

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 most situations.

Disincentives to development in sending districts often come in the form of increasing lot size requirements in the base zoning, thereby decreasing the overall development potential of these resource areas. Other disincentives may come in the form of increased permitting requirements in response to the sensitive nature of these areas. Incentives in receiving districts can be crafted as density bonuses awarded as a part of a TDR transaction, or in response to more desirable development approaches such as the inclusion of affordable housing or bicycle/pedestrian amenities.

Another element of TDR that can enhance the program’s effectiveness is a TDR Credit Bank. These banks provide a means to store development rights that have been purchased from sending areas if an opportunity has not yet been identified for development in the receiving area. This mechanism can be very useful if the timing of a particular property sale in the sending area is not concurrent with the developer’s efforts in the receiving area. Due to the complexity of real estate and development transactions, this may happen often. The bank could also be useful to communities that have an opportunity to purchase the rights to a parcel of high conservation interest but have not yet identified a parcel that could receive the increased density.

To function efficiently, a TDR credit bank should be controlled by a third party organization that is empowered to negotiate the value of development rights and sell them when the opportunity arises. This third-party entity could be a non-profit corporation or an agency that already operates in the community. Massachusetts legislation does not provide specific guidance for establishing a TDR credit bank so the conditions under which these agencies are established and operate will be unique to each community. Communities would need to decide, for example, if the agency would be established under a General Bylaw or would exist outside of the community’s regulatory structure. As a result of this variability, the model bylaws developed here do not provide the language by which a community would establish a TDR bank.

These model bylaws provide two separate approaches to TDR programming: one approach relies heavily on restrictions in sending areas as a disincentive to developing those lands while the other relies more on bonuses in receiving areas as an incentive to looking elsewhere for higher economic gain. The first approach will be more applicable to communities that are less comfortable with an overall increase in buildout and are focusing primarily on preserving existing resource areas. These communities will be more rural in nature, may not have established centralized water supply or wastewater services, and may not have reached a point in their economic development where they can concretely define a well-developed activity center. Under this first approach, no net increase or decrease of development potential occurs.

The second approach may be better suited to more suburban communities that are anxious to curb the existing sprawl pattern of development while fostering growth levels and densities that are higher than what existing zoning allows in specific areas. These communities would typically have partial sewer and water supply networks and well-established activity centers that can absorb higher densities. Using this approach, the community could realize a significant overall increase in development potential.

The critical issue in drafting a TDR bylaw is to ensure that a comprehensive planning approach is used to identify other areas within the existing bylaw that will need to be made consistent with the new program. For example, if a receiving district is zoned exclusively for commercial development, it will be more difficult to transfer development rights from residentially zoned parcels. Likewise, if a receiving area is zoned exclusively for single family housing, it may be difficult to accommodate the increase in density from a proposed TDR transaction. Other more specific zoning-related questions that should be considered include, but are not limited to:

- Are parking requirements in receiving areas defined in a way that can properly accommodate a mix of uses or increases in density? (i.e., Is there enough space?)*
- Should limitations on height be re-examined in the receiving districts in order to properly accommodate increases in development density?*
- Are there other dimensional regulations in the receiving district that may hamper the success of a TDR transaction such as Floor to Area Ratio or limits on impervious cover?*

The answers to these questions will obviously vary from one community to another. The bylaw developed for this toolkit assumes that the planning process has identified zoning inconsistencies and that the TDR bylaw will be presented as part of a package of zoning amendments for the City or Town to consider.

The following bylaw adapted selected sections from the Cape Cod Commission's Model Transfer of Development Rights Bylaw, which was drafted by Horsley & Witten, Inc. and the law firm Robinson and Cole. The major strength of the Commission's model bylaw is the recognition that preservation areas in Massachusetts will not always be defined by vast contiguous reaches of open space or farmland. This has been the case in many areas around the country where TDR programs have already been successful such as Montgomery County, Maryland and the Pinelands of New Jersey. However in Massachusetts, areas of preservation interest such as agricultural operations, Areas of Critical Environmental Concern (ACEC's), or isolated pockets of forest often cover much smaller tracts of land and can represent a fragmented patchwork of parcels across a single community. As such, designating "sending areas" may not be as straightforward as with other more rural situations across the country.

As with all major bylaw changes in any community, drafting, adopting and implementing a TDR bylaw (with other associated amendments) should follow a comprehensive planning assessment. Previous planning efforts may have already been completed by a City or Town including inventorying Chapter 61 parcels, completing an Open Space and Recreation Plan, adopting a Master Plan, establishing groundwater protection areas, completing habitat studies, or establishing an Agricultural Commission. These activities create valuable planning resources that can inform the designation of sending and receiving districts and provide significant levels of support for outreach efforts during the development of a TDR program. It should be noted that commencing a planning process of this nature could result in several subdivision Preliminary Plan submittals as landowners in the Sending Areas attempt to protect their ability to develop at the original densities.

TRANSFER OF DEVELOPMENT RIGHTS MODEL BYLAW (PRESERVATION APPROACH)

1.0 Purpose:

This bylaw establishes two distinct overlay districts in [INSERT NAME OF TOWN]: the Preservation District and the Receiving District. The bylaw establishes specific development regulations and guidelines for the Preservation District and also enables the transfer of development rights from the Preservation District to the Receiving District. The goals of this bylaw are to:

- (a) Provide land owners with the ability to purchase and sell development rights;
- (b) Preserve sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, public access to surface waters;
- (c) Steer development away from sensitive resource areas to places better suited to increased levels of development such as established mixed use, commercial or residential centers; and
- (d) Steer development to areas served by existing infrastructure such as established roadways, public water supply system, the centralized sewer collection system, public transit and other utilities.

The purpose and intent provisions describe why the bylaw has been developed and what purposes it intends to serve. It is partly an educational component to help the public and the users of the bylaw understand what transferable development rights are and how they might be used to preserve special areas.

2.0 Definitions

2.1 Development Rights. Those rights to develop, expressed as the maximum number of dwelling units for residential parcels or square feet of gross floor area for non-residential parcels, that could be permitted on a designated sending parcel under the applicable zoning and subdivision rules and regulations in effect on the date of the transfer of development rights. Determination of the maximum number of development rights available for transfer shall be made by the SPGA as part of a Yield Plan.

Development rights are used to measure density that can be transferred out of the Preservation District and into the Receiving District. For this model bylaw, dwelling units per acre for residential parcels and gross floor area for non-residential parcels were used as units of measure for development rights.

In residential zones of comparable land values, each lot, regardless of size, might have one development right associated with it. Other scenarios might involve a scaled approach to account for a wide disparity in property values. In a non-residential zone, each parcel would have associated with it the number of square feet of building that could be built in a maximum buildout scenario.

It is important to note that there are TDR programs in other parts of the country that use different mechanisms to quantify and trade development rights. Credits for sewer system flow, traffic generation, and pollutant loading values such as pounds of nitrogen represent other quantifiable mechanisms that could be traded between properties.

2.2 Non-residential Use. For the purposes of this bylaw, Non-Residential Use shall include any use allowed in the following districts [INSERT APPROPRIATE REFERENCE TO COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL ZONING].

This definition is important as development rights for these uses can be transferred from Preservation Districts to Receiving Districts. Deferring to the full range of uses already allowed in the Zoning Bylaw provides the applicant with a logical framework for approaching these proposals and ensures that something not previously allowed in a Receiving District will be proposed.

2.3 Preservation District. An overlay zoning district established by the [Town Meeting or City/Town Council] upon recommendation from the SPGA as an area in which use or development should be restricted. The Preservation District also serves as a “sending area” from which development rights may be transferred to a Receiving District.

An overlay district is a type of district that lies on top of another and either adds certain regulations to that area or alters those that are already in place. Regulations on development in the Preservation District and transferable densities are provided in two separate models.

2.4 Receiving District. An overlay zoning district established by the [Town Meeting or City/Town Council] upon recommendation from the SPGA as an area suitable to receive transferred development rights.

The Receiving District is another overlay zone which is likely to be one that has some special ability to take on extra density. The Receiving District in most towns will probably have public water and sewer, an improved road infrastructure, and sufficient land and market demand to absorb additional density. As much care must be taken in identifying and delineating Receiving Districts as in identifying the Preservation Districts. Sensitivity must be given to the land economics -- will there be sufficient demand in the Receiving District to encourage the sale and transfer of development rights from the Preservation District?

2.5 Residential Use. For the purposes of this bylaw, residential use shall include any allowable residential use identified in [INSERT REFERENCE TO ALLOWABLE USES SECTION OF ZONING BYLAW].

2.6 SPGA. Special Permit Granting Authority. For the Purposes of this Bylaw, the SPGA shall be the Planning Board.

2.7 Transfer of Development Rights (TDR). The transfer from a sending parcel to a receiving parcel of development rights.

This is the actual transfer or movement of the development rights from one parcel to another. This is done by a legal instrument in the form of a contract which is able to be recorded on the land records.

2.8 Yield Plan. A conceptual site plan demonstrating the extent of development that could occur on a Preservation District parcel in accordance with the provisions of this Bylaw and other provisions of the Zoning Bylaw as they are applicable.

3.0 Establishment of District Overlays

1.1 Preservation Districts

Preservation Districts are overlay districts, shown on the zoning [map](#) on file with the Town Clerk entitled [INSERT TITLE] and dated [INSERT CITATION] and include the following resource areas.

- Wellhead protection areas.
- Potential public water supply areas as identified in the Town’s Master Plan.
- Land designated under G.L. c. 61, 61A and/or 61B.
- Locations of historic and/or cultural significance.
- Land areas providing public access to an ocean, forest or other resource.
- Areas of Critical Environmental Concern
- Prime Farmland
- Areas identified as Priority Habitat or Estimated Habitat for Rare or Endangered Species by the Natural Heritage Endangered Species Program.

The areas listed above represent a list of potential preservation areas that could be included in the Sending District inventory. Not all of these areas will be applicable to each Massachusetts community and there may be other candidates that are not listed here. The list illustrates how communities can draw from existing state level resource protection programs as well as local initiatives to bring several different resource protection efforts into a single growth control mechanism.

3.2 Receiving Districts

Receiving Districts are overlay districts, shown on [REFERENCE MAP ON FILE WITH CITY/TOWN CLERK], in districts/zones in the Town defined as a growth activity center by the local comprehensive plan and/or zoning bylaw/ordinance and shall not include any areas included within Section 3.1.

As part of the planning process associated with developing a TDR program, it is critical to consider the cost of development when comparing sending and receiving districts. The delineation of these receiving districts should, to the greatest extent possible, provide a sharp contrast with regard to the cost of developing infrastructure. Developers will be more inclined to pay higher prices for open space areas if there will be a substantial savings in roadway development, provision of water supply, wastewater disposal and other utilities in the receiving district. Communities that have partial sewerage or centralized water supply should carefully integrate these service envelopes into the delineation of receiving areas. Communities should also consider opportunities for inter-municipal agreements, particularly where sending area boundaries overlap town/city lines. Where Zone 2 areas or habitat corridors cross into another community, that neighboring city/town could be eligible to participate in the program by sending rights into the identified receiving district. A sample map was developed for this Toolkit that illustrates an example of where this could occur.

As part of the overall planning process, communities will need to identify existing limitations on density in the receiving area that need to be changed to accommodate increased development rights.

Limitations on building height and excessive parking requirements are two examples of existing provisions that may act as hurdles to the TDR process. Local officials will want to examine these bulk and density regulations to ensure that TDR processes will not be encumbered by variance requests.

Outreach efforts will also be a critical component of identifying receiving areas as “density” is often perceived as a negative thing by current residents. The planning process for TDR should be incorporated into a larger Master Plan effort wherever possible. Regardless, a significant level of public involvement will be required in which concrete and attractive images are used to accurately represent the benefits that can occur from higher densities in identified growth centers.

3.3 Parcels Partially Contained in Preservation Districts

Where the boundary of a Preservation District divides a lot, only that portion of the lot within the Sending District can be used to quantify Development Rights. The amount of residential or non-residential development that may be transferred shall be determined by the amount of development shown within the Preservation District on the Yield Plan as described in Section 6.1 below.

This model bylaw requires a Yield Plan to determine the number of development rights that can be transferred from the Sending Area. Communities may want to remove this requirement if they are comfortable with a simpler calculation based solely on the area of the parcel in the sending area. For example, in a zone that allows density at one unit per acre, a 15-acre parcel would simply be assigned 15 transferable units. Communities will have to closely examine existing constraints in Sending Areas such as pervasive wetlands. In these instances, the bylaw should specify that yield will be based on the gross area of upland. Regardless of existing constraints, it is reasonable to assume that using site area alone will increase the number of transferable development rights since roadways and utilities are not considered. This may act as a powerful incentive, but local decision makers will need to be aware of how this will increase the density in receiving areas.

Although some of the sending areas identified in Section 3.1 are specific to parcels such as Chapter 61 lands, most of the sending area overlays offered as examples do not respect property boundaries. As a result, it is essential to clarify how the community will consider parcels that are only partially contained in Sending District overlays. The Receiving District will be delineated using parcel boundaries and therefore there will be no divided parcels in that overlay district.

4.0 Transfer of Development Rights Program Guidelines

This Section creates a significant disincentive to development in preservation areas by increasing the minimum lot size to five times the existing base zoning. The purpose of this is to lay the foundation for a TDR incentive which allows development rights to be traded at the original density. For the purposes of illustration, the base zoning minimum lot size is shown in two different residential zones. These zones require one-acre or two-acre minimum lot sizes as is common in many rural and suburban communities in Massachusetts.

The political difficulties associated with “down-zoning” are acknowledged by the developers of this toolkit. It is therefore understood that passing a bylaw that significantly decreases “by right” development potential may pose significant challenges to local officials. However, this option is

included because of its simplicity, clarity and proven success in programs like Montgomery County, Maryland. Furthermore, discussions with many communities in Massachusetts have demonstrated that landowners of so called “resource” parcels are often looking for ways to preserve their land while realizing a return on their investment. In communities with a significant number of Chapter 61 parcels, for example, landowners may support an increase in minimum lot size requirements if they know that the TDR program offers the possibility of a “sale price” at the original density. If local decision makers do not wish to pursue this particular approach, density incentives can be provided for TDR transactions. These are described in detail in the second TDR Bylaw.

4.1 Minimum Lot Size for Residential Parcels in the Preservation District

The minimum lot sizes for parcels within the Preservation District are summarized in the following table. All other dimensional and bulk regulations in the underlying Districts shall remain the same.

District	Base Zoning Minimum Lot Size	Minimum Lot Size
Residential-1 (R-1)	2 acres	20 acres
Residential-2 (R-2)	1 acre	10 acres

For all other Zoning Districts in the Town, minimum lot size within the Preservation District shall remain the same as summarized in [CITE ORIGINAL TABLE FROM THE ZONING BYLAW FOR DIMENSIONAL REGULATIONS].

The table above uses typical Massachusetts residential zone densities as an example of how the table would be presented. What is important here is to include all residential districts in the table with significant increases in minimum lot size. Commercial and other non-residential districts can be included in this table with similar reductions in allowable density.

4.2 Transfer of Development Rights

Land owners in the Receiving District as identified in Section 3.2 of this Bylaw may purchase development rights from a land owner in the Preservation District as part of a Special Permit application to the SPGA. Transfer of Development Rights for Residential Use (as defined in Section 2.5) may only be made to Receiving District parcels where some form of Residential Use is allowed by right. Likewise, Transfer of Development Rights for Non-Residential Use (as defined in Section 2.2) can only be made to Receiving District parcels where some form of Non-Residential Use is allowed by right.

The program is designed to allow for Transfer of Development Rights between subsets of these larger use categories. For example, the rights derived from single-family home lots in the Preservation District can be used to develop condominiums in a Receiving District as long as condominiums are allowed in the underlying Zoning District. Likewise, the rights derived from a retail parcel in the Preservation District could be used to develop office space in the Receiving District as long as office space is allowed by the underlying Zoning District.

The above provision is designed to maintain certain limitations on the uses that can be transferred between districts while allowing flexibility when it comes to larger use “categories”. These guidelines set up a two-prong test. First, are the units of Development Rights consistent (i.e., number of housing units versus square footage of floor area)? Second, is the proposed use in the Receiving District allowed by right? A successful transfer will necessarily require both conditions to be true.

The approach described in this bylaw only allows residential development rights to be transferred to residential zones and, likewise, non-residential development rights can be transferred to zones that allow for this use. There are programs in existence, including one in Hadley, MA, where residential rights can be transferred to non-residential zones. In other words, units of housing are converted to square footage of commercial space through the TDR process. This type of approach may be more politically acceptable to residents that are concerned over potential increases in residential development. A detailed market analysis would be required by a qualified real estate professional to determine the exchange rate between residential and non-residential development rights.

4.3 Determining Development Rights for Residential Development

Transfer of Development Rights for residential development shall be performed on a “per unit” basis. The amount of development rights (potential dwelling units) vested in residential zones within the sending areas is summarized in the table below.

Zoning District	Transferable Density
Residential-1 (R-1)	1 unit per 2 acres
Residential-2 (R-2)	1 unit per acre

The Transferable Density outlined above for each of these Zoning Districts is the original density allowed by right in the underlying district regulations. This provision answers to the dramatic increase in minimum lot size outlined in Section 4.1 as it allows the land owner in the Receiving District to realize the value of his/her property that was anticipated under the original Zoning Bylaw provisions.

Perhaps the most important element to identifying these guidelines is a serious consideration of the market forces that will influence TDR transactions. The schedule described above is a simple approach to exchanging development rights in between areas of comparable market value. Valuation of development rights is a complex process that may require the assistance of a real estate or economic development professional. In cases where the real estate value of a sending area parcel (e.g., waterfront property) is significantly out of balance with property values in the receiving area (e.g., depressed commercial center) a scaling formula will need to be developed that ensures each land owner receives a fair deal. In the scenario described above, a developer would be expected to pay prime real estate prices to develop in a “low-end” area. In this situation, he or she would want to receive multiple development rights for a single lot purchase.

The number of units that may be transferred shall be determined through the development of a Yield Plan for the sending area site as described in Section 6.1 below. Using the prescribed density above, the dimensional and bulk regulations of the underlying zoning, and the existing Subdivision Rules and Regulations, the Applicant shall submit a Yield Plan with the application for Special Permit showing the number of lots that could be developed under these regulations.

4.4 Determination of Development Rights for Non-Residential Development

Transfer of Development Rights for Non-Residential Use shall be performed on a “square footage” basis as it applies to gross floor area. Transferable square footage shall not apply to other aspects of the development such as parking areas, stormwater BMP’s, or other structural aspects of a development. The applicant shall demonstrate to the satisfaction of the Planning Board that these other structural aspects of the development are adequately addressed in the Receiving District through the required Site Plan. The number of square feet for a Non-Residential Use that may be transferred from a sending area shall be determined through a Yield Plan as described in Section 6.1 below.

5.0 Pre-Application.

5.1 Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the SPGA shall invite the Conservation Commission, Board of Health, Historical Commission, and [INSERT THE NAMES OF ANY OTHER APPROPRIATE BOARDS]. The purpose of a pre-application review is to minimize the applicant’s costs of engineering and other technical experts, and to commence negotiations with the SPGA at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed Transfer of Development Rights, seek preliminary feedback from the SPGA and/or its technical experts, and set a timetable for submittal of a formal application. The SPGA may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD Special Permit.

5.2 Submittals. In order to facilitate review of the OSRD at the pre-application stage, applicants are strongly encouraged to submit a Site Context Map. This map illustrates the location of parcels within their respective Districts (Preservation and Receiving). Basic information regarding the size of each parcel, the status of ownership and general location of resource areas in the Preservation District. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature non-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property.

6.0 Application for Special Permit.

An application for a Special Permit for a Transfer of Development Rights shall be submitted on the form(s) provided by the SPGA [REFERENCE ANY SPECIFIC APPLICATION FORMS FOR THE MUNICIPALITY]. Applicants for a Transfer of Development Rights shall also file with the SPGA [INSERT APPROPRIATE NUMBER OF COPIES] copies of a Concept Plan. The Concept Plan shall include a Yield Plan for the Preservation District and a Site Plan for the Receiving District [see Sections 6.1 and 6.2 below]. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

Depending on the requirements of the local Subdivision Rules and Regulations, the requirements for a Concept Plan can be made identical to the requirements for a Preliminary Plan, to specific sections of a Definitive Plan or, if applicable, to elements of the Site Plan Approval requirements. The most important objective is to make these requirements overlap. Applicants should be able to use the TDR process to satisfy elements of the subdivision or site plan approval process wherever possible. The goal is to create complementary permitting processes, not to make the applicant duplicate his or her efforts during design.

6.1 **Yield Plan.** Applicant shall submit a Yield Plan for the Preservation District parcel that illustrates the number of units of residential development or Gross Floor Area for non-residential development that could be developed in the underlying district using the guidelines provided in Section 4.0 of this Bylaw. A Yield Plan shall include:

- (a) Parcel boundaries, north point, date, legend, title “Yield Plan,” and scale.
- (b) The name and address of the record owner or owners, the applicant, and the design engineer that prepared the plan.
- (c) The location and description of the Preservation District(s) that apply to the site.
- (d) The names, approximate location, and widths of adjacent streets.
- (e) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (f) Lines showing potential residential or non-residential lots with approximate areas and frontage dimensions, or unit placements and proposed common areas.
- (g) Footprints of non-residential buildings with an accompanying calculation of the potential Gross Floor Area.
- (h) Location and extent of parking, landscaping, stormwater management, and wastewater management service areas that would be required to accommodate the use.

6.2 **Site Plan.** A Site Plan for the proposed Receiving District shall be prepared by a Massachusetts Registered Professional Engineer and shall address the general features of the land, and give approximate configurations of the lots, buildings, and roadways. Where a Preliminary Plan has already been developed as part of a formal subdivision process, this may be submitted as a Site Plan to the SPGA. The Sketch Plan shall include the following where applicable:

- (a) The subdivision name, boundaries of all lots, north point, date, legend, title “Concept Plan,” and scale.
- (b) The name and address of the record owner or owners, the applicant, and the design engineer that prepared the plan.
- (c) The names, approximate location, and widths of adjacent streets.

- (d) Existing and proposed structures, fences and walls.
- (e) Locations and dimensions of walkways, driveways, parking areas, loading and service areas, parking space dimensions and screening.
- (f) Location of on-site wells, waterlines and all subsurface utilities.
- (g) Location of any proposed dumpster areas.
- (h) Architectural plans with building elevations
- (i) Proposed erosion control measures
- (j) Drawings of proposed signs
- (k) Lighting Plan showing the location, type and intensity of lighting for the site
- (l) Landscape Plan showing the location and type of plants used for aesthetics, screening, and/or stormwater mitigation on the site.
- (m) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level.
- (n) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (o) Proposed roadway grades.
- (p) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the SPGA. However, a narrative explanation shall be prepared by a Massachusetts Registered Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.
- (q) A narrative explanation prepared by a Massachusetts Registered Professional Engineer proposing systems for stormwater drainage and likely impacts on-site and to any abutting parcels of land.
- (r) A narrative explanation prepared by a Massachusetts Registered Professional Engineer, detailing the proposed drinking water supply system.
- (s) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.
- (t) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose.

(u) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

Again, it is critical that the requirements listed above for a Site Plan mirror the requirements of the local Subdivision Rules and Regulations and/or Site Plan Review in order to streamline the permitting process. Where there are specific requirements in other local regulations that would satisfy the goals of this section, these requirements could simply be referenced here in place of listing all of the requirements.

6.3 Procedures. Whenever an application for a Transfer of Development Rights Special Permit is filed with the SPGA, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plans, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the SPGA within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the SPGA is held prior to the expiration of the thirty-five-day period, the SPGA shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the SPGA shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

6.4 Condition of Approval. The SPGA shall require, as a condition of Special Permit approval under this bylaw, that the record owner of sending parcel(s) in the Preservation District record at the Registry of Deeds a Conservation Restriction set forth in Section 7.3.

7.0 Title Recordation, Tax Assessment and Restriction of Development Rights

7.1 All instruments implementing the transfer of development rights shall be recorded in the manner of a deed in the Registry of Deeds of the jurisdiction for both sending and receiving parcels. The instrument evidencing such TDRs shall specify the lot and block number of the sending parcel(s) and the lot and block number of the receiving parcel(s).

7.2 The Town Clerk shall procure all pertinent information required by the Town Assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDRs from the Registry of Deeds for both the sending parcel(s) and receiving parcel(s).

7.3 The record owner of the sending parcel(s) shall, within forty-five (45) days of receipt of a special permit authorizing TDRs, record at the Registry of Deeds a Conservation Restriction as defined by G.L. c. 184 §§31-33 running in favor of the town, the state or an independent trust prohibiting, in perpetuity, the construction, placement or expansion of any new or existing structure or other development on said sending parcel(s). Evidence of said recording shall be transmitted to the SPGA of the town in which the restriction has been placed, indicating the date of recording and deed book and page number at which the recording can be located. The grant of the special permit to transfer development rights shall be conditioned upon such restriction, and no special permit for a transfer of development rights shall be effective until the restriction noted above has been recorded at the Registry of Deeds.

Commentary: This section requires the conveyance documents to be recorded in the Registry of Deeds in the jurisdiction for both the sending and receiving parcels so that they are of record and lenders and perspective purchasers and others interested in the status of title will know that the property has been permanently restricted. The bylaw is presented here with the assumption that the land in the sending district will be preserved in its entirety. Communities could consider establishing restrictions that limit the amount of development in the sending area. However, reducing the development density should be carefully considered as the resulting lower density could still create a sprawl situation.

Importantly, these transfers are going to have an impact on real property taxes. Where properties are restricted in a Preservation District, their taxes should decrease. This is a substantial incentive for the transfers. On the other hand, in the Receiving Districts, the additional density approved as part of the transfer is likely to enhance property values and result in somewhat higher taxes.

The restrictions recorded at the Registry of Deeds also help ensure that the preserved properties will not be developed. It is important to note with landowners in the sending areas that they can still use their land while it remains in their ownership. This is particularly important in the preservation of agricultural lands. Farmers will be more receptive to the program if they clearly understand that the land can continue production after the development rights are sold.

Please note that a Conservation Restriction is not effective for purposes of this bylaw and does not acquire perpetual status until the restriction has been approved by the Secretary of Environmental Affairs, as specified in G.L. c. 184 §§31-32. Therefore, the applicant for a TDR must commence the conservation restriction approval process well in advance of the anticipated date of receipt of the Special Permit.

8.0 Severability:

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

Commentary: This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.

TRANSFER OF DEVELOPMENT RIGHTS MODEL BYLAW (DENSITY BONUS APPROACH)

1.0 Purpose:

This bylaw establishes two distinct overlay districts in [INSERT NAME OF TOWN]: the Preservation District and the Receiving District. The bylaw establishes specific development regulations and guidelines for the Preservation District and also enables the transfer of development rights from the Preservation District to the Receiving District by Special Permit. The goals of this bylaw are to:

- (a) Provide land owners with the ability to purchase and sell development rights;
- (b) Preserve sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, public access to surface waters;
- (c) Steer development away from sensitive resource areas to places better suited to increased levels of development such as established mixed use, commercial or residential centers; and
- (d) Steer development to areas served by existing infrastructure such as established roadways, public water supply system, the centralized sewer collection system, public transit and other utilities.

Commentary: The purpose and intent provisions describe why the bylaw has been developed and what purposes it intends to serve. It is partly an educational component to help the public and the users of the bylaw understand what transferable development rights are and how they might be used to preserve special areas.

2.0 Definitions

2.1 Development Rights. Those rights to develop, expressed as the maximum number of dwelling units for residential parcels or square feet of gross floor area for non-residential parcels, that could be permitted on a designated sending parcel under the applicable zoning and subdivision rules and regulations in effect on the date of the transfer of development rights. Determination of the maximum number of development rights available for transfer shall be made by the SPGA as part of a Yield Plan.

Development rights are used to measure density that can be transferred out of the Preservation District and into the Receiving District. For this model bylaw, dwelling units per acre for residential parcels and gross floor area for non-residential parcels were used as units of measure for development rights.

In residential zones of comparable land values, each lot, regardless of size, might have one development right associated with it. Other scenarios might involve a scaled approach to account for a wide disparity in property values. In a non-residential zone, each parcel would have associated with it the number of square feet of building that could be built in a maximum buildout scenario.

It is important to note that there are TDR programs in other parts of the country that use different mechanisms to quantify and trade development rights. Credits for sewer system flow, traffic generation, and pollutant loading values such as pounds of nitrogen represent other quantifiable mechanisms that could be traded between properties.

2.2 Non-residential Use. For the purposes of this bylaw, Non-Residential Use shall include any use allowed in the following districts [INSERT APPROPRIATE REFERENCE TO COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL ZONING].

This definition is important as development rights for these uses can be transferred from Preservation Districts to Receiving Districts. Deferring to the full range of uses already allowed in the Zoning Bylaw provides the applicant with a logical framework for approaching these proposals and ensures that something not previously allowed in a Receiving District will be proposed.

2.3 Preservation District. An overlay zoning district established by the [Town Meeting or City/Town Council] upon recommendation from the SPGA as an area in which use or development should be restricted. The Preservation District also serves as a “sending area” from which development rights may be transferred to a Receiving District.

An overlay district is a type of district that lies on top of another and either adds certain regulations to that area or alters those that are already in place. Regulations on development in the Preservation District and transferable densities are provided in two separate models.

2.4 Receiving District. An overlay zoning district established by the [Town Meeting or City/Town Council] upon recommendation from the SPGA as an area suitable to receive transferred development rights.

The Receiving District is another overlay zone which is likely to be one that has some special ability to take on extra density. The Receiving District in most towns will probably have public water and sewer, an improved road infrastructure, and sufficient land and market demand to absorb additional density. As much care must be taken in identifying and delineating Receiving Districts as in identifying the Preservation Districts. Sensitivity must be given to the land economics -- will there be sufficient demand in the Receiving District to encourage the sale and transfer of development rights from the Preservation District?

2.5 Residential Use. For the purposes of this bylaw, residential use shall include any allowable residential use identified in [INSERT REFERENCE TO ALLOWABLE USES SECTION OF ZONING BYLAW].

2.6 SPGA. Special Permit Granting Authority. For the Purposes of this Bylaw, the SPGA shall be the Planning Board.

2.7 Transfer of Development Rights (TDR). The transfer from a sending parcel to a receiving parcel of development rights.

This is the actual transfer or movement of the development rights from one parcel to another. This is done by a legal instrument in the form of a contract which is able to be recorded on the land records.

2.8 Yield Plan. A conceptual site plan demonstrating the extent of development that could occur on a Preservation District parcel in accordance with the provisions of this Bylaw and other provisions of the Zoning Bylaw as they are applicable.

3.0 Establishment of District Overlays

3.1 Preservation Districts

Preservation Districts are overlay districts, shown on the zoning [map](#) on file with the Town Clerk entitled [INSERT TITLE] and dated [INSERT CITATION] and include the following resource areas.

- Wellhead protection areas.
- Potential public water supply areas as identified in the Town’s Master Plan.
- Land designated under G.L. c. 61, 61A and/or 61B.
- Locations of historic and/or cultural significance.
- Land areas providing public access to an ocean, forest or other resource.
- Areas of Critical Environmental Concern
- Prime Farmland
- Areas identified as Priority Habitat or Estimated Habitat for Rare or Endangered Species by the Natural Heritage Endangered Species Program.

The areas listed above represent a list of potential preservation areas that could be included in the Sending District inventory. Not all of these areas will be applicable to each Massachusetts community and there may be other candidates that are not listed here. The list illustrates how communities can draw from existing state level resource protection programs as well as local initiatives to bring several different resource protection efforts into a single growth control mechanism.

3.2 Receiving Districts

Receiving Districts are overlay districts, shown on the zoning map, in districts/zones in the Town defined as a growth activity center by the local comprehensive plan and/or zoning bylaw/ordinance and shall not include any areas included within Section 3.1.

As part of the planning process associated with developing a TDR program, it is critical to consider the cost of development when comparing sending and receiving districts. The delineation of these receiving districts should, to the greatest extent possible, provide a sharp contrast with regard to the cost of developing infrastructure. Developers will be more inclined to pay higher prices for open space areas if there will be a substantial savings in roadway development, provision of water supply, wastewater disposal and other utilities in the receiving district. Communities that have partial sewerage or centralized water supply should carefully integrate these service envelopes into the delineation of receiving areas.

As part of the overall planning process, communities will need to identify existing limitations on density in the receiving area that need to be changed to accommodate increased development rights. Limitations on building height and excessive parking requirements are two examples of existing provisions that may act as hurdles to the TDR process. Local officials will want to examine these bulk and density regulations to ensure that TDR processes will not be encumbered by variance requests.

Outreach efforts will also be a critical component of identifying receiving areas as “density” is often perceived as a negative thing by current residents. The planning process for TDR should be incorporated into a larger Master Plan effort wherever possible. Regardless, a significant level of public involvement will be required in which concrete and attractive images are used to accurately represent the benefits that can occur from higher densities in identified growth centers.

3.3 Parcels Partially Contained in Preservation Districts

Where the boundary of a Preservation District divides a lot, only that portion of the lot within the Sending District can be used to quantify Development Rights. The amount of residential or non-residential development that may be transferred shall be determined by the amount of development shown within the Preservation District on the Yield Plan as described in Section 7.1 below.

This model bylaw requires a Yield Plan to determine the number of development rights that can be transferred from the Sending Area. Communities may want to remove this requirement if they are comfortable with a simpler calculation based solely on the area of the parcel in the sending area. For example, in a zone that allows density at one unit per acre, a 15-acre parcel would simply be assigned 15 transferable units. Communities will have to closely examine existing constraints in Sending Areas such as pervasive wetlands. In these instances, the bylaw should specify that yield will be based on the gross area of upland. Regardless of existing constraints, it is reasonable to assume that using site area alone will increase the number of transferable development rights since roadways and utilities are not considered. This may act as a powerful incentive, but local decision makers will need to be aware of how this will increase the density in receiving areas.

Although some of the sending areas identified in Section 3.1 are specific to parcels such as Chapter 61 lands, most of the sending area overlays offered as examples do not respect property boundaries. As a result, it is essential to clarify how the community will consider parcels that are only partially contained in Sending District overlays. The Receiving District will be delineated using parcel boundaries and therefore there will be no divided parcels in that overlay district.

4.0 Preservation District Special Permit Requirements

One of the problems often associated with TDR programs is that the TDR process may require a higher level of permitting while simply developing in the Preservation District according to conventional zoning will not. This Section of the bylaw serves to “level the playing field” for most development that would ordinarily take place by requiring a Special Permit for residential and non-residential developments beyond a certain size.

Residential development of five (5) or more units of housing in any Preservation District shall require a Preservation District Special Permit from the SPGA. Non-residential Development of more than 4,000 square feet of Gross Floor Area shall also require a Preservation District Special Permit from the SPGA.

4.1 An application for a Preservation District Special Permit shall be submitted on the form(s) provided by the SPGA [REFERENCE ANY SPECIFIC APPLICATION FORMS FOR THE MUNICIPALITY]. Applicants for a Preservation District Special Permit shall also file with the SPGA eight [INSERT APPROPRIATE NUMBER OF COPIES] copies of a Site Plan. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

4.2 Site Plan Contents. A Site Plan for a Preservation District Special Permit shall be prepared by a Massachusetts Registered Professional Engineer and shall show configurations of the lots, buildings, and roadways. Where a Preliminary Plan has already been developed as part of a formal subdivision process, this may be submitted as a Site Plan to the SPGA. The Sketch Plan shall include the following where applicable:

- (a) The subdivision name, boundaries of all lots, north point, date, legend, title “Concept Plan,” and scale.
- (b) The name and address of the record owner or owners, the applicant, and the design engineer that prepared the plan.
- (c) The names, approximate location, and widths of adjacent streets.
- (d) Existing and proposed structures, fences and walls.
- (e) Locations and dimensions of walkways, driveways, parking areas, loading and service areas, parking space dimensions and screening.
- (f) Location of on-site wells, waterlines and all subsurface utilities.
- (g) Location of any proposed dumpster areas.
- (h) Architectural plans with building elevations
- (i) Proposed erosion control measures
- (j) Drawings of proposed signs
- (k) Lighting Plan showing the location, type and intensity of lighting for the site
- (l) Landscape Plan showing the location and type of plants used for aesthetics, screening, and/or stormwater mitigation on the site.
- (m) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level.
- (n) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (o) Proposed roadway grades.
- (p) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the SPGA. However, a narrative explanation shall be prepared by a Massachusetts Registered Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.

(q) A narrative explanation prepared by a Massachusetts Registered Professional Engineer proposing systems for stormwater drainage and likely impacts on-site and to any abutting parcels of land.

(r) A narrative explanation prepared by a Massachusetts Registered Professional Engineer, detailing the proposed drinking water supply system.

(s) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.

(t) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose.

(u) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

The most important aspect of this approach is to have the requirements of the Preservation District Special Permit mirror the requirements of the Special Permit for a Transfer of Development Rights listed below in Section 7.2. Having these permitting processes explicitly require the same level of effort on the part of the applicant removes the perception that permitting a TDR will be significantly more difficult than permitting development of a certain scale in the Preservation District.

4.3 Procedures. Whenever an application for a Preservation District Special Permit is filed with the SPGA, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plans, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the SPGA within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the SPGA is held prior to the expiration of the thirty-five-day period, the SPGA shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the SPGA shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

4.4 Preservation District Special Permit Criteria for Approval. The SPGA shall grant a Preservation District Special Permit if they conclude that the applicant has made every reasonable effort to mitigate impacts to the resources identified as part of the Preservation District. These mitigations may include, but are not limited to:

(a) Proper handling, storing and tracking of hazardous materials and wastes in the Groundwater Protection District

(b) Adequate pre-treatment of stormwater runoff before recharging in the Groundwater Protection District

- (c) The use of cluster denitrification wastewater treatment systems where applicable in the Groundwater Protection District.
- (d) To greatest practicable extent, the preservation of significant trees or forested areas.
- (e) Preservation of naturally vegetated surface water buffer zones.
- (f) Preservation of historic structures where practicable.
- (g) Preservation of existing local access points to surface waters.
- (h) Minimal disturbance of sensitive habitat areas as delineated by Areas of Critical Environmental Concern and Estimated or Potential Habitats of Rare and Endangered Species as determined by the Natural Heritage Endangered Species Program.

5.0 Transfer of Development Rights Program Guidelines (*Incentive Approach*)

The previous model Section 4.0 (Preservation Approach) creates a significant disincentive to development in preservation areas by increasing the minimum lot size to five times the existing base zoning. This model, using the provisions in Section 5.0 (Incentive Approach), maintains the original underlying zoning density but allows the transferable density to increase in the TDR process. This approach is appropriate for Receiving Areas that can accommodate significantly higher densities than what is currently allowed under zoning. Communities with more urbanized growth centers or those considering major economic redevelopment efforts may find this approach to be very effective.

Perhaps the most important element to identifying these guidelines is a serious consideration of the market forces that will influence TDR transactions. The schedule described above is a simple approach to exchanging development rights in between areas of comparable market value. Valuation of development rights is a complex process that may require the assistance of a real estate or economic development professional. In cases where the real estate value of a sending area parcel (e.g., waterfront property) is significantly out of balance with property values in the receiving area (e.g., depressed commercial center) a scaling formula will need to be developed that ensures each land owner receives a fair deal. In the scenario described above, a developer would be expected to pay prime real estate prices to develop in a “low-end” area. In this situation, he or she would want to receive multiple development rights for a single lot purchase.

5.1 Transfer of Development Rights

Land owners in the Receiving District as identified in Section 3.2 of this Bylaw may purchase development rights from a land owner in the Preservation District as part of a Special Permit application to the SPGA. Transfer of Development Rights for Residential Use (as defined in Section 2.5) can only be made to Receiving District parcels where some form of Residential Use is allowed by right. Likewise, Transfer of Development Rights for Non-Residential Use (as defined in Section 2.2) can only be made to Receiving District parcels where some form of Non-Residential Use is allowed by right.

The program is designed to allow for Transfer of Development Rights between subsets of these larger use categories (Residential and Non-Residential). For example, the rights derived from single-family home lots in the Preservation District can be used to develop condominiums in a Receiving District as long as condominiums are allowed in the underlying Zoning District. Likewise, the rights derived from

a retail parcel in the Preservation District could be used to develop office space in the Receiving District as long as office space is allowed by the underlying Zoning District.

The above provision is designed to maintain certain limitations on the uses that can be transferred between districts while allowing flexibility when it comes to larger use “categories”. These guidelines set up a two-prong test. First, are the units of Development Rights consistent (i.e., number of housing units versus square footage of floor area)? Second, is the proposed use in the Receiving District allowed by right? A successful transfer will necessarily require both conditions to be true.

The approach described in this bylaw only allows residential development rights to be transferred to residential zones and, likewise, non-residential development rights can be transferred to zones that allow for this use. There are programs in existence, including one in Hadley, MA, where residential rights can be transferred to non-residential zones. In other words, units of housing are converted to square footage of commercial space through the TDR process. This type of approach may be more politically acceptable to residents that are concerned over potential increases in residential development. A detailed market analysis would be required by a qualified real estate professional to determine the exchange rate between residential and non-residential development rights.

5.2 Determining Development Rights for Residential Development

Transfer of Development Rights for residential development shall be performed on a “per unit” basis. Transfer of Development Rights for non-residential development shall be performed on a “square footage” basis as it applies to gross floor area. In each case, the number of Development Rights that may be transferred from the Preservation District shall be 1.5 times the amount of Development Rights determined from a Yield Plan (Section 7.1).

6.0 Pre-Application.

6.1 Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the SPGA. If one is requested, the SPGA shall invite the Conservation Commission, Board of Health, Historical Commission, and [INSERT THE NAMES OF ANY OTHER APPROPRIATE BOARDS]. The purpose of a pre-application review is to minimize the applicant’s costs of engineering and other technical experts, and to commence negotiations with the SPGA at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed Transfer of Development Rights, seek preliminary feedback from the SPGA and/or its technical experts, and set a timetable for submittal of a formal application. The SPGA may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD Special Permit.

6.2 Submittals. In order to facilitate review of the OSRD at the pre-application stage, applicants are strongly encouraged to submit a Site Context Map. This map illustrates the location of parcels within their respective Districts (Preservation and Receiving). Basic information regarding the size of each parcel, the status of ownership and general location of resource areas in the Preservation District. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature non-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property.

7.0 Application for Special Permit.

An application for a Special Permit for a Transfer of Development Rights shall be submitted on the form(s) provided by the SPGA [REFERENCE ANY SPECIFIC APPLICATION FORMS FOR THE MUNICIPALITY]. Applicants for a Transfer of Development Rights shall also file with the SPGA [INSERT APPROPRIATE NUMBER OF COPIES] copies of a Concept Plan. The Concept Plan shall include a Yield Plan for the Preservation District and a Site Plan for the Receiving District [see Sections 7.1 and 7.2 below]. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

Depending on the requirements of the local Subdivision Rules and Regulations, the requirements for a Concept Plan can be made identical to the requirements for a Preliminary Plan, to specific sections of a Definitive Plan or, if applicable, to elements of the Site Plan Approval requirements. The most important objective is to make these requirements overlap. Applicants should be able to use the TDR process to satisfy elements of the subdivision or site plan approval process wherever possible. The goal is to create complementary permitting processes, not to make the applicant duplicate his or her efforts during design.

7.1 Yield Plan. Applicant shall submit a Yield Plan for the Preservation District parcel that illustrates the number of units of residential development or Gross Floor Area for non-residential development that could be developed in the underlying district using the guidelines provided in Section 5.0 of this Bylaw. A Yield Plan shall include:

- (a) Parcel boundaries, north point, date, legend, title “Yield Plan,” and scale.
- (b) The name and address of the record owner or owners, the applicant, and the design engineer that prepared the plan.
- (c) The location and description of the Preservation District(s) that apply to the site.
- (d) The names, approximate location, and widths of adjacent streets.
- (e) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (f) Lines showing potential residential or non-residential lots with approximate areas and frontage dimensions, or unit placements and proposed common areas.
- (g) Footprints of non-residential buildings with an accompanying calculation of the potential Gross Floor Area.
- (h) Location and extent of parking, landscaping, stormwater management, and wastewater management service areas that would be required to accommodate the use.

7.2 Site Plan. A Site Plan for the proposed Receiving District shall be prepared by a Massachusetts Registered Professional Engineer and shall address the general features of the land, and give approximate configurations of the lots, buildings, and roadways. Where a Preliminary Plan has already been developed as part of a formal subdivision process, this may be submitted as a Site Plan to the SPGA. The Sketch Plan shall include the following where applicable:

- (a) The subdivision name, boundaries of all lots, north point, date, legend, title “Concept Plan,” and scale.
- (b) The name and address of the record owner or owners, the applicant, and the design engineer that prepared the plan.
- (c) The names, approximate location, and widths of adjacent streets.
- (d) Existing and proposed structures, fences and walls.
- (e) Locations and dimensions of walkways, driveways, parking areas, loading and service areas, parking space dimensions and screening.
- (f) Location of on-site wells, waterlines and all subsurface utilities.
- (g) Location of any proposed dumpster areas.
- (h) Architectural plans with building elevations
- (i) Proposed erosion control measures
- (j) Drawings of proposed signs
- (k) Lighting Plan showing the location, type and intensity of lighting for the site
- (l) Landscape Plan showing the location and type of plants used for aesthetics, screening, and/or stormwater mitigation on the site.
- (m) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level.
- (n) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (o) Proposed roadway grades.
- (p) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the SPGA. However, a narrative explanation shall be prepared by a Massachusetts Registered Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.

(q) A narrative explanation prepared by a Massachusetts Registered Professional Engineer proposing systems for stormwater drainage and likely impacts on-site and to any abutting parcels of land.

(r) A narrative explanation prepared by a Massachusetts Registered Professional Engineer, detailing the proposed drinking water supply system.

(s) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.

(t) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose.

(u) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

Again, it is critical that the requirements listed above for a Site Plan mirror the requirements of the local Subdivision Rules and Regulations and/or Site Plan Review in order to streamline the permitting process. Where there are specific requirements in other local regulations that would satisfy the goals of this section, these requirements could simply be referenced here in place of listing all of the requirements.

7.3 Procedures. Whenever an application for a Transfer of Development Rights Special Permit is filed with the SPGA, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plans, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the SPGA within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the SPGA is held prior to the expiration of the thirty-five-day period, the SPGA shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the SPGA shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

7.4 Condition of Approval. The SPGA shall require, as a condition of Special Permit approval under this bylaw, that the record owner of sending parcel(s) in the Preservation District record at the Registry of Deeds a Conservation Restriction as set forth in Section 8.3.

8.0 Title Recordation, Tax Assessment and Restriction of Development Rights

8.1 All instruments implementing the transfer of development rights shall be recorded in the manner of a deed in the Registry of Deeds of the jurisdiction for both sending and receiving parcels. The instrument evidencing such TDRs shall specify the lot and block number of the sending parcel(s) and the lot and block number of the receiving parcel(s).

8.2 The Town Clerk shall procure all pertinent information required by the Town Assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDRs from the Registry of Deeds for both the sending parcel(s) and receiving parcel(s).

8.3 The record owner of the sending parcel(s) shall, within forty-five (45) days of receipt of a special permit authorizing TDRs, record at the Registry of Deeds a Conservation Restriction as defined by G.L. c. 184 §§31-33 running in favor of the town, the state or an independent trust prohibiting, in perpetuity, the construction, placement or expansion of any new or existing structure or other development on said sending parcel(s). Evidence of said recording shall be transmitted to the SPGA of the town in which the restriction has been placed, indicating the date of recording and deed book and page number at which the recording can be located. The grant of the special permit to transfer development rights shall be conditioned upon such restriction, and no special permit for a transfer of development rights shall be effective until the restriction noted above has been recorded at the Registry of Deeds.

Commentary: This section requires the conveyance documents to be recorded in the Registry of Deeds in the jurisdiction for both the sending and receiving parcels so that they are of record and lenders and perspective purchasers and others interested in the status of title will know that the property has been permanently restricted. The bylaw is presented here with the assumption that the land in the sending district will be preserved in its entirety. Communities could consider establishing restrictions that limit the amount of development in the sending area. However, reducing the development density should be carefully considered as the resulting lower density could still create a sprawl situation.

Importantly, these transfers are going to have an impact on real property taxes. Where properties are restricted in a Preservation District, their taxes should decrease. This is a substantial incentive for the transfers. On the other hand, in the Receiving Districts, the additional density approved as part of the transfer is likely to enhance property values and result in somewhat higher taxes.

The restrictions recorded at the Registry of Deeds also help ensure that the preserved properties will not be developed. It is important to note with landowners in the sending areas that they can still use their land while it remains in their ownership. This is particularly important in the preservation of agricultural lands. Farmers will be more receptive to the program if they clearly understand that the land can continue production after the development rights are sold.

Please note that a Conservation Restriction is not effective for purposes of this bylaw and does not acquire perpetual status until the restriction has been approved by the Secretary of Environmental Affairs, as specified in G.L. c. 184 §§31-32. Therefore, the applicant for a TDR must commence the conservation restriction approval process well in advance of the anticipated date of receipt of the Special Permit.

9.0 Severability:

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

Commentary: This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.