

Appendix B: Reasonable Measures

KITSAP COUNTY 2016 COMPREHENSIVE PLAN UPDATE REASONABLE MEASURES

WHAT IS A BUILDABLE LANDS REPORT?

The state Growth Management Act (“GMA”), chapter 36.70A, requires some cities and counties, including Kitsap County, to prepare a “buildable lands report” (“BLR”) on a periodic basis. RCW 36.70A.215. The BLR is used:

- to determine whether there is sufficient land capacity to accommodate the projected population within the county for the planning period;
- to determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within urban growth areas (UGAs) since the last update of the comprehensive plan and the last BLR;
- based on the actual density of development as determined under (b), to review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.¹

WHAT ARE COUNTYWIDE PLANNING POLICIES (CPPs)?

GMA requires that countywide planning policies (CPPs) are adopted to provide a framework for ensuring consistency between city and county comprehensive plans. RCW 36.70A.210(1). The CPPs are to be developed through a “collaborative process” agreed upon by the cities and the county. RCW 36.70A.210(2)(a). At a minimum, the CPPs must address the following:

- Policies to implement RCW 36.70A.110, the establishment of urban growth areas (UGAs);
- Policies regarding contiguous and orderly development and provision of urban services to the UGAs;
- Policies for siting public capital facilities of a countywide or statewide nature;
- Policies for countywide transportation facilities and strategies;
- Policies regarding affordable housing;

¹ RCW 36.70A.215(3).

- Policies for joint county and city planning within urban growth areas;
- Policies for countywide economic development and employment, and
- An analysis of the fiscal impact.²

WHAT ARE REASONABLE MEASURES?

The GMA also requires that if the BLR demonstrates an inconsistency between what has occurred and what was envisioned in the planning process, the county must adopt and implement “measures that are reasonably likely to increase consistency during the subsequent five-year period.”³ Such measures are referred to as “reasonable measures.” They typically are code provisions or comprehensive plan policies that encourage urban growth and help protect rural and resource areas.

IS KITSAP COUNTY REQUIRED TO ADOPT REASONABLE MEASURES?

Kitsap County is required to adopt Reasonable Measures. As of 2015, Kitsap County had completed three BLRs that measured the growth in Kitsap County. The first BLR was published in 2002; the second in 2007 and again in 2015. The County is required to annually monitor reasonable measures to determine their effect and may revise or rescind them as appropriate. While the three BLRs showed increasing consistency with the GMA and the goals and policies of the CPPs and comprehensive plans, there remain some inconsistencies. In 2004, the Central Puget Sound Growth Management Hearings Board (CPSGMHB) identified three inconsistencies revealed by the first BLR:

- the urban/rural split – more development was occurring in the rural areas than the urban areas;
- urban densities were occurring in the rural areas; and
- less than minimum urban densities being achieved in the UGAs.⁴

The County was subsequently involved in several years of litigation concerning its obligation to reasonable measures. The Growth Hearings Board and the courts ultimately held that Kitsap County needed to adopt reasonable measures to address the inconsistencies noted above. Last year, the adequacy of Kitsap County’s 2015 BLR was challenged before the CPSGMHB.⁵ While finding the BLR methodology acceptable and significant progress had been made, the CPSGMHB noted it still demonstrated inconsistencies in the same three areas mentioned above. The Growth Hearings Board also found the BLR was deficient in failing to identify reasonable measures, but agreed that the adoption of new measures should be part of the comprehensive plan update.

² RCW 36.70A.210 (3).

³ RCW 36.70A.215(4).

⁴ *Bremerton et al. v. Kitsap County*, CPSGMHB 04-3-0009c, FDO (8/20/04) (“*Bremerton II*”).

⁵ *Harless and Suquamish Tribe v. Kitsap County*, CPSGMHB No. 15-3-0005, FDO (1/22/2016) (“*Harless IV*”).

WHAT TYPES OF REASONABLE MEASURES SHOULD THE COUNTY BE CONSIDERING?

The County has been ordered by the Growth Hearings Board to adopt reasonable measures. While neither the Courts nor the CPSGMHB have required any “specific” reasonable measures, they have suggested the types of reasonable measures that the County should consider. In 2005, the Growth Hearing Board stated:

The GMA gives counties ample discretion to adopt and implement a more varied array of measures . . . including measures to refocus development away from rural to urban lands. Measures to reduce rural density, such as TDRs and lot aggregation, should be on the table. Kitsap’s Comprehensive Plan Policy RL-3, mandates that the County evaluate *rural* growth patterns for consistency with the plan and “research and evaluate possible incentives” for rural lot aggregation. Kitsap County can take advantage of the success and failures of other Central Puget Sound counties in implementing such strategies.

Measures might be on the table, for example, amending the CPPs to require higher density along transit routes in cities and unincorporated urban areas; establishing minimum densities for subdivisions in both cities and the unincorporated urban area; modifying sub-area planning to disallow UGA expansion; requiring UGA expansion to be offset by contraction elsewhere; requiring that all UGA adjustments be considered on a county-wide basis (e.g., discontinue sub-area and ad hoc site-specific UGA expansions); rolling population targets forward every ten years, as required by the GMA, rather than every five years; targeting capital facilities and amenities to support urban density.⁶

More recently, the CPSGMHB stated:

The BLR demonstrates that 91% of rural residential growth is occurring on pre-GMA platted lots, many of which are so small as to generate densities that compel urban-level roads and services. The BLR demonstrates that a great deal of urban residential growth is occurring on overly-large parcels, defeating the provision of efficient and compact urban services and hastening pressure to expand UGAs. Unless measures are adopted which are reasonably calculated to address these legacy lot challenges, it seems unlikely the discrepancies with County growth targets can be cured. It seems logical that a more robustly-analyzed list of identified measures would provide more productive guidance to the County and its citizens as they consider which measures to adopt.⁷

Given this direction, Kitsap County is proposing the matrix of measures attached to this document.

⁶ *1000 Friends of Washington et al. v. Kitsap County*, CPSGMHB No. 04-3-0031c, FDO , at 25, n. 15 (6/28/05).

⁷ *Harless IV*, FDO at 17.

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Reasonable Measure	Where Implemented in Current Code	Description	Comment
1. Transfer of Development Rights	KCC 17.430	<p>Chapter 17.520 (formerly 17.430)</p> <p>See attached draft code</p> <p><u><i>17.520.010 Purpose.</i></u></p> <p><u><i>17.520.020 Authority.</i></u></p> <p><u><i>17.520.030 Applicability.</i></u></p> <p><u><i>17.520.040 General requirements.</i></u></p> <p><u><i>17.520.050 Sending areas - requirements.</i></u></p> <p><u><i>17.520.060 Sending site calculations.</i></u></p> <p><u><i>17.520.070 Receiving sites.</i></u></p> <p><u><i>17.520.080 Transfer of development rights – When required.</i></u></p> <p><u><i>17.520.090 Transfer of development rights (TDR) - Application Process; Letter of Intent; Issuance of TDR certificates.</i></u></p> <p><u><i>17.520.100 Transfer of development rights (TDR) - conservation easement.</i></u></p> <p><u><i>17.520.110 Transfer of development rights (TDR) - conveyance of certified development rights.</i></u></p> <p><u><i>17.520.120 Transfer of development rights (TDR) - application of TDR certificates to receiving sites and extinguishment of TDR certificates.</i></u></p> <p><u><i>17.520.130 Reinstating development rights of a sending site.</i></u></p>	<p>County adopted updated TDR Goals and Policies in Fall, 2015.</p> <p>Proposed code implementing TDR drafted.</p> <p>Proposed resolution establishing initial development credits drafted.</p> <p>Would have to be updated regularly based on market factors.</p>
2. Recognition of Rural Legacy Lots	KCC 17.382.110 (39)	<p>39. Unless otherwise stated in this title, if a lot of record which was legally created <u>after July 1, 1974</u>, is smaller in total square footage than that required within the zone, or if the dimensions of the lot are less than that required within the zone (<u>substandard lot</u>), said lot may be occupied by any use allowed within that zone subject to all other requirements of the zone. <u>For substandard lots that were created prior to July 1, 1974 that do not meet the minimum dimensions required for the zone, they may be considered for development permits if they meet one or more of the following exceptions: (a) a lot upon which there is, or was, a</u></p>	<p>Complete revision of Footnote 39.</p> <p>Criteria for proposed exemptions would be further clarified in permit checklists and application forms.</p>

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Reasonable Measure	Where Implemented in Current Code	Description	Comment
		<p><u>legally placed residence; or (b) there have been specific development investments in the lot prior to the enactment of this ordinance, including, an approved water or sewer connection, participation in a local improvement district, or (c) a vested development permit. An owner of contiguous substandard lots may choose to aggregate (combine) the lots in order to meet these requirements.</u></p>	
<p>3. Minimum / Maximum urban lot size</p>	<p>KCC 17.382.060</p>	<p>Urban Low Residential (ULR): Minimum Lot Size: Proposed increase from 2,400 sf to 3,600 sf (<i>not a reasonable measure</i>) Maximum Lot Size: Proposed a new maximum lot size of 9,000 sf Minimum Lot Width: Proposed increase from 40 ft to 60 ft.</p> <p>Urban Cluster Residential (UCR): Minimum Lot Size: No Change Maximum Lot Size: Proposed a new maximum lot size of 9,000 sf Minimum Lot Width: No Change</p>	<p>2,400 sf per acre equates to an Urban Medium Density, not Urban Low. If lots are overdeveloped, Kitsap County may be required to significantly decrease the UGA size.</p> <p>Gross Acreage Calculations (1 acre) 2,400 sf / 1 acre results in 18.15 du/acre 3,600 sf / 1 acre results in 12.1 du/acre 4,800 sf / 1 acre results in 9.08 du/acre</p> <p>Minimum Lot Width Change: Increased to 60 ft. 60' x 60' = 3,600 sf</p> <p>A maximum lot size is necessary to insure that large lots are not underdeveloped in the future. 5 du/ac = 43560 sf / 5 lots = 8,712 sf 10 du/ac = 43560 sf / 10 lots = 4,356 sf 19 du/ac = 43560 sf / 10 lots = 2,293 sf</p> <p>If lots are underdeveloped in the future, Kitsap County may be required to significantly increase the UGA size.</p>
<p>4. Silverdale Centers Plan</p>	<p>KCC 17.382.050</p>	<p>New Goals and Policies in Comp. Plan New Regional Center Zone. For parcels within the Silverdale Regional Center Boundary zoned Regional Center and Urban High residential: Proposed maximum allowed density increase from 30 to 60 dwelling units per acre. Proposed maximum height allowance increased from existing Silverdale Design Districts.</p>	<p>Height: 15 ft Ground Floor Max Height and 10 ft subsequent floor Max Height 45 ft (4 stories) 65 ft (6 stories) 85 ft (8 stories) 105 ft (10 stories) 125 ft (12 stories) Harrison Hospital approved height 180 ft</p>

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Reasonable Measure	Where Implemented in Current Code	Description	Comment
5. Monitoring and tracking measures	Department and related Program Offices	Improvements to parcel data base (correcting land codes, etc.) underway. Automate tracking and monitoring parcel data. Ensure compatibility of assessor and planning and zoning data. Conduct ongoing continuous process improvement	Update annual monitoring and reporting process to improve future analysis.
6. New ADU Process	17.381.040(E) ADUs in rural areas 17.381.050	Accessory Dwelling Unit (ADU) Permissibility: . Add Use Table Footnote: FN # 96 An accessory dwelling unit is only allowed if the parcel on which it is located is twice the size of the minimum parcel size for the zone.	Rural Residential, Rural Protection, Rural Wooded: Proposed change from requiring a conditional use permit (CUP) to permitted outright (P) with a new footnote.

Chapter 17.520

(Formerly Chapter 17.430)

TRANSFER OF DEVELOPMENT RIGHTS

Sections:

17.520.010 Purpose.

17.520.020 Authority.

17.520.030 Applicability.

17.520.040 General requirements.

17.520.050 Sending areas - requirements.

17.520.060 Sending site calculations.

17.520.070 Receiving sites.

17.520.080 Transfer of development rights – When required.

17.520.090 Transfer of development rights (TDR) - Application Process; Letter of Intent; Issuance of TDR certificates.

17.520.100 Transfer of development rights (TDR) - conservation easement.

17.520.110 Transfer of development rights (TDR) - conveyance of certified development rights.

17.520.120 Transfer of development rights (TDR) - application of TDR certificates to receiving sites and extinguishment of TDR certificates.

17.520.130 Reinstating development rights of a sending site.

17.520.010 Purpose.

The purpose of this chapter is to create a process for certification and transfer of Transferable Development Rights (TDR) from designated sending areas to designated receiving areas. 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 the following:

- A. Flexibility and efficient use of land and building techniques;
- B. Preservation of rural character, promotion of farming areas, and provision of long-term open space opportunities;;
- C. A mechanism to work toward achieving policies outlined in the Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan, applicable sub-area plans and development regulations.

17.520.020 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.

17.520.030 Applicability.

This chapter supplements county land use regulations and other land protection efforts by establishing a TDR process, which may be employed at a landowner’s option to certify and transfer development rights from an eligible sending site to an eligible receiving site, and which may include transfer through an open market or TDR bank. This chapter regulates the following with respect to the transfer of development rights:

- A. Establishes candidate TDR sending sites to include specific comprehensive plan land use designations, zones, qualifying farming areas, and other rural lands, and establishes eligible TDR receiving areas;
- B. Provides a method to determine the number of certified development rights that a sending site is eligible to transfer;
- C. Provides a market-based TDR implementation system based on the issuance of TDR certificates that may be freely sold or otherwise transferred;
- D. Requires the recording of conservation easements that restrict development on sending sites;

17.520.040 General requirements.

- A. Development Rights. Residential development rights are considered as interests in real property.

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- B. Transfer of Development Rights Permitted. The number of dwelling units allowed to be constructed on a sending parcel under Section 17.520.050 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 allowed only under the provisions in this chapter.
- C. Transfer of Rights. In any transfer of rights, the sending parcel(s) may transfer all of its development rights to a receiving parcel or parcels, or sell its development rights to an individual, intermediate buyer, or entity.

17.520.050 Sending areas

- A. Designation of Sending Areas. Use of TDR sending areas must provide a public benefit i.e., the protection of that benefit by transferring residential development rights to another site is in the public interest. In addition to those areas that qualify as sending areas according to this chapter, the Kitsap County 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 TDR sending sites.s.
- C. Sending Area Emphasis. While transfer of development rights from all sending sites is promoted, consistent with the Kitsap County Comprehensive Plan, specific areas or lot sizes may be emphasized as preferable sending sites. Such properties may receive additional incentives such as increased development rights to further encourage transfer. Such incentives shall be approved and further amended by Board of Commissioner resolution.
- D. Additional sending site qualifications.
 - 1. Contiguity of Sending Site Lots. If a sending site consists of more than one lot, the lots must be contiguous. For purposes of this chapter, lots separated only by a public street or right of way are considered contiguous.
 - 2. Code compliance required. If the sending site is the subject of code enforcement action by the county, the responsible party, upon whom a notice of violation has been served pursuant to KCC Chapter 2.116, must resolve the allegations of violation, which may include performance of any required abatement, restoration, or payment of civil penalties, or dismissal of charges pursuant to legal process, before development rights for the sending site may be certified or transferred by a sending site landowner. This requirement may be waived at the discretion of the director where a proposal is in the public interest, provided that any outstanding code violations do not materially affect the conservation value of the sending site and the person responsible for code compliance is making a good faith effort to resolve the violations. Waivers granted pursuant to this subsection are solely for the purpose of TDR sending site eligibility and do not constitute a waiver of any county land use regulations or affect ongoing or future code enforcement actions related to the sending site.
 - 3. Forest practices compliance required. For sending sites on which the entire lot or a portion of the lot has been cleared or graded pursuant to a Class II, III or IV special forest practices permit as defined by RCW 76.09.050 within the six years prior to application for certification or transfer of development rights, the applicant must provide an affidavit of compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010 and any additional reforestation conditions of their forest practice permit. Sending sites that are subject to a six-year moratorium on development applications pursuant to RCW 76.09.060 shall not be qualified as TDR sending sites until the moratorium has expired or been lifted.
 - 4. Land already encumbered by a conservation easement shall not be eligible as a TDR sending site.
 - 5. Any land below ordinary high water of any fresh or saltwater body shall not be eligible as a TDR sending site.
 - 6. Development rights allocated to eligible sending sites may be converted to TDR certificates 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 TDR conservation easement imposed under 17.520.100.

17.520.060 Sending site calculations.

- A. Calculation for Transfer Purposes Only. The determination of the number of development rights that a sending site is eligible to transfer pursuant to this section, shall be valid for transfer purposes only, and does not entitle the sending site to building permits or other development approvals, or change the sending site property's zoning classification.
- B. Number of Certified Development Rights. The number of residential development rights that a sending site is eligible to transfer under this program shall be the larger of:
 - 1. The number of legal lots that comprise the sending site; or
 - 2. The number that is determined by applying the sending site base density dictated by the underlying zoning as established in KCC 17.420.060 to the gross area of the sending site.

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- C. No Fractional TDRs. Any fractions of development rights that result from the calculations in 17.520.060.B shall not be included in the final determination of total development rights available for sale.
- D. Sending Site Area. For purposes of calculating the number of development rights that may be transferred from a sending site, the gross area of a sending site shall be determined as follows:
 - 1. If the sending site is comprised of one or more undivided tax parcels, the acreage shall be determined by:
 - a. Kitsap County Assessor records; or
 - b. A survey funded by the applicant that has been prepared and stamped by a surveyor licensed in the State of Washington.
 - 2. If the proposed sending site includes one or more partial lots or involves a short subdivision or boundary line adjustment, then the applicant is required to provide, at the applicant's cost, a survey that has been prepared and stamped by a surveyor licensed in the State of Washington.
 - 3. Any portion of the sending site that is already subject to a conservation easement or other recorded encumbrance restricting development on the sending site shall be subtracted from the sending site area before applying the base density calculation under subsection 17.520.060.B.
 - 4. Any portion of the sending site used for residential development or reserved for future residential development shall be subtracted before applying the base density calculation under subsection 17.520.060.B.
- E. For purposes of determining the number of development rights that may be certified for transfer from a sending site, the number of existing and proposed residential dwelling units, if any, to be retained on the sending site shall be subtracted from the number of development rights eligible for transfer as determined pursuant to subsection 17.520.060.B.
- F. TDR calculation final. Upon issuance of the TDR Certificate Letter of Intent, the determination of the number of certified development rights that a sending site is eligible to transfer to a receiving site pursuant to subsection 17.520.060.B is final and shall not be revised due to subsequent rezones or other changes to the sending site.

17.520.070 Receiving areas and exchange rates.

- 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 are those within an urban growth area or are proposed to be included within an urban growth area by a Comprehensive Plan amendment, site-specific application or sub-area plan.
- C. Exchange Rates. For eligible receiving sites, the transfer to and use of TDR credits on a receiving site shall occur consistent with applicable development regulations established in the program authorizing use of TDR at the receiving site.
 - 1. For receiving areas defined in 17.520.060.B above, exchange rates are established by resolution of the Board of County Commissioners.
 - 2. Required development rights are calculated on a per acre basis. All fractional acreages shall be rounded up to the higher exchange rate.
 - 3. Exchange rates shall be periodically evaluated and may be modified to ensure they reflect market conditions.

17.520.080 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 I 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 shall be established by resolution of the board of county commissioners.
- 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 shall be established by resolution of the board of county commissioners.

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- C. Urban Growth Area Expansions. The board of county commissioners in the annual Comprehensive Plan Amendment docketing resolution may require a transfer of development right or rights as part of Comprehensive Plan or sub-area plan expansions of urban growth areas.
- 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.

17.520.090 Transfer of development rights (TDR) Application Process; Letter of Intent; Issuance of TDR certificates.

- A. Application for TDR certificates. In order to obtain TDR certificates, the sending site owner(s) or authorized agent must submit an application for TDR certificates. The applicant for TDR certificates will submit on a form provided by the County, a calculation of the number of development right credits that proposed to be certified in accordance with 17.520.060, subject to review and approval by the director. The department shall use the application to determine whether the sending site meets the requirements of 17.520.050 and, if so, the number of development rights that the sending site is eligible to transfer pursuant to 17.520.060. The application shall include all of the following:
 - 1. Legal description and parcel numbers of the sending site for which TDR certificates are sought.
 - 2. The following documents, which shall be used as the basis for determining transferable development rights pursuant to 17.520.050:
 - a. If the sending site consists of one or more undivided tax parcels, the applicant(s) shall provide either official records from the Kitsap County Assessor or a survey that has been prepared and stamped by a surveyor licensed in the state of Washington.
 - b. If the sending site includes portions of one or more tax parcels, the applicant(s) shall provide a survey that has been prepared and stamped by a surveyor licensed in the state of Washington.
 - c. If one or more single family dwellings or other residential, commercial, or industrial structures exist on the sending site, the applicant(s) shall submit a site map showing the location of each dwelling unit and other structures.
 - d. If the applicant(s) propose to build one or more single family dwellings, or other residential structures permitted by the sending site zoning, following the issuance of TDR certificates for the sending site, the applicant(s) shall submit a general site plan showing the number and location of proposed dwelling units, together with any proposed subdivision, short subdivision, boundary line adjustment, or tax lot segregation.
 - 3. A title report issued no longer than 30 days prior to the date of application confirming that the ownership interest(s) in the sending site are in the name(s) of the person(s) whose signature(s) appear on the application for TDR certificates and that there are no existing conservation easements on the sending site.
 - 4. A declaration by the applicant(s) describing the status of ongoing code enforcement actions, if any, relating to the sending site and the steps taken by the applicant to resolve the violations.
 - 5. Any applicable review or other fees.
 - 6. If the information required by this section is inadequate or unavailable, the department may require additional documentation from the applicant or rely on information contained in the county geographic information system or other county records.
- B. Certification of TDR Letter of Intent
 - 1. Following application for TDR certificates by the sending site owner or authorized agent, staff shall verify the development right credit calculations prior to issuing a TDR Certificate Letter of Intent.
 - 2. The department will issue a TDR certificate letter of intent upon verification of sending site eligibility under this Chapter. The letter shall contain a determination of the number of development rights calculated for the sending site pursuant to 17.520.050 and an agreement by the department to issue a corresponding number of TDR certificates in exchange for a sending site conservation easement granted to the County by the sending site owner pursuant to 17.520.100. The sending site owner may use the TDR Certificate Letter of Intent to market sending site development rights to potential purchasers, but the TDR Certificate Letter of Intent shall have no intrinsic value and cannot be transferred or used to obtain increased density within receiving areas. A TDR Certificate Letter of Intent shall be valid for a period of five years from the date of issuance. If a TDR Certificate

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Letter of Intent has not been converted to serially numbered TDR certificates within five years from the date of issuance, the landowner must reapply to the program to update the determination of eligibility and calculation of development rights for the sending site.

3. As provided by the TDR Certificate Letter of Intent, the department shall issue serially numbered TDR certificates to the sending site owner upon acceptance and recording of a County-approved conservation easement pursuant to the requirements of this section and 17.520.100; provided, however, that the department shall have 30 days from the date 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. If, based on such a review, the department determines that conditions on the sending site are materially different than those documented in the application and county review under this section, the department shall reject the conservation easement and the TDR certificate Letter of Intent shall be null and void. Where a TDR certificate has been determined to be null and void pursuant to this subsection, a sending site owner may reapply for TDR certificates and such reapplications shall be subject to the requirements of this section.

17.520.100 Transfer of development rights (TDR) - conservation easement.

- A. TDR conservation easement required. No TDR certificates shall be issued pursuant to subsection 17.520.090 unless a conservation easement is accepted by the director pursuant to the requirements of this section.
- B. Acceptance and recording of TDR conservation easement. Subject to the restrictions of subsection 17.520.100.B.3, the director shall accept and sign on behalf of the county a conservation easement offered by a sending site owner in exchange for TDR certificates following issuance of a TDR Certificate Letter of Intent; provided, however, that the easement meets the requirements set forth in subsection 17.520.100.C of this section. Following acceptance of a conservation easement by the director, the department shall record the easement with the county auditor and shall notify the assessor.
- C. Requirements for TDR conservation easement. The conservation easement shall be on a form approved by the prosecuting attorney and shall be reviewed and approved by the department, subject to the requirements of this section. The easement shall contain, at a minimum, all of the following:
 1. A legal description of the sending site.
 2. The serial numbers of the TDR certificates to be issued by the department on the sending site that is the subject of the conservation easement.
 3. A covenant prohibiting any subdivision of the sending site except for subdivisions, if any, that were proposed in the documentation submitted to the department pursuant to subsection 17.520.090.A.2.d
 4. A covenant prohibiting all uses that impair or diminish the functions and values of the property that comprise the public benefit being conserved, which, depending on the property will include the agricultural or forest use, and may include watershed function, habitat, or open space use, and prohibiting the construction of any new residential structures in the easement area.
 5. A covenant that all provisions of the conservation easement shall run with the land and bind the sending site in perpetuity, and may be enforced by the county.
 6. A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his or her heirs, successors and assigns shall retain exclusive rights to such access or use subject to the terms of the conservation easement.
 7. Additional provisions that are reasonably necessary for the enforcement and administration of the conservation easement as determined by the director, including a covenant granting the county a right of entry, subject to reasonable advance notice, to conduct brief inspections for the sole purpose of determining compliance with the requirements of the easement.

17.520.110 Transfer of development rights (TDR) - conveyance of certified development rights.

- A. Conveyance of certified development rights authorized. Subject to the requirements of this section, TDR certificates issued pursuant to subsection 17.520.090 may be sold or otherwise conveyed and held indefinitely before certified development rights are applied to a receiving site pursuant to 17.520.080.
- B. Deed of transferable development rights required. TDR certificates issued pursuant KCC 17.520.090 shall be sold or otherwise conveyed only by means of a deed of transferable development rights meeting the requirements of this section.
- C. Recording of deed and notice of transfer. At the time a TDR certificate is conveyed, the parties shall record the deed of transferable development rights documenting the conveyance. The department shall review and approve the deed

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of transferable development rights, subject to the requirements of this section, prior to its recording. Costs associated with the recordation shall be paid by the seller.

- D. Contents of deed. The deed of transferable development rights required by subsection B of this section shall specify the number of certified development rights sold or otherwise conveyed and shall be on a form provided by the department and approved by the prosecuting attorney. The deed of transferable development rights must include:
1. A legal description and map of the sending site.
 2. The names of the transferor and the transferee and the serial number(s) of the TDR certificates being transferred.
 3. A covenant that the transferor grants and assigns to the transferee a specified number of certified development rights from the sending site.
 4. Proof of ownership of the sending site by the transferor or, if the transferor is not the owner of the sending site, a declaration that the transferor has either:
 - a. Sold the sending site but retained the TDR certificates issued for the sending site pursuant to 17.520.090; or
 - b. Obtained TDR certificates previously conveyed by an original deed of transferable development rights, which shall be identified by date of execution, the names of the original transferor and transferee, and the volume and page where it was recorded with the auditor.
 5. Certification of the number of certified development rights on the sending site and copies of the TDR certificates issued by the department for the sending site pursuant to 17.520.090.
 6. Proof of payment to the state of any required excise taxes and payment to the county of recording fees for the transaction.
 7. Proof of the execution and recordation of a conservation easement on the sending site, as required by 17.520.100.
 8. The signature of the department staff member(s) who have reviewed the deed for completeness.

17.520.120 Transfer of development rights (TDR) - application of TDR certificates to receiving sites and extinguishment of TDR certificates.

- A. Application to a TDR receiving site. TDR certificates shall be considered applied to a receiving site when the agency with jurisdiction has made a final decision approving the receiving site development activity for which the TDR certificates are provided.
- B. Effect of applying TDR certificates to a receiving site. TDR certificates that have been applied to a receiving site pursuant to subsection 17.520.120.A shall be considered void by the county and may not be applied to receiving sites pursuant to this chapter; provided, however, that if a decision approving a receiving site development activity is appealed, the TDR certificates provided in connection with that approval shall not be considered void under this section unless the decision approving the development activity is affirmed following the exhaustion of all administrative and judicial appeals.
- C. TDR extinguishment document required. Upon application to a receiving site pursuant to subsection 17.520.120.A, the applicant receiving approval of a receiving site development activity shall provide a TDR extinguishment document to the department. The TDR extinguishment document shall be on a form provided by the department and shall include the serial number of each TDR certificate that has been applied to a receiving site and the legal description of the receiving site to which the certificate(s) have been applied.

17.520

17.520.130 Reinstating development rights of a sending site.

Unless otherwise prohibited by the board of county commissioners in the annual Comprehensive Plan Amendment docketing resolution, properties that have transferred their development right to an approved receiving site and have been included in an urban growth area expansion through sub-area plan or similar area-wide planning effort may have their development right(s) reinstated for development at urban densities. The reinstatement shall be automatic after review and approval of the Comprehensive Plan Amendment and associated SEPA review.