

Chapter 6. Transfer of Development Rights

6.1. Background and Summary of Proposed Regulation

After adoption of the Growth Management Act (GMA), Kitsap County has made significant efforts to direct growth into its urban areas. The County has adopted targets in its previous Comprehensive Plan for 76% of all new population growth to be targeted within the urban growth areas around Bremerton, Silverdale, Poulsbo and Port Orchard. As a significant amount of the County's pre-GMA lot creation was located within the rural areas, a surplus of vacant undeveloped land in these areas has affected the County's ability to meet its 76% urban target. In an effort to meet urban growth accommodation targets and to provide viable economic development options to rural land owners other than the residential development of their land, Kitsap County has developed a Transfer of Development Rights (TDR) program.

The proposed TDR program would allow rural property owners to sell the development rights from their lands to property owners within the urban growth areas wishing to achieve higher residential densities or land use intensity than the existing Comprehensive Plan/Zoning ordinance would allow. To this end, each future Comprehensive Plan site-specific amendment, rezone or increased height request would require the purchase of development rights from properties in the rural areas.

6.2. Proposed Draft Ordinance Language

Amend Chapter 17.110, Definitions, as follows:

17.110.XXX Development rights.

"Development rights" means the residential building rights permitted to a lot or parcel within a sending area based on the gross density, established pursuant to the Kitsap County zoning map and this title, and measured in base dwelling units per developable acre.

17.110.XXX Receiving sites.

"Receiving areas and parcels" means areas within an urban growth area that are designated on the Kitsap County zoning map or by further action of the Board of County Commissioners, that may be eligible for additional residential development through the transfer of development rights.

17.110.XXX Rezone.

"Rezone" means a change in the zoning classification of zone on the Kitsap County Zoning Map that affects one parcel or a small group of contiguous parcels, a section, or sections of Kitsap County consistent with Chapter 17.510.

17.110.XXX Sending sites.

"Sending areas and parcels" means undeveloped or partially developed lot(s) or parcel(s) located within a sending area, designated on the Kitsap County zoning map or by further action of the Board of County Commissioners, that are appropriate to transfer development rights. A sending parcel or site is one that is located within a designated sending area.

17.110.XXX Site specific amendment.

"Site-specific amendment" means an amendment to the Comprehensive Plan and/or Zoning Map that affects one or a small group of contiguous parcels. A site-specific amendment most frequently affects only the land use designation and/or zoning classification and not the text of the Comprehensive Plan or a development regulation.

Amend Title 17, Zoning, to include the following new Chapter:

Chapter 17.430

TRANSFER OF DEVELOPMENT RIGHTS

Sections:

- 17.430.010 Purpose.
- 17.430.020 Authority.
- 17.430.040 General requirements.
- 17.430.050 Sending areas.
- 17.430.060 Receiving areas.
- 17.430.070 Transfer of development rights – when required.
- 17.430.080 Transfer of development rights (TDR) program - calculations.
- 17.430.090 Procedures and requirements for certification and approval of transfer of development rights.

17.430.010 Purpose.

The purpose of this chapter is to establish procedures for the transfer of development rights from one property to another. Where the applicable Comprehensive Plan policies, designated overlay zone or zoning map designation provide the option for transfer of development rights (TDRs), the rights shall be transferred consistent with the requirements of this chapter, the Kitsap County Zoning Map and other requirements of Title 17.

The transfer of development rights from one property to another is allowed in order to provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds, and open space; to provide increased equalization of property values between various zones; and to work toward achieving county-wide land use planning goals as determined by the Kitsap County Comprehensive Plan, the objectives of approved sub-area plans and the purpose of County implementing regulations.

17.430.020 Authority.

The transfer of residential development rights (“TDR”) system for Kitsap County is established. The base residential density of a sending site may be transferred and credited to a non-contiguous receiving site only when the TDR is approved in accordance with the rules and procedures in this chapter.

17.430.040 General requirements.

- A. Development Rights. The residential development rights are considered as interests in real property.
- B. Transfer of Development Rights Permitted. Notwithstanding any other provisions of this code regarding residential density, including minimum lot size, lot coverage, building setbacks, and minimum lot width and depth, the number of dwelling units permitted to be constructed on a sending parcel consistent with Section 17.505.050 may be transferred to a receiving parcel. In approving a transfer of development rights, the appropriate decision-making body must find that such a transfer is consistent with the Comprehensive Plan, the existing zoning designation of the sending parcel and the proposed zoning designation of the receiving parcel. A transfer of development rights is permitted to occur only under the circumstances, and according to procedures, set out in this chapter.
- C. Transfer of Rights. In any transfer of rights, the sending parcel(s) may transfer all or a portion of its development rights to a receiving parcel or parcels, or sell its development rights to an individual, intermediate buyer, or entity.

17.430.050 Sending areas.

- A. Designation of Sending Areas. In addition to those areas that qualify as sending areas according to the Kitsap County Comprehensive Plan, the Board of County Commissioners may approve additional sending areas through a change to the Kitsap County Code or a Comprehensive Plan amendment.
- B. Rural Sending Areas. All parcels located within rural designated lands and zoned Rural Wooded, Rural Residential, Rural Protection, or Forest Resource are available to be certified as TDRs based on their zone’s permitted density.

17.430.060 Receiving areas.

- A. Designation of Receiving Areas. In addition to those areas that qualify as receiving areas according to the Kitsap County Comprehensive Plan, the Board of County Commissioners may approve additional areas as receiving areas. Additional areas may be approved through a change to the Kitsap County Code or a Comprehensive Plan amendment. The designation of additional TDR receiving areas is based on findings that the area or site is appropriate for higher residential densities, is not limited by significant critical areas, and no significant adverse impacts to the surrounding properties would occur.

- B. Designated Receiving Areas. Receiving areas or parcels must be within an urban growth area.

17.430.070 Transfer of development rights – when required.

Transfer of development rights are required as described below.

- A. Site-Specific Comprehensive Plan Amendments. Site-Specific Comprehensive Plan amendments pursuant to Chapter 21.08 requesting a higher density or intensity designation shall require a transfer of development right. Development rights purchased for a Site-Specific amendment may also count towards any future rezone request within the new designation. The numbers of development rights required for each amendment are as follows:
1. Residential to Higher-Density Residential – one (1) development right per acre
 2. Residential to Urban Commercial – two (2) development rights per acre
 3. Residential to Urban Industrial – one (1) development right per acre
- B. Rezones. Rezones pursuant to Chapter 17.510 requesting a higher density or intensity zone shall require a transfer of development right. Rezones may be allowed only within the same Comprehensive Plan land use designation. Any rezone request that requires a change of Comprehensive Plan land use designation will require a Comprehensive Plan amendment. The numbers of development rights required for each rezone are as follows:
1. Residential to Higher Density Residential – one (1) development right per acre per zone increase, e.g., Urban Low to Urban Medium
 2. Commercial to Higher Intensity Commercial – one (1) development right per acre per zone increase, e.g., Neighborhood Commercial to Highway Tourist Commercial
- C. Height Increases in all Urban Zones. Except in the construction of mixed-use developments, requests for increased structure height within an urban growth area boundary are subject to review by the department and the appropriate review authority to determine whether the subject areas are appropriate for designation as TDR receiving areas. As part of a land use application, submittal of a request for increased structure height shall be required to purchase one (1) TDR unit for each additional 30% increase in building height above the maximum height for that zone.
- Example: The existing zone requires a maximum 35-foot height for all buildings. A 45-foot height building would be an approximately 29% increase in building height and would require one (1) TDR unit to increase the structure height.
- D. Cities. In cooperation with Kitsap County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purpose of receiving transferred densities pursuant to this chapter. The number of development rights that a Kitsap County unincorporated rural or natural resources land sending site is eligible to send to a Kitsap County city receiving site is determined through the application of a conversion ratio established by Kitsap County and each city.
- E. Except as provided in this chapter, development of a receiving site is subject to all use, lot coverage, setback and other requirements of the designated zone.

17.430.080 Transfer of development rights (TDR) program - calculations.

- A. The number of development rights a site within a sending area is eligible to send to a receiving site is determined as described below.

Beginning with the gross acreage of the lot(s) as determined by the Kitsap County Assessor's records and/or a recorded survey, the following areas are subtracted:

1. Any portion of the sending site in a conservation easement or other similar encumbrance (not including special tax status);
 2. Any public rights-of way or other public land;
 3. The acreage required for each existing dwelling unit on the lot(s) consistent with the density table located in Chapter 200.010; and
 4. Any areas of below ordinary high water of any fresh or saltwater body.
- B. After these features have been subtracted, the remaining acreage is divided by the acreage required for an individual dwelling unit prescribed by their zone consistent with Section 200.010 e.g. 20 acres per dwelling unit in the Rural Wooded zone. If the lot(s) being calculated is divided by a zoning boundary, the acreage is calculated separately for each zoning classification.
- C. The determination of the number of residential development rights a sending site has available for transfer to a receiving site is valid for transfer purposes only, is documented in a TDR certificate letter of intent and is considered a final determination, not to be revised due to changes to the sending site's zoning.
- D. Development rights from one sending site may be allocated to more than one receiving site and one receiving site may accept development rights from more than one sending site.

17.430.090 Procedures and requirements for certification and approval of transfer of development rights.

- A. Certification for Future Sale or Transfer. A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Department as a Type I decision. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel is certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. The issuance of TDR certificates is recorded as a notice of title for the subject property(s). All certified TDRs and the value of such rights are deemed to be appurtenant to the sending area parcel until such rights are transferred by a recorded deed of transfer.
- B. Intermediate Transfer. Certified TDRs may be approved administratively for transfer to another individual, intermediate buyer, or entity that may hold them for a period of time before the TDRs are transferred to a receiving area parcel. Under this provision, no certified TDR may be transferred to a receiving parcel or used in association with a development project without prior approval under the procedures established in this title and the appropriate Title 16 subdivision regulations, as applicable.
- C. Initiation. An application for transfer of development rights (TDR) is initiated as follows:
1. The process is initiated by submittal of an application for a transfer of development rights permit by the owner of the receiving parcel to the Department.
 2. An application for a TDR permit is accepted only for filing concurrently with an application for the associated development project, Site-Specific Comprehensive Plan amendment or rezone application pursuant to the requirements of the Kitsap County Code.

3. Except as allowed by Section 17.505.080.A, the TDR permit application is reviewed concurrently with the proposed development project according to the procedures prescribed in the Kitsap County Code.
- D. Submittal Requirements. All requirements for a TDR permit or certification must include the following:
1. A map showing the location and boundaries of the receiving parcel and sending parcel as applicable;
 2. The acreage of the receiving parcel and sending parcel as applicable;
 3. The zoning and current allowable gross density of the receiving or sending parcels as applicable;
 4. A lot of record confirmation application;
 5. Written and notarized consent to the transfer from all registered owners and lien holders of record of all property subject to the transfer of development rights;
 6. A calculation of the number of units available to be transferred from the sending parcel and the total number of dwelling units requested to be transferred to the receiving parcel as applicable. Any fraction of a unit of 0.50 or greater shall be considered as a whole unit;
 7. Except for purposes of certification or transfer under Section XX.XX.XXX, all other submittal requirements for an application for the associated development project pursuant to the requirements of the Kitsap County Code; and
 8. The department may require the submission of other data, information, or drawings as deemed necessary to accomplish the purposes of this chapter.
- E. Approval Process and Criteria.
1. The procedures for approval of a TDR permit shall be those required for the development project, Comprehensive Plan amendment or rezone pursuant to the requirements of this code.
 2. The review authority may approve or approve with conditions the TDR permit upon making the finding that the purposes and requirements of this chapter have been met. If the purposes and requirements have not been met, the permit shall be denied.
- F. Requirements for Final Approval. Approval of a TDR permit is finalized after the following actions:
1. Final approval of the concurrent development project according to the provisions of this Code, except as allowed by Section 17.505.080.A.
 2. Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect the development right transfer. The instrument must include at minimum a legal description of both the sending parcel(s) and receiving parcel(s) and the serial numbers of the certified TDRs being transferred.
 3. Recording of a deed restriction, as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction must be submitted to the Department, which certifies the transfer of all development rights on each sending parcel. The deed restriction must be approved as to form by the Department. The document notifies all owners and successors that the transfer and its concomitant restrictions run with the land and are binding on all future owners.
 4. For all sending parcels, the deed restriction is sufficient to retire all transferred development rights on the sending parcel for a period of 40 years.

Amend Chapter 21.08.030, Definitions, as follows:

21.08.030 Definitions.

H. "Site-specific amendment" means an amendment to the Comprehensive Plan and/or Zoning Map that affects one or a small group of contiguous parcels. A site-specific amendment most frequently affects only the land use designation and/or zoning classification and not the text of the Comprehensive Plan or a development regulation.

Repeal and replace Section 21.08.110, Application requirements for site-specific amendments, with the following:

21.08.110 Application requirements for site-specific amendments or rezone.

An application for a site-specific amendment of the Comprehensive Plan land use map or zoning map, shall include the following:

- A. An application form which includes the signatures, addresses, telephone numbers and agent information for the applicant and the owner(s) of record;
- B. A description of the proposed amendment including text changes and a map;
- C. If the proposal is for a land use map or zoning map amendment, the location of the property covered by the proposed amendment as shown on an assessor's map dated and signed by the applicant and the owner;
- D. If the proposed amendment includes an amendment to both the land use map and the zoning map, a legal description of the property covered by the amendment, including the notarized signature of one or more owners;
- E. An explanation of the reasons the amendment is being proposed;
- F. An explanation of the proposed amendment's anticipated impacts;
- G. An explanation of how the proposed amendment is consistent with the GMA, the Kitsap County-wide Planning Policy, and the Comprehensive Plan;
- H. An environmental checklist, if required;
- I. The processing fee established by the Board of County Commissioners;
- J. A calculation describing the number of residential units allowable under the existing zone density consistent with Section 17.200.010 and the number of units allowable under the proposed zone density as identified in Section 17.200.010; and
- K. If the application results in a higher residential density or if the application proposes a change from a residential use to a commercial or industrial use, a transfer of development credit certificate shall be submitted with the application or during the application review process.