

Chapter 17.13

TRANSFER OF DEVELOPMENT RIGHTS

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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. 2010-006, 2010](#); [Ord. 2009-25, 2009](#))

The applicant is requesting a transfer of development rights from the Sending Site identified as Parcels 949862 and 949863 to the Receiving Site identified as the residential area within the proposed planned unit development project that encompasses this application. This residential area includes Parcels 376334, 386334, and 396334. The Sending Site is completely covered by wetlands and wetland investigation areas as shown on the attached Sending Site Critical Areas Report in Exhibit 23. Each parcel in the sending site has one (1) TDR Density Credit, creating two (2) transferrable TDR Density Credits. Because the proposed receiving site is within a proposed planned unit development zone, the two parcels in the sending site would each provide two (2) additional Units of Density. Due to this, the receiving site would receive a total of four (4) TDR Density Credits according to the listed exchange rates found in KCC 17.13.080(5).

17.13.015 Definitions.

1. Receiving Site means the location available to receive a TDR Credit which may be located within all the Rural Lands as designated by Kittitas County. A Receiving Site may use a TDR Credit to increase density of a project parcel beyond the underlying zoning limitations.
2. Sending Site means any land in Kittitas County deemed to contain a public benefit or as further described in this KCC 17.13.015.
3. Units of Density means any parcel with an established Kittitas County Parcel Number as shown on the Kittitas County Official Land Use Map.

4. Parcel means any divided plot of land located in Kittitas County that has been issued a County Parcel Number.
5. Lot means a parcel of land as described in number 4 above.
6. Kittitas County Official Land Use Map means that map maintained by Kittitas County titled Kittitas County Compass.
7. TDR Density Credit means a credit of residential density that removes the right to construct a residential home or other structure on the Sending Site parcel and allows for the increase of density within the receiving site. TDR Density Credit may be used to increase the density of a parcel in any City, Urban Growth Area, LAMIRD, or land with a Rural Land designation.
8. TDR Easement means an easement placed on the Sending Site that eliminates the possibility of residential development on said sending site. The easement shall be granted by the owner of the sending site that extinguishes the right to develop said site. Said easement shall be filed with the Kittitas County Auditor and shall become a limitation on title of the sending site parcel. ([Ord. 2023-010](#), 2023)

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 TDR Density Credit, 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:

The proposed sending site, identified as parcels 949862 and 949863, is located entirely within wetlands and wetland investigation areas and is within a critical area as identified on the official county map. Based on this, the sending site can be presumed to contain a public benefit as it meets criteria 3 below. See aerial photo of sending attached below. Legal description of sending sites attached below.

1. Farm and Agricultural Land (must satisfy criteria 1.a. thru 1.e.) *Does not apply*
 - a. Is land in the Commercial Agriculture, Ag-20, Ag-5, Forest & Range, or R-5 zoning;
 - b. Is a minimum of five (5) acres in size;
 - c. Is located within the boundary of the Agricultural Production District area shown on the Kittitas County zoning map; and
 - d. Includes proof of commercial agricultural income as required for Current Use Agricultural taxation under [RCW 84.34](#).
2. Forest Land (must satisfy criteria 2.a. thru 2.e.) *Does not apply*
 - a. Is land in Commercial Forest, Forest & Range, Rural Recreation, or R-5 zoning;
 - b. Is a minimum of five (5) acres in size;
 - c. Is not publicly owned; and
 - 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.
3. Frequently Flooded Area as defined in [KCC 17A.02.140](#), or a critical area as defined and established in [KCC 17A](#) as may be identified on the official county map. Any lot wholly or partially impacted by [KCC 17A](#) as shown by a critical areas report produced by the applicant or as shown on the official county map is eligible to be a sending site. *This criteria is applicable to this TDR*
4. Lands designated as eligible sending sites in a TDR agreement with a city. *Does not apply*
5. Lands must be located within Kittitas County. *Both sites are located within Kittitas County.*

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. *The sending site consists of two contiguous parcels.*
7. Development rights acquired from eligible sending sites shall be converted to TDR 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 through the creation of a TDR Density Credit, 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 easement. *Parcels 949862 and 949863 shall be maintained as a critical area according to the criteria of this chapter.*
8. Publicly owned property shall not be eligible to become a sending site. *Parcels 949862 and 949863 are privately owned by the applicant.*

(Ord. 2023-010, 2023; Ord. 2014-015, 2014; Ord. 2013-001, 2013; Ord. 2011-013, 2011; Ord. 2011-005, 2011; Ord. 2010-006, 2010; 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. *Does not apply*
 - b. All city receiving sites shall be designated pursuant to an agreement with the County. *Does not apply*
 - c. Sites within Urban Growth Areas, with a density greater than six (6) dwelling units (du) per acre, where new growth is or will be encouraged under the Growth Management Act and Countywide Planning Policies. *Does not apply*
 - d. LAMIRDs. *Does not apply*
 - e. 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. *This transfer would send development rights to a proposed planned unit development zone and would increase density by four (4) additional units, which includes the two additional units that are gained through the PUD zone conversion as found in 17.13.080(5).*
 - f. Unincorporated sites for which a long plat has been requested increasing the density above the underlying zones density within the boundaries of said long plat. *Does not apply*
 - g. All parcels designated as Rural Land shall be eligible to be a receiving site. *The proposed receiving site is within a Rural Residential land use.*
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\(1\)](#).

(Ord. 2023-010, 2023; Ord. 2013-001, 2013; Ord. 2011-005, 2011; Ord. 2010-006, 2010; Ord. 2009-25, 2009)

17.13.040 Calculations of Available TDR Density Credits on Sending Sites.

1. The number of residential development rights, TDR Density Credits, that an unincorporated sending site is eligible to sell or transfer under this program shall be determined by the sending site base density dictated by the underlying zoning as established by the Kittitas County Zoning map, and/or existing established density, provided that the number of development rights shall not exceed the following:
 - a. One (1) Unit of Density per existing parcel:
 - i. *Example: An individual owns 26 vacant acres in a Rural 5 zone all qualifying as a sending site. The acreage has been previously divided and includes seven 3-acre parcels and one 5-acre parcels. The number of TDR Density Credits available to sell or trade would be 8. Seven 3-acre parcels plus one 5-acre parcel equals 8 available TDR Density Credits.*
The proposed sending site consists of two contiguous preexisting 3.10-acre parcels in Rural-5 zoning. Based on this, this site would create two (2) TDR Density Credits.
 - b. One (1) Unit of Density as allowed by the underlaying zoning:
 - i. *Example: An individual owns 26 vacant acres in a Rural 5 zone all qualifying as a sending site. The acreage has NOT been divided and remains as one parcel. The number of TDR Density Credits available to sell or trade from this parcel would be 5. A single 26-acre parcel in a Rural 5 zone may be divided into five parcels there for a total of five TDR Density Credits are available. Does not apply*
 - c. A combination of both existing density and density allowed within the zone:
 - i. *Example: An individual owns 26 vacant acres in a Rural 5 zone all qualifying as a sending site. The acreage has been previously divided into four 3-acre parcels and one fourteen-acre parcel. The number of TDR Density Credits available to sell or trade from this parcel would be 6. Four existing 3-acre parcels plus the density allowed for the remaining 14-acres under the Rural 5 zoning being two for a total of 6 TDR Density Credits.*
Does not apply
2. 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 of available density. *The entirety of the proposed sending site is identified as a critical area, so there will be no subtractions made from the calculation of available density.*
 - a. *Example: An individual owns 26 acres in a Rural 5 zone all qualifying as a sending site. The acreage has been previously divided into four 3-acre parcels and one fourteen-acre parcel. There is an existing home and barn constructed on the fourteen-acre parcel that covers four acres of the fourteen-acre parcel. The Rural 5 zone requires a 5-acre minimum parcel size for a residence and associated out buildings. Therefor the total available TDR Density Credits would be five. This would include the four vacant 3-acre parcels equaling four TDR Density Credits and one TDR Density*

Credit for the vacant 9-acres of the 14-acre parcel (14-acres less the 5-acre residence = 9 remaining acres and one TDR Density Credit under Rural 5 zoning) equaling 5 parcels available as TDR Density Credits.

- b. *Example: An individual owns 26 acres in a Rural 5 zone all qualifying as a sending site. The acreage has been divided into four 3-acre parcels and one fourteen-acre parcel. There is an existing home and barn constructed on one of the 3-acre parcels. The Rural 5 zone requires 5-acres minimum parcel size for a residence and associated out buildings. Therefore the total available TDR Density Credits would be five. This would include the three vacant 3-acre parcels equaling three credits and two TDR Density Credits for the vacant 14-acre parcel.*
- c. *Example: An individual owns 26 vacant acres in a Rural 5 zone all qualifying as a sending site. The acreage has NOT been divided and remains as one parcel. The owner intends to reserve a building site for a future home. The number of TDR Density Credits available to sell or trade from this parcel would be 4. A Single 26-acre parcel in a Rural 5 zone may be divided into a total of five parcels. One unit has been reserved for future residential development therefore the total available TDR Credits would be four.*

3. Calculating TDR Density Credits:

- a. For purposes of calculating the number of TDR Density Credits a sending site as described in KCC 17.13.040 (i) may sell, the area of a sending site shall be determined by:
 - i. Kittitas County Assessor records; or [See Exhibit X-11 for Sending Site Assessor Records](#)
 - ii. A survey funded by the applicant that has been prepared and stamped by a surveyor licensed in the State of Washington.
 - iii. If the sending site consists of multiple lots, the acreage in sum shall be determined through the means outlined in [KCC 17.13.040\(3\)\(a\)\(i\)](#).
- b. For purposes of calculating the number of TDR Density Credits a sending site, as described in KCC 17.13.040 (ii), may qualify for and sell shall be determined by either:
 - i. The underlying zoning; The calculation shall be based on the identified area which qualifies as a sending site divided by the allowed underlying zoning density; Example: A 20-acre parcel in the Rural 5 zone is impacted by a 5-acre critical area. The lot would qualify for 1 TDR Density Credit leaving the other 15 acres available for residential development as allowed by the underlying zone; or
 - ii. The established density meaning the number of lots, with Kittitas County Parcels numbers assigned, located within in or partially within the area designated and qualifying as a sending site. Example: there are five 3-acre parcels and 1 five-acre parcel under one ownership. The 5-acre parcel is 100% impacted by a critical area and one of the 3-acre parcels is partially (20%) impacted by a critical area. The owner qualifies for 2 TDR Density

Credits. Both the impacted 3-acre parcel and the impacted 5-acre parcel would have their development rights extinguished. The remaining four 3-acre parcels are available for development as allowed by the underlying zone. *The proposed sending site consists of two parcels which contain two contiguous preexisting 3.10-acre lots in Rural-5 zoning and are both entirely impacted by a critical area. Based on this, this lot would create two (2) TDR Density Credits.*

4. Development rights, in the form of a TDR Density Credit, from one sending site may be converted and transferred to more than one (1) receiving site and one receiving site may accept TDR Density Credits from more than one (1) sending site. *The TDR Density Credit shall be transferred directly from the proposed sending site to the proposed receiving site. There will not be an additional sending site nor will the credit be transferred to any other receiving site.*
5. The determination of the number of TDR Density Credits a sending site has available shall be valid for transfer purposes only, shall be documented in a TDR Density Credit certificate, and shall be considered a final determination, not to be revised due to changes to the sending site's zoning. *Understood*
6. The development right determinations and applications in 1 through 5 above extend only to the TDR program and do not change the sending site parcel's existing zone designation. ([Ord. 2023-010](#), 2023; [Ord. 2013-001](#), 2013; [Ord. 2011-013](#), 2011; [Ord. 2010-006](#), 2010; Ord. 2009-25, 2009) *The sending site parcels will remain bound to the Rural-5 zoning code regulations throughout the TDR process.*

17.13.050 Sending Site Development Limitations.

1. When only a portion of a site's development rights have been 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. ([Ord. 2023-010](#), 2023; Ord. 2009-25, 2009) *All development rights will be transferred from the sending site to the receiving site.*

17.13.055 Receiving Site Development Limitations.

1. The receiving site application shall include a project boundary which includes including all the parcels that will be affected by the TDR Density Credit and shall identify the location where the TDR Density Credit shall be placed. *See Exhibit 4 - Development Plan*
2. The density within the established boundary may be increased over the underlying zone by the number of TDR Density Credits. This means that the parcel sizes within the boundary may be decreased. *The transfer of development rights from the proposed sending site into a planned unit development zone would create four (4) additional Units of Density. Therefore, parcel sizes may be decreased to prevent low-density development and include all transferred TDR Density Credits.*
3. No parcel with the project boundary shall be reduced in size below one-half acre except in a Planned Unit Development as provided for in [KCC 17.36](#) or within a City, UGA or LAMIRD. *Parcels may be reduced in size below one-third acre as allowed by KCC 17.36 and 17.13.*
4. TDR Density Credits may be used to increase density in the following county actions; Boundary Line Adjustments, Long Plats, Planned Unit Developments,

Short Plats and Cluster Plats. ([Ord. 2023-010](#), 2023) *This transfer is used to provide additional density for this proposed planned unit development.*

17.13.060 TDR Documentation of Restrictions. *Understood*

1. Upon issuance of TDR Density Credit certificates, deed restrictions in the form of a TDR Easement as defined herein 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. A TDR easement permanently encumbers a sending site, excepting extraordinary circumstances and a determination of public benefit. The associated process for opting out of a TDR easement for those qualifying shall include a finding by the Board 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 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\(3\)\(b\)](#). ([Ord. 2023-010](#), 2023; [Ord. 2017-001](#), 2017; [Ord. 2013-001](#), 2013; [Ord. 2010-006](#), 2010; Ord. 2010-02, 2010; Ord. 2009-25, 2009)

17.13.070 TDR Sending Site Certification. *Understood*

1. The Director or designee shall be responsible for determining whether properties are eligible to be considered a sending site. The Director or designee shall base his/her 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.
3. Following the Director's review and approval of a properly filed sending site application, the County shall issue a TDR Density Credit certificate in conversion for the proposed sending site TDR conservation easement.
4. Sending site landowners may obtain TDR Density Credit 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 Density Credit certificates by the sending site owner, the County shall issue a TDR Density Credit 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 Density Credit certificates in conversion for a sending site TDR easement. The sending site owner may use the TDR Density Credit certificate letter of intent to market sending site development rights to potential purchasers.
 - b. A TDR Density Credit certificate letter of intent shall be valid for a period of five (5) 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 (5) 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 approval of a TDR easement; provided, however, that the County shall have twenty-eight (28) days from the date the TDR 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 easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued. ([Ord. 2023-010](#), 2023; [Ord. 2017-001](#), 2017; [Ord. 2013-001](#), 2013; [Ord. 2010-006](#), 2010; Ord. 2009-25, 2009)

17.13.080 TDR Transfer Process.

1. TDR transaction transferring TDR Density Credits 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 TDR Density Credits density credits from unincorporated Kittitas County to any such city. *The applicant will not be transferring development rights to an incorporated city. This transfer will be done within unincorporated Kittitas County.*
2. The requested TDR 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.
The proposed sending site and receiving site are both owned by the applicant.
3. All applications using TDR Density Credits must be in accordance with all other applicable laws and regulations. *Agreed*
4. The County may waive or modify the TDR 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.
5. For receiving sites listed in [KCC 17.13.030](#), the exchange rate shall be as follows: *Based on the location of the proposed receiving site being within a proposed planned unit development zone, the proposed exchange rate would be two (2) additional Units of Density, giving the receiving site four (4) total TDR Density Credits.*

Receiving Sites

Exchange Rate

| | |
|---------------------------|-----------------------------------|
| Urban Growth Areas | 1 TDR Credit = 3 Additional Units |
| Planned Unit Developments | 1 TDR Credit = 2 Additional Units |
| Rural Development | 1 TDR Credit = 1 Additional Unit |

6.

([Ord. 2023-010](#), 2023; [Ord. 2016-023](#), 2016; [Ord. 2011-005](#), 2011; [Ord. 2010-006](#), 2010; Ord. 2009-25, 2009)

17.13.090 Repealed.

([Ord. 2023-010](#), 2023; Ord. 2009-25, 2009)

17.13.100 Repealed.

([Ord. 2023-010](#), 2023; Ord. 2009-25, 2009)