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# Appendix

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## Transfer of Development Rights

The information contained in this appendix is taken directly from the Smart Growth/Smart Energy Toolkit published by the Executive Office of Energy and Environmental Affairs on behalf of the Commonwealth of Massachusetts.

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**In Brief:** Transfer of Development Rights (TDR) is a regulatory strategy that harnesses private market forces to accomplish two smart growth objectives. First, open space is permanently protected for water supply, agricultural, habitat, recreational, or other purposes via the transfer of some or all of the development that would otherwise have occurred in these sensitive places to more suitable locations. Second, other locations, such as city and town centers or vacant and underutilized properties, become more vibrant and successful as the development potential from the protected resource areas is transferred to them. In essence, development rights are "transferred" from one district (the "sending district") to another (the "receiving district"). Communities using TDR are generally shifting development densities within the community to achieve both open space and economic goals without changing their overall development potential. While less common, TDR can also be used for preservation of historic resources.

### The Problem

**Conventional zoning** has failed to prevent, and is often the cause of, suburban sprawl in Massachusetts. As ideas regarding land use planning have evolved, it has become clear that conventional zoning is an obstacle to the goals of many communities. Even highly valued areas of forest or farmland are zoned for low-density residential or residential/agricultural development - otherwise known as sprawl. At the same time, in existing or potential community centers current zoning often does not allow for density levels appropriate to a vibrant commercial or mixed-use district. Traditional planning techniques to address these situations, such as large land acquisitions in open space areas, whole-sale rezoning of downtown centers, or down-zoning of agricultural areas, are politically sensitive, costly, and often impractical as they reduce the development potential of a landowner's property.



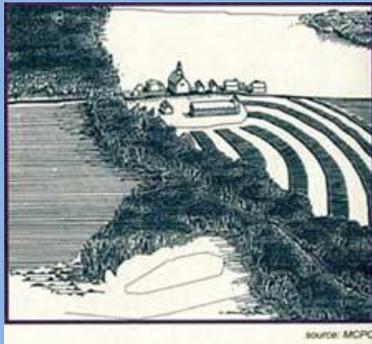
Preservation and revitalization can both be hampered by existing zoning codes that allow for extensive sprawl but do not allow for higher densities in what would otherwise be viable economic activity centers. These pictures illustrate what can happen to conventionally zoned areas. TDR offers an alternative that protects agricultural lands from this type of sprawling growth.

## Introduction to Transfer of Development Rights

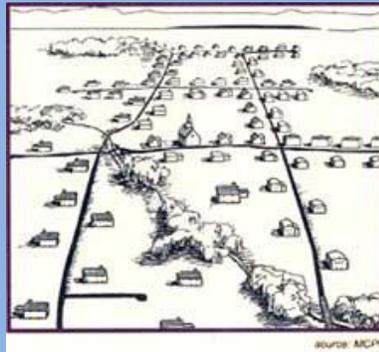
Transfer of Development Rights (TDR) represents an innovative way to direct growth away from lands that should be preserved to locations well suited to higher density development. Areas that may be appropriate for additional development include pre-existing village centers or other districts that have adequate infrastructure to service new growth.

The approach begins with planning processes that will identify specific preservation areas as “sending areas” and specific development districts as “receiving areas.” In Massachusetts, this level of town-wide or city-wide planning is best addressed in the comprehensive planning process. Once these areas are identified, Zoning Bylaw amendments can be adopted which authorize landowners in the sending areas to sell their development rights to landowners in the receiving areas. The amount of money required to purchase these development rights is influenced by the Zoning Bylaw provisions, but is generally negotiated between the landowners. This approach allows market forces to enter into the transaction and requires land owners to negotiate the final value of development rights.

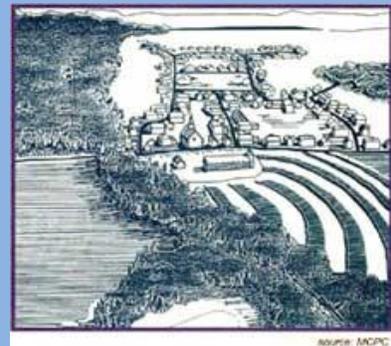
In return for the purchase, landowners in the sending area place a restriction on their property, which is generally recorded as deed restriction. This restriction can be determined through explicit zoning provisions or can be negotiated as part of the permitting process, perhaps via a special permit. Restrictions can limit the level of potential development, the type of development, or some combination of both. Developers who buy development rights are acquiring the capacity to build higher density in a receiving area, which can mean different types of the same use (apartments in addition to single family homes), higher densities of the same use (single family homes on one-quarter acre lots instead of one acre), or different higher intensity uses (commercial or industrial use in addition to residential).



Existing Village



Conventional Development



Development with TDR

TDR can be an effective tool to simultaneously limit development in valuable open space areas while stimulating additional development in areas well suited to higher densities. Although some transfers are based on a “one to one” ratio (one housing unit in the sending area grants one housing unit in the receiving area) in order to provide an incentive, other programs have increased the value of a development right if it is transferred. For example, a single development right in the sending area could provide multiple development rights in the receiving area. This “scaling” process can act as a tremendous economic incentive for both landowners in the transaction.

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## Characteristics that Support Transfer of Development Rights

**Communities** that can implement Transfer of Development Rights on a broad scale will generally have the following characteristics:

**Clearly Identified Resource Areas for Protection.** The foundation of any TDR program is a resource area that requires protection. Sending area communities should clearly identify the resources they would like to protect as these choices will shape many of the TDR program elements such as the method of calculating development rights, the types of incentives that will be offered to developers, and the type of restriction recorded.

**Consensus Regarding the Location and Extent of Receiving Areas.** Communities must develop consensus regarding which areas will receive higher densities than what is allowed under existing zoning. Higher density development is a difficult, politically charged topic in communities and often requires a significant outreach effort to gain acceptance. Detailed discussion regarding the intensity and types of use should be a part of the TDR planning process.

**Infrastructure that can Support Increases in Density.** Another critical element to TDR program is the district(s) to which increased growth will be directed. Communities should be able to identify areas where existing infrastructure can accommodate higher densities. Infrastructure concerns include wastewater, water supply, traffic, and other utilities. Market considerations should also be evaluated when residential and/or commercial development rights may be transferred as the market in receiving areas must be able to support increased densities.

**A Clearly Written Bylaw.** TDR legislation can become very complex as municipalities attempt to create guidelines for market transactions with various incentives to the development community. The goal of a community should be to develop a concise permitting process that does not add unnecessary layers of review for the development community. Bylaws should include an attractive incentive for TDR transactions in the form of density above that otherwise possible in the receiving zone.

**Strong Market Conditions.** The goal of increased density in receiving areas must be supported by a strong market demand for either residential or commercial development. Communities should consider enlisting the help of a qualified real estate or economic development professional to assess whether the market in receiving areas is strong enough to support increases in growth.

**TDR Credit Bank.** Due to the complexity of TDR transactions, the timing involved with buying, selling, and developing properties may not always be seamless. In the event that specific elements of a transaction are delayed, it may be beneficial for a community to establish a TDR Credit Bank where development rights can be temporarily stored before being purchased by a developer. Communities can also use these banks to store credits that are purchased by the Town for parcels of high conservation priority.

**A Sophisticated Reviewing/Permitting Authority.** The permitting authority for a TDR transaction should have a clear understanding of the program guidelines to ensure that development rights and density increases are correctly calculated in permit applications. Reviewing agencies should also be able to prioritize those design elements that are most important to the final project and identify alternative approaches that may simplify the application process.

**Open Communication between Local Agencies.** The permitting authority for TDR transactions should have access to other agencies that may help to clarify opportunities or constraints associated with either the sending or receiving districts. Inter-agency cooperation can be formally integrated into the review process using the provisions of the TDR bylaw where commentary may be required from other agencies such as the Conservation Commission, the Board of Health or the Town Engineer. Other agencies or groups that could be involved in the review process, formally or informally, include local watershed groups, the local Open Space Committee, or the Agricultural Commission.

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## Implementation

**Background Research:** Completion of a real estate market analysis (REMA) is highly recommended. The overall purpose of the analysis is to validate the transfer system prior to the adoption of the implementing bylaw or ordinance. Demand for growth is necessary for TDR to succeed, and a REMA will determine market strength. It will also help a community comprehend land values and the types of growth that the market will support. Knowing the economic value of development rights generated in the sending area and the capacity of the market to absorb that value in the receiving zone is critical. Moreover, a community must ensure that the rate of transfer (the number of development rights generated multiplied by the expected sale price of each right) adequately compensates the landowner in a sending area for forgone development on their parcel. Similarly, an understanding of the value of additional density in the receiving area is important to establishing the amount of additional density permitted per credit acquired. The REMA completed by Woolwich, NJ is an excellent example.

**Drafting the Bylaw or Ordinance:** The process typically begins with translation of master plan goals into preservation or "sending areas" and specific development districts or "receiving areas." Once these areas are identified, zoning by-law amendments can be drafted and adopted which authorize landowners in the sending areas to sell their development and developers in receiving areas to grow more intensely by purchasing them.

### 1. Designate sending areas

Sending areas are portions of the community that are ideal for preservation and very limited or no development. These are often areas of agricultural, environmental or historic importance. To preserve these areas, TDR enables landowners to sell the development rights associate with their property, thus transferring development to more appropriate areas.

### 2. Designate receiving areas

The preservation of agricultural lands conserves prime agricultural soils. The protection of naturally vegetated open space conserves wildlife habitat and maintains recharge to groundwater.

### 3. Create a formula for allocating rights

The development rights or credits can be assigned in a variety of ways, and can accommodate transfers involving (and between) residential, commercial, and industrial uses. Perhaps the simplest way to calculate the number of credits allocated to landowners in the sending area would be to make them equal the number of potential building lots in the sending area. The resulting number of credits generated could then be used as a starting point for calculating the amount of additional density each acquired credit provides in the receiving area.

### 4. Determine the value of a credit in the receiving area

After determining the number of credits generated in the sending zone(s) the community should be sure that more density is possible in the receiving zones than the number of generated credits will allow. This will help create demand for credits. Each credit acquired by a developer or landowner in the receiving zone must also have more "value" in additional density than its acquisition cost. In turn, the acquisition cost must be sufficient to compensate the landowner in the sending area. Due to the potential complexity of these calculations municipalities are encouraged to complete and use a REMA to determine credit values.

### 5. Establish administrative/permitting procedures

Administration of TDR systems requires different permitting procedures than conventional zoning. Communities should be prepared to address the recording of deed restrictions, tracking of credits, and other tasks associated with TDR.

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## Benefits

Transfer of Development Rights benefits communities by providing a mechanism with which to achieve a municipality's land protection goals without spending local money. Market forces are harnessed to protect land while also encouraging greater prosperity, and tax revenue, in suitable locations of the community. Local governments also spend less for ongoing maintenance, as roads and other infrastructure are reduced and concentrated in city and town centers and other suitable locations as discussed under financial consideration below.

Depending on the design of the program, the benefits of TDR are also evident in how TDR implements many of the Patrick Administration's Sustainable Development Principles including:

- **Concentrate Development and Mix Uses:** TDR is designed to curb sprawl and encourage development in areas with adequate infrastructure.
- **Use Natural Resources Wisely:** The preservation of agricultural lands conserves prime agricultural soils. The protection of naturally vegetated open space conserves wildlife habitat and maintains recharge to groundwater.
- **Protect Land and Ecosystems:** Conservation restrictions that may be placed on sending areas can provide permanent protection for wildlife habitat and significant cultural or historic landscapes.
- **Expand Housing Opportunities:** TDR programs create higher density neighborhoods and can be designed with density bonuses or approval contingencies based on the inclusion of affordable housing in the receiving district.

## Benefits



**TDR** provides several financial benefits to local governments, private developers, and the general community. First of all, limiting development in outlying open space or agricultural areas will reduce municipal infrastructure costs that would result from large scale subdivision development. Preservation of these areas therefore decreases the local tax burden required to keep pace with sprawl. Conversely, because this technique does not limit the overall development potential within a community, the act of preserving land does not translate into a loss for the community's tax base. In addition, TDR allows a community to preserve land without using public funds, a cost that otherwise would be borne by the municipality's taxpayers.

Land owners in sending areas and private developers can realize significant financial gains through TDR programs especially if development rights are increased through density bonuses during the transaction. In these instances, land-owners in the sending areas can actually demand a higher price for their land than if they were to convert it to residential development. Developers in the receiving district can also realize a higher investment on their property when it is developed at a higher density than what was allowed under conventional zoning.

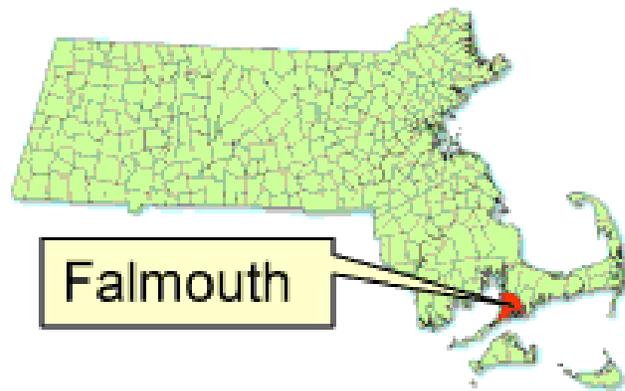
## Case Study

The Town of Falmouth is a coastal community rich in natural resources including marine recharge areas, Areas of Critical Environmental Concern (ACEC's), and aquifers for municipal water supply. As with many communities in Massachusetts, local decision makers realized that considerable tracts of open space were zoned for residential sprawl in many of these resource areas. As part of a suite of zoning based tools targeted toward more efficient use of undeveloped land, Falmouth adopted one of the Commonwealth's first TDR Bylaws.

### The Program

The Falmouth TDR Bylaw was originally accepted at Town Meeting in 1985 and has been amended several times since then. The Bylaw establishes "donor" and "receiving" districts based on a variety of criteria such as allowable use and the size of the parcel(s) in either district. Donor districts were originally established based upon existing Chapter 61A parcels, recharge areas to sensitive surface waters or the contributing zones to the public water supply. Since then, the Bylaw has been amended to include ACEC's and the Coastal Resources Overlay in the donor district areas. Receiving areas are listed in the zoning bylaw and include those districts already zoned for residential use.

The program can only function as part of a subdivision application and adds a Special Permit requirement. However, this additional requirement is streamlined by having the Planning Board named as the permitting authority for both requirements. Furthermore, incentives are added in the form of density bonuses. These bonuses are awarded according to a detailed schedule listed in the Bylaw. Bonuses vary between 20 to 40 percent depending on which area is sending and which area is receiving.



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### **McKenna Ridge Road**

This subdivision is one of several success stories in Falmouth implemented through the TDR Program. The donor parcel identified in this instance was located in the Water Resource Protection District and covered approximately 12.5 acres. Yield calculations developed for the parcel showed that six lots could reasonably be developed under the standard subdivision process. Because the developer was using the TDR Program, he was granted a 20% increase on this base yield value, bringing the yield value up to eight lots.



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