

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE

NO. 2011- 005

Revisions to Kittitas County Code Regarding Transfer of Development Rights amending Sections 17.13, Transfer of Development Rights and 17.37, Master Planned Resorts of the Kittitas County Code

- WHEREAS:** On December 22, 2009, Kittitas County adopted Ordinance No. 2009-25, that included Comprehensive Plan amendments and development regulation amendments to establish a Transfer of Development Rights (TDR) program; and
- WHEREAS:** On September 7, 2010, Kittitas County adopted Ordinance No. 2010-006, that included revisions to Kittitas County Code regarding TDR amending Sections 17.13, Transfer of Development Rights; 17.98, Amendments; 17.36, Planned Unit Development Zone; and 17.37, Master Planned Resorts of the Kittitas County Code; and
- WHEREAS:** The Kittitas County Departments that are involved in processing TDR applications, including Community Development Services, Assessor, Auditor, Treasurer, Prosecutor, and Commissioners, determined that amendments to Kittitas County Code are needed to clarify processing requirements, require that lands in the program be located in Kittitas County, remove references to UGNs, and eliminate the requirement for MPRs to obtain TDR credits for final approval; and
- WHEREAS:** The Kittitas County Planning Commission held a public hearing on May 10, 2011, to hear public testimony regarding revisions to the Kittitas County Code regarding TDR; and
- WHEREAS:** Public testimony was accepted from those persons wishing to be heard and the Planning Commission made formal recommendations and entered findings of fact for the recommended development regulation amendments on May 10, 2011; and
- WHEREAS:** The Board of Kittitas County Commissioners did hold a public hearing on Tuesday, June 7, 2011 to hear public testimony regarding amendments to the Kittitas County Code regarding TDR.

NOW, THEREFORE BE IT ORDAINED That the Board of County Commissioners after due deliberation, hereby approves the revisions to Kittitas County Code regarding Transfer of

Development Rights amending Sections 17.13, Transfer of Development Rights and 17.37, Master Planned Resorts. Amendments as attached hereto in the reference Attachments A and B and incorporated by reference.

ADOPTED this 7th day of June, 2011 at Ellensburg, Washington.

**ATTEST:
CLERK OF THE BOARD**


Julie A. Kjorsvik



APPROVED AS TO FORM:

Neil Caulkins,
Civil Deputy signing for
Greg Zempel
Prosecuting Attorney WSBA #19125

**BOARD OF COUNTY COMMISSIONERS
KIT TITAS COUNTY, WASHINGTON**



Commissioner, Chairman



Commissioner, Vice-Chairman



Commissioner, Commissioner

ATTACHMENT A

Chapter 17.13 Transfer of Development Rights Revisions

Chapter 17.13 Transfer of Development Rights

Sections

17.13.010 Purpose.

17.13.020 TDR Sending Sites.

17.13.030 TDR Receiving Sites.

17.13.040 Calculations of Available Development Rights on Sending Sites.

17.13.050 Sending Site Development Limitations.

17.13.060 TDR Documentation of Restrictions.

17.13.070 TDR Sending Site Certification and TDR Committee Review Process.

17.13.080 TDR Transfer Process.

17.13.090 TDR Amenity Funding for Cities.

17.13.100 Condemned Lands.

17.13.010 Purpose.

The purpose of the transfer of development rights (TDR) is to provide public benefits by permanently conserving rural farm and forest land through acquisition and extinguishment of the development rights on those lands designated as "sending sites." All other rights of ownership, including the right to continue operation of such businesses as farming, timber harvesting, sports and recreation, and other uses permitted within the zone remain with the owner of the underlying fee. Transfer through conversion of the acquired development rights to density credits redeemable on eligible sites, designated as "receiving sites" per KCC 17.13.030(1), shall be accomplished as set out herein. (Ord. 2009-25, 2009)

17.13.020 TDR Sending Sites.

Sending sites must contain a public benefit such that the preservation of that benefit by transferring residential development rights, in the form of density credits, to another site is in the public interest. A sending site will be presumed to contain a public benefit if it meets either criteria 1, 2, 3 or 4, as stated below:

1. Farm and Agricultural Land (must satisfy criteria 1.a. thru 1.e.)
 - a. Is in 20-acre agricultural zoning (Commercial Agriculture, Ag-20, Forest & Range);
 - b. Is a minimum of 20 acres in size;
 - c. Is located within the boundary of the Agricultural Production District shown on the Kittitas County Comprehensive Plan Land Use Map.
 - d. Includes proof of commercial agricultural income as required~~May qualify for Open Space ("current use")~~ Agricultural taxation under RCW 84.34; and
 - e. Has value above that associated with resource value ("higher and better use").
2. Forest Land (must satisfy criteria 2.a. thru 2.e.)
 - a. Is in 80-acre Commercial Forest zoning or 20-acre Forest & Range zoning;
 - b. Is a minimum of 20 acres in size;
 - c. Is not publicly owned;
 - d. Has a Timber Management Plan that is in compliance with Washington State Department of Revenue's guidelines dated June 2010 or as thereafter amended~~May qualify for Designated Forest Land ("current use")~~ taxation under RCW 84.33; and
 - e. Has value above that associated with resource value ("higher and better use").

3. Frequently Flooded Area as defined in KCC 17A.02.140.
4. Lands designated as eligible sending sites in a TDR agreement with a city.
- ~~4.5.~~ Lands must be located within Kittitas County.
- ~~5-6.~~ If a sending site consists of more than one lot, the lots must be contiguous. For purposes of this chapter, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed.
- ~~6-7.~~ Development rights acquired from eligible sending sites may be converted to density credits which may be transferred to eligible receiving sites through the TDR transfer process. After completion of the conveyance of a sending site's development rights, the property shall be maintained in a condition that is consistent with the criteria in this chapter under which the sending site was qualified by means of a TDR conservation easement.
- ~~7-8.~~ Publicly owned property shall not be eligible to become a sending site. (Ord. 2009-25, 2009)

17.13.030 TDR Receiving Sites.

1. Eligible receiving sites shall be those sites as listed below and shall be located within Kittitas County. For eligible receiving sites, the transfer and exchange of TDR density credits shall occur consistent with KCC 17.13.080.:
 - a. Cities where new growth is or will be encouraged under the Growth Management Act and Countywide Planning Policies.
 - b. All city receiving sites shall be designated pursuant to an agreement with the County.
 - c. Sites within Urban Growth Areas, with a density greater than six dwelling units (du) per acre, where new growth is or will be encouraged under the Growth Management Act and Countywide Planning Policies.
 - d. Unincorporated sites outside of Urban Growth Areas for which an amendment to the official zoning map or rezone to a zoning classification allowing greater than one dwelling unit (du) per twenty acres.
 - ~~d-e.~~ Unincorporated sites outside of Urban Growth Areas for which an ~~and~~ associated map amendment to the Comprehensive Plan has been requested pursuant to Kittitas County Code in conjunction with a rezone under (1)(d) of this section.
 - ~~e-f.~~ Unincorporated sites for which a Performance Based Cluster Plat has been requested pursuant to KCC 16.09.
 - ~~f-g.~~ Areas previously identified as Urban Growth Nodes (UGN) and that may be known in the future as LAMIRDS.
 - ~~g-h.~~ Unincorporated sites for which a Planned Unit Development (PUD) designation amendment to the zoning map has been requested pursuant to Kittitas County Code, when such amendment results in an increase in density.
 - ~~h-i.~~ Unincorporated sites for which a Master Planned Resort (MPR) designation and associated amendments to the Zoning Map and Comprehensive Plan has been requested pursuant to Kittitas County Code.
2. The provisions of this chapter shall only apply to receiving site development proposals that vest after the effective date of this chapter. For purposes of vesting and this chapter, site development proposals include both legislative and quasi-judicial land use decisions associated with the eligible receiving sites outlined in KCC 17.13.030.1.
3. The provisions of this chapter shall not apply to land divisions completed in accordance with the County "one-time split" provision pursuant to KCC 17.29.040. (Ord. 2009-25, 2009)

17.13.040 Calculations of Available Development Rights on Sending Sites.

1. The number of residential development rights that an unincorporated sending site is eligible to sell under this program shall be determined by applying the sending site base density dictated by the underlying zoning as established in Title 17, Zoning, to the area of the sending site. Any portion of the sending site used for residential development or reserved for future residential

development in the TDR conservation easement shall be subtracted from the calculation at base density.

2. Any fractions of development rights that result from the calculations in KCC 17.13.040 1. shall not be included in the final determination of total development rights available for sale.
3. For purposes of calculating the number of development rights a sending site may sell, the area of a sending site shall be determined as follows:
 - a. If the sending site is an entire lot, the acreage shall be determined by:
 - i. Kittitas County Assessor records; or
 - ii. A survey funded by the applicant that has been prepared and stamped by a surveyor licensed in the State of Washington.
 - b. If the sending site consists of multiple lots, the acreage in sum shall be determined through the means outlined in KCC 17.13.040 3.a.i.
4. Development rights from one sending site may be converted and transferred to more than one receiving site and one receiving site may accept density credits from more than one sending site.
5. The determination of the number of residential development rights a sending site has available shall be valid for transfer purposes only, shall be documented in a TDR certificate, and shall be considered a final determination, not to be revised due to changes to the sending site's zoning.
6. No density credits may be allowed from land already encumbered by a conservation easement, unless such land was encumbered by a TDR demonstration project.
7. The development right determinations and applications in 1. through 7. above extend only to the TDR program and do not change the sending site parcel's existing zone designation. (Ord. 2009-25, 2009)

17.13.050 Sending Site Development Limitations.

1. When only a portion of a site's development rights have been conveyed and extinguished, a sending site may subsequently accommodate remaining residential dwelling units, if any, on the remaining buildable portion of the parcel(s) or be subdivided consistent with the base density provisions for the applicable zone pursuant to Kittitas County Code and other Kittitas County development regulations.
2. Only those nonresidential uses directly related to the conservation values of the property and supportive of the criteria under which the sending site qualified are allowed on a sending site.
3. The TDR conservation easement by its terms may reserve dwelling units that may be developed in the future consistent with the easement. All development rights not explicitly reserved in the TDR conservation easement shall be extinguished through the TDR conservation easement. (Ord. 2009-25, 2009)

17.13.060 TDR Documentation of Restrictions.

1. Upon issuance of TDR certificates, deed restrictions documenting the development rights conveyance shall be recorded by the County and notice placed on the title of the sending parcel. The County shall establish and maintain an internal tracking system that identifies all certified transfers.
2. Upon issuance of TDR certificates, a TDR conservation easement granted to Kittitas County or an appropriate land management nonprofit or quasi-governmental organization such as the Conservation District, shall be required for the sending site.
3. A TDR conservation easement permanently encumbers a sending site, excepting extraordinary circumstances and a determination of public benefit. The associated process for opting out of a TDR conservation easement for those qualifying shall include a finding by the BOCC of the following:
 - a. Demonstration of a hardship beyond the land owner's control; and
 - b. Purchase equivalent transfers of development rights; and

- c. Adoption of a resolution by the Board of County Commissioners finding that there is an equivalent or better public benefit to exchange the previously held easement for the easement described above in KCC 17.13.060(3)(b).
4. At the discretion of the BOCC, Kittitas County may elect to secure an appropriate land management nonprofit or quasi-governmental organization to receive, manage, and steward TDR conservation easements. (Ord. 2010-02, 2010; Ord. 2009-25, 2009)

17.13.070 TDR Sending Site Certification.

1. The Community Development Services Director (CDS Director) shall be responsible for determining whether properties are eligible to be considered a sending site. The CDS Director shall base its decision on the materials provided by the landowner in a TDR sending site application and a satisfaction of the sending site requirements outlined in KCC 17.13.020.
2. Responsibility for preparing a completed sending site application rests exclusively with the applicant. The fees for such application shall be as established annually by the Board of County Commissioners under separate action. Fees shall be payable to Kittitas County Community Development Services and shall not be returnable in any case.
3. Following the CDS Director's review and approval of a properly filed sending site application, the County shall issue a TDR certificate in conversion for the proposed sending site TDR conservation easement.
4. Sending site landowners may obtain TDR certificates which can be transferred pursuant to KCC 17.13.080 and used by receiving area landowners. The process for obtaining the TDR certificates is as follows:
 - a. Following an application for TDR certificates by the sending site owner, the County shall issue a TDR certificate letter of intent. The certificate letter of intent shall contain a determination of the number of development rights calculated for the sending site pursuant to KCC 17.13.040 and an agreement by the County to issue a corresponding number of TDR certificates in conversion for a sending site conservation easement granted to Kittitas County or an appropriate land management nonprofit or quasi-governmental organization by the sending site owner pursuant to KCC 17.13.060. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas.
 - b. A TDR certificate letter of intent shall be valid for a period of five years from the date of issuance. If a TDR certificate letter of intent has not been converted to a serially numbered TDR certificate within a period of five years from the date of issuance, then the landowner must reapply to CDS to determine whether the property is eligible to be considered a sending site.
 - c. As provided by the TDR certificate letter of intent, the County shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement; provided, however, that the County shall have 28 days from the date of the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site permit file and/or a site inspection.
 - d. A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued. (Ord. 2009-25, 2009)

17.13.080 TDR Transfer Process.

1. TDR transaction transferring density credits from within unincorporated Kittitas County to within an incorporated city shall be reviewed and transferred using the city's development application review process. The transfer shall be subject to a TDR agreement between Kittitas County and the

- city. The County and any city located within the County may also establish by agreement general procedures for facilitating and completing TDR transactions transferring density credits from unincorporated Kittitas County to any such city.
2. Density credits shall be required for approved amendments to the Comprehensive Plan associated with receiving sites detailed in KCC 17.13.030 1.a thru 1.h. Applications may be submitted without the purchase of density credits, but no final plat approval or other permits, if no land division is involved, for development associated with a TDR requirement shall be issued until the density credit requirement is satisfied.
 - a. The tender of density credits is not a precondition for any amendment to the Comprehensive Plan, Zoning Map or proposed development to be approved. The density credits are required before the County issues final plat approval or permits, if no land division is involved, for any development of the additional units in the Comprehensive Plan amendment. The developer must submit the density credits when applying for the permit.
 - b. The ordinance granting each Comprehensive Plan Amendment shall condition the approval upon the applicant's compliance with the requirement of development credits.
 3. The required density credits may be acquired by:
 - a. Purchasing density credits from certified sending sites;
 - b. Transferring density credits from certified sending sites owned by a receiving site owner; or
 - c. Purchasing previously purchased, unexecuted TDR credits from another buyer.
 4. All development using density credits must be in accordance with all other applicable laws and regulations.
 5. The County may waive or modify the density credit requirements if it is determined by the Prosecuting Attorney that strict application of the requirement in a specific situation would result in an unconstitutional taking of property or a violation of the property owner's right to substantive due process. Modifications made under this provision shall be no greater than necessary to avoid the taking or substantive due process violation. The County shall provide written documentation supporting each application of the provision. (Ord. 2009-25, 2009)
 6. For receiving sites listed in KCC 17.13.030, the exchange rate shall be as follows:

Receiving Sites	Exchange Rate
Urban Growth Areas	1 TDR Credit = 2 Additional Units
Planned Unit Developments	1 TDR Credit Per 20 Acres of Receiving Site Area
Master Planned Resorts	1 TDR Credit Per 20 Acres of Receiving Site Area
Rural Rezones	1 TDR Credit Per 20 Acres of Receiving Site Area

Example: Owner A wishes to rezone 80 acres of land currently zoned Forest and Range to Rural - 5 (receiving site). Owner B owns 640 acres of land zoned Commercial Forest (sending site). Owner B's property is eligible for up to eight TDR credits (640 ac. / 80 ac. = 8 or the total sending site acreage divided by the base density of underlying zoning). Owner A would be required to obtain four TDR credits from Owner B (4 x 20 ac. = 80 ac. or 1 TDR credit per 20 ac. of receiving site area). Owner B could then choose to retain the remaining four TDR credits or sell them to additional receiving sites.

17.13.090 TDR Amenity Funding for Cities.

1. TDR amenity funding may be authorized from Kittitas County to cities as an incentive to enter into and utilize the TDR program.

2. TDR amenity funding shall be described in the TDR agreement between the County and the city. Amenity funding may differ between cities based upon the unique needs of the County and city. (Ord. 2009-25, 2009)

17.13.100 Condemned Lands.

All condemnation actions on sending sites encumbered by a TDR conservation easement in favor of Kittitas County or its assigns shall be mitigated. Mitigation value shall equal the value of the development rights at the time the property was encumbered with a TDR conservation easement, plus eight percent annual interest, irrespective of whether the development rights purchased on the property have been extinguished, banked or sold to a private party. (Ord. 2009-25, 2009)

ATTACHMENT B

Chapter 17.37 Master Planned Resorts Revisions

Chapter 17.37 MASTER PLANNED RESORTS

17.37.040 Applications/approvals required for new master planned resorts.

1. A master planned resort may be authorized by the county only through approval of a master planned resort development permit in conjunction with approval by the board of county commissioners of a development agreement as authorized by Chapter 15A.11 KCC, Development Agreements, and RCW 36.70B.170 through 36.70B.210. Consistent with KCC 15A.11.020(B) and RCW 36.70B.170, the development agreement approved by the board of county commissioners must set forth the development standards applicable to the development of a specific master planned resort, which may include, but are not limited to: (1) permitted uses, densities and intensities of uses, ~~transfer of development rights~~, and building sizes; (2) phasing of development, if requested by the applicant; (3) procedures for review of site-specific development plans; (4) provisions for required open space, visitor-oriented accommodations, short-term visitor accommodations, on-site recreational facilities, and on-site retail/commercial services; (5) mitigation measures imposed pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, and other development conditions; and (6) other development standards including those identified in KCC 15A.11.020(E) and RCW 36.70B.170(3).
2. Required Applications/Approvals. In addition to approval of a MPR development permit and a development agreement as set forth in subsection A of this section, a master planned resort shall require the following approvals from the county: (1) a site-specific amendment of the comprehensive plan land use designation map to master planned resort; provided, that the sub-area planning process described in Chapter 1 of the county comprehensive plan and Chapter 15B.03 KCC, Amendments to Comprehensive Plan, may be used if deemed appropriate by the applicant and county; and (2) a site-specific rezone of the county zoning map to master planned resort zoning district pursuant to Chapter 17.98 KCC, Amendments ~~and in accordance with Chapter 17.13 KCC, Transfer of Development Rights~~. The comprehensive plan amendment or subarea plan and rezone may be processed by the county concurrent with the master planned resort development permit and development agreement required for approval of a master planned resort.
3. Planned Actions Authorized. If deemed appropriate by the applicant and the county, a master planned resort project may be designated by the county as a planned action pursuant to the provisions of Chapter 15A.09 KCC, Planned Actions. (Ord. 2009-25, 2009; Ord. 2000-13, 2000)