



## What is a Transfer of Development Rights?

Transfer of Development Rights is a regulatory tool for municipalities to direct investment in their existing village center instead of undeveloped green space areas. The strategy's goal is to limit sprawl, protect natural resources, and foster development that is economically beneficial and sustainable.

A community can adopt zoning bylaws that designate certain areas as sending and receiving zones to allow property owners to sell the development rights to the undeveloped property to property owners in receiving zones. The property owner who sells development rights places undeveloped land into deed-restricted conservation protection, and the receiving owner can build at a greater density.

A community begins the process by identifying specific areas for green space preservation and specific areas which would benefit from greater density. The municipality should conduct an analysis of the receiving area's infrastructure to ensure it supports increased density. Transfer of Development Rights depends on a strong economic market in the receiving area, and the Commonwealth advises communities to engage with a real estate or economic development professional to assess the receiving area's capacity for growth.

A community must also determine a formula to set the value of a transfer. For example, a municipality can calculate the number of housing units that could have been constructed in the newly protected area and credit the landowner with that number of housing units. The developer in the receiving areas can then purchase the right to develop each housing unit.

However, municipalities can incentivize the transfers by setting a formula that rewards developers in receiving areas with multiple development rights rather than a simple one-to-one transfer.

The negotiating landowners determine the actual cash value of each credit.

## Benefits:

- Reduces Urban Sprawl.
- Expands Housing Options.
- Protects Wildlife Habitats.
- Supports Agricultural Land Uses.
- Maintains Historic and Scenic Character of a Community.

## Ideal Sending Districts:

- Agricultural lands.
- Chapter 61 parcels.
- Unprotected open spaces.
- Areas of environmental concern
- Rare and endangered species habitats.
- Watersheds.
- Historic districts.

## Ideal Receiving Districts:

- Village center.
- Transportation hubs.
- Industrial land.
- Areas currently served by municipal infrastructure.

## BRPC PROGRAM

Community Planning Program  
[berkshireplanning.org/programs](http://berkshireplanning.org/programs)

### Credit Bank:

The Commonwealth advises that a TDR Credit Bank can enhance the process. Due to the complexity and timing of real estate transactions, a credit bank serves as an independent organization to negotiate and sell development rights.

The Commonwealth did not provide guidance about the establishment of a credit bank but suggests that non-profit, third-party entities already operating in a community serve as ideal agencies to foster the transactions.

The bank would temporarily hold development credits and re-sell to developers seeking to increase density, which is particularly impactful when a community can purchase a parcel for conservation but have not identified a developer in a receiving district to purchase the development rights.

### Model Bylaws:

The Commonwealth provides towns with model bylaws for communities to review when considering adopting a Transfer of Development Rights program.

One model is designed for rural communities who prioritize preserving open space and do not have the village center strong enough to support the program. The approach focuses on disincentivizing developing in sending areas and is designed to provide no changes in the amount of potential development.

The model disincentives building in sending districts by significantly increasing the required lot size requirements for new construction but allows for the owner to sell development rights at the original density.

This model could particularly reap benefits for farmers, who can still use the land while it is in conservation and lower their tax burden. However, unless the program is carefully designed, communities' risk unintentionally creating more sprawl in the sending districts.

The second model is designed for suburban communities concerned with sprawl patterns and seeking to bolster density. The bylaw keeps the sending district's zoning requirements the same but sets a formula that provides greater value to the receiving district. For example, the underlying zoning may allow for an owner of a lot in the sending district to construct one housing unit on the land going into conservation, but the purchaser of development right could build five in the receiving district.

Municipalities should be cautious about how it designs a program in the second model to avoid overly saturating the receiving area with density the infrastructure cannot support.

### Sustainable Berkshires:

The [Sustainable Berkshires plan](#) identified expanding Transfer of Development Rights programs throughout the county.

The report reads, "a regional or sub regional transfer of development rights program would be a complex endeavor to implement, but if successful could serve to help revitalize and reinvigorate urban areas as well as maintain rural areas."

### Resources:

[Massachusetts Office of Energy and Environmental Affairs TDR Smart Growth Toolkit.](#)

[Massachusetts Model Bylaws.](#)

[TDR Case Studies.](#)

[Massachusetts Executive Office of Energy and Environmental Affairs 2019 presentation at the Massachusetts Land Conservation Conference.](#)

### Example Bylaws:

[Hadley](#)

[Northampton](#)

[Williamstown](#)