RECEIVED

No testimony has been received since the January 2015 meeting. Several members of the rulemaking advisory committee made informal suggestions for clarification that have been addressed in the draft proposed for adoption.

IV. DEPARTMENT RECOMMENDATION AND MOTIONS

DLCD staff recommends that the commission adopt the proposed rules using motion 1 below. Two alternative motions are also provided below.

1. The commission may adopt the proposed rules as drafted.
I move to adopt the administrative rules proposed in Attachments A and C of the staff report, to create a new division 29, to create a new rule 0023 within division 4, and to amend rules within divisions 4 and 27.
2. The commission may adopt rules with amendments made by the commission at the meeting.
I move to adopt the administrative rules proposed in Attachments A and C of the staff report, to create a new division 29, to create a new rule 0023 within division 4, and to amend rules within divisions 4 and 27 as revised by the commission...
3. The commission may direct department staff to prepare amendments to the proposed rule for the commission to consider at the May meeting.
I move to direct staff to revise the proposed rules to address the following issues...

V. ATTACHMENTS

- A. Proposed OAR 660 division 29
- B. Proposed OAR 660 division 29 showing changes from the draft dated January 7, 201
- C. Proposed OAR 660 divisions 4 and 27

Additional background information can be found in the staff report from the January 2015 LCDC Meeting, which is available online at:

http://www.oregon.gov/LCD/docs/meetings/lcdc/012215/Item_6_M49_TDC_Rulemaking.pdf

OAR Division 29

MEASURE 49 TRANSFER OF DEVELOPMENT CREDITS SYSTEMS

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Rule Number, Title	Page
660-029-0000 Purpose	1
660-029-0010 Definitions	2
660-029-0020 County Authority to Establish a M49 TDC System.....	3
660-029-0030 Sending Properties.....	3
660-029-0040 Calculation and Types of Transferable Development Credits	4
660-029-0050 Process for Creating Transferable Development Credits	8
660-029-0060 Protection of Sending Properties.....	9
660-029-0070 Conveyance of TDC Ownership	10
660-029-0080 Designation of Receiving Areas.....	10
660-029-0090 Process for Using Transferable Development Credits	12
660-029-0100 Interjurisdictional Transfer of Development Credits	13
660-029-0110 TDC Bank Option	14
660-029-0120 Amending or Abolishing a TDC System	14

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.

1 **660-029-0010**

2 **Definitions**

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

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

7 (2) “Measure 49” or “M49” means 2007 Oregon Laws Chapter 424 (Ballot Measure 49); 2009
8 Oregon Laws Chapter 855 (also known as House Bill 3225); 2010 Oregon Laws Chapter 8
9 (also known as Senate Bill 1049); 2011 Oregon Laws Chapter 612 (also known as House Bill
10 3620) and OAR 660-041-0000-0180.

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

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

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

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

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

24 (6) “Substantially developed subdivision” means a legal subdivision created prior to
25 acknowledgment of the county comprehensive plan under ORS 197.251 in which more than
26 50 percent of the lots are developed with a dwelling and at least 50 percent of the
27 undeveloped lots are adjacent to a developed lot.

28 (7) “Transferable development credit” or “TDC” means a severable development interest in real
29 property that can be transferred from a sending property to a lot, parcel or tract in a receiving
30 area.

1 660-029-0020**2 County Authority to Establish a M49 TDC System**

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

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

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

7 (a) Designate M49 properties that are eligible sending properties as provided in OAR
8 660-029-0030;

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

11 (c) Designate receiving areas or create a process for property owners to apply for
12 designation of lands as receiving areas, as provided in OAR 660-029-0080;

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

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

17 660-029-0030**18 Sending Properties**

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

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

21 (b) That have lawful access; and

22 (c) That are located:

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

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

26 (C) In an area identified in OAR 660-029-0040(3)(b) through (e).

27 (2) Sending properties exclusions: Notwithstanding section (1), a county may designate areas or
28 types of M49 properties that are not eligible as sending properties because the M49 property

1 is not buildable or for other reasons. If a county excludes some M49 properties, it shall
2 either:

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

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

7 **660-029-0040**

8 **Calculation and Types of Transferable Development Credits**

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

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

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

18 (a) The M49 property is within a zone or overlay zone described in OAR 660-029-
19 0030(1)(c)(A) or (B);

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

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

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

29 (a) The M49 property is high-value farmland or high-value forestland as defined in ORS
30 195.300 and OAR 660-041-0130.

31 (b) Recreational and Cultural Areas:

- 1 (A) Any portion of the M49 property is within a scenic, historic, cultural or
2 recreational resource identified as significant on a local inventory as part of an
3 acknowledged comprehensive plan or land use regulation.
- 4 (B) Any portion of the M49 property is within or shares a boundary with a National
5 Park, National Monument, National Recreation Area, National Seashore,
6 National Scenic Area, Federal Wild and Scenic River and associated corridor
7 established by the federal government, State Scenic Waterway, State Park, State
8 Heritage Area or Site, State Recreation Area or Site, State Wayside, State
9 Scenic Viewpoint, State Trail, or State Scenic Corridor.
- 10 (c) Environmentally Sensitive Areas:
- 11 (A) Any portion of the M49 property is within an area designated as Willamette
12 River Greenway, estuarine resources, coastal shoreland, or beaches and dunes
13 designated in an acknowledged comprehensive plan or land use regulation
14 implementing Goals 15-18.
- 15 (B) Any portion of the M49 property is within or shares a boundary with a National
16 Wilderness Area, National Area of Critical Environmental Concern, National
17 Wildlife Refuge or Area, Federal Research Natural Area, National Outstanding
18 Natural Area, State Wildlife Area, State Natural Area or Site, or a natural area
19 or open space identified as significant on a local inventory as part of an
20 acknowledged comprehensive plan or land use regulation as specified in OAR
21 660-023-0160 and -0220.
- 22 (C) Any portion of the M49 property is within an area designated by the Oregon
23 Department of Fish and Wildlife (ODFW) as a Conservation Opportunity Area
24 as mapped in 2006.
- 25 (D) Any portion of the M49 property is within or shares a boundary with a riparian
26 corridor adopted in an acknowledged comprehensive plan as provided in OAR
27 660-023-0090, or if the local government has not adopted an inventory of
28 riparian corridors, then the riparian corridors defined using the safe harbor
29 provided in section (5) of OAR 660-023-0090.
- 30 (E) Any portion of the M49 property is within a wetland that is:
- 31 (i) Identified as significant or special interest for protection on a local
32 wetland inventory or other inventory as provided in OAR chapter
33 141, division 86 or a wetland conservation plan approved by DSL;
- 34 (ii) A Wetland of Conservation Concern (formerly Special Area of
35 Concern) as designated by DSL;

- 1 (iii) In the Wetland Reserve Easement Program of the Natural Resources
2 Conservation Service (NRCS);
- 3 (iv) Identified on the Oregon’s Greatest Wetlands map or GIS layer by
4 The Wetlands Conservancy as of January 1, 2015;
- 5 (v) Identified on the Wetland Priority Sites map or GIS layer by Oregon
6 State University and The Wetlands Conservancy as of January 1,
7 2015;
- 8 (vi) Has a conservation value of 50 or greater as rated on The Wetlands
9 Conservancy and Institute of Natural Resources Wetlands
10 Conservation Significance map or GIS layer as of January 1, 2015;
11 or
- 12 (vii) Designated as locally significant in an inventory adopted as part of
13 an acknowledged comprehensive plan or land use regulation as
14 provided in OAR 660-023-0100.
- 15 (d) Natural Hazard Areas:
- 16 (A) The M49 property is predominantly within the “XXL 1 Tsunami Inundation”
17 zone delineated on the Tsunami Inundation Maps published by the Oregon
18 Department of Geology and Mineral Industries in 2014.
- 19 (B) Any portion of the M49 property is within a Special Flood Hazard Area or
20 floodway on the Flood Insurance Rate Maps adopted by a county or on a
21 preliminary map with a Letter of Final Determination (LFD) issued by the
22 Federal Emergency Management Agency, whichever is most recent.
- 23 (C) The M49 property is predominantly within an area composed of either or both:
- 24 (i) A fire hazard rating of “Very High: 2.2+” on the “Community at Risk:
25 Hazard Rating” map published by the Oregon Department of Forestry
26 (ODF) on October 1, 2006; or
- 27 (ii) A fire hazard rating of “High: 1.9-2.1” on the “Community at Risk:
28 Hazard Rating” map published by ODF on October 1, 2006 and that is
29 outside of a local public fire protection district or agency.
- 30 (D) The M49 property is predominantly within a landslide deposit or scarp flank on
31 the SLIDO Release 3.2 Geodatabase published by the Oregon Department of
32 Geology and Mineral Industries (DOGAMI) December 29, 2014, provided the
33 deposit or scarp flank is from a data source mapped at a scale of 1:40,000 or
34 finer.

- 1 (E) The M49 property is predominantly within an area designated as a natural
2 hazard in an acknowledged comprehensive plan or land use regulation.
- 3 (e) The M49 property is predominantly within an area designated as a critical ground
4 water area or as a ground water limited area by the Oregon Water Resources
5 Department or Water Resources Commission before January 1, 2015, unless water
6 can be provided by an existing community or public water system.
- 7 (4) If a M49 property qualifies for bonus credits under sections (2) and (3), a county may
8 additionally grant bonus credits based on the size of the property protected from development
9 as follows:
 - 10 (a) Fewer than 80 acres: No additional credit
 - 11 (b) 80 acres or more, and fewer than 120 acres: 0.2 credits
 - 12 (c) 120 acres or more, and fewer than 160 acres: 0.4 credits
 - 13 (d) 160 acres or more, and fewer than 200 acres: 0.6 credits
 - 14 (e) 200 acres or more, and fewer than 240 acres: 0.8 credits
 - 15 (f) 240 acres or more: 1.0 credit
- 16 (5) A TDC system adopted by Clackamas, Multnomah, or Washington County must establish
17 two types of credits.
 - 18 (a) TDCs from sending properties within a rural reserve designated under OAR 660-027-
19 0020(2) shall be known as type A credits and may be used in any receiving area.
 - 20 (b) TDCs from sending properties outside rural reserves designated under OAR 660-027-
21 0020(2) shall be known as type B credits and may only be used in receiving areas
22 outside of rural reserves.
- 23 (6) A TDC system adopted by Douglas or Lane County must establish two types of credits.
 - 24 (a) TDCs from sending properties within the Oregon Coastal Zone as defined in OAR
25 660-035-0010(1) shall be known as type A credits and may be used in any receiving
26 area.
 - 27 (b) TDCs from sending properties outside of the Oregon Coastal Zone shall be known as
28 type B credits and may only be used in receiving areas outside of the Oregon Coastal
29 Zone.

1 **660-029-0050**

2 **Process for Creating Transferable Development Credits**

- 3 (1) An applicant may apply to a county that has established a M49 TDC system under OAR 660-
4 029-0020 to convert dwelling authorizations under M49 into TDCs. The county shall
5 evaluate the application based on the locally-adopted M49 TDC ordinance and this division
6 to determine whether the dwelling authorizations under M49 are eligible for conversion to
7 TDCs, and how many credits will be created, including any bonus credits.
- 8 (2) When a county preliminarily approves an application, the county will:
- 9 (a) Send notice to the department, including the application, the preliminary approval,
10 any proposed restrictive covenant and any proposed conservation easement; and
- 11 (b) Request an Amended Final Order and TDC certificates from the department.
- 12 (3) The department will review the county request and determine its consistency with this
13 division. If consistent, the department will:
- 14 (a) Issue an Amended Final Order documenting the number of dwelling authorizations
15 under M49 that have been converted to TDCs and the number that remain; and
- 16 (b) Issue the applicable number of TDC certificates to the county.
- 17 (4) If an applicant applies to convert dwelling authorizations under M49 to TDCs from a
18 property that has already been divided pursuant to M49, then the partition or subdivision
19 must be vacated by the county prior to final approval.
- 20 (5) If an applicant receives preliminary approval for bonus credits under OAR 660-029-0040, the
21 applicant must convey a conservation easement or place a restrictive covenant on the
22 property that meets the requirements of OAR 660-029-0060, record it with the county clerk
23 and provide a copy to the county, prior to final approval.
- 24 (6) The Amended Final Order must be recorded in the deed records of the county.
- 25 (7) When all of the requirements of this rule have been met, the county shall give final approval,
26 issue the TDC certificates to the applicant and provide the complete record of the decision to
27 the department.
- 28 (8) The county will keep a permanent record of amended final orders, vacations, restrictive
29 covenants and conservation easements that apply to M49 sending properties to ensure that
30 unauthorized development does not occur.

1 660-029-0060**2 Protection of Sending Properties**

- 3 (1) To qualify for bonus credits under OAR 660-029-0040, the M49 property must be
4 permanently restricted from future development or land division for any purpose other than:
- 5 (a) Farm use as defined in ORS 215.203;
 - 6 (b) Agricultural buildings as defined in ORS 455.315;
 - 7 (c) Replacement dwellings as provided in OAR 660-033-0130(8) and OAR 660-006-
8 0025(3)(p);
 - 9 (d) Farm stands as provided in OAR 660-033-0130(23);
 - 10 (e) Forest operations as defined in OAR 660-006-0005;
 - 11 (f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries
12 resources;
 - 13 (g) Conservation areas or natural resource uses that do not require a land use decision;
14 and
 - 15 (h) Home occupations as provided in OAR 660-033-0120, OAR 660-006-0025(4)(s) and
16 local regulations.
- 17 (2) If the M49 property is fewer than 20 acres, then the restriction required by section (1) may be
18 accomplished by either a restrictive covenant or a conservation easement.
- 19 (3) If the M49 property is 20 acres or more, then the restriction required in section (1) must be
20 accomplished by a conservation easement conveyed to a willing holder identified in ORS
21 271.715(3). Exception: The restriction required by section (1) on a M49 property 20 acres or
22 more may be accomplished with a restrictive covenant if the county provides notice to the
23 department 60 days prior to final approval, and no eligible holder has been found to accept a
24 conservation easement.
- 25 (4) A restrictive covenant must:
- 26 (a) Be reviewed by the department for compliance with this rule as provided in OAR
27 660-029-0050;
 - 28 (b) Authorize the county and the department to independently enforce the restrictive
29 covenant;
 - 30 (c) Be accompanied by a title search and a legal description of the property sufficient to
31 determine all owners of the property and all lienholders; and

- 1 (d) Be recorded in the deed records for the county in which the M49 property is located.
- 2 (5) A conservation easement must:
- 3 (a) Be reviewed by the department for compliance with this rule as provided in OAR
4 660-029-0050;
- 5 (b) Authorize the department to independently enforce the conservation easement;
- 6 (c) Be accompanied by a title search and a legal description of the property sufficient to
7 determine all owners of the property and all lienholders; and
- 8 (d) Be recorded in the deed records for the county in which the M49 property is located.

9 **660-029-0070**

10 **Conveyance of TDC Ownership**

- 11 (1) Prior to conveying ownership of a TDC, the owner of the TDC must submit notice of the
12 conveyance to the department, using an online form provided by the department.
- 13 (2) On receipt of a notice of conveyance, the department shall acquire verification of the
14 conveyance from the previous owner.
- 15 (3) Conveyance of a TDC is a conveyance for the purposes of subsection 11(6) of chapter 424,
16 Oregon Laws 2007. Upon transfer of the TDC to a person other than the spouse of the owner
17 who obtained the authorization or the trustee of a revocable trust in which the owner who
18 obtained the authorization is the settlor, the person receiving the TDC must use the TDC
19 within 10 years of the conveyance. If the M49 property was conveyed prior to creation of the
20 TDCs, the owner must use the TDCs within 10 years of the first conveyance.

21 **660-029-0080**

22 **Designation of Receiving Areas**

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

- 25 (1) Rural Residential exceptions areas may be designated as receiving areas. A local TDC
26 system may authorize a higher density of residential development on all or portions of such
27 areas than is allowable by OAR 660-004-0040, as provided in OAR 660-029-0090(2).
- 28 (2) Substantially developed subdivisions in areas that are planned and zoned for farm or forest
29 use outside rural reserves may be designated as receiving areas. A local TDC system may
30 authorize residential development not otherwise allowable in the underlying farm or forest
31 zone, provided:

- 1 (a) The subdivision was approved prior to January 1, 1985;
- 2 (b) All existing lots in the subdivision are five acres or smaller if the property is in
3 western Oregon as defined in ORS 321.257 or 10 acres or smaller if the property is in
4 eastern Oregon as defined in ORS 321.805;
- 5 (c) At least 50% of the lots in the subdivision are developed with a dwelling and at least
6 50 percent of the undeveloped lots are adjacent to a developed lot;
- 7 (d) One dwelling per lot is permitted, with no new land divisions allowed; and
- 8 (e) The county approves a reasons exception pursuant to OAR 660, division 4.
- 9 (3) Receiving areas must:
- 10 (a) Meet the requirements of ORS 215.296; and
- 11 (b) Be selected so as to minimize conflicts with nearby commercial agricultural and
12 forest operations. Methods for the county to minimize conflicts may include but are
13 not limited to:
- 14 (A) Minimizing the selection of receiving areas that are adjacent to high-value
15 farmland; and
- 16 (B) Restricting increases in allowed density to the interior of applicable exceptions
17 areas.
- 18 (4) Receiving areas may not include any land:
- 19 (a) That meets the conditions in OAR 660-029-0040(3)(b) through (e), except that the
20 term “M49 property” is replaced with “land”;
- 21 (b) That is a sending property designated as provided in OAR 660-029-0010;
- 22 (c) Within urban reserves designated under OAR 660, divisions 21 or 27;
- 23 (d) Within 100 feet of a riparian corridor as provided in OAR 660-029-0040(3)(c)(D);
- 24 (e) Within 100 feet of a wetland as provided in OAR 660-029-0040(3)(c)(E) or subject
25 to state jurisdiction as determined by the Department of State Lands (DSL) as
26 provided in OAR chapter 141, division 85, OAR chapter 141, division 89, OAR
27 chapter 141, division 90 and OAR chapter 141, division 102;
- 28 (f) Within any significant Goal 5 resource site documented and adopted by a local
29 government as a part of a comprehensive plan or land use regulation as defined in
30 OAR 660-023-0010(9);

- 1 (g) Within one mile of the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami
2 Inundation Maps published by the Oregon Department of Geology and Mineral
3 Industries in 2014;
- 4 (h) Within a Special Flood Hazard Area or within an area mapped as “shaded X” or
5 designated “500 year flood plain” on the Flood Insurance Rate Maps adopted by a
6 county or on a preliminary map with a Letter of Final Determination (LFD) issued by
7 the Federal Emergency Management Agency, whichever is most recent;
- 8 (i) Within an area of five acres or greater with a fire hazard rating of “High: 1.9-2.1” or
9 “Very High: 2.2+” as designated on the “Community at Risk: Hazard Rating” map
10 published by the Oregon Department of Forestry on October 1, 2006;
- 11 (j) Within an area in which a detailed geotechnical report would be required to site a
12 dwelling as specified in the acknowledged comprehensive plan or land use regulation;
- 13 (k) Within a landslide deposit or scarp flank on the SLIDO Release 3.2 Geodatabase
14 published by the Oregon Department of Geology and Mineral Industries (DOGAMI)
15 December 29, 2014, provided the deposit or scarp flank is from a data source mapped
16 at a scale of 1:63,500 or finer; or
- 17 (l) Within an area designated as a natural hazard in an acknowledged comprehensive
18 plan or land use regulation.
- 19 (5) A county may exclude any additional land from receiving areas.

20 **660-029-0090**

21 **Process for Using Transferable Development Credits**

- 22 (1) A person who proposes to use TDCs within a receiving area shall submit an application to
23 the county accompanied by TDC certificates sufficient to permit the proposed development.
- 24 (2) If TDCs are used in a rural residential receiving area under the provisions of OAR 660-029-
25 0080(1), then the lot or parcel may be divided to site the additional dwelling or dwellings.
26 The lots or parcels resulting from the division must have sufficient area within the receiving
27 area for the dwelling and all supporting infrastructure. New lots or parcels may be as small as
28 five acres in all cases. New lots or parcels may be smaller than five acres if the proposed size
29 is equal to or greater than the average size of lots and parcels within exception areas within
30 one-half mile of the edge of the subject property. The new lots or parcels may not be smaller
31 than two acres in any case.

- 1 (3) If an applicant proposes to use a TDC on a lot or parcel that is partially within the receiving
2 area and partially outside of the receiving area, then the dwelling and all supporting
3 infrastructure authorized by the TDC must be located entirely within the receiving area.
- 4 (4) The county shall evaluate the application based on the locally-adopted TDC ordinance and
5 the provisions of this division in order to determine the type and number of credits that are
6 required to be submitted. Based on this evaluation, the county may preliminarily approve the
7 application and shall request verification from the department of the type and number of
8 credits that belong to the applicant, using an online form provided by the department.
- 9 (5) The department shall verify the type and number of credits that belong to the applicant.
- 10 (6) Following department verification, the county may approve the application and shall notify
11 the department within 30 days of any approval.

12 **660-029-0100**

13 **Interjurisdictional Transfer of Development Credits**

- 14 (1) Counties may enter into cooperative agreements under ORS chapter 195 to establish a system
15 for the transfer of TDCs between the counties that are parties to the agreement, subject to the
16 limitations in section (2).
- 17 (2) TDCs may only be transferred within the regions described below:
- 18 (a) Metro, including Clackamas, Multnomah and Washington counties.
- 19 (b) Willamette Valley, including Benton, Linn, Marion, Polk and Yamhill counties, and
20 that portion of Lane County outside of the Coastal Zone defined in OAR 660-035-
21 0010(1).
- 22 (c) Coastal, including Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties
23 and those portions of Douglas and Lane counties in the Coastal Zone defined in OAR
24 660-035-0010(1).
- 25 (d) Southern, including Jackson and Josephine counties, and that portion of Douglas
26 County outside the Coastal Zone defined in OAR 660-035-0010(1).
- 27 (e) Central, including Crook, Deschutes, Hood River, Jefferson, Klamath and Wasco
28 counties.
- 29 (f) Eastern, including Baker, Gilliam, Grant, Harney, Lake, Malheur, Morrow, Sherman,
30 Umatilla, Union, Wallowa and Wheeler counties.

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

4 **660-029-0110**
5 **TDC Bank Option**

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

- 7 (1) Buying TDCs from M49 sending properties;
- 8 (2) Selling TDCs for potential use in receiving areas;
- 9 (3) Managing funds available for the purchase and sale of TDCs;
- 10 (4) Serving as a clearinghouse and information source for buyers and sellers of TDCs; and
- 11 (5) Accepting donations of TDCs from M49 sending properties.

12 **660-029-0120**
13 **Amending or Abolishing a TDC System**

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

~~Oregon Administrative Rules~~
~~Department of Land Conservation and Development~~

OAR Division 29

MEASURE 49 TRANSFER OF DEVELOPMENT CREDITS SYSTEMS

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Rule Number, Title	Page
660-029-0000 Purpose	1
660-029-0010 Definitions	2
660-029-0020 County Authority to Establish a M49 TDC System.....	3
660-029-0030 Sending Properties.....	3
660-029-0040 Calculation and Types of Transferable Development Credits	4
660-029-0050 Process for Creating Transferable Development Credits	8
660-029-0060 Protection of Sending Properties.....	9
660-029-0070 Conveyance of TDC Ownership	10
660-029-0080 Designation of Receiving Areas.....	11
660-029-0090 Process for Using Transferable Development Credits	13
660-029-0100 Interjurisdictional Transfer of Development Credits	13
660-029-0110 TDC Bank Option	14
660-029-0120 Amending or Abolishing a TDC System	14

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

1 their development interests under M49 from one property to another property at a more suitable
2 location, reducing the adverse impact of scattered M49 residential development on farm, forest
3 and other resource land.

4 **660-029-0010**

5 **Definitions**

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

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

10 (2) “Measure 49” or “M49” means 2007 Oregon Laws Chapter 424 (Ballot Measure 49); 2009
11 Oregon Laws Chapter 855 (also known as House Bill 3225); 2010 Oregon Laws Chapter 8
12 (also known as Senate Bill 1049); 2011 Oregon Laws Chapter 612 (also known as House Bill
13 3620) and OAR 660-041-0000-0180.

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

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

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

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

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

27 (6) “Substantially –developed subdivision” means a legal subdivision created prior to
28 acknowledgment of the county comprehensive plan under ORS 197.251 in which more than
29 50 percent of the lots are developed with a dwelling and at least 50 percent of the
30 undeveloped lots are adjacent to a developed lot.

31 (7) “Transferable development credit” or “TDC” means a severable development interest in real
32 property that can be transferred from a sending property to a lot, parcel or tract in a receiving
33 area.

1 660-029-0020**2 County Authority to Establish a M49 TDC System**

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

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

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

7 (a) Designate M49 properties that are eligible sending properties as provided in OAR
8 660-029-0030;

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

11 (c) Designate receiving areas or create a process for property owners to apply for
12 designation of lands as receiving areas, as provided in OAR 660-029-0080;

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

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

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

19 660-029-0030**20 Sending Properties**

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

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

23 (b) That have lawful access; and

24 (c) That are located:

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

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

28 (C) In an area identified in OAR 660-029-0040(3)(b) through (e).

1 (2) Sending properties exclusions: Notwithstanding section (1), a county may designate areas or
2 types of M49 properties that are not eligible as sending properties because the M49 property
3 is not buildable or for other reasons. If a county excludes some M49 properties, it shall
4 either:

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

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

9 **660-029-0040**

10 **Calculation and Types of Transferable Development Credits**

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

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

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

20 (a) The M49 property is within a zone or overlay zone described in OAR 660-029-
21 0030(1)(c)(A) or (B);

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

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

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

31 (a) The M49 property is high-value farmland or high-value forestland as defined in ORS
32 195.300 and OAR 660-041-0130.

1 (b) Recreational and Cultural Areas:

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

5 (B) Any portion of the M49 property is within or shares a boundary with a National
6 Park, National Monument, National Recreation Area, National Seashore,
7 National Scenic Area, Federal Wild and Scenic River and associated corridor
8 established by the federal government, State Scenic Waterway ~~or State Park,~~
9 State Park, State Heritage Area or Site, State Recreation Area or Site, State
10 Wayside, State Scenic Viewpoint, State Trail, or State Scenic Corridor.

11 (c) Environmentally Sensitive Areas:

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

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

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

27 (D) Any portion of the M49 property is within or shares a boundary with a riparian
28 corridor ~~as defined in adopted in an acknowledged comprehensive plan as~~
29 ~~provided in OAR 660-023-0090, or if the local government has not adopted an~~
30 ~~inventory of riparian corridors, then the riparian corridors defined using the safe~~
31 ~~harbor provided in section (5) of OAR 660-023-0090.~~

32 (E) Any portion of the M49 property is within a wetland ~~listed~~that is:

33 (i) Identified as significant or special interest for protection on ~~the~~
34 statewide ~~a local~~ wetland inventory or ~~a local~~ other inventory as

1 provided in OAR chapter 141, division 86 or a wetland conservation
2 plan approved by DSL;

3 (ii) A Wetland of Conservation Concern (formerly Special Area of
4 Concern) as designated by DSL;

5 (iii) In the Wetland Reserve Easement Program of the Natural Resources
6 Conservation Service (NRCS);

7 (iv) Identified on the Oregon’s Greatest Wetlands map or GIS layer by
8 The Wetlands Conservancy as of January 1, 2015;

9 (v) Identified on the Wetland Priority Sites map or GIS layer by Oregon
10 State University and The Wetlands Conservancy as of January 1,
11 2015;

12 (vi) Has a conservation value of 50 or greater as rated on The Wetlands
13 Conservancy and Institute of Natural Resources Wetlands
14 Conservation Significance map or GIS layer as of January 1, 2015;
15 or

16 (vii) Designated as locally significant wetlands in an inventory adopted
17 as part of an acknowledged comprehensive plan or land use
18 regulation ~~or wetland conservation plan as defined as~~ provided in
19 OAR 660-023-0100.

20 (d) Natural Hazard Areas:

21 (A) The M49 property is predominantly within the “XXL 1 Tsunami Inundation”
22 zone delineated on the Tsunami Inundation Maps published by the Oregon
23 Department of Geology and Mineral Industries in 2014.

24 (B) Any portion of the M49 property is within a Special Flood Hazard Area or
25 floodway on the Flood Insurance Rate Maps adopted by a county or on a
26 preliminary map with a Letter of Final Determination (LFD) issued by the
27 Federal Emergency Management Agency, whichever is most recent.

28 (C) ~~Any portion of~~ The M49 property hasis predominantly within an area composed
29 of either or both:

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

- 1 (ii) A fire hazard rating of “High: 1.9-2.1” on the “Community at Risk:
2 Hazard Rating” map published by ODF on October 1, 2006 and that is
3 outside of a local public fire protection district or agency.
- 4 (D) The M49 property is predominantly within ~~an area identified as, or within the~~
5 ~~path of,~~ a landslide deposit or scarp flank on the SLIDO Release 3.2
6 Geodatabase published by the Oregon Department of Geology and Mineral
7 Industries (DOGAMI) December 29, 2014, provided the deposit or debris flow
8 hazard or in which scarp flank is from a geotechnical report would be required to
9 sitedata source mapped at a dwelling as specified in the acknowledged
10 comprehensive plan or land use regulation or an adopted Natural Hazard
11 Mitigation Planscale of 1:40,000 or finer.
- 12 (E) The M49 property is predominantly within an area designated ~~in an~~
13 ~~acknowledged comprehensive plan or land use regulation or an adopted Natural~~
14 ~~Hazard Mitigation Plan~~ as a significant natural hazard ~~pursuant to Goal 7 in an~~
15 acknowledged comprehensive plan or land use regulation.
- 16 (e) ~~Any portion of~~ The M49 property is predominantly within an area designated as a
17 critical ground water area or as a ground water limited area by the Oregon Water
18 Resources Department or Water Resources Commission before January 1, 2015,
19 unless water can be provided by an existing community or public water system.
- 20 (4) If a M49 property qualifies for bonus credits under sections (2) and (3), a county may
21 also additionally grant bonus credits based on the size of the property protected from
22 development as follows:
- 23 (a) Fewer than 80 acres: No additional credit
- 24 (b) 80 acres or more, and fewer than 120 acres: 0.2 credits
- 25 (c) 120 acres or more, and fewer than 160 acres: 0.4 credits
- 26 (d) 160 acres or more, and fewer than 200 acres: 0.6 credits
- 27 (e) 200 acres or more, and fewer than 240 acres: 0.8 credits
- 28 (f) 240 acres or more: 1.0 credit
- 29 (5) A TDC system adopted by Clackamas, Multnomah, or Washington County must establish
30 two types of credits.
- 31 (a) TDCs from sending properties within a rural reserve designated under OAR 660-027-
32 0020(2) shall be known as type A credits and may be used in any receiving area; ~~and.~~

- 1 (b) TDCs from sending properties outside rural reserves designated under OAR 660-027-
2 0020(2) shall be known as type B credits and may only be used in receiving areas
3 outside of rural reserves.
- 4 (6) A TDC system adopted by Douglas or Lane County must establish two types of credits.
- 5 (a) TDCs from sending properties within the Oregon Coastal Zone as defined in OAR
6 660-035-0010(1) shall be known as type A credits and may be used in any receiving
7 area.
- 8 (b) TDCs from sending properties outside of the Oregon Coastal Zone shall be known as
9 type B credits and may only be used in receiving areas outside of the Oregon Coastal
10 Zone.

11 **660-029-0050**

12 **Process for Creating Transferable Development Credits**

- 13 (1) An applicant may apply to a county that has established a M49 TDC system under OAR 660-
14 029-0020 to convert dwelling authorizations under M49 into TDCs. The county shall
15 evaluate the application based on the locally-adopted M49 TDC ordinance and this division
16 to determine whether the dwelling authorizations under M49 are eligible for conversion to
17 TDCs, and how many credits will be created, including any bonus credits.
- 18 (2) When a county preliminarily approves an application, the county will:
- 19 (a) Send notice to the department, including the application, the preliminary approval,
20 any proposed restrictive covenant and any proposed conservation easement; and
- 21 (b) Request an Amended Final Order and TDC certificates from the department.
- 22 (3) The department will review the county request and determine its consistency with this
23 division. If consistent, the department will:
- 24 (a) Issue an Amended Final Order documenting the number of dwelling authorizations
25 under M49 that have been converted to TDCs and the number that remain; and
- 26 (b) Issue the applicable number of TDC certificates to the county.
- 27 (4) If an applicant applies to convert dwelling authorizations under M49 to TDCs from a
28 property that has already been divided pursuant to M49, then the partition or subdivision
29 must be vacated by the county prior to final approval.
- 30 (5) If an applicant receives preliminary approval for bonus credits under OAR 660-029-0040, the
31 applicant must convey a conservation easement or place a restrictive covenant on the

1 property that meets the requirements of OAR 660-029-0060, record it with the county clerk
2 and provide a copy to the county, prior to final approval.

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

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

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

10 **660-029-0060**

11 **Protection of Sending Properties**

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

14 (a) Farm use as defined in ORS 215.203;

15 (b) Agricultural buildings as defined in ORS 455.315;

16 (c) Replacement dwellings as provided in OAR 660-033-0130(8) and OAR 660-006-
17 0025(3)(p);

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

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

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

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

24 (h) Home occupations as provided in OAR 660-033-0120, OAR 660-006-0025(4)(s) and
25 local regulations.

26 (2) If the M49 property is fewer than 20 acres, then the restriction required by section (1) may be
27 accomplished by either a restrictive covenant or a conservation easement.

28 (3) If the M49 property is 20 acres or more, then the restriction required in section (1) must be
29 accomplished by a conservation easement conveyed to a willing holder identified in ORS
30 271.715(3). Exception: The restriction required by section (1) on a M49 property 20 acres or

1 more may be accomplished with a restrictive covenant if the county provides notice to the
2 department 60 days prior to final approval, and no eligible holder has ~~accepted~~been found to
3 accept a conservation easement.

4 (4) A restrictive covenant must:

5 (a) ~~Meet~~Be reviewed by the ~~requirements of department for compliance with this rule as~~
6 provided in OAR 660-029-0020(2)(e);0050;

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

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

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

12 (5) A conservation easement must:

13 (a) Be reviewed by the department for compliance with this rule ~~prior to recording as~~
14 provided in OAR 660-029-0050;

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

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

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

19 **660-029-0070**

20 **Conveyance of TDC Ownership**

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

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

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

1 660-029-0080**2 Designation of Receiving Areas**

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

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

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

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

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

16 (c) At least 50% of the lots in the subdivision are developed with a dwelling and at least
17 50 percent of the undeveloped lots are adjacent to a developed lot;

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

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

20 (3) Receiving areas must:

21 (a) Meet the requirements of ORS 215.296; and

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

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

27 (B) Restricting increases in allowed density to the interior of applicable exceptions
28 areas.

29 (4) Receiving areas may not include any land:

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

- 1 (b) That is a sending property designated as provided in OAR 660-029-0010;
- 2 (c) Within urban reserves designated under OAR 660, divisions 21 or 27;
- 3 (d) Within 100 feet of a riparian corridor as ~~defined~~provided in OAR 660-~~023-0090;029-~~
4 0040(3)(c)(D);
- 5 (e) Within 100 feet of a wetland ~~listed on the statewide wetland inventory or a local~~
6 inventory of significant wetlands adopted as part of a comprehensive plan or land use
7 regulation as definedprovided in OAR 660-~~023-0100;029-0040(3)(c)(E)~~ or subject to
8 state jurisdiction as determined by the Department of State Lands (DSL) as provided
9 in OAR chapter 141, division 85, OAR chapter 141, division 89, OAR chapter 141,
10 division 90 and OAR chapter 141, division 102;
- 11 (f) Within any significant Goal 5 resource site documented and adopted by a local
12 government as a part of a comprehensive plan or land use regulation as defined in
13 OAR 660-023-0010(9);
- 14 (g) Within one mile of the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami
15 Inundation Maps published by the Oregon Department of Geology and Mineral
16 Industries in 2014;
- 17 (h) Within a Special Flood Hazard Area or within an area mapped as “shaded X” or
18 designated “500 year flood plain” on the Flood Insurance Rate Maps adopted by a
19 county or on a preliminary map with a Letter of Final Determination (LFD) issued by
20 the Federal Emergency Management Agency, whichever is most recent;
- 21 (i) Within an area of five acres or greater with a fire hazard rating of “High: 1.9-2.1” or
22 “Very High: 2.2+” as designated on the “Community at Risk: Hazard Rating” map
23 published by the Oregon Department of Forestry on October 1, 2006;
- 24 (j) Within an area ~~identified as, or within the path of, a landslide or debris flow hazard or~~
25 in which a detailed geotechnical report would be required to site a dwelling as
26 specified in the acknowledged comprehensive plan or land use regulation ~~or an~~
27 adopted Natural Hazard Mitigation Plan; or;
- 28 (k) Within a landslide deposit or scarp flank on the SLIDO Release 3.2 Geodatabase
29 published by the Oregon Department of Geology and Mineral Industries (DOGAMI)
30 December 29, 2014, provided the deposit or scarp flank is from a data source mapped
31 at a scale of 1:63,500 or finer; or
- 32 ~~(k)(1)~~ (l) Within an area designated as a natural hazard in an acknowledged comprehensive
33 plan or land use regulation ~~or an adopted Natural Hazard Mitigation Plan as a natural~~
34 hazard pursuant to Goal 7.

1 (5) A county may exclude any additional land from receiving areas.

2 **660-029-0090**

3 **Process for Using Transferable Development Credits**

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

7 (2) If TDCs are used in a rural residential receiving area under the provisions of OAR 660-029-
8 0080(1), then the ~~property~~lot or parcel may be divided to site the additional dwelling or
9 dwellings. The lots or parcels resulting from the division must have sufficient area within the
10 receiving area for the dwelling and all supporting infrastructure. New lots or parcels may be
11 as small as five acres in all cases. New lots or ~~parcel~~parcels may be smaller than five acres if
12 the proposed size is equal to or greater than the average size of lots and parcels within
13 exception areas within one-half mile of the edge of the subject property. The new lots or
14 parcels may not be smaller than two acres in any case.

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

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

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

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

26 **660-029-0100**

27 **Interjurisdictional Transfer of Development Credits**

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

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

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

- 1 (b) Willamette Valley, including Benton, Linn, Marion, Polk and Yamhill counties, and
2 that portion of Lane County outside of the Coastal Zone defined in OAR 660-035-
3 0010(1).
- 4 (c) Coastal, including Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties
5 and those portions of Douglas and Lane counties in the Coastal Zone defined in OAR
6 660-035-0010(1).
- 7 (d) Southern, including Jackson and Josephine counties, and that portion of Douglas
8 County outside the Coastal Zone defined in OAR 660-035-0010(1).
- 9 (e) Central, including Crook, Deschutes, Hood River, Jefferson, Klamath and Wasco
10 counties.
- 11 (f) Eastern, including Baker, Gilliam, Grant, Harney, Lake, Malheur, Morrow, Sherman,
12 Umatilla, Union, Wallowa and Wheeler counties.
- 13 (3) Interjurisdictional TDC programs that involve two types of credits may authorize the transfer
14 of credits to another jurisdiction within the same region, in accordance with this rule and the
15 provisions of OAR 660-029-0040(5) and (6).

16 **660-029-0110**

17 **TDC Bank Option**

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

- 19 (1) Buying TDCs from M49 sending properties;
- 20 (2) Selling TDCs for potential use in receiving areas;
- 21 (3) Managing funds available for the purchase and sale of TDCs;
- 22 (4) Serving as a clearinghouse and information source for buyers and sellers of TDCs; and
- 23 (5) Accepting donations of TDCs from M49 sending properties.

24 **660-029-0120**

25 **Amending or Abolishing a TDC System**

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

1 Within OAR 660-004-0040, *Application of Goal 14 to Rural Residential Areas*, amend section
2 (8) to add a new subsection as follows:

3 **(h) Notwithstanding the provisions of subsection (g), a county may allow the creation of**
4 **lots or parcels as small as two acres without an exception to Goal 14 in an existing**
5 **rural residential exception area as a designated receiving area for the transfer of**
6 **Measure 49 development interests, as provided in OAR 660-029-0080 and 660-029-**
7 **0090.**
8

9 Within OAR 660, division 004, add a new rule as follows:

10 **660-004-0023**

11 **Reasons Necessary to Justify an Exception for a Substantially Developed Subdivision to**
12 **Receive Transferred Development Credits Under Goal 2, Part II(c)**

13 Notwithstanding OAR 660-004-0022(2), an exception under Goal 2, Part II(c) may be taken to
14 Goal 3 or Goal 4, or both, to designate a receiving area as provided in OAR 660, division 29 to
15 accommodate dwellings authorized by ORS 195.300 to 195.336 (Measure 49) in a substantially
16 developed subdivision in a farm or forest zone.

- 17 (1) For the purposes of this rule, “substantially developed subdivision” has the meaning
18 provided in OAR 660-029-0010.
- 19 (2) A county may find that the need for a receiving area that is satisfied by designating a
20 substantially developed subdivision under OAR 660 division 29 is a reason that the state
21 policy embodied in Goal 3 or Goal 4, or both, should not apply to the substantially
22 developed subdivision.
- 23 (3) Notwithstanding OAR 660-004-0020(2)(b)(B)(i)-(iv), a county may limit its
24 consideration of areas that do not require a new exception under OAR 660-004-
25 0020(2)(b) to areas that qualify as potential receiving areas under OAR 660-029-0080(1),
26 (4) and (5).
- 27 (4) A county may limit its analysis of long-term environmental, economic, social and energy
28 consequences under OAR 660-004-0020(2)(c) to substantially developed subdivisions
29 under OAR 660-029-0080(2).
- 30 (5) A county may determine that a substantially developed subdivision that meets the
31 requirements of OAR 660-029-0080 is compatible with other adjacent uses as required by
32 OAR 660-004-0020(2)(d).
33

34 Within OAR 660-027-0070, *Planning of Urban and Rural Reserves*, amend section (5) as
35 follows:

- 36 (5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend
37 its comprehensive plan or land use regulations as they apply to land in an urban or rural
38 reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to
39 designation of the subject property as urban or rural reserves, in order to authorize an

- 1 alteration or expansion of uses **or lot or parcel sizes** allowed on the land under the exception
2 provided:
- 3 (a) The alteration or expansion would comply with the requirements described in ORS
4 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and
5 forest use;
- 6 (b) The alteration or expansion conforms to applicable requirements for exceptions and
7 amendments to exceptions under OAR chapter 660, division 4, and all other applicable
8 laws; [~~and~~]
- 9 (c) The alteration or expansion would not expand the boundaries of the exception area unless
10 such alteration or expansion is necessary in response to a failing on-site wastewater
11 disposal system[~~;~~; **and**
- 12 (d) **An alteration to allow creation of smaller lots or parcels than was allowed on the**
13 **land under the exception complies with the requirements of OAR chapter 660,**
14 **division 29.**