

Oregon Administrative Rules  
Department of Land Conservation and Development

**DIVISION 29**

**MEASURE 49 TRANSFER OF DEVELOPMENT CREDITS SYSTEMS**

---

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 .....	2
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 .....	6
660-029-0060 Protection of Sending Properties.....	7
660-029-0070 Transfers of Development Credits .....	8
660-029-0080 Designation of Receiving Areas.....	8
660-029-0090 Process for Using Transferable Development Credits .....	10
660-029-0100 Interjurisdictional Transfer of Development Credits .....	10
660-029-0110 TDC Bank Option .....	11
660-029-0120 Amending or Abolishing a TDC System .....	12

---

**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 development interest arises (subsection 11(8) of chapter 424, Oregon Laws 2007 and ORS 94.531). The purpose of this division is to enable counties to adopt local ordinances to establish these systems and to place reasonable limits on the local 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. These systems will reduce the adverse impact of scattered 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 Property” or “M49 property” means the entire property authorized for home site development as described in the order issued by the Department of Land Conservation and Development (department) under section 6 or 7, chapter 424, Oregon Laws 2007 titled “ORS 195.300 to ORS 195.336 (Measure 49) Supplemental Review of Measure 37 Claim Final Order and Home Site Authorization” or a court order issued upon review of a department order.
- (3) “Receiving area” means a designated area of land to which a holder of development credits generated from a sending property may transfer the development credits and in which additional residential uses not otherwise allowed, are allowed by reason of the transfer.
- (4) “Sending property” means a M49 property that qualifies under OAR 660-029-0030, from which development credits generated from forgone development are transferable, for residential uses not otherwise allowed, to a receiving area.
- (5) “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 transfer of development credits from M49 properties. Counties that choose to adopt a M49 TDC system shall:

- (1) Adopt a local M49 TDC ordinance that meets the requirements of this rule ;
- (2) Amend the comprehensive plan and zoning ordinance to:

- (a) Designate M49 properties that are eligible sending properties based on the requirements of OAR 660-029-0030;
- (b) Establish bonus credits that will apply to certain sending properties in accordance with OAR 660-029-0040;
- (c) Designate receiving areas based on the requirements of 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;
- (f) Approve holders of conservation easements and entities for third-party enforcement of restrictive covenants to satisfy OAR 660-029-0060; and
- (g) Determine whether the TDC system will apply only within the county or additionally to other counties in the region, as described at 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;
  - (b) That can be provided with legal access; and
  - (c) That are located:
    - (A) Within a zone adopted pursuant to Goal 3, 4, 5, 15, 16, 17, or 18; or
    - (B) Within an area identified in OAR 660-029-0040(3)(b) through (f).
- (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 the extent of such lands in the ordinance establishing the TDC system; or
  - (b) Adopt clear and objective standards in the ordinance establishing the TDC system for case-by-case determinations through a ministerial review.

## 660-029-0040

### Calculation and Types of Transferable Development Credits

A county shall determine the number of development credits that may be transferred from a M49 property consistent with this rule.

- (1) One transferable development credit (TDC) is available for each new dwelling authorized in the “Final Order and Home Site Authorization.” The number of new dwellings eligible for transfer is subject to sections 6(2), 6(3) and 11(6), chapter 424, Oregon Laws 2007. Credits do not come from partitions without dwellings.
- (2) A county may grant bonus credits as permitted in section (3) to provide additional incentive to reduce potential development on 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 adopted pursuant to Goal 3, 4, 5, 15, 16, 17, or 18.
  - (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 still qualify for bonus fractional 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 category of attributes listed as paragraphs (a) through (g) that is applicable to the subject property. Bonus credits are 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 predominantly high-value farmland or high-value forestland as defined in ORS 195.300 and OAR 660-041.
  - (b) Any portion of the M49 property is within or shares a boundary with scenic, historic, cultural, open space or recreational resources included on a local inventory within an acknowledged comprehensive plan.
  - (c) Environmentally Sensitive Areas:
    - (A) Any portion of the M49 property is within an area designated as Willamette Valley Greenway, estuarine resources, coastal shore, or beaches and dunes included on a local inventory within an acknowledged comprehensive plan pursuant to Goals 15-18.

(B) Any portion of the M49 property is within or shares a boundary with a natural area included on a local inventory within an acknowledged comprehensive plan pursuant to Goals 5 or 6.

(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 or the most recent release by ODFW.

(D) Any portion of the M49 property is within or shares a boundary with the top of bank of a fish-bearing stream as identified on ODFW Fish Habitat Distribution maps (list names and dates in this space)...

(d) Natural Hazard Areas:

(A) Any portion of the M49 property is within a Special Flood Hazard Area on the Flood Insurance Rate Maps adopted by the counties

(B) Any portion of the M49 property is within an area designated as a natural hazard adopted by the county pursuant to Goal 7.

(e) Any portion of the property is within a Groundwater-restricted Area as identified by the Oregon Water Resources Department, unless water can be provided by an existing community or public water system.

(f) Any other area that the county has identified within an acknowledged comprehensive plan as high-priority for protection from development.

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

(a) Fewer than 20 acres: No additional credit

(b) 20 acres or more, and less than 40 acres: 0.2 credits

(c) 40 acres or more, and less than 60 acres: 0.4 credits

(d) 60 acres or more, and less than 80 acres: 0.6 credits

(e) 80 acres or more, and less than 100 acres: 0.8 credits

(f) 100 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 Coastal Zone Management Area (CZMA) shall be known as type A credits and may be used in any receiving area.
- (b) TCDs from sending properties outside of the CZMA shall be known as type B credits and may only be used in receiving areas outside of the CZMA.

**660-029-0050**

**Process for Creating Transferable Development Credits**

- (1) A M49 claimant may apply to a county that has established a M49 TDC system under OAR 660-029-0020 to convert their M49 authorizations into TDCs. The county shall evaluate the application based on the locally-adopted M49 TDC ordinance and this division to determine whether the M49 authorizations are eligible for conversion, and how many credits will be created, including any bonus credits.
- (2) When a county preliminarily approves an application, the county will:
  - (a) Request an Amended Final Order and TDC certificates from the department; and
  - (b) Either include a copy of any proposed conservation easement or provide notice that the applicant has not been able to identify an easement holder.
- (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 M49 authorizations 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 M49 authorizations from a property that has already been divided pursuant to the Measure 49 authorization, then the partition or subdivision must be vacated by the county prior to final approval.

- (5) If an applicant applies for bonus credits under OAR 660-029-0040, the applicant must sign a conservation easement or restrictive covenant 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 prior to final approval.
- (7) When all of the requirements of this section have been met, the county shall give final approval, issue the TDC certificates to the applicant, and provide the complete record of 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) If a transfer qualifies 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 agricultural use, forest use, public parkland devoted to passive, low intensity uses, conservation areas or similar nonstructural uses, by either a restrictive covenant or a conservation easement acceptable to the department.
- (2) A M49 property under 20 acres may be protected by a restrictive covenant or a conservation easement.
- (3) A conservation easement must be applied to all M49 properties of 20 acres or more, unless no qualified and willing holder is identified. If an applicant is unable to identify a qualified and willing easement holder, the county shall provide notice to the department, which shall have 60 days to either identify a qualified and willing easement holder or allow the application to proceed with a restrictive covenant instead of an easement in place.
- (4) A restrictive covenant or conservation easement must designate the following entities as having separate and independent enforcement rights with respect to the restrictive covenant:
  - (a) An entity described in ORS 271.715(3) that is acceptable to the county;
  - (b) All future owners of the subject M49 property;
  - (c) The county; and
  - (d) The department.

- (5) A restrictive covenant or conservation easement must be:
- (a) Approved by the county and recorded with the county clerk; and
  - (b) Accompanied by a title search and a legal description of the property sufficient to determine all owners of the property and all lienholders.

#### **660-029-0070**

##### **Transfers of Development Credits**

- (1) If the owner of a TDC transfers ownership to a subsequent owner, the owner must submit notice of the transfer to the department, using an online system or form provided by the department.
- (2) On receipt of a notice of transfer, the department shall verify the transfer by contacting the previous owner.
- (3) A transfer of a TDC has the same effect as conveying the property for the purposes of subsection 11(6) of chapter 424, Oregon Laws 2007. Consequently, once the owner who obtained the M49 authorization transfers the TDC to a person, other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owners must use the TDC within 10 years of the conveyance.

#### **660-029-0080**

##### **Designation of Receiving Areas**

A county may only designate receiving areas as described in (1) and (2) subject to the limitations of (3) and (4).

- (1) Receiving areas may include lands that are within Rural Residential exceptions areas zoned for 5- and 10-acre minimum lot sizes, in which transferred development credits may be used to allow a higher density of residential development than would otherwise be allowable in the underlying zone by OAR 660 division 4. All or portions of such areas may be developed at lot sizes of 5 acres or at a density that is determined at the time of application for the use of TDCs, consistent with the provisions of OAR 660-029-0090(3).
- (2) Receiving areas may include lands that are within substantially developed subdivisions in resource zones. Transferred development credits may be used to allow development that would not otherwise be allowable in the underlying zone, if:
  - (a) The subdivision was approved prior to January 1, 1985;

- (b) All lots in the subdivision are five acres or smaller if the property is in western Oregon or 10 acres or smaller if the property is in eastern Oregon;
- (c) The subdivision is at least 50% built-out and at least 50% 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 takes a reasons exception pursuant to OAR 660-004.

(3) Receiving areas must:

- (a) Meet the standards of 215.296; and
- (b) Minimize conflicts with nearby commercial agricultural and forest operations. Methods for the county to minimize conflicts 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 lands that are:

- (a) Identified in OAR 660-029-0040(3)(b) through (f);
- (b) Sending properties;
- (c) Within urban reserves designated under OAR 660-027;
- (d) Within one mile of the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami Inundation Maps (TIMs) by the Oregon Department of Geology and Mineral Industries (DOGAMI, 2014);
- (e) Within potential wildfire hazard areas as mapped by the Oregon Department of Forestry (ODF) and supplemented by the best available data, not restricted to areas adopted in a comprehensive plan;
- (f) Within areas subject to flood hazard, identified by the best data available, beyond areas designated in a comprehensive plan;
- (g) Within potential landslide hazard areas identified in the SLIDO v3.1 database and supplemented by the best available data, not restricted to areas adopted in a comprehensive plan;

(h) Within any hazard area identified by the county, not restricted to areas adopted in a comprehensive plan; or

(i) Within any environmentally sensitive, natural, historic or scenic area identified by the county, not restricted to areas adopted in a comprehensive plan.

#### **660-029-0090**

##### **Process for Using Transferable Development Credits**

- (1) Any person may acquire 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 interests. All resulting development credits may be used, resold, held for future use or sale, or permanently retired.
- (2) A person who proposes to use a TDC on a property in a designated receiving area shall submit an application to the county for the use of such credits as part of an application for a Type II development permit. The application must be accompanied by TDC certificates sufficient to permit the proposed development.
- (3) If an applicant proposes to use TDCs in a rural residential receiving area under OAR 660-029-0080(1)(a) on lots smaller than five acres, the permitted density shall be based on the average lot or parcel pattern in existing exception areas within one-half mile of the edge of the subject property, but shall in no case result in lots or parcels smaller than two acres.
- (4) The county shall evaluate the application based on the locally-adopted ordinance and the provisions of this division to determine the type and number of credits required, and whether to preliminarily approve the application. The county shall request verification from the department of the type and number of credits that belong to the applicant.
- (5) The department shall verify the type of number of credits that belong to the applicant.
- (6) If the county gives final approval to the application, it shall notify the department within 30 days of 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, to include Clackamas, Multnomah and Washington counties;
  - (b) Coastal, to include Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties, and those portions of Douglas and Lane Counties west of the coast range;
  - (c) Willamette Valley, to include Linn, Marion, Polk and Yamhill counties, and that portion of Lane County east of the coast range;
  - (d) Coastal, to include Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties and those portions of Douglas and Lane counties west of the coast range;
  - (e) Southern, to include Jackson and Josephine counties, and that portion of Douglas County west of the coast range;
  - (f) Central, to include Crook, Deschutes, Hood River, Jefferson, Klamath and Wasco counties; and
  - (g) Eastern, to include 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).
- (4) When development credits that are transferred 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.

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

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

- (1) Buying TDCs from M49 sending properties;
- (2) Selling TDCs to potential developers in receiving areas;
- (3) Managing funds available for the purchase and sale of transferable development credits;
- (4) Serving as a clearinghouse and information source for buyers and sellers of transferable development credits; 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. TDCs may be used under the prior system for 12 months after the amendment or abolishment.

Draft