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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 03/12/2015 by the  
Land Conservation and Development Department 660  
Agency and Division Administrative Rules Chapter Number  
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To become effective Upon filing. Rulemaking Notice was published in the January 2015 Oregon Bulletin.

**RULE CAPTION**

Regulates the transfer of development interests from properties approved for development under Ballot Measure 49

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

660-004-0023, 660-029-0000, 660-029-0010, 660-029-0020, 660-029-0030, 660-029-0040, 660-029-0050, 660-029-0060, 660-029-0070, 660-029-0080, 660-029-0090, 660-029-0100, 660-029-0110, 660-029-0120

**AMEND:**

660-004-0040, 660-027-0070

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 197.040

**Other Authority:**

**Statutes Implemented:**

ORS 195.300-195.336; 197.015 & 197.732; 2007 Oregon Laws, chapter 424

**RULE SUMMARY**

The new rules and rule amendments will provide a framework for local governments to adopt programs that allow landowners to transfer severable development credits from properties with Measure 49 development authorizations to other locations, and between jurisdictions, as described in Measure 49 (Oregon Laws 2007, chapter 424, section 11), and in accordance with ORS 94.531. The new rules will also provide for, as a result of transfers of development credits, the permanent preservation of certain farm, forest and other natural resource lands.

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## **660-004-0023**

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

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

(1) For the purposes of this rule, “substantially developed subdivision” has the meaning provided in OAR 660-029-0010.

(2) A county may find that the need for a receiving area that is satisfied by designating a substantially developed subdivision under OAR chapter 660, division 29 is a reason that the state policy embodied in Goal 3 or Goal 4, or both, should not apply to the substantially developed subdivision.

(3) Notwithstanding OAR 660-004-0020(2)(b)(B)(i)-(iv), a county may limit its consideration of areas that do not require a new exception under OAR 660-004-0020(2)(b) to areas that qualify as potential receiving areas under OAR 660-029-0080(1), (4) and (5).

(4) A county may limit its analysis of long-term environmental, economic, social and energy consequences under OAR 660-004-0020(2)(c) to substantially developed subdivisions under OAR 660-029-0080(2).

(5) A county may determine that a substantially developed subdivision that meets the requirements of OAR 660-029-0080 is compatible with other adjacent uses as required by OAR 660-004-0020(2)(d).

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336 & 197.732; 2007 Oregon Laws, chapter 424

## **660-004-0040**

### **Application of Goal 14 to Rural Residential Areas**

(1) The purpose of this rule is to specify how Goal 14 “Urbanization” applies to rural lands in acknowledged exception areas planned for residential uses.

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 “Agricultural Lands”, Goal 4 “Forest Lands”, or both has been taken. Such lands are referred to in this rule as “rural residential areas”.

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) Land inside an acknowledged urban growth boundary;

(B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;

(C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;

(D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) Resource land, as defined in OAR 660-004-0005(2);

(F) Nonresource land, as defined in OAR 660-004-0005(3);

(G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or

(H) Land planned and zoned primarily for rural industrial, commercial, or public use.

(3)(a) This rule took effect on October 4, 2000.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

(4) The rural residential areas described in subsection (2)(a) of this rule are "rural lands". Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.

(5)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's

minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.

(6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

(d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

(A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;

(B) The number of new lots or parcels to be created does not exceed 10;

(C) None of the new lots or parcels will be smaller than two acres;

(D) The development is not to be served by a new community sewer system;

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;

(F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;

(G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new "mobile home park" or "manufactured dwelling park" as defined in ORS 446.003(23) and (30) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

(h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

(A) The parcel to be divided has two or more permanent habitable dwellings on it;

(B) The permanent habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and

(D) The partition would not create any vacant parcels on which a new dwelling could be established.

(E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(1)(p)(A)-(D).

(i) For rural residential areas designated after October 4, 2000, the affected county shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

(8)(a) Notwithstanding the provisions of section (7) of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

(A) Ashland;

(B) Central Point;

(C) Medford;

(D) Newberg;

(E) Sandy.

(b) Any division of rural residential land in an urban reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan of a city or urban area listed in subsection (8)(a) that:

(A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21; or

(B) is part of a regional growth plan that contains at least a twenty-year regional urban reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658.

(c) Notwithstanding the provisions of section (7) of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR chapter 660, division 21, or is not part of an acknowledged regional growth plan as described in subsection (b), paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of section (7), if Metro has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21 or division 27, any land division of rural residential land in that urban reserve shall be done in accordance with the applicable acknowledged comprehensive plan and zoning provisions adopted to implement the urban reserve.

(e) Notwithstanding the provisions of section (7), if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if Metro has not designated an urban reserve that contains at least a twenty-year reserve of

land acknowledged to comply with either OAR chapter 660, division 21 or division 27, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of section (7) and subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at densities of at least 10 units per net developable acre. In no case shall the minimum parcel area requirement set for such lands be smaller than 10 acres.

(g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (G) of this subsection exist:

(A) The parcel to be divided has two or more permanent, habitable dwellings on it;

(B) The permanent, habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;

(D) The partition would not create any vacant parcels on which new dwellings could be established;

(E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel;

(F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)-(D) or ORS 215.283(1)(p)(A)-(D), whichever is applicable; and

(G) The parcel is not in an area designated as rural reserve under OAR chapter 660, division 27, except as provided under OAR 660-027-0070.

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

(9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws.

Stat. Auth.: ORS 197.040, 195.141

Stats. Implemented: ORS 195.141, 195.145, 195.300-195.336, 197.175 & 197.732; 2007 Oregon Laws,

chapter 424

Hist.:

**660-027-0070**

**Planning of Urban and Rural Reserves**

(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

(d) Other uses and land divisions that a county could have allowed under ORS 215.130(5) – (11) or as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves;

(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:

(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;

(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and

(d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.

(6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).

(7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take an exception to a statewide land use planning goal in order to allow the establishment of a transportation facility in an area designated as urban reserve.

(8) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

(9) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050.

Stat. Auth.: ORS 195.141 & 197.040

Stats. Implemented: ORS 195.137-195.145 & 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.:

## **OAR chapter 660, division 29**

### **MEASURE 49 TRANSFER OF DEVELOPMENT CREDITS SYSTEMS**

#### **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 (Oregon Laws 2007, chapter 424, subsection 11(8) 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 may enable landowners to realize the value of their M49 authorizations without developing the property from which the claims arose. These systems may 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.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

### **660-029-0010**

#### **Definitions**

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336 & 197.015; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0020**

##### **County Authority to Establish a M49 TDC System**

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

- (1) Adopt a local ordinance that meets the requirements of this division; and
- (2) Amend the comprehensive plan and implementing ordinances to:
  - (a) Designate M49 properties that are eligible sending properties as provided in OAR 660-029-0030;
  - (b) Establish bonus credits, if any, that will apply to certain sending properties as provided in OAR 660-029-0040;
  - (c) Designate receiving areas or create a process for property owners to apply for designation of lands as receiving areas, as provided in OAR 660-029-0080;
  - (d) Adopt any applicable overlay zones or other measures necessary to implement the TDC system; and
  - (e) Determine whether the TDC system will provide for transfer to other counties in the region, as provided in OAR 660-029-0100.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0030**

##### **Sending Properties**

- (1) A county may only designate sending properties consisting of M49 properties:
  - (a) For which new dwellings have been authorized by a M49 final determination;
  - (b) That have lawful access; and
  - (c) That are located:
    - (A) Within a zone or overlay zone adopted pursuant to Goals 3, 4, 15, 16, 17 or 18;
    - (B) Within a zone or overlay zone explicitly adopted for conservation or preservation of natural areas pursuant to Goals 5 or 8; or

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

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0040**

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

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

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

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

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

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

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

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

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

(b) Recreational and Cultural Areas:

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

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

(c) Environmentally Sensitive Areas:

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

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

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

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

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

(i) Identified as significant or special interest for protection on a local wetland inventory or other inventory as provided in OAR chapter 141, division 86 or a wetland conservation plan approved by Division of State Lands (DSL);

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

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

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

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

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

(vii) Designated as locally significant in an inventory adopted as part of an acknowledged comprehensive plan or land use regulation as provided in OAR 660-023-0100.

(d) Natural Hazard Areas:

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

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

(C) The M49 property is predominantly within an area composed of either or both:

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

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

(D) The M49 property is predominantly within a landslide deposit or scarp flank on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 29, 2014, provided the deposit or scarp flank is from a data source mapped at a scale of 1:40,000 or finer.

(E) The M49 property is predominantly within an area designated as a natural hazard in an acknowledged comprehensive plan or land use regulation.

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

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

(a) Fewer than 80 acres: No additional credit

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

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

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

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

(f) 240 acres or more: 1.0 credit

(5) A TDC system adopted by Clackamas, Multnomah, or Washington County must establish two types of credits.

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

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

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0050**

##### **Process for Creating Transferable Development Credits**

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

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

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

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

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

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

(b) Issue the applicable number of TDC certificates to the county.

- (4) If an applicant applies to convert dwelling authorizations under M49 to TDCs from a property that has already been divided pursuant to M49, then the partition or subdivision must be vacated by the county prior to final approval.
- (5) If an applicant receives preliminary approval for bonus credits under OAR 660-029-0040, the applicant must convey a conservation easement or place a restrictive covenant on the property that meets the requirements of OAR 660-029-0060, record it with the county clerk and provide a copy to the county, prior to final approval.
- (6) The Amended Final Order must be recorded in the deed records of the county.
- (7) When all of the requirements of this rule have been met, the county shall give final approval, issue the TDC certificates to the applicant and provide the complete record of the decision to the department.
- (8) The county will keep a permanent record of amended final orders, vacations, restrictive covenants and conservation easements that apply to M49 sending properties to ensure that unauthorized development does not occur.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0060**

##### **Protection of Sending Properties**

- (1) To qualify for bonus credits under OAR 660-029-0040, the M49 property must be permanently restricted from future development or land division for any purpose other than:
  - (a) Farm use as defined in ORS 215.203;
  - (b) Agricultural buildings as defined in ORS 455.315;
  - (c) Replacement dwellings as provided in OAR 660-033-0130(8) and OAR 660-006-0025(3)(p);
  - (d) Farm stands as provided in OAR 660-033-0130(23);
  - (e) Forest operations as defined in OAR 660-006-0005;
  - (f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;
  - (g) Conservation areas or natural resource uses that do not require a land use decision; and
  - (h) Home occupations as provided in OAR 660-033-0120, OAR 660-006-0025(4)(s) and local regulations.
- (2) If the M49 property is fewer than 20 acres, then the restriction required by section (1) may be accomplished by either a restrictive covenant or a conservation easement.

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

(4) A restrictive covenant must:

(a) Be reviewed by the department for compliance with this rule as provided in OAR 660-029-0050;

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

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

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

(5) A conservation easement must:

(a) Be reviewed by the department for compliance with this rule as provided in OAR 660-029-0050;

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

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

##### **Conveyance of TDC Ownership**

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

## **660-029-0080**

### **Designation of Receiving Areas**

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

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

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

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

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

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

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

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

(3) Receiving areas must:

(a) Meet the requirements of ORS 215.296; and

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

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

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

(4) Receiving areas may not include any land:

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

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

- (c) Within urban reserves designated under OAR chapter 660, divisions 21 or 27;
  - (d) Within 100 feet of a riparian corridor as provided in OAR 660-029-0040(3)(c)(D);
  - (e) Within 100 feet of a wetland as provided in OAR 660-029-0040(3)(c)(E) or subject to state jurisdiction as determined by DSL as provided in OAR chapter 141, divisions 85, 89, 90 and 102;
  - (f) Within any significant Goal 5 resource site documented and adopted by a local government as a part of a comprehensive plan or land use regulation as defined in OAR 660-023-0010(9);
  - (g) Within one mile of the “XXL 1 Tsunami Inundation” zone delineated on the Tsunami Inundation Maps published by DOGAMI in 2014;
  - (h) Within a Special Flood Hazard Area or within an area mapped as “shaded X” or designated “500 year flood plain” on the Flood Insurance Rate Maps adopted by a county or on a preliminary map with a Letter of Final Determination (LFD) issued by the Federal Emergency Management Agency, whichever is most recent;
  - (i) Within an area of five acres or greater with a fire hazard rating of “High: 1.9-2.1” or “Very High: 2.2+” as designated on the “Community at Risk: Hazard Rating” map published by ODF on October 1, 2006;
  - (j) Within an area in which a detailed geotechnical report would be required to site a dwelling as specified in the acknowledged comprehensive plan or land use regulation;
  - (k) Within a landslide deposit or scarp flank on the SLIDO Release 3.2 Geodatabase published by DOGAMI on December 29, 2014, provided the deposit or scarp flank is from a data source mapped at a scale of 1:63,500 or finer; or
  - (l) Within an area designated as a natural hazard in an acknowledged comprehensive plan or land use regulation.
- (5) A county may exclude any additional land from receiving areas.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

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

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

- (1) A person who proposes to use TDCs within a receiving area shall submit an application to the county accompanied by TDC certificates sufficient to permit the proposed development.
- (2) If TDCs are used in a rural residential receiving area under the provisions of OAR 660-029-0080(1), then the lot or parcel may be divided to site the additional dwelling or dwellings. The lots or parcels resulting from the division must have sufficient area within the receiving area for the dwelling and all supporting infrastructure. New lots or parcels may be as small as five acres in all cases. New lots or

parcels may be smaller than five acres if the proposed size is equal to or greater than the average size of lots and parcels within exception areas within one-half mile of the edge of the subject property. The new lots or parcels may not be smaller than two acres in any case.

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

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0100**

##### **Interjurisdictional Transfer of Development Credits**

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

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

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

(b) Willamette Valley, including Benton, Linn, Marion, Polk and Yamhill counties, and that portion of Lane County outside of the Coastal Zone defined in OAR 660-035-0010(1).

(c) Coastal, including Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties and those portions of Douglas and Lane counties in the Coastal Zone defined in OAR 660-035-0010(1).

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

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

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0110**

##### **TDC Bank Option**

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

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.

#### **660-029-0120**

##### **Amending or Abolishing a TDC System**

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.300-195.336; 2007 Oregon Laws, chapter 424

Hist.