

KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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Chapter 17.13 Transfer of Development Rights

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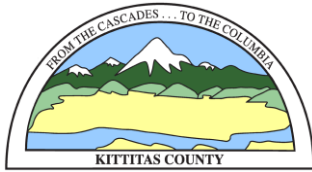
17.13.010 Purpose.

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\(1\)](#), ~~may 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](#): ~~at least one of the following criteria:~~

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. ~~May Qualify~~ies for Open Space ("current use") 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. ~~May Qualify~~ies 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.



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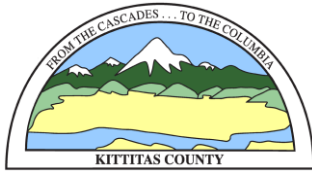
5. If a sending site consists of more than one lot, the lots must be contiguous. For purposes of this chapter, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed.
6. Development rights acquired from eligible sending sites may be converted 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. 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. 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 and associated map amendment to the Comprehensive Plan has been requested pursuant to Kittitas County Code.
 - e. Unincorporated sites for which a Performance Based Cluster Plat has been requested pursuant to [KCC 16.09](#).
 - f. Areas previously identified as Urban Growth Nodes (UGN) and that may be known in the future as LAMIRDs.
 - g. 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. 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 ~~associated~~ [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



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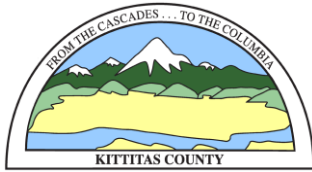
- base density dictated by the underlying zoning as established in [Title 17](#), Zoning, to the area of the sending site. Any portion of the sending site used for residential development or reserved for future residential development in the TDR conservation easement shall be subtracted from the calculation 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. ~~After a~~[Upon issuance of TDR certificates](#), ~~transfer~~, 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. ~~After a~~[Upon issuance of TDR certificates](#) ~~transfer~~, a TDR conservation easement granted ~~by~~[to Kittitas County or](#) an appropriate land management nonprofit or quasi-



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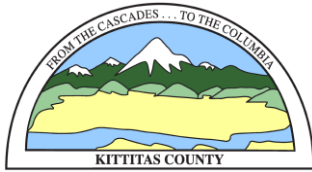
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- governmental organization such as the Conservation District, shall be required for the sending site.
3. A TDR conservation easement permanently encumbers a sending site, excepting extraordinary circumstances and a determination of public benefit. 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, The Kittitas County will be responsible for identifying and may elect to securing-secure](#) an appropriate land management nonprofit or quasi-governmental organization to [grant 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~~ [Board of county County commissioners Commissioners](#) under separate action. Fees shall be payable to ~~the~~ Kittitas County ~~treasurer~~ [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.
 - ~~a.~~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.](#)



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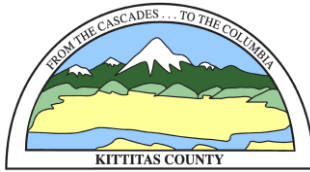
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- ~~b-c.~~ As provided by the TDR certificate letter of intent, the County shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement; provided, however, that the County shall have 28 days 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.
- ~~c-d.~~ A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been ~~issued~~~~transferred pursuant to~~ **17B.080**. (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 ~~â€~~ 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 ~~should~~ 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)



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6. For receiving sites listed in KCC 17.13.030, the exchange rate shall be as follows:

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

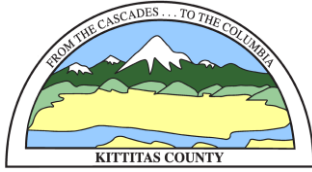
-Example: Owner A wishes to rezone 80 acres of land currently zoned Forest and Range to Rural - 5 (receiving site). Owner B owns 640 acres of land zoned Commercial Forest (sending site). Owner B's property is eligible for up to eight TDR credits (640 ac. / 80 ac. = 8 or the total sending site acreage 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)



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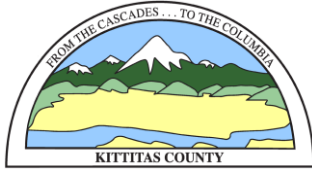
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Additional Proposed Code Revisions

Chapter 17.98 AMENDMENTS*

17.98.020 Petitions.

1. A petition to amend this title shall be filed with the administrator on forms prescribed by the Community Development Services Director. If the petition is for an amendment to the zoning map it shall include a legal description and location of the property to be reclassified.
2. A petition asking for a change from one zone to another must be signed by not less than seventy-five percent of the property owners and representing at least seventy-five percent of the assessed valuation of the area proposed for the zone reclassification.
3. Any member of the general public has the right to petition the board of county commissioners or planning commission for consideration of text amendments or change from one zone to another for a general areas. Such consideration is not mandatory.
4. Petitions shall be processed pursuant to Title 15A of this code, Project permit application process.
5. Petitions shall conform to maximum acreage percentages as identified for the appropriate zones in Kittitas County Code 17.04.060.
6. A petition requesting a change on the zoning map for areas designated Rural in Kittitas County shall be processed consistently with the Annual Comprehensive Plan Docketing Process to address compliance with the goals, policies and objectives of the adopted comprehensive plan and cumulative impacts, unless the petition is accompanied with a specific development application.
7. A petition requesting a change on the zoning map from one zone to another must demonstrate that the following criteria are met:
 - a. The proposed amendment is compatible with the comprehensive plan; and
 - b. The proposed amendment bears a substantial relation to the public health, safety or welfare; and
 - c. The proposed amendment has merit and value for Kittitas County or a sub-area of the county; and
 - d. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property; and
 - e. The subject property is suitable for development in general conformance with zoning standards for the proposed zone; and
 - f. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property; and
 - g. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties; and
 - h. The proposed amendment is in full compliance with Chapter 17.13 KCC, Transfer of Development Rights. (Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Ord. 96-1, 1996; Res. 83-10, 1983)



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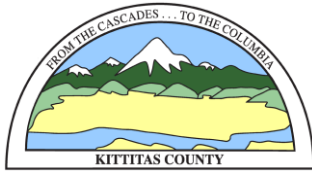
Chapter 17.36

PLANNED UNIT DEVELOPMENT ZONE*

17.36.030 Preliminary development plan.

Any persons or corporation applying for a planned unit development zone shall file a preliminary development plan with an application for zone change. The development plan shall include all of the following:

1. A vicinity map showing the location of the site and its relationship to surrounding areas;
2. A map of the site drawn to a scale, no smaller than two hundred feet to the inch showing the following:
 - a. Arrangement of land uses by type (residential, commercial, open spaces, etc.). A narrative on the approximate percentage of land in each category. The map should show proposed traffic circulation;
 - b. Names and dimensions of dedicated roads bounding or near the site;
 - c. Planned off-street parking areas including approximate number of spaces to be provided;
 - d. Elevation contours of no more than twenty-foot intervals;
 - e. Legal description of the subject property including section, township, range, parcel numbers and number of acres;
 - f. Name of proposed Planned Unit Development;
3. A Landscaping Plan.
4. A Phasing Plan with identified timelines.
5. A Development Plan addressing the following:
 - a. A narrative relating the development plan to adjacent development and natural areas;
 - b. A narrative of the developer's intent with regard to providing landscaping and retention of open spaces;
 - c. A narrative outlining future land ownership patterns within the development including homeowners associations if planned;
 - d. A narrative outlining the proposed water supply, storage and distribution system, sewage disposal/treatment plan, solid waste collection plan;
 - e. Documentation from the Community Development Services department that environmental review (SEPA) has been completed or will be completed;
 - f. An explanation and specification of any nonresidential uses proposed within the project;
 - g. Timing for the construction and installation of improvements, buildings, other structures and landscaping;
 - h. The method proposed to insure the permanent retention and maintenance of common open space;
 - i. Proposed setbacks;
 - j. A master plan of the site, if the proposed PUD is to be developed in phases. The master plan need not be fully engineered, but shall be of sufficient detail to illustrate the property's physical features and probable development pattern. The master plan will serve as a guide in each successive stage of development until its completion;



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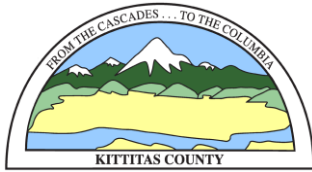
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- k. A narrative of planned residential (housing) densities expressed in terms of living units per building and per net acre (total acreage minus dedicated rights-of-way);
- l. **If the proposed PUD rezone will result in an increase in unit density over the existing zone, include a narrative of the transfer of development rights in accordance with Chapter 17.13 KCC, Transfer of Development Rights.** (Ord. 2007-22, 2007; Ord. 90-6 (part), 1990: Res. 83-10, 1983)

17.36.040 Final development plan.

Following approval of the preliminary development plan by the county and before lot sales or building construction commences, the developer (owner) shall submit a final development plan for approval by the board of county commissioners which shall include all of the following as listed below. Submittal shall be consistent with the process as outlined for Final Plat Development in Kittitas County Code 16.20.

1. A staging plan describing the timing or sequence of construction for all the elements of the plan. Subdivision lot sales may precede other elements of the development upon final plat approval;
2. A map or maps of the site drawn at a scale no smaller than one hundred feet to one inch showing the following:
 - a. Preliminary engineering plans including site grading, road improvements, drainage and public utilities extensions;
 - b. Arrangement of all buildings which shall be identified by type;
 - c. Preliminary building plans including floor plans and exterior design and/or elevation views;
 - d. Location and number of off-street parking areas including type and estimated cost of surfacing;
 - e. The location and dimensions of roads and driveways including type and estimated cost of surfacing and road maintenance plans;
 - f. The location and total area of common open spaces;
 - g. Proposed location of fire protection facilities;
 - h. Proposed storm drainage plan;
3. Certification from state and local health authorities that water and sewer systems are available to accommodate the development;
4. Provisions to assure permanence and maintenance of common open spaces;
5. Statement of intent including estimated cost for landscaping and restoration of natural areas despoiled by construction including tree planting;
6. **Certification by the county of transfer of the required density credits in compliance with Chapter 17.13 KCC, Transfer of Development Rights.** (Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Ord. 90-6 (part), 1990: Res. 83-10, 1983)



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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)