

# *A New Day for Transfer of Development Rights in Massachusetts*

Massachusetts Land Conservation Conference  
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# Rural/natural lands provide many benefits...

## Ecological:

- climate regulation
- carbon sink
- watershed protection
- nutrient cycling
- erosion control
- biodiversity, habitat

## Human:

- tax revenue
- climate change mitigation
- employment
- clean air & drinking water
- local food
- local wood
- hunting, fishing, recreation
- aesthetic enjoyment

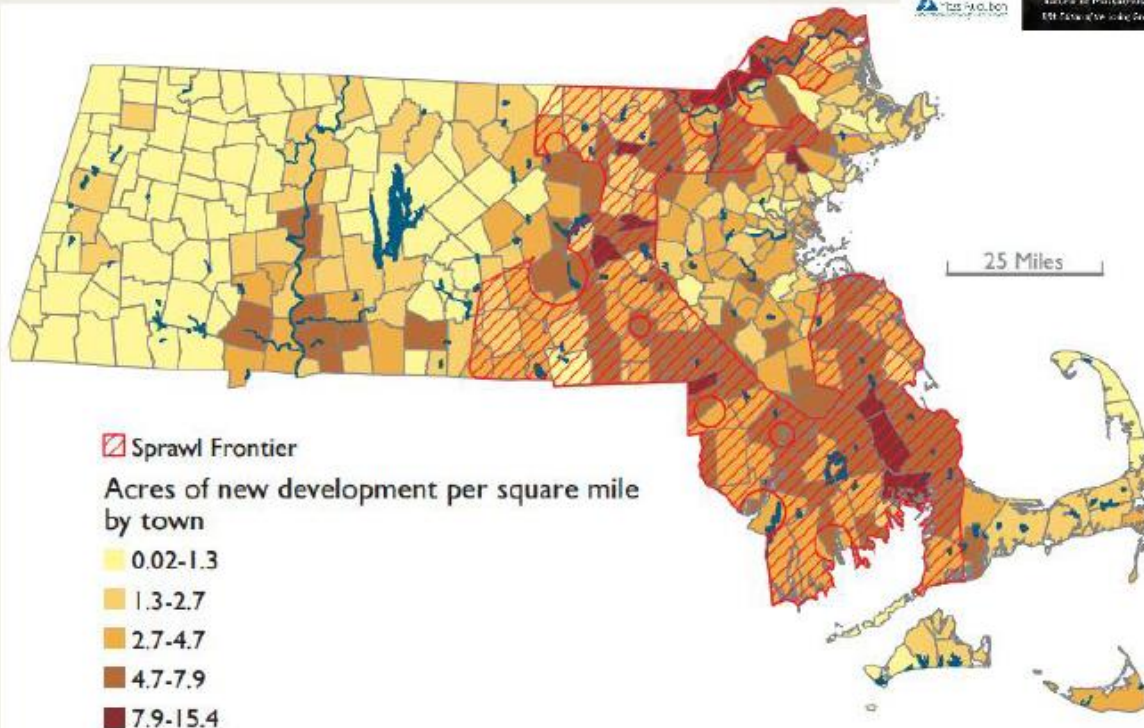
## ...as does smart development.

- Less traffic & more walking and biking
- Lower infrastructure and service costs
- Less land, water, & energy use
- More diverse & affordable housing

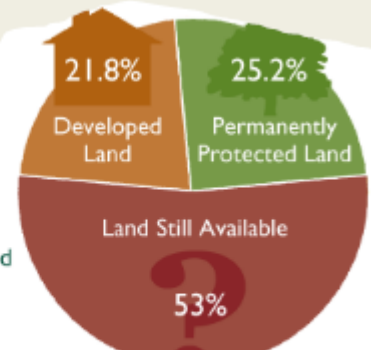
Mass Audubon's "Losing Ground" tells us that sprawl continues, that >80% of land is developed for housing, that 53% of MA is still available, & that >1/2 of remaining land has high conservation value

## What's the problem?

Development is sprawling



As of 2013, **over half** of the land in Massachusetts had not yet been protected or developed.



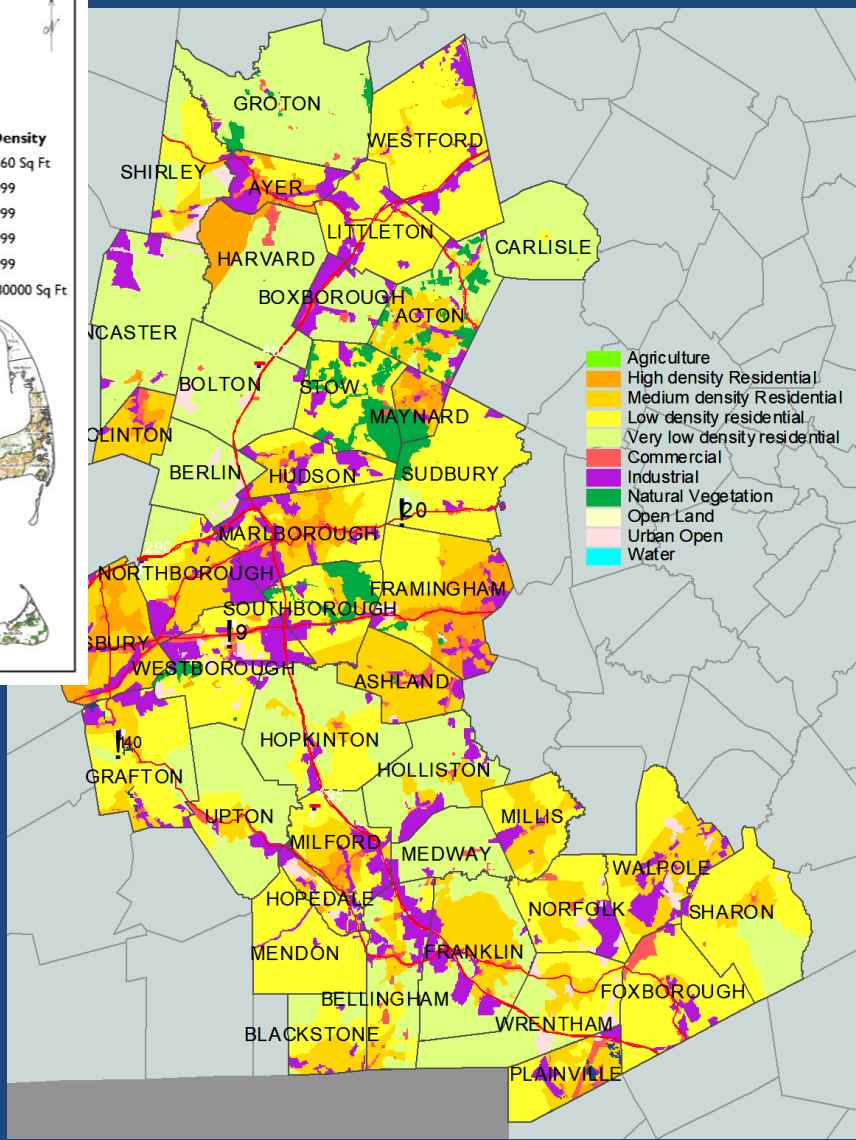
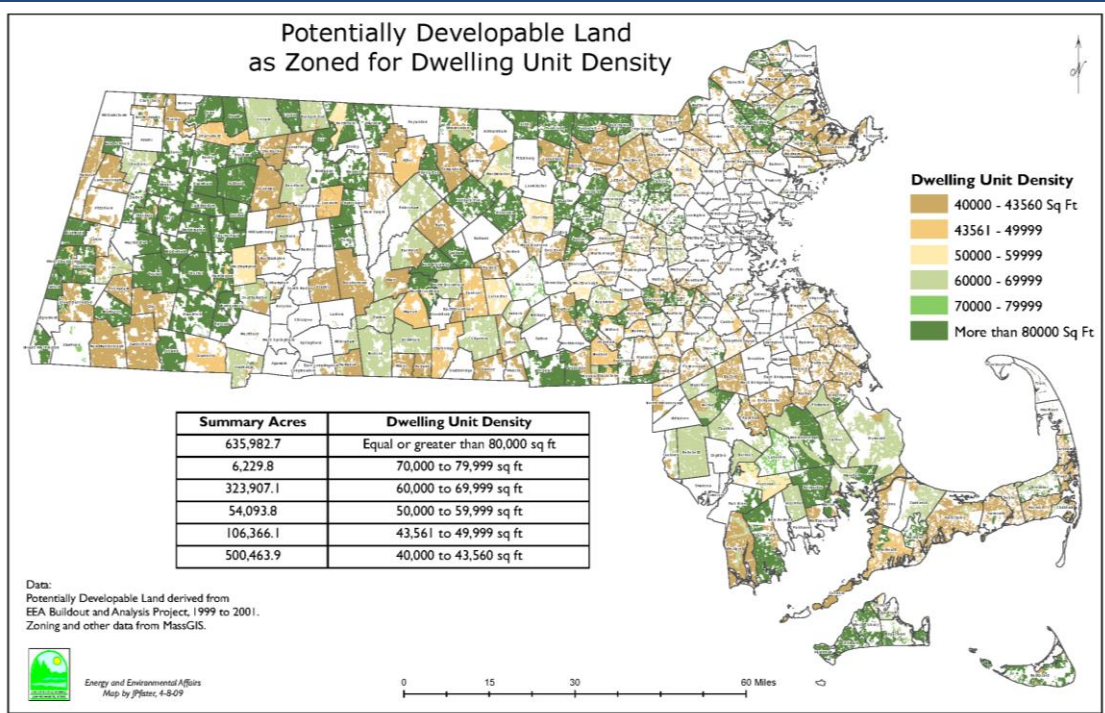
### Planning for the Future



of the remaining unprotected land is of **high conservation value.**  
(BioMap 2)

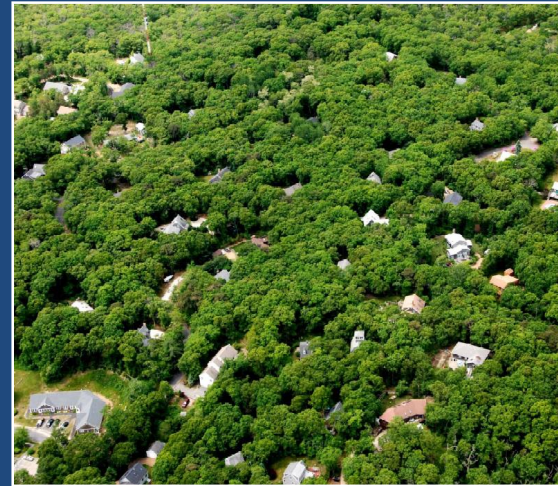
As development pressures increase, we can plan our land use for both a **strong economy** and a **safe, healthy environment.**

# A Rationale for TDR Zoning:



Much of MA is zoned for land consumptive large lot single family development, & for car-dependent single-use projects

# Zoning can achieve something better than this! Including permanent land conservation!



Plus, it's much cheaper to rezone than to buy land  
Acquisition is an important, but not an inexpensive, protection strategy

# Development patterns based on conventional zoning create less than optimal conditions

**Underdeveloped  
Commercial Centers**



**Overdeveloped  
Residential Sprawl**



# Transfer of Developments Rights Two-Fold Objective

**Concentrate  
Development in Growth  
Centers**



**Permanently  
Preserve Existing  
Open Space**





# Transfer of Developments Rights The Concept

Owner of "sending" parcel sells development rights in exchange for permanent conservation easement.



Owner of "receiving" parcel buys development rights to build at densities higher than allowed under base zoning.

# Statutory TDR Definitions

**Transfer of Development Rights Zoning or TDR Zoning: Zoning that authorizes transfer of development rights by permitting landowners in specific preservation areas identified as sending areas to sell their development rights to landowners in specific development districts identified as receiving areas.**

**Transfer of Development Rights: The process by which the owner of a parcel may convey development rights, extinguishing those rights on the first parcel and where the owner of another parcel may obtain and exercise those rights in addition to the development rights already existing on that second parcel.**

# Model Zoning TDR Definitions

**Development Rights: The amount of development that could take place on a tract of land under Zoning**

**Sending Areas: Areas identified as priorities for preservation or significant decreases in development [Locations growth is to moved from]**

**Receiving Area: Areas that have potential to support more development than what is allowed by existing bylaws and/or regulations [Locations growth is to be moved to]**

**TDR Credit Bank: A third party entity that can store, administer, and sell development rights.**

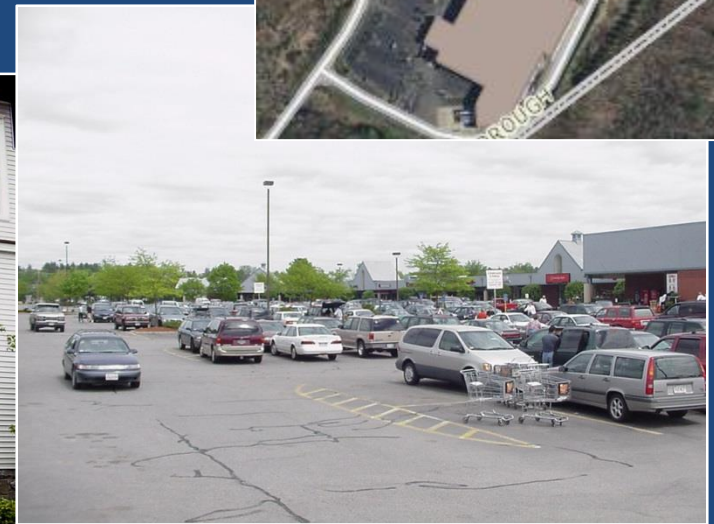
# Potential Sending Areas

- Prime Agricultural Lands
- Chapter 61 parcels
- Large Tracts of Unprotected Open Space
- Aquifer Protection Overlays
- Areas of Critical Environmental Concern
- Habitat for Rare and Endangered Species
- Watersheds to Sensitive Surface Waters
- Historic Districts or Structures



# Potential Receiving Areas

- Village Centers
- Transportation Nodes
- Commercial or Industrial Districts
- Areas Served by Infrastructure
  - Centralized Water Supply
  - Centralized Sewer System
  - Public Transportation Routes



# MA Smart Growth/Smart Energy Toolkit



**Smart Growth / Smart Energy Toolkit**

HOW TO USE THIS TOOLKIT | INTRODUCTION | STATE POLICIES AND INITIATIVES

**Home**

Modules  
Case Studies  
Slideshows  
Model Bylaws

**Traditional Neighborhood Development (TND)**

**In Brief:** TND, also known as "new urbanism", "neo-traditional" or village-style development, includes a variety of housing types, a mix of land uses, an active center, a walkable design, and often a transit option within a compact neighborhood scale area either as infill in an existing developed area or as a district scale project.

**The Problem**

**Traditional Neighborhood Development** seeks to remedy the most pressing

- Website that is user friendly, comprehensive, & MA focused
- Integrated materials on each smart growth technique to promote understanding and local passage of new zoning bylaws
- Case studies show real world implementation, many in Massachusetts communities

## Smart Growth / Smart Energy Toolkit Modules -Transfer of Development Rights (TDR)

Learn about the Smart Growth/Smart Energy Transfer of Development Rights (TDR) module.

### Overview

TDR is a regulatory strategy that harnesses private market forces to accomplish two smart growth objectives.

1. 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.
2. Other locations, such as city and town centers or vacant and

### RELATED

[Case Studies - Transfer of Development Rights \(TDR\) →](#)

Feedback



### Transfer of Development Rights

*The following bylaws were developed for the Transfer of Development Rights (TDR) and Agricultural Preservation modules of the Smart Growth Toolkit. Because this technique has been successfully applied toward preserving agricultural lands in other parts of the country, a TDR model bylaw was developed that is specifically designed for communities with large tracts of agricultural lands that may be developed in the future.*

*TDR Programs are perhaps more complex than any other "Smart Growth" approach presented in this toolkit. Combining free market forces with local legislation requires local officials to walk a fine line between enabling creative development and imposing enforceable limitations on undesired growth. When examining TDR programs that have been successful in other parts of the United States, there is one general but strong pattern that is common to most: the proverbial "carrot and stick" approach. Whether through the use of disincentives in "sending districts", incentives in "receiving districts" or some combination, a successful program will make TDR the most attractive choice to landowners in*

[http://www.mass.gov/envir/smart\\_growth\\_toolkit/](http://www.mass.gov/envir/smart_growth_toolkit/)



Transit Oriented Design district will use Chapter 40R provisions to allow for expanded higher density housing opportunities.



Higher density housing will be connected to transit center with period lighting and walkways.



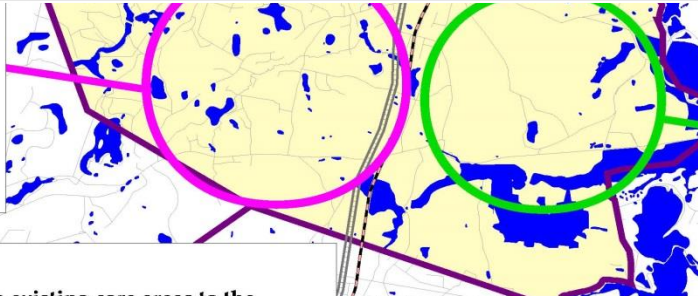
Transit center characterized by small-scale commercial development in classic village center design. Incorporates second story housing opportunities.



# Sending and Receiving Areas are Best Identified Through A Comprehensive Planning Process



Revise Zoning Bylaw to ensure OSRD and LID techniques are applied to areas with significant development potential.



Existing farmland identified as high acquisition priority through Open Space and Recreation Plan. Funding sources could include Self-Help Program, Community Preservation Act or Agricultural Preservation Restriction.

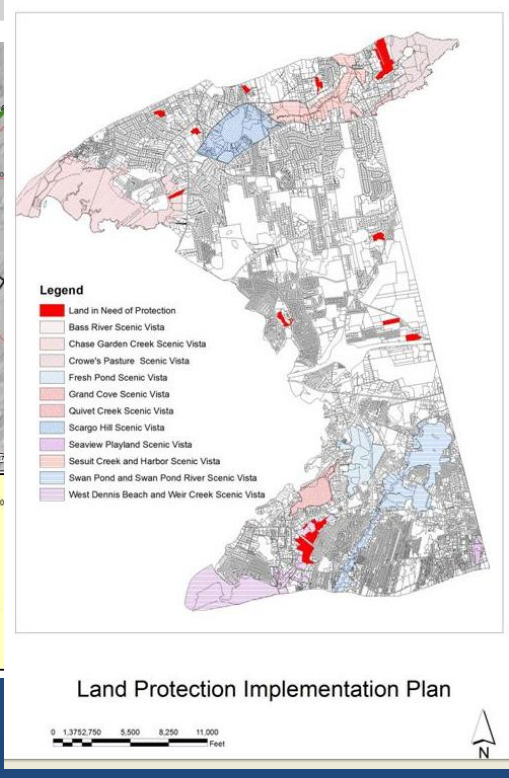
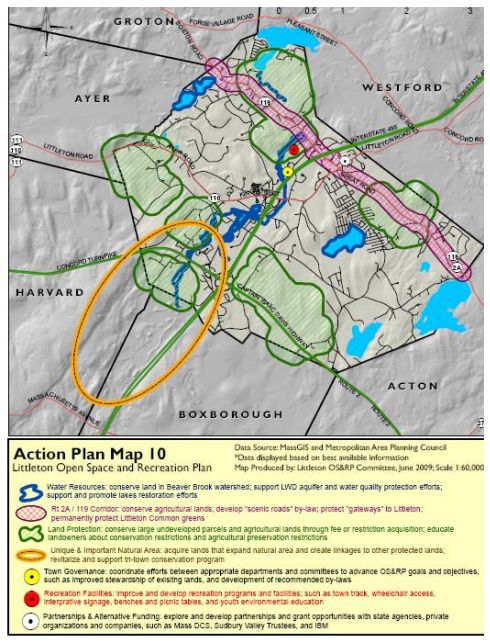
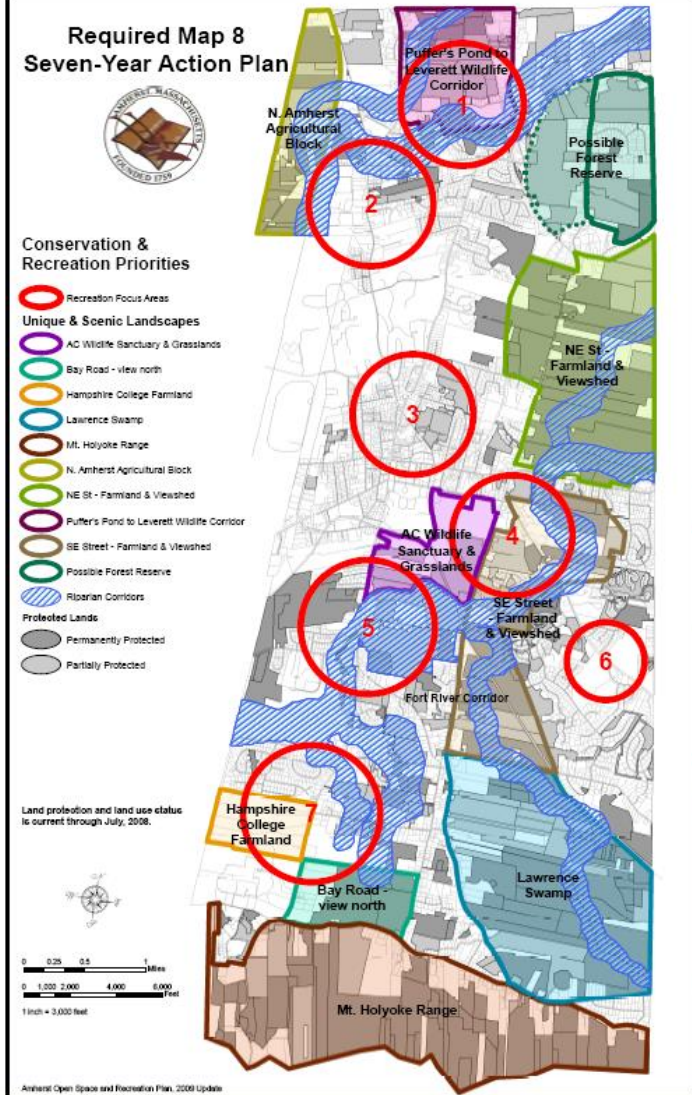
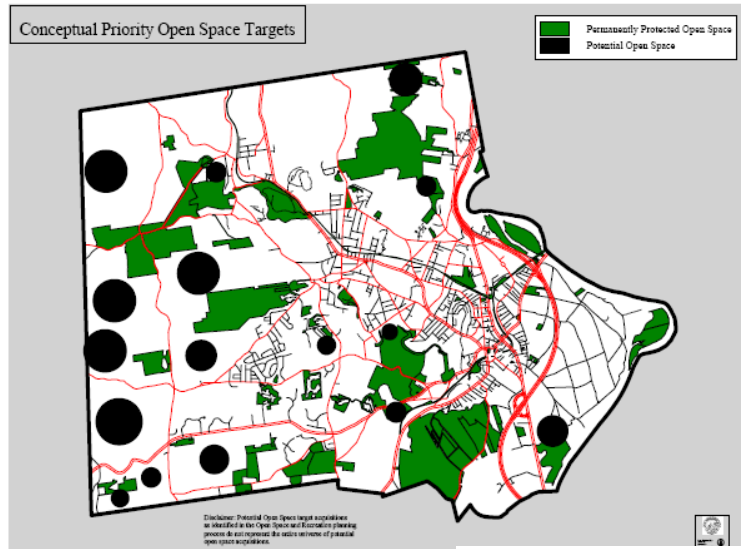
**Master Plan Goals:**

1. Direct new development to the existing core areas to the greatest extent possible.
2. Develop standards and bylaws that result in more sustainable development of existing green space.
3. Facilitate sustainable increases to affordable housing stock.
4. Revitalize downtown area with flexible zoning provisions that focus on Transit Oriented Design.

**Legend**

- Infill Opportunity Areas
- Open Space Priority
- Significant Developable Greenspace
- Collector Streets
- Commuter Rail Line
- ★ Transit Center

# Open Space Plans can guide selection of sending areas





# Implementing TDR

## The Basic Questions

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- Clearly Defined Sending and Receiving Areas
  - “What are the resources we need to protect?”
  - “Where can we handle increases in development capacity?”
- Adequate Administrative Capacity
  - “Do we have a permitting body that clearly understands the program?”
  - “Do we need a TDR Credit Bank?”
  - “Will the City/Town play a role in establishing the value of development rights or will the market be used to establish value?”

# Implementing TDR

## Understanding the Market

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### Market Analysis

- Is the market for development in the Receiving Areas strong enough to draw investment in higher densities?
- How do property values compare between Sending and Receiving Areas?

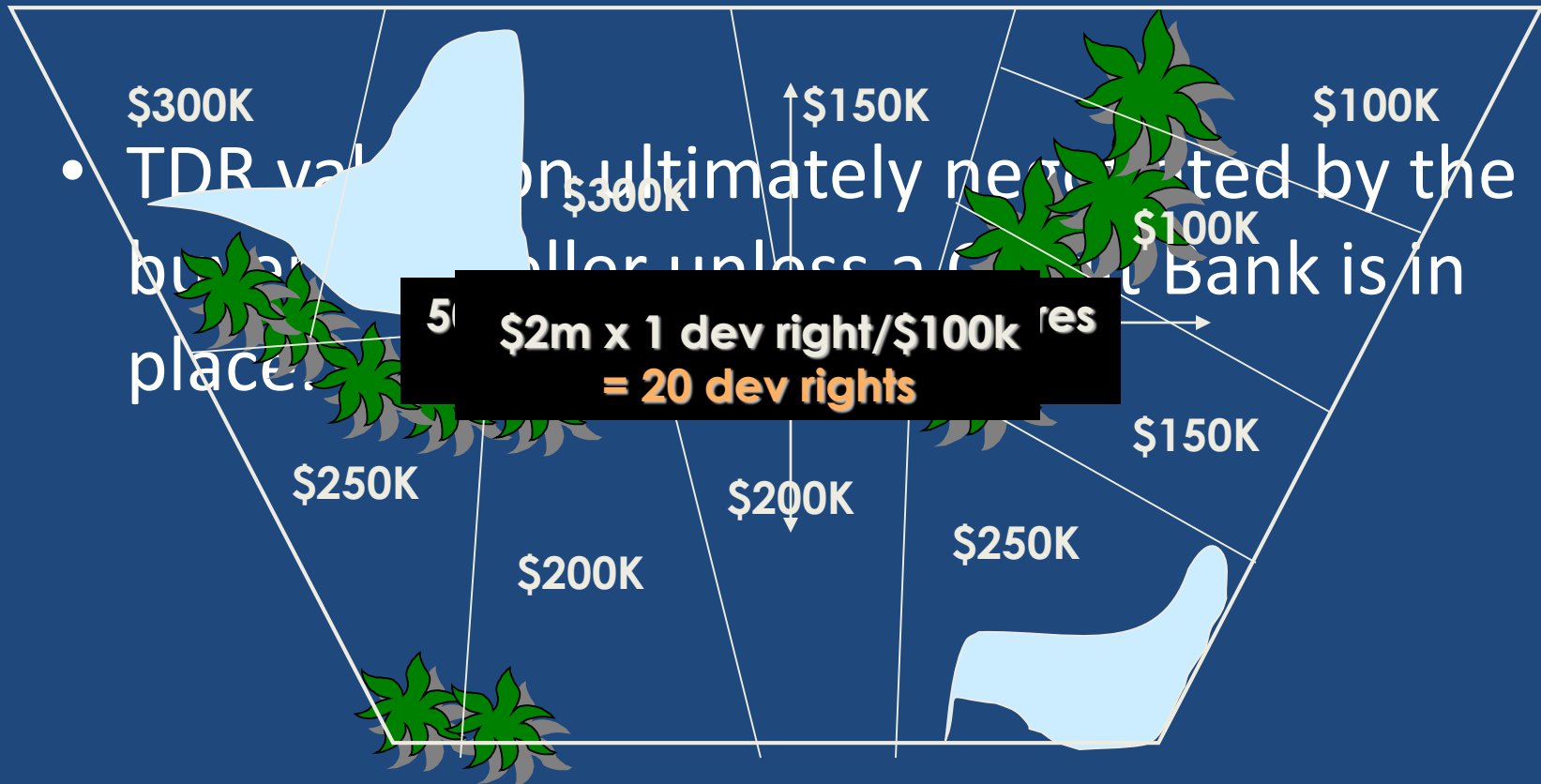
USE A QUALIFIED PROFESSIONAL TO DEVELOP AN UNDERSTANDING OF THE EXISTING MARKET.

# Implementing TDR

## Valuation of Development Rights

- Common methods of TDR valuation

### Maximum developable area (Yield Plan)



- TDR value is ultimately determined by the buyer or seller unless a TDR Bank is in place.

# Implementing TDR

## Disincentives in the Sending Area

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Reduce development potential in Sending Areas through increased minimum lot size.

**Example:**  
**Sending Area Overlay**  
**Original Minimum Lot Size = 1 acre**  
**Revised Minimum Lot Size = 10 acres**

NOTE: ALLOW TDR AT ORIGINAL DENSITY TO PROVIDE INCENTIVE AND PROTECT LAND OWNER'S INVESTMENT

Note: Equity should always be a consideration for political if not legal reasons

# Implementing TDR

## Incentives in the Receiving Area

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Density Bonuses could provide a fixed percentage increase in development rights over and above the Sending Area yield or a specified increase in allowable density

### **Example:**

**“The number of Development Rights that can be transferred from the Sending Area shall be 1.5 times the amount of Development Rights determined from a Yield Plan”**

CAUTION: DENSITY BONUSES CAN SIGNIFICANTLY INCREASE THE DEVELOPMENT POTENTIAL OF A RECEIVING DISTRICT

# The Toolkit Includes Case Studies:

## CASE STUDY Falmouth, MA

Sending Areas Identified through Careful Planning Process:

- Water Resource Protection District
- Chapter 61A Parcels
- Areas of Critical Environmental Concern
- Coastal Resource Overlay District



## CASE STUDY

### Seattle, Washington

Complex urban TDR Program relies heavily on a TDR Credit Bank to facilitate transactions.

#### Primary goals:

- Preserve Historic Structures
- Preserve Existing Affordable Housing
- Incentives for Varied Building Scale
- Infill Development of Compatible Character



YMCA Building Restoration

W Hotel Development



## CASE STUDY

### Montgomery County, Maryland

Sending Area identified as 90,000 acres of undeveloped agricultural land. Area down-zoned from 5-acre minimum lot size to 25-acre minimum. Development rights can be traded at the original density.



Receiving areas identified by proximity to existing infrastructure. Density bonuses awarded at varied scaled depending on the location of the Receiving Area.

TDR has big, unrealized in MA, potential

## Rationale for a State TDR Loan Fund:

- Enables a city/town to act as a “Credit Bank” without using local money to capitalize the bank
- Reduces concern that there will be no buyer for rights (a particular worry when utilizing an incentive that reduces on-site yield) and that no rights will be available to purchase
- Enables split transactions
  - Transactions need not be direct or contemporaneous
  - Seller w/out a direct/immediate buyer
  - Buyer can buy from the community instead of a private seller
  - A municipality can buy rights from land it really doesn't want developed, and sell the credits later.

# TDR Revolving Fund Process:

1. Pass TDR zoning
2. Create a local transfer of development rights revolving fund under MGL Ch. 44 Sec. 53E½
3. Apply to EEA for loan eligibility “Pre-Approval”
  - Zoning must meet certain basic standards (see next slide)
4. Receive certification of eligibility





# TDR Revolving Fund Process (cont'd):

5. ID development rights to buy & apply to EEA for a loan
6. Receive a loan & contract with EEA
7. Purchase Rights (conserve sending area) following MGL Ch. 30B
  - Record CR (APR or WPR)
8. Market & Sell Rights (develop receiving areas more densely) following MGL Ch. 30B (at a profit OR loss)
9. Repay Loan (within 5 years, or start paying interest)



# Zoning Standards:

- Mechanisms in place to acquire, retain, & sell development rights (process)
- Sending area(s) have sufficient conservation value to meet restriction approval standards (public benefit)
- Requires permanent conservation of sending parcels
- Requires recording of restrictions at the Registry
- Receiving area(s) can accommodate transferred rights
- Mechanisms in place to create, track, & record development rights certificates (i.e. properly handle a new type of legal document)

Commonwealth of Massachusetts  
Department of Housing and Community Development

## THE ZONING ACT

TABLE OF PRINCIPAL USES  
PRINCIPAL USES listed in this Table are subject to provisions in some

| PRINCIPAL USES                                      | RESIDENTIAL DISTRICTS                         |     |    |     | VILLAGE DISTRICTS |     |     |     | OFFICE DISTRICTS |    |    |    | SIGN CODES |
|---|---|-----|----|-----|-------------------|-----|-----|-----|------------------|----|----|----|------------|
|   | R-1<br>R-2<br>R-3<br>R-4<br>R-5<br>R-6<br>R-7 | R-8 | VR | EAV | EV-2              | NAV | SAV | WHV | OP-2             | OC | LB |    |            |
| <b>10 GENERAL USES</b>                              |   |     |    |     |                   |     |     |     |                  |    |    |    |            |
| 10.1 Recreation                                     | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 10.2 Communication                                  | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 10.3 Recreation                                     | SP  | SP  | SP | SP  | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| <b>11 RESIDENTIAL USES</b>                          |   |     |    |     |                   |     |     |     |                  |    |    |    |            |
| 11.1 Single Family Dwelling                         | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | N                | N  | N  | Y  |            |
| 11.2 Two-Family Dwelling                            | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | N                | N  | N  | Y  |            |
| 11.3 Multi-Family Dwelling                          | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | N                | N  | N  | Y  |            |
| 11.4 Home-Based Business                            | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | N                | N  | N  | Y  |            |
| <b>12 COMMERCIAL, PROFESSIONAL, AND PUBLIC USES</b> |   |     |    |     |                   |     |     |     |                  |    |    |    |            |
| 12.1 Office   | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 12.2 Retail   | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 12.3 Professional                                   | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 12.4 Home-Based Business                            | SP  | SP  | SP | SP  | N                 | N   | N   | N   | SP               | SP | SP | SP |            |
| 12.5 Public or Private Club, Franchise              | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 12.6 Child Care Facility                            | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| 12.7 Other Public Use                               | SP  | SP  | SP | SP  | SP                | SP  | SP  | SP  | SP               | SP | SP | SP |            |
| 12.8 Professional Services Center                   | SP  | SP  | SP | SP  | SP                | SP  | SP  | SP  | SP               | SP | SP | SP |            |
| 12.9 Professional Office                            | SP  | SP  | SP | SP  | SP                | SP  | SP  | SP  | SP               | SP | SP | SP |            |
| 12.10 Business Office                               | SP  | SP  | SP | SP  | SP                | SP  | SP  | SP  | SP               | SP | SP | SP |            |
| 12.11 Business Office, Professional Office          | SP  | SP  | SP | SP  | SP                | SP  | SP  | SP  | SP               | SP | SP | SP |            |
| 12.12 Business Office, Professional Office          | Y   | Y   | Y  | Y   | Y                 | Y   | Y   | Y   | Y                | Y  | Y  | Y  |            |
| <b>13 INDUSTRIAL USES</b>                           |   |     |    |     |                   |     |     |     |                  |    |    |    |            |
| 13.1 Heavy Industrial                               | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| 13.2 Light Industrial                               | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| 13.3 Light Industrial, Office                       | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| 13.4 Professional Office                            | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| 13.5 Professional Office & Dwelling                 | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |
| 13.6 Home-Based Business, Professional Office       | N   | N   | N  | N   | N                 | N   | N   | N   | N                | N  | N  | N  |            |

**ZONING MAP**  
Town of  
ACTON, MASSACHUSETTS  
Map No. 1  
Map No. 4  
Zoning Amended through  
December 2017

Town of Acton  
Planning Department, 2018  
(parcels amended through 2017)

Scale  
1" = 2,000' Net  
AppGeo

# EEA will provide a model TDR Certificate



 **Southampton Town  
Transfer of Development  
Rights (TDR) CERTIFICATE**

This certifies that: \_\_\_\_\_ hereby own(s)  
\_\_\_\_\_ SOUTHAMPTON TOWN TDRs

And that a deed restriction concerning that property  
and lot \_\_\_\_\_ situated in the Town of:  
Liber \_\_\_\_\_ at Page \_\_\_\_\_

THIS CERTIFICATE ENTITLES THE OWNER  
AS PROVIDED IN THE TOWN C  
AND PURSUANT TO TOWN BOARD A

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



## TDR CERTIFICATE

APPLICATION No. \_\_\_\_\_ (to be completed by the County)

**Beaufort County Community Development Department**  
100 Ribaut Road / Room 115 / County Administration Building  
Beaufort, South Carolina 29902  
Phone: 843-255-2140 / Fax: 843-540-9432

Application/Certificate number: \_\_\_\_\_ Date issued: \_\_\_\_\_

District Map/Parcel Number of Sending Area Parcel \_\_\_\_\_

Sending area that generated the TDRs: \_\_\_\_\_

Number of TDRs generated by the recorded easement: \_\_\_\_\_

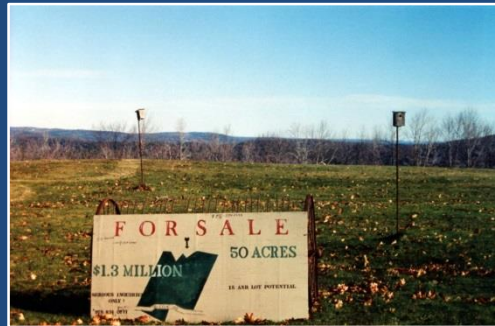
TDR easement is recorded at Book \_\_\_\_\_ Page \_\_\_\_\_

The serial number assigned to each TDR associated with this certificate and TDR easement are:  
\_\_\_\_\_

Examples from New  
York & South Carolina

# Municipal Responsibilities: Post Loan

- Follow state procurement law (30B) when buying/selling rights
- Determine, on case-by-case basis, who will hold the restriction (i.e. the community or a land trust)
- Make sure restrictions are recorded at the Registry of Deeds
- Monitor restrictions going forward
- Track & record Development Rights Certificates with the Clerk & Registry
- Keep records of all transactions involving restrictions & Certificates, & report annually to EEA
- Keep records of all financial transactions , track the TDR revolving fund balance, & report annually to EEA
- Repay the loan (or incur interest after 5 years or the potential withholding of local aid after 10 years)



# What if something goes wrong?

- If the community buys but can't sell the credits, TDR isn't realized, but the community has competed a conservation purchase.
- Risk that the rights can't be sold is with the community, not EEA
- If a city/town gets the zoning wrong, it still must repay EEA
- Zoning could be modified to create greater incentive for the use of rights
- A loan could be repaid from other funds (do the math)
- After 10 years EEA can ask that the principal & interest be taken from local aid

# What's Next: Steps to Implementation

- Create the state TDR Revolving Fund that was authorized
- Convene Informal Steering Committee
- Draft & Issue Regulations (follow specified process)
  - Public hearing/comment period
- Create a TDR Program at EEA to administer the Fund
- Develop/Issue Application & Guidance Documents
- Establish Review Team (EOHED, DHCD, ...)
- Capitalize the Revolving Fund
  - Possible we could see qualified communities apply for loans in FY20, more likely FY21.
  - Anticipating the need for loan funds in FY21

# Planning Assistance Grants:

**Eligibility:** Cities & towns, regional planning agencies, & RPAs on behalf of communities

**Purpose:** Fund the professional help & public process needed to plan & zone for land conservation & development consistent with the Sustainable Development Principles

**Timing:**

- RFR Release – Late March or early April
- Applications Due – Late May
- Awards Made – June
- Work done by June 30, 2021 (end of fiscal year 2021)

**Funding Available:** \$500,000 FY20 and \$500,000 FY21

**Grant Amount:** Maximum of \$50,000 (criteria favor smaller amounts)

**Match Required:** 25%; could be in-kind services of a professional planner



# Planning Assistance Grants (cont'd):

Project Eligibility: Most land use related activities with preference for “action” & “Set Asides” for projects in a few categories that will compete among themselves:

- **Zoning resulting in permanent land conservation (e.g. NRPZ or TDR)**
- Zoning for sustainable housing production (e.g. ADUs, 40R , TOD, Mixed-Use)
- Mitigation of climate change through zoning that addresses energy use & GHG emissions

## Evaluation Criteria:

- Advances sustainable development by directly, quickly, & significantly improving growth;
- Utilizes funding efficiently;
- Implements a Master, Climate Change, Open Space, or other Plan;
- Involves more than one municipality collaborating regionally;
- Provides a match above the required 25%;
- Implements a Smart Growth Toolkit technique;
- Advances a Community Compact Best Practice commitment; and
- Demonstrates consistency with the MA Sustainable Development Principles





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