

Docket Item No.	Project Name	Brief Description of Suggested Amendment	Who Suggested Amendment	Staff Lead	Staff Recommendation
20.08	KCC 17.13 KCC 17.36	Remove Transfer of Development Rights (TDR) requirement that conservation easements be held by nonprofit or quasi-governmental agency. Allow transfer of development rights for Planned Unit Developments (PUD) in the rural areas.	Commissioner Wright	CDS – Planning	Staff recommends approval of the amendment as proposed.

The proposed amendment to KCC 17.13 would remove an existing TDR requirement that conservation easements be held by a nonprofit or quasi-governmental agency. The proposal also includes amending KCC 17.36 to allow the TDRs for PUDs in the rural areas.

DRAFT – August 2020

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, [recreation land, open spaces](#) 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, [conservation, environmental, open space](#) 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](#))

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~~, [or 5](#) as stated below:

1. Farm and Agricultural Land (must satisfy criteria 1.a. through 1.e.)
 - a. Is land in the Commercial Agriculture, Ag-20, Ag-5, Forest & Range, [Rec-5](#) or R-5 zoning;
 - b. Is a minimum of ~~twenty (20) acres~~ [the underlying zoning](#) in size;
 - c. Is located within the boundary of the Agricultural Production District area shown on the Kittitas County zoning map;
 - d. Includes proof of commercial agricultural income as required for 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~~ [through](#) 2.e.)
 - a. Is land in Commercial Forest, Forest & Range, [Ag-5, Rec-5](#), or R-5 zoning;
 - b. Is a minimum of ~~twenty (20) acres~~ [the underlying zoning](#) 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; and
 - e. [Has value above that associated with resource value \("higher and better use"\).](#)
 3. [Rural, Open Space and Recreation Lands \(must satisfy criteria 3.a. through 3.d.\)](#)
 - a. [Is land in Forest & Range, Ag-5, Rec-5 or R-5 zoning;](#)
 - b. [Is a minimum of the underlying zoning in size;](#)
 - c. [Is not publicly owned;](#)
 - e.d. [Has value above that associated with the resource value \("higher and better use"\)](#)
 - ~~3.4.~~ [Frequently Flooded Area as defined in \[KCC 17A.02.140\]\(#\).](#)
 - ~~4.5.~~ [Lands designated as eligible sending sites in a TDR agreement with a city \[or Kittitas County\]\(#\).](#)
 - ~~5.6.~~ [Lands must be located within Kittitas County.](#)
 - ~~6.7.~~ [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.](#)
 - ~~7.8.~~ [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.](#)
 - ~~8.9.~~ [Publicly owned property shall not be eligible to become a sending site.](#)
- ([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.
 - 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 (6) 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 (1) dwelling unit (du) per ~~twenty (20)~~ [five \(5\)](#) acres.
 - e. Unincorporated sites outside of Urban Growth Areas for which an associated map amendment to the Comprehensive Plan has been requested pursuant to Kittitas County Code in conjunction with a rezone under (1)[through \(54\)](#) of this section.
 - f. Unincorporated sites for which a Cluster Plat has been requested pursuant to KCC Chapter [16.09](#) and KCC Chapter [17.30](#) Rural Recreation.
 - g. LAMIRDS.
 - 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.
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. 2013-001](#), 2013; [Ord. 2011-005](#), 2011; [Ord. 2010-006](#), 2010; 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, provided that the number of development rights shall not exceed one (1) per ~~twenty (20)~~ [five \(5\)](#) acres. 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 (1) receiving site and one receiving site may accept density credits from more than one (1) 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 6. above extend only to the TDR program and do not change the sending site parcel's existing zone designation. ([Ord. 2013-001](#), 2013; [Ord. 2011-013](#), 2011; [Ord. 2010-006](#), 2010; 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 by an appropriate land management nonprofit or quasi-governmental organization such as the Conservation District, shall be required for the sending site.~~
- ~~3.2.~~ 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 Board of the following:
 - a. Demonstration of a hardship beyond the land owner's control; and
 - ~~b. Purchase equivalent transfers of development rights; and~~
 - ~~e.b.~~ Adoption of a resolution by the Board finding that there is an equivalent or better public benefit to [opt out of a TDR conservation easement, exchange the previously held easement for the easement described above in KCC 17.13.060\(3\)\(b\).](#)
~~At the discretion of the Board, Kittitas County may elect to secure an appropriate land management nonprofit or quasi-governmental organization to receive, manage, and steward TDR conservation easements.~~

([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.

1. The Director shall be responsible for determining whether properties are eligible to be considered a sending site. The Director 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 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 (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 acceptance of a TDR conservation easement; provided, however, that the County shall have twenty-eight (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. 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 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.
 6. Density credits shall not be required as a condition of project permit approval when the development contains conditions requiring at least 30% of the proposed residential units be constructed as affordable housing. For the purposes of this chapter, affordable housing is defined as single family housing which is affordable to be purchased by ~~low income~~ individuals and families earning 80% of the area median income at the time of purchase, or multifamily housing where the rental fee per month is no greater than 30% of the monthly income of the individuals and families earning 80% of the area median income at the time of rental. Agreements must also be in place between the developer and Kittitas County to assure that rental properties remain affordable for a minimum of 25 years. Area median income is defined as the area median income for Kittitas County as determined by the United States Department of Housing and Urban Development.
 7. 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 to finalize an approved PUD

Rural Rezones

1 TDR Credit Per 20 Acres of Receiving Site Area to finalize an approved Rural Rezone

8.

~~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. (Ord. 2016-023, 2016; Ord. 2011-005, 2011; Ord. 2010-006, 2010; Ord. 2009-25, 2009)~~

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)

Chapter 17.36

PLANNED UNIT DEVELOPMENT ZONE*

17.36.025 Allowed density.

1. Inside the Urban Growth Area (UGA): The county may approve an increase of dwelling unit density for residential PUDs of not more than three (3) times the density permitted in the underlying zone, provided development rights are transferred pursuant to KCC Chapter 17.13 and additional natural and social amenities beyond the required minimums are provided.
2. Outside the Urban Growth Area (UGA) and Rural LAMIRDs: The density of the underlying zone or existing density within the PUD boundary shall not be exceeded by a PUD except as provided for in KCC Chapter 17.13.
- 2.3. For Rural LAMIRDs, the density shall be consistent with the character of the existing area as required by RCW 36.70A.070(5)d).

(Ord. 2013-001, 2013)