

SOUTHEASTERN REGIONAL PLANNING AND  
ECONOMIC DEVELOPMENT DISTRICT  
88 BROADWAY  
TAUNTON, MA 02726

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REQUEST FOR PROPOSALS- CONSULTING SERVICES  
RELATING TO PLANNING, COMMUNITY DEVELOPMENT AND  
DESIGN

Request for Proposals

CONSULTING SERVICES RELATING TO PLANNING, COMMUNITY  
DEVELOPMENT AND DESIGN

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**ISSUED BY THE SOUTHEASTERN REGIONAL PLANNING AND  
ECONOMIC DEVELOPMENT DISTRICT**

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**Request for Proposals:** Planning and Real Estate Professional  
Services

**Purchasing Entity:** Southeastern Regional Planning & Economic  
Development District (SRPEDD)

**Address:** 88 Broadway, Taunton, MA 02780

**Telephone:** 508-824-1367  
**Fax:** 508-823-1803

**E-mail Address:** gguimond@srpedd.org

**RFP File Name/Title:** Transfer of Development Rights Market Feasibility  
Study

**RFP File Number:** SCRV4

**Procurement Team Leader/Contact Person:**

**Greg Guimond, Fiduciary Agent**

**Procurement Management Team:**

**Southeastern Regional Planning & Economic  
Development District, Comprehensive Planning  
Department**

**I. General Information**

The terms of 801 CMR 21.00, Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable, are incorporated by reference into this RFP. Words used in this RFP shall have the meanings defined in 801 CMR 21.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFP. Unless otherwise specified in this RFP, all communications, responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost

proposals or figures in U.S. Currency. All responses must be submitted in accordance with the specific terms of this RFP.

Bidder Communication. Bidders are prohibited from communicating directly with any employee of the procuring department except as specified in this RFP, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFP. Bidders may contact the contact person for this RFP in the event this RFP is incomplete or the Bidder is having trouble obtaining any required attachments electronically.

Reasonable Accommodation. Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFP information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis. A Bidder requesting accommodation must submit a written statement that describes the Bidder's disability and the requested accommodation to the contact person for the RFP. The Procurement Management Team (PMT) reserves the right to request unreasonable requests.

Public Records. All responses and information submitted in response to this RFP are subject to the Massachusetts Public Records Law, M.G.L., Chapter 66, Section 10, and to Chapter 4, Section 7, Subsection 26. Any statements in submitted responses that are inconsistent with these statutes shall be disregarded.

Best Value Selection and Negotiation. The PMT may select the response(s) that demonstrates the best value overall, including proposed alternatives that will achieve the procurement goals of the department. The PMT and a selected Bidder, or a Contractor, may negotiate a change in any element of contract performance or cost identified in the original RFP or the selected Bidder's or Contractor's response which results in lower costs or a most cost effective or better value than was presented in the selected Bidder's or Contractor's original response.

Costs. Costs that are not specifically identified in the Bidder's response, and accepted by a department as part of a contract, will not be compensated under any contract awarded pursuant to this RFP. Southeastern Regional Planning and Economic Development District (SRPEDD) will not be responsible for any costs or expenses incurred by Bidders responding to this RFP.

Contract Expansion. If additional funds become available during the contract duration period, the department reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFP or to

execute contracts with contractors not funded in the initial selection process, subject to available funding, satisfactory contract performance and service or commodity need.

Affirmative Market Program (AMP). Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs) and resulted in the Affirmative Market Program in Public Contracting. As a result, M/WBEs are strongly encouraged to submit responses to this RFP, either as prime vendors, subcontractors, joint venture partners or other type of business partnerships.

Non-certified bidders are strongly encouraged to develop creative initiatives to help foster new business relationships with M/WBEs within the primary industries affected by this RFP. In order to satisfy the compliance of this section and encourage bidder's participation of AMP objectives, the Affirmative Market Program Plan for large procurements greater than \$50,000 must be evaluated at 10% or more of the total evaluation. Once an AMP Plan is submitted, negotiated and approved, the agency will then monitor the contractor's performance, and use actual expenditures with SOMWBA certified contractors to fulfill their own AMP expenditure benchmarks. M/WBE participation must be incorporated into and monitored for all types of procurements regardless of size; however, submission of an AMP Plan is mandated only for large procurements over \$50,000.

Agencies may require some or all of the following components as part of the Affirmative Market Program Plan submitted by bidders: Sub-contracting with certified M/WBE firms, Growth and Development activities to increase M/WBE capacity, Ancillary use of certified M/WBE firms, Past Performance or information of past expenditures with certified M/WBEs. Agencies are encouraged to include additional incentives for bidders to commit to at least one certified MBE and WBE in the submission of AMP plans.

A Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), M/Non-Profit, or W/Non-Profit, is defined as such by SOMWBA. All certified businesses are required to submit an up to date copy of their State Office of Minority and Women Business Assistance (SOMWBA) certification letter. The purpose for this certification is to participate in the Commonwealth's Affirmative Market Program for public contracting. Minority- and Women-Owned firms that are not currently certified but would like to be considered as an M/WBE for the purpose of this RFP should submit their application at least two weeks prior to the RFP closing date. For further information on SOMWBA certification, contact their office at 1-617-727-8692 or via the Internet at [mass.gov/somwba](http://mass.gov/somwba).

Affirmative Market Program Subcontracting Policies. Prior approval of the agency is required for any subcontracted service of the contract. Agencies may define required deliverables including, but not limited to, documentation necessary to verify subcontractor commitments and expenditures with Minority- or Women-Owned Business Enterprises (M/WBEs) for the purpose of monitoring and enforcing compliance of subcontracting commitments made in a bidder's Affirmative Market Program (AMP) Plan. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

Subcontracting Policies. Prior approval of the department is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same state and federal financial and program reporting requirements and held to the same reimbursable cost standards as contractors.

Identifiable Health Information: HIPAA and Protected Health Information. Any department subject to the requirements of 45 CFR 160, 162, and 164 (the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) that seeks bidders to perform a function or activity involving the use or disclosure of protected health information, must include a provision in the procurement solicitation document (i.e., RFP) informing bidders of their contractual obligations, if any, that the department will require to comply with HIPAA. For example, if the department seeks a bidder to perform business associate functions, as that term is used in HIPAA, then the department must include in the RFP a sufficient description of business associate obligations including, but not limited to, the bidder's obligation to: adequately safeguard the information (in whatever form it is maintained or used, including verbal communications) from inappropriate or unauthorized use or disclosure; provide individuals access to their records; and strictly limit use and disclosure of the information for only those purposes approved of by the department.

Pricing: Federal Government Services Administration (GSA) or Veteran's Administration Supply. The Commonwealth reserves the right to request from the successful bidder(s) initial pricing schedules and periodic updates

available under their GSA or other federal pricing contracts. In the absence of proprietary information being part of such contracts, compliance for submission of requested pricing information is expected within 30 days of any request. If the contractor receives a GSA or Veteran's Administration Supply contract at any time during this contract period, it must notify the Commonwealth contract manager.

## **II. Description or Purpose of Procurement**

### **1. Introduction**

The Southeastern Regional Planning and Economic Development District (SRPEDD) is seeking the services of a Planning and Real Estate Consultant (the Consultant) to develop a market feasibility study for establishing a regional Transfer of Development Rights (TDR) Program for southeastern Massachusetts. The selected Consultant should have significant experience in conducting market analyses and feasibility studies for TDR programs.

This project is part of the South Coast Rail Technical Assistance and is funded through the South Coast Rail project, part of the Massachusetts Department of Transportation (MassDOT). MassDOT and the Executive Office of Housing and Economic Development jointly manage the technical assistance program and SRPEDD is a regional planning agency and contractor to the Commonwealth for the provision of services to 27 cities and towns in the South Coast Corridor region.

#### **Project Background**

South Coast Rail is seeking to restore commuter rail service between Boston and the South Coast cities of Taunton, Fall River, and New Bedford. As a major transportation investment priority of the Patrick/Murray Administration, South Coast Rail is not only designed to provide new transportation options to an underserved part of eastern Massachusetts, but also spark new economic development. It is estimated that this project will create close to \$500 million dollars in new business activity each year. South Coast Rail is currently undergoing environmental review and is scheduled to begin service in 2016 or 2017. As part of the long term planning for the project, the Commonwealth, in partnership with the 31 cities and towns of the region, three regional planning agencies, and numerous other stakeholders, conducted a two-year planning process that culminated in the August 2009 release of the *South Coast Rail Economic Development and Land Use Corridor Plan*.

#### **The Corridor Plan**

The Corridor Plan is the first time that the Commonwealth engaged in holistic planning for a transportation project. The Corridor Plan can be found at [www.mass.gov/southcoastrail](http://www.mass.gov/southcoastrail) under the documents tab. The plan integrates transportation, economic development, and land use planning for southeastern Massachusetts, providing a blueprint for the sustainable development of the region

through 2030. For the first time in Massachusetts, the state has endorsed priority areas for protection (PPAs) and for development (PDAs). State and local actions will guide development to the development areas and encourage preservation of the protection areas. Through an intensive, bottom-up planning process, local, regional, and state priority areas were identified. The state-endorsed priority areas are shown in the Corridor Map (pg. 40 of the Corridor Plan). In contemplating a TDR program for this region, we hope to use some of the identified PPAs (or parts thereof) as sending areas and selected PDAs as receiving areas.

Since the release of the Corridor Plan, the Commonwealth has supported the implementation phase through on-going technical assistance. The regional planning agencies and sub-consultants are working with corridor communities to develop TOD and other zoning bylaws, conduct detailed station area planning work, and developing regulations for environmental preservation. This RFP is part of the ongoing implementation work.

As part of the plan, the state made a series of policy commitments that will help implement the plan recommendations (Chapter 7). One commitment is that the state will provide strategic investments in support of the priority areas. This fall, the Governor issued Executive Order #525 that directs agencies making investments in land protection and in infrastructure to support the priorities identified in the Corridor Map. Another key commitment is creating a TDR program to guide development into appropriate areas for growth and permanently preserve outlying areas rich in natural resources.

As part of the development of the Corridor Plan, preliminary reports on the feasibility of creating a regional TDR program were created (attached). Key findings of these reports include: the in many locations, the region's relatively weak market will be a barrier to establishing a robust program and the creation of a TDR bank will significantly improve the viability of a program. The purpose of this RFP is to build on this earlier work and provide more detailed economic information on the feasibility of establishing a TDR program for southeastern Massachusetts.

#### History of TDR in Massachusetts

TDR has been around for a number of years in Massachusetts, but to date its use has been very limited. TDR is authorized by state statute (MGL Chapter 40A, Section 9), and currently requires a Special Permit mechanism. Massachusetts is a home rule state; therefore almost all zoning is a local matter. No regional authority for land use rests with the counties or regional planning agencies in this part of the state. A number of communities have TDR bylaws on the books, but use is rare. All TDR programs are intra-municipal. Most programs transfer residential development rights to residential uses, but there are examples of residential to commercial or other unique transfers (reduced parking requirements, increased lot coverage or FAR).

## Study Area

The South Coast corridor includes 31 municipalities and over 30 PDAs and 70 PPAs. This RFP asks the Consultant to provide a regional analysis to determine the suitability for a TDR program in this corridor. In addition, the analysis will also focus on a smaller subset of areas that have been identified as having TDR potential. Both intra- and inter-municipal TDR will be contemplated as part of this project. The following sites are the smaller subset that will be assessed for market feasibility (PPA and PDA identification in parentheses):

1. Lakeville Greenway Connection (P58) to Lakeville State Hospital and Station Area (D18)
2. Freetown Greenway Connection (P58) and Freetown Acidic Fen (P56) to Freetown Assonet Village TOD (D19)
3. Lakeville Assawompset Ponds Complex (P48) to New Bedford TOD districts (D24)
4. Rochester Mattapoisett River Aquifer Protection Area (P59) to Marion's Crossroads (D33); Mattapoisett's Village Commercial District (D32); and Fairhaven's regional PDA- Alden Road Redevelopment Area (SD 27 on the Regional Priority Map)

## Description of Potential Sending and Receiving Areas

### 1. Intra-municipal transfer within Lakeville

**Sending:** The Greenway Connection (P58) is a large area of undeveloped land straddling the Towns of Lakeville and Freetown, serving as a link between the Freetown State Forest and Assonet Cedar Swamp. The sending area would be limited to the portion of the site within Lakeville.

**Receiving:** The former Lakeville State Hospital (72 acres) and the area surrounding the current MBTA commuter rail station close to the Middleborough Town line would serve as the receiving area. This is a subcomponent of the Priority Protection Area D18 (Middleborough Downtown).

### 2. Intra-municipal transfer within Freetown

**Sending:** The first sending area is the Freetown portion of the Greenway Connection (P58) described above. The second sending area is the Acidic Fen (P56). The fen is located north of Interchange 10 on Route 24, close to the Berkley town line.

**Receiving:** Assonet Village TOD (D19) will be adjacent to a future train station for South Coast Rail. This area is being considered for mixed-use development.

### 3. Inter-municipal transfer from Lakeville to New Bedford

Sending: Lakeville supplies water to New Bedford. In the preliminary TDR studies, using TDR to protect water supplies was identified as a possible approach for structuring a TDR program. The Assawompset Pond Complex serves as a surface water resource, supplying drinking water to 250,000 people, including New Bedford.

Receiving: Two commuter rail stations are proposed for New Bedford, anchoring these two new TOD Districts, Whale's Tooth and King's Highway. Whale's Tooth is currently home to a parking lot and underutilized industrial land, adjacent to the working waterfront and Hicks-Logan-Sawyer neighborhood and downtown New Bedford. King's Highway is approximately 55 acres currently occupied by marginal commercial plazas.

4. Inter-municipal transfer from Rochester to Marion, Mattapoisett, and Fairhaven.

Sending: This is another water-based TDR- the Mattapoisett River Aquifer Protection Area supplies water under an agreement with these four communities, serving more than 24,000 people. This medium and high yield aquifer is home to Priority Habitats, rich farmlands, and fisheries.

Receiving: Marion and Mattapoisett, located on Buzzards Bay, and Fairhaven use the Mattapoisett River Aquifer for their drinking water supply. The Crossroads in Marion (D33) has potential for redevelopment, infill, and mixed-use, while Mattapoisett's Village Commercial District (D32) is suitable for expanded redevelopment and infill. The earlier TDR studies also identified waterfront sites as having sufficient demand to support TDR. Marion and Mattapoisett could have waterfront locations suitable for a receiving area as well. Fairhaven's Regional PDA is the Alden Road Industrial Development Area. The Alden Road Industrial Development area is located at the intersection of Route 240 and Bridge Street. This area contains approximately 84 acres and consists of a number of business activities including commercial and retail uses. This area offers redevelopment, expansion and infill opportunities. In addition the 28 acre Fairhaven Landfill site, which is located adjacent to this area, may offer some redevelopment options. The area is an Economic Opportunity Area (EOA). Sub-districts of the Fairhaven site include:

*Kmart Plaza: Alden Road South - Area I*

The south section of Alden Road comprises two principle commercial plazas containing approximately 68 acres and includes the Wal-Mart Plaza (Fairhaven Common) and the Big Kmart Plaza. The Wal-Mart Plaza contains several commercial buildings including Wal-Mart, Sears, Marshall's, Ocean State Job Lot and other retail businesses with a combined space of 247,000 sq. ft. The Kmart Plaza site has two buildings and several businesses including Kmart, Staples

and an automotive business. The total space on this site is approximately 93,000 sq. ft. Additional land on the site is available for expansion and development. These areas have been identified for potential redevelopment and infill development opportunities. The area is a designated Economic Opportunity Area (EOA) allowing development incentives to be offered.

#### *Alden Road Southeast - Area II*

The southeast section of Alden Road II area covers approximately 33 acres and includes the New Bedford Standard Times facility, a 200,000 square foot printing and distribution building situated on a six acre site. The remaining area has several businesses and vacant parcels held in private ownership. Fairhaven has identified this area for mixed use redevelopment and infill development opportunities including the potential for residential, which could complement the adjacent residential neighborhood to the south. This area is also a designated Economic Opportunity Area (EOA).

The main questions that this RFP seeks answers to are:

- 1) Is the market (with appropriately structured incentives) able to support the establishment of a TDR program in this region? What should be the transfer value of the development rights? For example, what density bonus or other mechanism is needed for a TDR market to function? Should the transfer be residential to residential or residential to some other development right?
- 2) For the inter-municipal transfers, how can the receiving community be “made whole”? If they are receiving new growth, there will be additional costs (e.g. education costs). What can be done to make sure there is a sufficient incentive for receiving communities to participate? What type of TDR bank structure should be created?

## **2. Scope of Work**

The Consultant will work with SRPEDD to:

- 1) Meet regularly with the project management team throughout the term of the project
- 2) Develop a market analysis for the overall region and for each of the potential TDR sites identified above, including
  - a. A determination of the type and value of the development rights to be transferred;
  - b. Recommendations on preliminary boundaries for sending and receiving areas
  - c. Recommendations on which of the TDR sites are feasible

- d. Recommendations on program design that will result in an effective TDR program
  - e. Recommendations on ensuring receiving communities will be “made whole”.
- 3) The findings will be incorporated into a final report in both hard and electronic copies.
  - 4) A final presentation to SRPEDD and the Commonwealth on the key findings of this project.

Consultant’s Role: The selected Consultant is responsible for Tasks 1 – 4 of the above Scope of Work.

Regional Planning Agency’s Role: SRPEDD will provide the selected Consultant with available data and information on the proposed sending and receiving sites. SRPEDD in conjunction with the Commonwealth will provide direction and oversight to the project.

### **3. Budget & Justification**

The total cost of the work outline above in the Scope of Work shall not exceed \$75,000.

### **4. Schedule**

Respondents may email clarifying questions about this RFP to Greg Guimond at [gguimond@srpedd.org](mailto:gguimond@srpedd.org). SRPEDD will not be able to respond individually to questions, but will post the questions and answers on SRPEDD’s website on March 9<sup>th</sup> ([www.srpedd.org](http://www.srpedd.org)).

The schedule of dates for this RFP follows:

Due date for questions:	March 4, 2011 at 1:00 PM
Response to questions posted:	March 9, 2011 at 1:00 PM

Proposal submission deadline:	<b>March 21, 2011 at 4:00 PM</b>
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Open price proposals:	March 25, 2011 at 1:00 PM
Award contract by:	April 8, 2011
Deadline for completion of work:	October 14, 2011

All funds awarded under this contract must be spent by **October 14, 2011**.

### **5. Requires Submittals**

A complete proposal will consist of the following:

**A. Non-Price (Technical) Proposal**

**i. Relevant experience:** Requires job-related experience that would be relevant to this project.

**ii. Samples of work:** Three samples of previous experience that would be relevant to this project with references.

**All applicants must include:**

1. Cover sheet
2. A timeline for deliverables
3. Work plan with percentage of the budget used for each task
4. A description of the methods that will be used for this project
5. A description of your qualifications, including evidence of previous related work.

**B. Price Proposals**

Price proposals should be sealed separately from the technical proposals and shall contain the following information:

- i. Billing rate**
- ii. Total price.**

**6. Proposal Opening**

The Southeastern Regional Planning and Economic Development District will accept complete proposals through **March 21, 2011**, at 4:00 pm. The consultant must submit a separate sealed non-price (technical) and price proposals plainly marked as such and labeled "TDR Proposal" in the lower left corner. The Consultant shall submit one (1) original and three (3) copies of the non-price technical proposals and one (1) original and three (3) copies of the price proposals. Please print double sided. All packages must be complete and provide all the information requested herein. Proposals that are incomplete, not properly endorsed or signed, or other wise contrary to instructions, will be rejected as non-responsive by the Procurement Officer.

All proposals should be mailed or delivered to:

Greg Guimond, Procurement Officer  
Southeastern Regional Planning and Economic Development District  
88 Broadway  
Taunton, MA 02780

The Southeastern Regional Planning and Economic Development District reserves the right to accept or reject any or all proposals in total or in part, and reserves the right to waive minor inconsistencies, as they deem, in the best interest of the public. Technical

proposals will be opened in the presence of one or more witnesses and a register of all proposals will be prepared. The Chief Procurement Officer pursuant to M.G.L. c.30B shall conduct the RFP opening and the contents of the proposals shall be kept confidential until the evaluation process is completed. Proposals will be evaluated based on the criteria contained in Sections 9 and 10. Responsive proposals meeting the minimum criteria will be evaluated and rated based on the evaluation criteria. Finalists may be interviewed. Price proposals will be opened after evaluation of the Technical proposals and the interviews, if any, have been completed.

## **7. Award**

The contract will be awarded in writing to the Consultant submitting the most advantageous proposal considering the evaluation criteria and price.

## **8. Contract**

The Consultant will be held to the terms and prices within the proposal for the duration of the contract if both parties sign a contract. All applicable statutory provisions of the laws of the United States and the Commonwealth of Massachusetts will bind the Consultant selected. Any restrictions, qualifications, or deviations from the services requested must appear in the proposal submittal. A draft copy of the contract that will be executed with the Southeastern Regional Planning and Economic Development District (SRPEDD) is attached. As part of the Contract, the Consultant will be asked to acknowledge that much of the information collected and evaluated under the contract's scope of services may be considered confidential.

## **9. Proposal Evaluation**

Minimum Evaluation Criteria

The following is the Minimum Criteria that proposals must meet to be considered for further evaluation.

- A. Submission of a complete proposal that meets the requirements stated in this RFP.
- B. Experience with preparing TDR market analyses and feasibility studies

## **10. Comparative Evaluation Criteria**

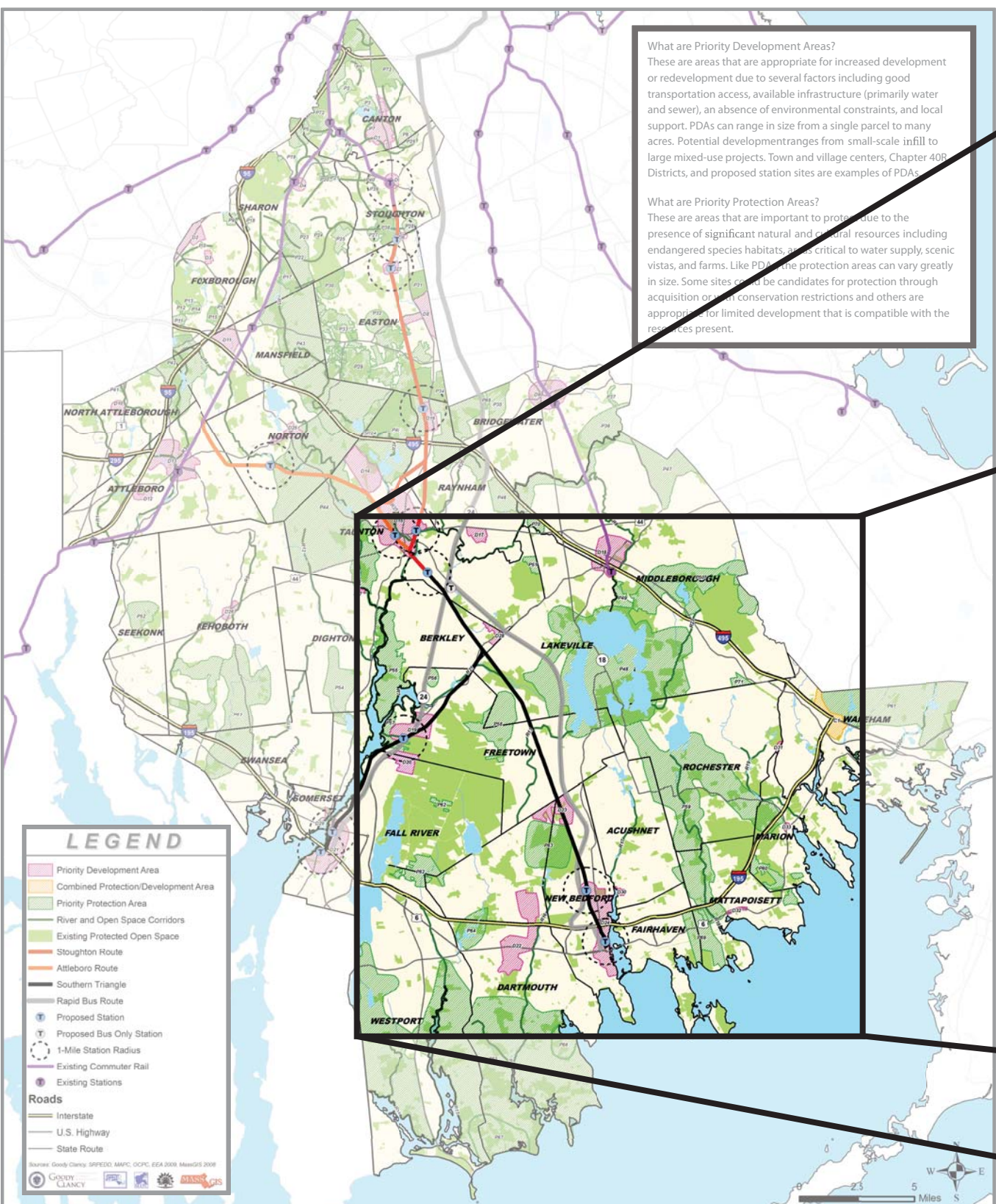
Proposals will be evaluated according to the following criteria:

- Qualifications of Consultant – i.e. knowledge of the field, appropriate educational background.
- Degree to which purpose of the RFP is met.
- Relevant experience of Consultant.
- Appropriate budget and timeline, including cost effectiveness of activities outlined in the proposal and feasibility of timeline.
- Clear writing style free of jargon, and understandable to practitioners, as reflected in other products.
- Affirmative Market Program Plan

Price proposals will be compared only after all non-price proposals have been ranked according to the comparative evaluation criteria above. The contract will be awarded to the Consultant who submits the most advantageous proposal, based on all of the evaluation criteria and price.

**What are Priority Development Areas?**  
 These are areas that are appropriate for increased development or redevelopment due to several factors including good transportation access, available infrastructure (primarily water and sewer), an absence of environmental constraints, and local support. PDAs can range in size from a single parcel to many acres. Potential development ranges from small-scale infill to large mixed-use projects. Town and village centers, Chapter 40B Districts, and proposed station sites are examples of PDAs.

**What are Priority Protection Areas?**  
 These are areas that are important to protect due to the presence of significant natural and cultural resources including endangered species habitats, areas critical to water supply, scenic vistas, and farms. Like PDAs, the protection areas can vary greatly in size. Some sites could be candidates for protection through acquisition or with conservation restrictions and others are appropriate for limited development that is compatible with the resources present.



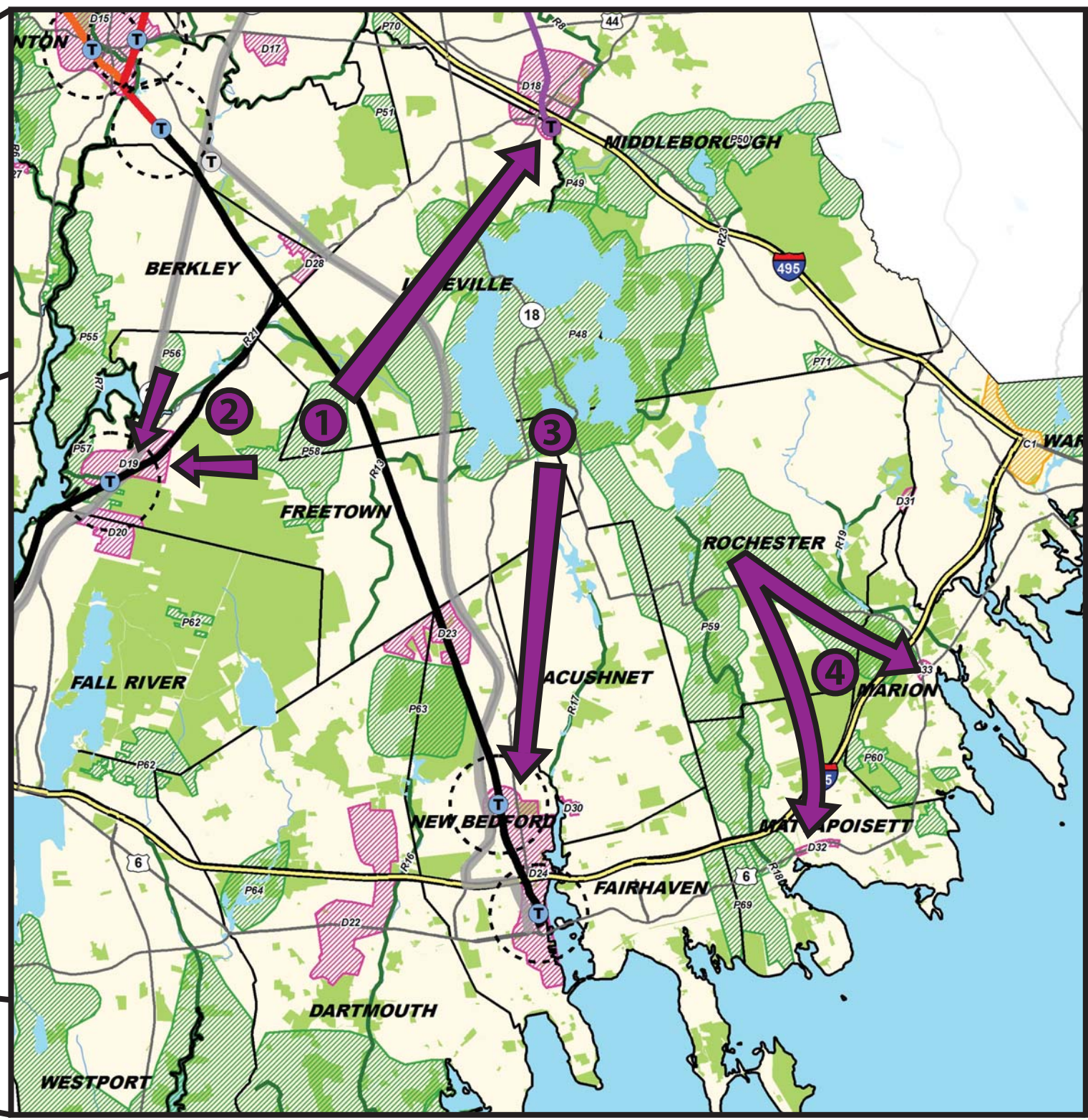
**LEGEND**

- Priority Development Area
- Combined Protection/Development Area
- Priority Protection Area
- River and Open Space Corridors
- Existing Protected Open Space
- Stoughton Route
- Attleboro Route
- Southern Triangle
- Rapid Bus Route
- Proposed Station
- Proposed Bus Only Station
- 1-Mile Station Radius
- Existing Commuter Rail
- Existing Stations

**Roads**

- Interstate
- U.S. Highway
- State Route

Source: Geacly Clancy; SRPEDD; MAPC; OCP; EEA; MassDOT; MassGIS 2008



**South Coast Rail Priority Development and Protection Areas**

<ul style="list-style-type: none"> <li>01 Route 128 Economic Opportunity Overlay District</li> <li>02 Route 1 Corridor Gillette Stadium and Fitness Place</li> <li>03 Chestnut Green Former Foxborough State Hospital</li> <li>04 Sharon Town Center</li> <li>05 Downtown Stoughton</li> <li>06 Roche Bros./Eaton</li> <li>07 Eastern Village</li> <li>08 Quaker Commons/Easton Industrial Park/Washington Street</li> <li>09 Downtown Bridgewater</li> <li>10 Downtown North Attleborough</li> <li>11 Cabot Business Park Redevelopment</li> <li>12 187 Industrial Park</li> <li>13 Downtown Attleboro</li> <li>14 Myles Standish Industrial Park</li> <li>15 Downtown Taunton</li> <li>16 Raynham Park</li> </ul>	<ul style="list-style-type: none"> <li>017 Raynham Woods Commerce Center</li> <li>018 Middleborough Downtown</li> <li>019 Assonet Village TOD</li> <li>020 SouthCoast BioPark</li> <li>021 Downtown Fall River</li> <li>022 UMass/Fairfax Corner Redevelopment</li> <li>023 New Bedford Downtown TOD Area</li> <li>024 Town Common Revitalization District</li> <li>025 Avenue Crossing</li> <li>026 Dighton Industries</li> <li>027 County Street/Route 79 Business District</li> <li>028 The Waterfront Industrial Area and Stada's Ferry Crossing</li> <li>029 Waterfront Industrial Redevelopment Area</li> <li>030 Lower County Road</li> <li>031 Village Commercial District</li> <li>032 Crossroads</li> </ul>	<ul style="list-style-type: none"> <li>033 Cranberry Bog and Upland at Sharon Commons</li> <li>034 Blue Hills Golf Course</li> <li>035 Mass Hospital School Site</li> <li>036 Water Rights on Reservoir Pond</li> <li>037 Brookmeadows Golf Course</li> <li>038 UMass/Fairfax Corner</li> <li>039 Water Rights around Canton Center</li> <li>040 Glen Echo Pond</li> <li>041 Wampatuck Golf Course</li> <li>042 Monks Farm</li> <li>043 Bettelesville Hill</li> <li>044 Echo Pond</li> <li>045 Anne's Long Pond East</li> <li>046 Benson Pond</li> <li>047 Canoe River ACEC (OCP region)</li> <li>048 Municipal Water Source and Future Well Site</li> <li>049 Law Farm</li> <li>050 Conservation Area</li> <li>051 Gil Farm</li> <li>052 Foxborough Country Club (private golf course)</li> <li>053 Clover Valley Farm</li> <li>054 Hockomock ACEC (OCP region)</li> <li>055 Elm Street-Bridgewater</li> </ul>	<ul style="list-style-type: none"> <li>056 Nasketucket Bay State Reservation</li> <li>057 Palmer River</li> <li>058 South Bridgewater/Cumberland Farm Land</li> <li>059 Taunton River</li> <li>060 Muddy Cove Brook</li> <li>061 Lower Taunton River Protection Area</li> <li>062 Acidic Fen</li> <li>063 Southworth Pond and Ligtly Fields</li> <li>064 Ten Mile River/Zone II Protection Area</li> <li>065 Bungy River ACEC (SRPEDD region)</li> <li>066 Canoe River ACEC (SRPEDD region)</li> <li>067 Three Mile River ACEC (SRPEDD region)</li> <li>068 Acushnet Swamp</li> <li>069 Upper Taunton River</li> <li>070 Great &amp; Little Cedar Swamps</li> <li>071 Assawamisset Ponds Complex</li> <li>072 Nasketucket River-Farm Protection</li> <li>073 Green Heart Corridor</li> <li>074 Thatcher Pond</li> </ul>	<ul style="list-style-type: none"> <li>075 Nasketucket Bay State Reservation</li> <li>076 Palmer River</li> <li>077 Lees River</li> <li>078 Segregant River</li> <li>079 Fall Brook</li> <li>080 West Branch of the Westport River</li> <li>081 East Branch of the Westport River</li> <li>082 Passapatan River</li> <li>083 Acushnet River</li> <li>084 Mattapoisset River</li> <li>085 Sippican River</li> <li>086 Agawam River</li> <li>087 Assonet River</li> <li>088 Black Brook</li> <li>089 Snake River</li> <li>090 Mill River</li> <li>091 Forge River</li> </ul>
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- 1 A TDR within the Town of Lakeville's PPA (P58) to to the existing MBTA station and former Lakeville Hospital site (D18)
- 2 A TDR within the Town of Freetown from two PPA s (P56 and P58) to the proposed MBTA station area along South Main Street (D19)
- 3 A TDR from the Town of Lakeville's PPA (P48) to the proposed MBTA station sites in the City of New Bedford (D24)
- 4 A TDR from the Town of Rochester's PPA (P59) to the PDAs of Marion (D33) and Mattapoisset (D32)

# Appendix to RFP #SCRV4: Transfer of Development Rights Market Feasibility Study

## **TDR in Southeastern Massachusetts Issue Paper #1**

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## ***TDR Program for Southeastern Massachusetts***

While primarily a transportation and economic development initiative, the re-establishment of a commuter rail link between Boston and southeastern Massachusetts also has implications for land use. A new transportation mode increases the accessibility of certain areas and adds amenity value to land in the region. A commuter line opens up new opportunities for residential living and expands the potential for mixed-use development. Consistent with the philosophy of the Commonwealth Capital program, this major capital investment should be coordinated with the shaping of development patterns in a sustainable way—directing growth to appropriate areas and preserving sensitive and significant natural resource areas.

This Issue Paper explores how Transfer of Development Rights (TDR) can play a role in shaping the growth pattern of southeastern Massachusetts. This is the first of three discussions papers. The basics of TDR are not taken up in this work as there are many excellent primers available.<sup>1</sup> Instead the three Issue Papers discuss the following:

- (1) What makes a successful TDR program? How does southeastern Massachusetts perform along these criteria?
- (2) What are the market conditions in southeastern Massachusetts? How would the re-establishment of rail, and other trends within the next 10 years, affect the market?
- (3) What should a TDR program for southeastern Massachusetts look like?

As the first in this series, this work focuses on what is known about successful TDR programs, using a literature search to develop a common set of criteria that define what is critical for a viable TDR program. These criteria are in turn applied to southeastern Massachusetts, and in some cases the Commonwealth in general, to produce an assessment of the relative strengths and weaknesses of the region according to the identified criteria.

### **What is needed for a successful TDR program?**

The concept of TDR has been around for approximately 40 years but in the past twenty-five years the use of and attention to TDR has markedly increased with the rise of anti-sprawl and smart growth policy choices. Researchers note that most TDR programs have gone through modifications and evolutions, and a thorough and meaningful evaluation of the technique has only become possible after more widespread use produced diverse track records. Several major studies of TDR within the United States

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<sup>1</sup> For example see: American Farmland Trust TDR Fact Sheet: [http://www.farmlandinfo.org/documents/27746/FS\\_TDR\\_1-01.pdf](http://www.farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf); Ohio State University: <http://ohioline.osu.edu/cd-fact/1264.html>; Pace Law School: <http://www.law.pace.edu/landuse/tdr.html>; and Massachusetts EOEEA: [http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-tdr.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-tdr.html).

## *TDR Program for Southeastern Massachusetts*

have been completed within the past eight years, and it is these that provide useful criteria for assessing what makes a successful TDR program.

This discussion paper is based on the review of eight pieces on TDR, five of which generated lessons learned from comparative case studies, and three of which are “how-to” guides that present a basic best practices approach to designing a successful TDR program. The case study reports include one completed for the Brookings Institute, one by Resources for the Future, and one by the University of Maryland, College of Agriculture and Natural Resources. Attached is an annotated bibliography describing each of the eight works, five of which are available as downloads from the Internet. These works include reports produced by acknowledged experts on this technique- Rick Puertz, Virginia McConnell, Margaret Walls, and Bill Fulton. (Also listed as references—but not studies—are two recent technical documents produced for the state of Washington for a similar effort exploring a regional TDR program.)

The researchers themselves acknowledge TDR programs are very idiosyncratic, that is local markets, regulatory and legal structures, and political will, vary widely within the United States.<sup>2</sup> Generalizations, then, come with a warning to be aware of the relevant contextual differences between programs and the unique qualities of the area under consideration for a TDR program.

The criteria presented in each of these resources have been organized in the attached table under the headings of: Political, Economic, and Structural Criteria. There is a fair amount of consistency across these works, albeit with slightly different word choices and in some cases negative assessments have been re-cast in the affirmative. The disagreement among the reports seems to lie in gauging degrees of success for programs, rather than identifying relevant features for success. The format for this paper will be to present a short description of the criteria as presented by the researchers, and then assess how these criteria are relevant to TDR in southeastern Massachusetts.

### **Political Criteria**

It almost goes without saying that political support is critical to the success of any TDR program. The establishment of such an initiative will require the adoption of local (and maybe state) regulations by the legislative body, and these regulations directly affect land values and in turn, personal and corporate wealth. **Without public support such regulations will not gain the necessary endorsement.**<sup>3</sup> Fulton et al argue that public support is also needed to maintain TDR programs in the face of pressure to undermine or water down the program over time.<sup>4</sup> Malcherner and Kaplowitz suggest that public support comes when residents have a strong connection to place and value the local

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<sup>2</sup> Machemer and Kaplowitz 781, 791; Fulton et al, 33.

<sup>3</sup> MGL 40A Sect gives zoning authority to the legislative body- for cities, the City Council; for Towns, Town Meeting, and MGL 40A Section 5 stipulates that passing a zoning amendment requires a 2/3 vote. See Machemer and Kaplowitz, 787; Walls and McConnell, 15.

<sup>4</sup> Fulton et al, 23, 34.

## ***TDR Program for Southeastern Massachusetts***

resources to be protected with TDR.<sup>5</sup> Many of the researchers also note the importance of public acceptance for receiving areas. In some ways, the research indicates that TDR programs built around the protection of a natural resource are more likely to be accepted than those motivated solely by growth management. In these cases it is easier to make an argument for protection of the resource and to determine boundary lines.<sup>6</sup>

Both Machemer and Kaplowitz, and Dehart and Etgen, claim that TDR programs are most successful when **the policies and practices of all levels of government are consistent in their message** of what to conserve and where to grow, and the use of TDR. This consistent and coherent government message is important to establishing a level of comfort for the private market. Both inter and intra-government policies, plans, and regulations should support the TDR approach and the defined areas. Local Comprehensive Plans, Conservation Commission and Board of Health regulations, and Zoning Bylaws should be aligned, and in turn the local visions should be mirrored in regional or state level plans, regulations, and programs.

Finally, researchers note **leadership makes a difference** when introducing a complex technique such as TDR. According to Machemer and Klapowitz, “good leadership seems to inspire confidence in the ultimate success of TDR programmes.”<sup>7</sup> Political leadership is critical, but leadership from within relevant constituencies (e.g. agriculture, environmentalists, developers, real estate brokers, etc.) can also play an important role in program acceptance and use. Leadership, in concert with public education and easy access to information, is necessary to fully engage all parts of the community so TDR can take hold and thrive.

### **Political Criteria and Southeastern Massachusetts**

Three of the communities within the rail study area have TDR bylaws on the books, and others have considered the technique within a local plan or area study.<sup>8</sup> This bodes well for a major TDR initiative—there is a foundation to build an educational campaign upon as the concept is not entirely new in the region. In addition, the locally-based process for identifying Priority Protection Areas (PPA) and Priority Development Areas (PDA) is more likely to reflect indigenous values than one imposed upon the region. The high degree of public involvement in this planning effort lays the ground work for the broad and deep public support that will be required to adopt a TDR program where PPA and PDA serve as the starting point for defining sending and receiving areas. While this activity provides a good base, the cultivation of local leadership and extensive

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<sup>5</sup> Machemer and Kaplowitz, 784-6.

<sup>6</sup> It is, however, argued by some that resource protection does not necessarily lead to the same development pattern that growth management would. That is, there may be leap-frogging and a patchwork of no growth areas. See Fulton et al, 22, 34.

<sup>7</sup> Machemer and Klapowitz, 793.

<sup>8</sup> Carver, Raynham and New Bedford have some form of TDR. Dartmouth, Seekonk, Wareham and Westport have considered the technique in planning documents.

### ***TDR Program for Southeastern Massachusetts***

education of the public and targeted groups will need to be part of the overall program design and implementation.

Public support can also be a function of enlightened self interest. In southeastern Massachusetts many communities rely on water supplies that lie in another community. Regional TDR can be a means for maintaining the quality of one's own water supply. Similarly, agriculture in the more rural areas of southeastern Massachusetts contributes to the food supply in the urbanized areas. These are themes that can contribute to a campaign for public support.

With regard to inter- and intra-governmental consistency, both positive and negative factors can be identified within the region. Intra-board cooperation and consistency does not always exist. Bureaucratic, unclear, duplicative and contradictory local permitting can dissuade property owners and developers from using TDR. TDR must be more than just the idea of one local entity such as the Planning Board or Board of Selectmen. Property owners must receive the same message and support for this option from the Conservation Commission, Board of Health, and all other local boards and officials. For example, denser development away from wetlands may be endorsed and approved by the Conservation Commission and Planning Board, but the Board of Health may have regulations that make the requisite shared wastewater systems difficult to permit. As the TDR program is designed and launched, technical assistance should be available for communities to undertake a local-level consistency review.

The Commonwealth is committed to sustainable development and as mentioned above, has made efforts, such as Commonwealth Capital, to create a strong incentive system for local adoption of sustainable practices (including TDR). Within this larger framework the Commonwealth is also promoting an increased acceptance of growth as necessary for continued economic vitality. These efforts focus on streamlined and by-right permitting. In as much as TDR is, or appears to be, more complex than by-right permitting such a program is at odds with the Commonwealth's objective of making appropriate growth attractive through simplified procedures. Certainly a TDR program can and should be designed to be by-right, but it will always entail the added step of purchasing development rights. In a climate where property owners and developers have traditionally used re-zonings to achieve higher by-right densities, a program that requires a financial transaction can be perceived by developers as more, not less, complex.<sup>9</sup>

Designing a streamlined TDR program is taken up below under the Structural Criteria heading. The point to be made here is that there may be a perception of TDR as inconsistent with promoting appropriate growth through simplified and by-right permitting. Of course, the argument can be made that TDR is a supporting technique for achieving the larger overall objective of the Commonwealth for balanced development that includes preservation.

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<sup>9</sup> Re-zonings are not per se simple, but most developers will see the financial transaction component of TDR as an added layer of complexity. Rezonings can be both easy and difficult; often urban areas, where rezoning is done by the City Council, are eager for any development investment.

## ***TDR Program for Southeastern Massachusetts***

The Commonwealth has a diverse group of initiatives that are consistent with—and can support—a regional TDR program in southeastern Massachusetts including: EOHEd’s Growth Districts and MassWorks grants and EOHEA’s Agricultural Preservation Restriction program. The existing structure would reward communities participating in a TDR program with Commonwealth Capital points and thus make them more competitive for state grants. To strengthen inter-governmental consistency, the Commonwealth should consider tailoring some specific initiatives to assist a regional TDR program, particularly around the issue of infrastructure capacity. One possibility is to develop a fund or position to provide technical assistance with water and wastewater issues, a rural or village supplement to the TOD initiative. For many communities a major stumbling block to more compact development is the lack of public water or wastewater or the capacity of existing systems. Several southeastern Massachusetts communities have conceptually endorsed compact development but lack the expertise needed to plan adequately for such infrastructure.<sup>10</sup> Having a state liaison or being able to hire a professional firm to represent a community’s interest can make a difference. Other possibilities to be refined in Issue Paper #3 include a more generous CPA match for TDR communities and technical assistance with bylaw revisions.

### **Economic Criteria**

The researchers agree that TDR will only function where there is an **active real estate market**. Growth, or demand for growth, must exist for TDR to function and TDR programs must use knowledge of local demand to design programs that offer some aspect of development that has value. Three of the case study reports agree that economic criteria, in particular **knowledge of the local market**, are the most important criteria for a successful TDR program.<sup>11</sup> This is supported both by the records of programs that have had multiple TDR transactions and those without any activity. In other words, one of the most common reasons for the failure of TDR programs is a poor understanding of the local market.

Simply put, for TDR to work property owners in the sending and receiving areas must be able to make more profits with TDR than with existing development alternatives. A successful TDR program defines sending and receiving areas, and sets the amount and types of transfer credits in accordance with local market demand. **Without demand for TDRs there will be no exchanges.** Receiving areas will use TDR when the existing zoning does not meet market demand. Developers will seek out development rights when there is a profit to be made (a demand exists) through a denser or otherwise enhanced development.<sup>12</sup> Offering higher densities in receiving areas is no guarantee

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<sup>10</sup> Carver is moving forward with creating a public water supply but has no wastewater facilities; Westport is interested in such infrastructure, and other possible communities include Rochester, Berkley, and Freetown.

<sup>11</sup> Dehart and Etgen, 11; Walls and McConnell, 15; and Machermer and Kaplowitz, 792.

<sup>12</sup>TDR programs can involve residential to residential transfers or residential to commercial/industrial transfers, or the purchasing of other development enhancement such as greater lot coverage or exemption from phased development. Determining what is of value to those developing is part of knowing the local market. In the Washington state market report included in the bibliography, the term “conversion commodity” is used for

### ***TDR Program for Southeastern Massachusetts***

of program participation.<sup>13</sup> Sending area property owners will participate when they are fairly compensated for their development rights. Development under the existing zoning must be less attractive than selling development rights, when compensation and associated factors, such as a commitment to agricultural use or gain from the preservation of contiguous land, are factored in.

Research also shows that successful TDR programs **manage the market for development rights**. The APA ZoningPractice article contends that a general rule of thumb is for receiving area capacity to be two times the sending area rights.<sup>14</sup> This creates a market for the sending rights ensuring property owners will get competitive compensation. With too few receiving areas as compared to sending areas, there is little demand for sending area rights and property owners are not offered compensation competitive with what can be made under traditional development. Walls and McConnell conclude that all TDR programs should **begin with a thorough market analysis** including a build-out to determine the ratio of sending to receiving areas, and to gain an understanding of the local market demand.<sup>15</sup>

A point made by many of the studies can be summed up as, there should be **no “free” or alternative density increase measures** available to property owners.<sup>16</sup> Given a market where there is unmet demand for increased density, the only way to get increased density should be through the purchase of development rights. In many communities, in particular urban areas seeking re-investment, density increases and other development enhancements are routinely approved in order to compete with greenfield development options.<sup>17</sup> Under such a scenario a developer has little reason to purchase development rights. Some communities also have regulations that offer density bonuses in exchange for conservation, infrastructure improvements, affordable housing, or other public goods. These provisions can also erode the viability of a TDR program, or as Walls and McConnell put it “dampen the demand,” by offering density “for free.”<sup>18</sup>

The bottom line is that the economics of TDR must work. Sending area property owners will sell development rights when they are fairly compensated and receiving area developers will buy development rights when they have value—that is there is both a demand for the rights and there is no cheaper or easier way to get the development rights.

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development enhancements. See *Market Analysis for Regional Transfer of Development Rights in Central Puget Sound*, p.ES-3.

<sup>13</sup> Walls and McConnell, 10, 25.

<sup>14</sup> In *Saved by Development* Rick Pruetz reports that the Long Island Pine Barrens TDR program requires each community to have 2.5 receiving rights to sending rights.

<sup>15</sup> Walls and McConnell, 126. New Jersey state law includes such a requirement (and the state provides 40K in funding)—see New Jersey Administrative Code (NJAC) 5:86.

<sup>16</sup> Walls and McConnell 10, 15, 26, 124; ZoningPractice, 4; Fulton et al, 22; Dehart and Etgen, 11, 149.

<sup>17</sup> For urban areas this may be as true for residential development as commercial/industrial, and in suburban areas commercial/office/light industrial uses are often courted with attractive packages.

<sup>18</sup> Walls and McConnell, 26.

## **Economic Criteria and Southeastern Massachusetts**

As mentioned above the second Issue Paper in this series is an overview of market conditions in southeastern Massachusetts. This is key to designing an effective TDR program. This next paper will assess market conditions by interviewing real estate professionals; assessing industry trends; and reviewing regional transactions under the Commonwealth's agricultural preservation restriction program. The information generated will be used to determine the amount and nature of market demand in the local real estate market. What is selling well? What pent up demand may exist? And, what would be the cost of development rights in the area?

While existing data will be useful, it will also be important to project future conditions. The market analysis shall also consider changes to the local market when a rail connection is re-established. Such a connection can affect local real estate markets, although in isolation such infrastructure is not sufficient to shape development patterns. Communities must concurrently revise regulations and make other investments in order to take full advantage of the improved transportation infrastructure. For areas suffering from disinvestment, renewed growth will require addressing struggling educational and public service delivery systems.

In addition the market analysis must consider real estate industry projections for the next ten years given the larger trends in energy prices and the aging of the baby boomers. For example, some of the communities within the region have very little multi-family housing stock.<sup>19</sup> A by-right TDR option for the development of such housing units could meet an unmet market demand. Also of interest is the value of sending areas in the region. Development rights in coastal communities are expensive. How would it be possible for developers to recoup the cost of such development rights? What product would command a high enough price to compensate for the purchase of development rights?<sup>20</sup> Also, beyond density what type of development features have value to developers now and in the near future? The market analysis will generate information to answer these questions.

The issue of "free" or alternative density is particularly relevant to designing an effective TDR program in Massachusetts. Communities will need to suspend generous development packages that offer increased density (or other bonuses) by-right or through politically supported special permits or re-zonings. Existing bylaws that offer density bonuses to induce more compact development will need to be assessed to determine if they are compatible with or competitive with a TDR program. Developers will not buy density that can be easily obtained without a financial cost.

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<sup>19</sup> Data being compiled by SRPEDD

<sup>20</sup> Issue papers 2 and 3 will expand on this concept, but in many ways the product that commands the highest price is waterfront development. Coastal communities may be most successful in using TDR if they are willing to direct growth to a coastal location. An example is the new urbanist beach community of SeaBrook in Washington State. See <http://www.seabrookwa.com/>.

## *TDR Program for Southeastern Massachusetts*

The decision to adopt a local Smart Growth District—“Chapter 40R” can also erode the viability of a TDR program. Given that there is a finite amount of land communities would choose to develop at high densities, TDR receiving areas may in fact be the same locations where communities may consider a 40R district. The financial incentives for the by-right Smart Growth District are attractive. Unlike TDR, 40R does not simultaneously address preservation but 40R funds could be used for the purchase of conservation property. Both 40R and a regional TDR program will require working through significant regulatory changes. Communities will weigh the financial incentives and predictability of the 40R program (including the 40 S provision) against the benefits of a TDR program. This is even truer in the case of inter-municipal TDR, where the receiving community does not benefit directly from the sending areas. In such a case a 40R district may be more financially advantageous for the community. It may be possible, however, that TDR receiving zones can be designed to meet a demand that falls outside the regulatory requirements of the 40 R districts (for instance exclusively high end housing). This is in large part a function of the range and nature of market demand.

Another alternative density measure available in many, but not all, of the southeastern Massachusetts communities, is the Comprehensive Permit Law, “Chapter 40B.”<sup>21</sup> For some projects, the 40 B process may be competitive with the purchasing of development rights to achieve higher residential densities. This may not always be the case as in reality 40 B is not as streamlined a process as it was designed to be. Often the permitting of these projects is lengthy, and the program stipulations may not align with a project concept. However, for developers with experience using the Comprehensive Permit process and designing projects within the program’s affordability restrictions, the 40 B option may be more attractive—that is more profitable—than TDR.

Discussion on the attractiveness of these alternatives for higher density will be part of the market analysis interviews with real estate professionals. More information is needed to assess the degree to which these programs may dampen participation in a TDR program.

### **Structural Criteria**

Participation in TDR is correlated to the **simplicity and efficiency** of the program’s design. Dewey found several communities repealing TDR programs because they were administratively unwieldy, difficult to explain, and thus unutilized.<sup>22</sup> Hand in hand with this goes the need for programs to be **adequately administered by professional staff**. Ultimately these features sum to TDR programs with **low transaction costs and by-right permitting**.<sup>23</sup> As noted earlier such a program design provides the private sector the degree of predictability and comfort needed to participate.

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<sup>21</sup> As of July 2008 study area communities at 10% affordable housing stock are: Brockton, Fall River, Mansfield, New Bedford, and Raynham.

<sup>22</sup> Dewey, 4.

<sup>23</sup> Fulton et al, 23 and Walls and McConnell, 26, 124.

## ***TDR Program for Southeastern Massachusetts***

There is agreement in the research that **appropriate and ready receiving areas** are also a critical ingredient of a successful TDR program. This is in part related to public support, in that receiving areas should be pre-approved so developers do not face local opposition to the increased density. All vetting of these sites should be done prior to the program launch, and ZoningPractice recommends receiving areas use form based codes as a means of obtaining public support. Readiness includes having a plan—design and financing—for any necessary infrastructure improvements.

**Perhaps the most controversial finding of all the case study work is the Walls and McConnell conclusion that “trying to force additional density into relatively high-density, already developed receiving areas is very difficult; almost no program has been successful in this regard, and some of the biggest failures seems to be attributable to this hurdle.”**<sup>24</sup> This study attributes this failure to a lack of demand—the market in these areas is not looking for higher density or the existing density meets or exceeds the market demand. Walls and McConnell suggest there has been **more success with programs that permit TDR between rural areas or towards a greenfield master planned community.** This underscores how designing successful receiving areas is in large part a function of understanding and tapping into market demand.

The research nearly uniformly concludes that a **TDR bank** is vital for a successful program. Such a bank serves as a clearinghouse, making information accessible, answering technical questions, and supporting public education.<sup>25</sup> The TDR Bank also assists the market by holding rights in order to overcome the problem of timing (sending property unable to find a buyer at a specific point in time); monitoring sales to inform the market with data; and matching buyers with sellers. A bank has a stabilizing influence on TDR markets and in some cases programs were jump started with a large public purchase of development rights.<sup>26</sup> The TDR bank held these rights until developer interest was matched. This simplified the first developer transactions by eliminating the need to look for willing sellers or negotiate between multiple sellers. Instead developers could go directly to the bank and get the credits they needed. As administrators and monitors, TDR Banks also serve the important function of being able to identify when and what type of program modifications could improve performance.<sup>27</sup>

Related to a TDR bank, some researchers reach the conclusion that TDR is **more successful on a regional than town basis.**<sup>28</sup> This is a matter of scale—a region means more buyers and sellers which improve market function. Also observed is that regional approaches tend to include areas with high and low demand for growth and thus facilitate exchanges. Many of the regional approaches occur in areas of the country that have unincorporated territory outside expanding metropolitan areas and/or active county level government.

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<sup>24</sup> Walls and McConnell, 124.

<sup>25</sup> Walls and McConnell, 19.

<sup>26</sup> Fulton et al, 123; Walls and McConnell, 126.

<sup>27</sup> Dehart and Etgen, 10.

<sup>28</sup> Dewey, 6; Fulton et al, 22.

## ***TDR Program for Southeastern Massachusetts***

Other structural issues raised in the research include the power of **mandatory over voluntary** programs and the use of **downzoning**. For Machemer and Kaplowitz a program is mandatory if it involves downzoning of the sending area.<sup>29</sup> Such downzoning is when density for building by-right in the sending area is decreased in comparison to the development rights that could be transferred from that property to a receiving area. They suggest such downzoning is correlated with greater TDR success. Walls and McConnell and the CRCOG Tool kit agree that downzoning is a feature of successful TDR, but express preference for programs that downzone both sending and receiving areas. Such an approach is seen as more equitable and one that adjusts densities below market demand—creating incentives for TDR participation on the part of sending and receiving property owners. Researchers, however, do note downzoning can backfire in that either area could end up developed at the lower density.<sup>30</sup> Walls and McConnell also point out that without downzoning (and in some cases even with it) TDR programs can have the effect of increasing the overall growth within a region. Density bonuses over the existing build-out figures mean that while growth may be more compact, the total amount may end up greater than under existing zoning.<sup>31</sup>

Finally, most researchers note that TDR programs must be **flexible** and that viable programs **evolve over time** in response to market changes and to improve efficiency. Several of the researchers add that TDR should be **one part of a larger set growth management tools**.

### **Structural Criteria and Southeastern Massachusetts**

When designing a program for southeastern Massachusetts the lessons with regard to structural efficiency should be observed. The program should be simple, efficient, and have adequate administrative support. Receiving and sending areas should be clearly identified and allotment calculations should be straightforward. The permitting of receiving areas should be by-right and a TDR bank should be formed to assist with education and transactions.<sup>32</sup> This will require a modification of existing MGL Chapter 40A Section 9 that stipulates TDR can be adopted as a special permit mechanism. Although not specifically raised in the studies of TDR, it would be wise to create an Advisory Board to the TDR Bank Administration. This Board should include private sector interests tuned into market dynamics.

It is not clear that a regional TDR for southeastern Massachusetts would mirror the central metropolitan growth demands cited in the research as favorable for TDR. Growth in this area is more diffuse with few extensive rural areas remaining. For Massachusetts, a regional program would need to confront the reality of municipal

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<sup>29</sup> Machemer and Klapowitz, 789.

<sup>30</sup> Walls and McConnell, 24.

<sup>31</sup> Walls and McConell, 15.

<sup>32</sup> Of course, there would in reality be two by-right options- one under the base zoning and one at a higher density with TDRs. By-right TDR refers to not needing a special permit for TDR density but still entails the TDR transaction.

### ***TDR Program for Southeastern Massachusetts***

boundaries (there are no unincorporated areas) and equity concerns about service demands related to receiving zones. Pruetz's extensive work on TDR programs found only nine (out of nearly 150) with any inter-jurisdictional features, some of which were not operational and many of which are distinct from Massachusetts by having county government. Like the 40S response to the 40R initiative, the issue of compensation to receiving areas will need to be addressed in the program design. This issue should not, however, prevent beginning what will be an evolving program with a TDR Bank that has oversight for intra-community TDR transactions.

While the PPA/PDA work can be the basis for defining appropriate and ready receiving areas, the market analysis may indicate modifications to ensure the development rights are redeemable. Receiving areas must be in a state of readiness and aligned with market demand. This may involve looking at rural to rural; rural to master planned areas; waterfront locations; and piggy-backing in areas in need of infrastructure.<sup>33</sup> Receiving areas must be places where there is a demand for development beyond the existing zoning. This brings up the issue of downzoning or as some term it, mandatory TDR. Downzoning has been most effective in the Maryland agricultural preservation TDR programs. Density in the sending areas was dropped dramatically for on-site development, but maintained for development rights transferred off-site. For some programs, receiving areas were also downzoned in an attempt to get base zoning below market demand.

For Massachusetts downzoning is problematic. Maryland is a late-vesting state, while Massachusetts has some of the most generous grandfathering provisions in the nation. In Maryland a property is only protected from a zone change if a building permit has been issued. In Massachusetts, property owners can file a preliminary plan (far from the investment needed to have a building permit) and freeze zoning for up to eight years. Many Massachusetts communities have experienced an influx of such "freeze-plans" when a zoning change proposal is scheduled before the legislative body. This has the effect of undermining the effectiveness of zone changes. Additionally, Massachusetts has not traditionally used very low density zoning (greater than five acres per unit). Such zoning would likely encounter a court challenge.

The other structural criteria identified for successful programs are flexibility or a willingness to make modifications over time and integrating TDR with other growth management approaches. Both of these can be accommodated in a program for southeastern Massachusetts.

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<sup>33</sup> Piggybacking can occur where the state is putting other infrastructure investments. For instance, beach colonies converting to year round use often are also areas with high septic failure rates. These may make suitable receiving areas as the increased density will be in keeping with the historical development pattern, take advantage of a state infrastructure subsidy, and decrease the cost of the infrastructure to each property owner. Another possibility is allowing TDR units on undersized non-grandfathered lots (property owners would pay to gain something of value) or target property that needs rezoning such as surplus industrially zoned land that would be suitable for mixed-use development.

**TDR Program for Southeastern Massachusetts**

<b>SUMMARY: ASSESSMENT OF SOUTHEASTERN MASSACHUSETTS AGAINST TDR CRITERIA FOR SUCCESS</b>		
<b>Header</b>	<b>Criteria</b>	<b>Southeastern Massachusetts</b>
<b>Political</b>	Public Support	Public Involvement Key- Build on PPA/PDA Process  Target Stakeholders
	Political Foundation	Conduct Intra-local Consistency Review  Design Additional State Programs to Support TDR Program
	Leadership	Cultivate Leadership Across Constituencies
<b>Economic</b>	Active Market	Steady Growth Occurring- Although not necessarily in areas preferred for smart growth
	Market Knowledge/ Analysis	Complete Market Analysis
	Understand Demand	Identify the Nature and Amount of Current and Projected Demand.  Consider Density and other Development Commodities (What has Value to Developers)  Modify Receiving Areas (PDA) in Accordance with Market Demand
	Manage Market	Calculate Receiving/Sending Figures  Calculate Agricultural Preservation Restrictions  Establish TDR Bank
	Free/Alternative Density	Assess Bonuses in Local Regulations  Get Community Perspective on 40R versus TDR  Get Developer Perspective on 40R vs. 40B vs. TDR
<b>Structural</b>	Simple, Efficient	Clearly define sending, receiving, allotment calculations.

**TDR Program for Southeastern Massachusetts**

		Make Receiving Areas By-right with TDR density  Streamline Approval Process
	Adequately Administered	Provide Adequate Staffing to TDR Bank  Invest in Educational Campaign
	Appropriate and Ready Receiving Areas	Match Receiving Areas to Demand; Coordinate Infrastructure for Readiness; Design Areas to Maximize Public Investment
	TDR Bank	Establish a Bank –even if initial program is intra-municipal—to Facilitate Monitoring, Education, Market Stabilization, and Program Modification.  Establish an Advisory Board with wide representation to provide feedback and advice.
	Downzoning/ Mandatory Use	Evaluate Likelihood of success under Generous Grandfathering
	Use with Other Techniques	Ongoing
	Modify Over Time	TDR Bank, with input from Advisory Board

Specific Actions Identified in Issue Paper #1:

1. Refine PDA/PPA into Receiving and Sending Areas with Market and Readiness Assessments.
2. Cultivate Local Leadership of TDR Initiative
3. Launch Education Campaign
4. Conduct Local Consistency Review (all regulations should support TDR)
5. Provide Technical Assistance with Water and Wastewater Issues for Village TDR
6. Provide Technical Assistance with TDR Bylaws for Small Communities
7. Consider increased CPA match for TDR participants
8. Prioritize Infrastructure Needed for TDR Areas
9. Change Chapter 40A TDR Special Permit Requirement
10. Establish TDR Bank
11. Consider undersized lots and areas receiving wastewater upgrades as TDR receiving areas.
12. Explore “hot” market potentials – both in terms of form/location (i.e. dense waterfront) and commodities other than density that may be in demand.

## ***TDR Program for Southeastern Massachusetts***

### Annotated Bibliography

Aken, Jeff, Jeremy Eckert, Nancy Fox, and Skip Swenson. 2008. *Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges*. The Cascade Land Conservancy. <http://www.cted.wa.gov/site/1085/default.aspx> .

This paper reviews TDR including common pitfalls, identification of the most promising directions for setting up effective TDR programs, and a review of the potential benefits to cities, counties, and the state. While focused on the particulars of experience and potential for the specific political and economic context of Washington State. It is a good overview of TDR.

Capitol Region Council of Governments. 2002. *CRCOG Livable Communities Toolkit: A Best Practices Manual for Metropolitan Regions*. <http://www.crcog.org/publications/tcsp.html>

Prepared for the greater Hartford Connecticut region, this manual describes the basics of TDR with an assessment of what is needed for a successful program. It includes a general description of the features of TDR and a model bylaw.

Daniels, Tom. 2007. *Zoning for Successful Transferable Development Rights Program*. *ZoningPractice* (12): December 2007.

An APA publication, this article summarizes best practices relative to TDR and zoning regulations. It draws from recent research and presents a succinct description of how to design a TDR zoning regulation.

Dehart, H. Grant and Rob Etgen. 2007. *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*. HRHCAE Pub 2007-01. <http://agroecol.umd.edu/files/Dehart%20Full%20Report%20HRHCAE%20Pub-2007-01.pdf>

A very thorough (166 pp) report that presents the basics of TDR and the specifics of successful programs in Maryland. The report draws conclusions about the features needed for a viable TDR program and examines how this could be applied in Maryland's eastern shore area.

Dewey, Dorothy Ives. 2005. Transfer of Development Rights in the Philadelphia Region—Hope or Hype? *Middle States Geographer* (38): 1-7.

This short piece examines TDR programs in the greater Philadelphia area. Of a total of 238 communities, 16 had TDR programs and 13 of these are assessed with findings indicating: 3 are repealing the programs, 4 have never been used, 2 were used once, and 4 are working satisfactorily. Dewey looks for explanations as to why TDR has failed to live up to its expectations.

### ***TDR Program for Southeastern Massachusetts***

Fulton, William, Jan Mazurek, Rick Pruetz, and Chris Williamson. 2004. *TDRs and Other Market-Based Land Mechanisms: How They Work and Their Role in Shaping Metropolitan Growth*. A Discussion Paper Prepared for The Brookings Institution Center on Urban and Metropolitan Policy.  
[http://www.brookings.edu/~media/Files/rc/reports/2004/06metropolitanpolicy\\_fulton/20040629\\_fulton.pdf](http://www.brookings.edu/~media/Files/rc/reports/2004/06metropolitanpolicy_fulton/20040629_fulton.pdf)

Using case studies and Pruetz's national survey, this paper examines TDRs and other market-based land preservation techniques like mitigation banking and density transfer fees. The authors categorize the national programs based on the purpose of the program and outline criteria for designing an effective TDR program.

Machemer, Patricia L. and Michael D. Kaplowitz. 2002. A Framework for Evaluating Transferable Development Rights Programmes. *Journal of Environmental Planning and Management* 45(6): 773-795.

This is perhaps the most comprehensive assessment of the features of a successful TDR program. Using 14 case studies, selected for their longevity and professionalism, the authors coded data to generate thematic indicators. While acknowledging the idiosyncratic nature of TDR programs, this research develops a list of criteria for evaluating the likely success of a TDR proposal.

Pruetz, Rick. 2003. *Beyond Takings and Givings: Saving Natural Areas, Farmland and Historic Landmarks with Transfer of Development Rights and Density Transfer Changes*. Burbank, CA: Arje Press.

A comprehensive listing of TDR programs that provides a summary of program characteristics and program utilization. This updates the author's pioneering 1997 work on TDR, *Saved by Development*.

Taintor, Rick. 2001. *Transfer of Development Rights Report South County Watersheds Technical Planning Assistance Project*.  
<http://www.dem.ri.gov/programs/bpoladm/suswshed/pdfs/tdrreprt.pdf>

Similar to the CRCOG report above, this Design Manual presents a summary of how TDR works and general conclusions on designing an effective TDR approach. Specifics are offered for South County, Rhode Island, including a model ordinance.

Walls, Margaret and Virginia McConnell. 2007. *Transfer of Development Rights in US Communities: Evaluating Program Design, Implementation and Outcomes*. Resources for the Future: Washington, D.C.  
[http://www.rff.org/rff/News/Features/TDR\\_Report.cfm](http://www.rff.org/rff/News/Features/TDR_Report.cfm)

### ***TDR Program for Southeastern Massachusetts***

These two authors are considered some of the leading experts on TDR programs. This report is an in depth view of 10 TDR programs that assesses the reasons for success and failure. It is a realistic appraisal that notes both the positive and negative aspects of the TDR approach and probes why many TDR programs do not live up to expectations.

Washington State Department of Community, Trade and Economic Development (CTED ). 2008. *Market Analysis for Regional Transfer of Development Rights in Central Puget Sound*. <http://www.cted.wa.gov/site/1060/default.aspx> .

This report is a 192 page technical evaluation of the potential for TDR within specific market areas of Washington State. A variety of consultants were employed to model site specific TDR transactions in order to assess market conditions for sending and receiving. The report includes ranges that estimate the value of development rights—both to developers seeking higher density and senders evaluating options.

**TDR PROGRAMS: CRITERIA FOR SUCCESS**

<b>Heading</b>	<b>Machemer and Kaplowitz 2002</b>	<b>Fulton, Mazurek, Pruetz, et al 2004</b>	<b>Dewey 2005</b>	<b>Walls and McConnell 2007</b>	<b>Dehart and Etgen 2007</b>	<b>Zoning Practice, APA 2007</b>	<b>CRCOG Tools for Towns 2002</b>	<b>Taintor 2001</b>
<b>POLITICAL</b>	Political Foundation Consistent Regulatory Process				Consistent Regulatory Process: Intra and Inter Government Bodies and Documents			
	“Sense of place” Public Support Resource Value Acknowledged	Strong Community Support	Address Opposition to Receiving Areas		Broad Public Support	Overcoming Opposition to Downzoning & Receiving Areas		Receiving Areas Acceptable
	TDR Leadership from Broad Stakeholders			Public Education & Information				
<b>ECONOMIC</b>	Market Knowledge Rapidly Growing Area Knowledge of Local Land Use	Viable & Adequate (supply) Receiving Areas  Balance Supply & Demand Sustainable Sending Areas		Need Demand Oversight of TDR Market	Need large and Active Real Estate Market for Higher Density  Demand/Supply Balance Receiving > Sending	Demand Critical  Oversupply of Sending=bad 2x Receiving as Sending = ideal	Strong Real Estate market  Receiving > Sending Need “redeemable rights”	Need Large and Active Real Estate Market  Profit > Cost
	Cost Efficient	No “Free” Density Strong Incentives for Landowner Participation	Sufficient Density Inducement to Generate Program Participation	Density not Achievable in Other Way –No “Free Density”  Profitability Under Existing Zoning Must be Less	TDR Required for any Density Increase  Sufficient Density Inducement to Generate Program Participation	Don’t Give Away Density- Existing Density Should not be Ample for Market Demands	Sufficient Incentive (Density or Other Scarce Resource or Necessary/Desirable Feature)	Meaningful Incentive
<b>STRUCTURAL</b>	Simple	Low Transaction Costs	Administrative Complexity- Need for Support- Commit Adequate Resources to Provide Institutional Support	By-Right Permitting	Administration: Simple, Efficient & Predictable- Well Staffed	Minimize Delays and Bureaucracy	Provide Adequate Administration	
	Appropriate Receiving Areas		Readiness of Receiving Areas	Rarely do Existing Dense Areas Work as Receiving Areas; Rural to Rural and Master Planned More Successful		Use Form Based Codes		Receiving Areas w/ Infrastructure
	TDR Bank	Bank or Clearinghouse Good Information Available	Regional Scale More Successful (TDR Bank)	TDR Bank Oversight of Market-Local Government Involvement			Regional Market Best TDR Bank	Regional Scale More Successful
	Mandatory>Voluntary Programs							
	Downzoning				Downzone All Areas		Downzone Both Areas	
	TDR w/PDR			Be Flexible—Modify Over Time	Use with Other Tools	Combine with Other Tools	Modify Over Time	

***TDR Program for Southeastern Massachusetts***

**TDR in Southeastern Massachusetts**

**Issue Paper #2:  
Market Viability of TDR and the South Coast Market**

Prepared by Marijoan Bull PhD, AICP  
For SRPEDD  
August 2008/Rev January 2009  
Assistance from Sandy Conaty, Principal Comprehensive Planner, SRPEDD

## **Market Information and a Viable TDR Program**

TDR is a market based tool for shaping development patterns. The success of such a program rests on market functions and conditions. In order for TDR to work there must be a developer willing to pay for increased development rights (or other development commodity<sup>34</sup>) and property owners willing to sell these rights, restricting development on their property. Developers will only purchase development rights if the resulting product will sell at a price that covers the costs of the project and supplemental development rights while allowing for a reasonable profit. Property owners will sell development rights when the compensation provided is competitive with the option of developing the property.

As laid out in Issue Paper #1, economic factors that work against this type of market situation include:

1. **Lack of Demand:** There must be growth for TDR to work. If there is an overall lack of demand in the receiving area, no TDR transactions will take place.
2. **Base Zoning at Market Density:** If the local zoning and other regulations are already at the density buyers are looking for, developers will not build at higher densities even if it is permitted. (This is also true for the other development commodities- height, coverage, etc.)
3. **Free Density:** If developers can get increased density without paying for it—for example through friendly rezonings, variances and waivers, special initiatives (40R), or comprehensive permits (40B) —TDR is unlikely to play a large role in higher density development.
4. **Density Bonuses:** If local ordinances/bylaws provide density bonuses in exchange for goods the community needs (traffic upgrades, school playing fields, waterline extensions, etc.) then interest in using TDR for increased density will be reduced. Developers may prefer this avenue to increased density as the improvements may also enhance the value of the project itself.
5. **High Development Right Values:** If the development rights to be purchased are especially costly relative to the property values in receiving areas it becomes difficult for the economics of transfers to work. Developers must have a product that will command a price that can cover the additional cost of the development rights.<sup>35</sup> While these values can be controlled with a multiplier applied to the development rights (e.g. one development right is worth two to four times more

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<sup>34</sup> TDR can be more than just transferring density. A program can be designed so that a developer purchases development rights in order to obtain other development commodities such as increased lot coverage or building height or non-residential square footage, etc. See p.6 of Issue Paper #1.

<sup>35</sup> While it can be argued that the higher density development in the receiving area has a lower per unit cost, the purchase of the additional density still must be covered.

## ***TDR Program for Southeastern Massachusetts***

when transferred) such adjustments mean less property can ultimately be preserved and may increase overall development within a region.

- 6. Lack of Market Management:** TDR programs can benefit from the management of the market of development rights. A general rule of thumb is that the number of receiving rights should be two times the number of sending rights.<sup>36</sup> The absence of market management can prevent the economics of TDR from working. Too many sending areas relative to receiving areas will keep compensation down and dampen participation of sending area property owners.

In order to assess these market factors for the existing and projected southeastern Massachusetts real estate market the following steps were taken:

(1) To ascertain development right values the files of the Massachusetts Department of Agricultural Resources Agricultural Preservation Restriction Program were reviewed. Purchases of Development Rights for agricultural properties within the South Coast region during 2000-2008 were tallied. The sample is small (8 transactions) but the results indicate development rights in the area have a median per acre value of \$14,000.

(2) The author met with and interviewed four development professionals in the South Coast corridor, focusing on Fall River and New Bedford. These individuals were asked about market conditions, unmet demand, rail induced property value increases, and market densities. Again, although a small sample the common features of these personal assessments shed some light on local market conditions.

(3) Data was gathered on the existing density bonuses within the bylaws/ordinances of South Coast communities in order to assess existing initiatives that could compete with TDR participation.

Certainly this is not a full market assessment. Such a report is beyond the funding and timeline provided this effort. This work could, however, be the basis of a more in depth assessment expanded to look at larger economic forces, industry projections, and a much larger pool of development professionals. Given the consistency of the picture emerging from this initial work, it can provide some guidance relative to market based criteria for a viable TDR initiative in the South Coast corridor.

### **The Cost of Development Rights**

The concept of transferring development rights comes from the model of property ownership consisting of a bundle of rights. Developing the property according to zoning is one of the rights enjoyed by the owner. These rights can be severed from the

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<sup>36</sup> See *Saved by Development* (2003) by Rick Pruett that reports that the Long Island Pine Barrens TDR program requires each community to have 2.5 receiving rights to sending rights, 195 and Tom Daniels (2007) *Zoning for Successful Transferable Development Rights Program*, 3.

**TDR Program for Southeastern Massachusetts**

property and transferred elsewhere still leaving the owner with other rights including using the property for agriculture, or recreation or conservation. Development rights then are less than the full fair market value of a property as once transferred the owner retains some rights and thus some of the property value.

The Massachusetts Department of Agricultural Resources' Agricultural Preservation Restriction Program (APR) purchases the development rights of prime agricultural lands under development pressure. The Commonwealth is interested in preserving the irreplaceable soils and farm operations in order to maintain the economic value of farms, local food security, and rural character. Interested farmers apply to the APR Program and a professional appraiser is hired to calculate the value of the development rights under the APR guidelines.

The appraiser will first determine the Full Market Value (FMV) of the property by evaluating the zoning and physical conditions, and calculating the most profitable and feasible development scenario. Most often this is developing the farm into a single family subdivision. The appraiser calculates the gross revenue that could be generated from subdividing the property and selling the house lots. Next, the net value is obtained by subtracting the projected development costs (permitting, engineering, legal counsel, road development, marketing, profit, etc.) from the estimated gross sales revenues. The appraiser must then determine what the property would be worth if the development rights have been severed and the property has in place a restriction for agricultural use. This figure is usually arrived at from the small number of comparable sales in the region. That is, the appraiser looks to actual sales of acreage under an APR and adjusts this value for the property in question considering the particular location and characteristics of the land.

The development rights are calculated as the difference between the net revenues and the retained APR property value. Figure One below illustrates this calculation:

<b>Figure One: Calculating the Value of Development Rights</b>	
Gross Sales if Developed	<i>Based on Comparable Sales Under Assumed Maximum Development Scenario (Typically Single Family Subdivision)</i>
- _____ (Development Costs)	<i>Permitting, Engineering, Legal, Marketing, Profit, etc.</i>
= Net Development Revenue	
- <u>(Value of Property under APR)</u>	<i>Based on Comparable Sales</i>
= Value of Development Rights	

### ***TDR Program for Southeastern Massachusetts***

Table One (see end of paper) includes the eight transactions of the Commonwealth's APR Program within the South Coast during January 2000 - June of 2008. The majority of these transactions (four) were in Dartmouth, with one each in Rochester, Fairhaven, Rehoboth and Westport. It is important to note that some of these transactions involved unusual property configurations or characteristics, including vast quantities of wetlands that would make development difficult or coastal access that skews property value. Also in some of the cases a building lot for the existing owner or family was reserved from the total land area.

Given the many odd configurations of development scenarios within these transactions, the development right value per lot figure is not very useful as a standard. The cost of development rights per acre is more useful, but again a few of these transactions involved tracts with large quantities of wetlands. The per acre figure ranges from a low of \$5,556 for a year 2000 Dartmouth transaction of a property that is nearly 40% wetlands, to a high of \$31,549 in 2004 for an unusual Fairhaven tract along the coast. The median for the development rights per acre value is: \$14,000 per acre.

While eight transactions is a very small sample it would seem to indicate that it is reasonable to estimate development rights in the represented communities in the range of \$10,000 - \$20,000/acre. If the median \$14,000 is used, one could estimate that to purchase the development rights of a 150 acre farm it would cost (not including transaction costs) roughly 2.1 million dollars.<sup>37</sup> Under the TDR scheme the developer in a receiving area would add this cost to her project cost in exchange for greater density. For a project of roughly 40 million dollars (\$200/sq ft x 200,000 sq ft) this would be about 5% of the direct project cost or if only half these rights were used, a cost of 1.05 million, 2.6% of the total project cost. Using the \$10,000- 20,000 as a rough bracketing, development rights for a 150 acre property could range from 1.5 million to 3 million dollars.<sup>38</sup>

As noted above, these costs can be lowered with a multiplier on the development rights with each \$10,000 representing two to three development rights, but the effect of this is to decrease the total acres that can be preserved and lower the effective compensation per development right. In sum, these rough values indicate that the economics of transfers will be difficult within the region unless the receiving areas can command significant prices.

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<sup>37</sup> Puertz (2003) lists the development rights value in King County WA at approximately \$26,000 in 1999 and notes one transaction in 2002 was at \$31,000 per development right; New Jersey Pinelands development credits are cited as \$10,000/right; and the Long Island Pine Barrens at \$50,000/right (189, 190, 218, 196). Montgomery County Maryland, indicates that after years of fluctuating around \$10,000/right, values in 2007 hovered near \$30,000/right (Department of Economic Development Montgomery County 2006, 4). The per acre figure used here can serve as a rough development right value.

<sup>38</sup> Of the eight transactions reviewed six were in communities with coastal access. This does skew property values, yet the lowest value/acre is in a coastal community, although not directly on the water. Also the properties participating in the APR program are all agriculturally significant—not necessarily a factor that distinguishes property in the South Coast region. The range of development rights values is one of the challenges of designing an equitable regional program.

## **Developers' Opinions on the South Coast Market**

The following assessments coalesced from several conversations with real estate development professionals working in the South Coast:<sup>39</sup>

- The rail project (as long as door-to-door travel times are under 1:40) is a plus for the region, yet alone is not enough to generate a major re-investment in the struggling urban areas. All those interviewed said an educated workforce is the number one limiting factor for economic development in the South Coast. Some TOD projects could be expected but most felt the timeline for a major re-investment in the South Coast urban areas is decades away.
- The urban areas of the South Coast (in particular Fall River and New Bedford) are pro-growth and thus are anxious for growth of all types. This means developers can easily negotiate for any changes to the density and other development characteristics needed for an economically viable project.
- Most projects in South Coast urban areas have a number of challenges—brownfields, access limitations, infrastructure needs—which require government incentives to go forward, and these projects often come with a higher risk.
- Existing zoning in these urban areas is not a particularly limiting factor for developments. The residential developer interviewed commented that there is not demand in this region for high density residential living. He described a recent 40R project in the area as designed at a very high density that he thought would be difficult to market and offered his opinion that 9-10 units/acre is the high end of market acceptable residential density in this region.<sup>40</sup>
- Suburban areas are more adverse to residential development, but 40B provides an avenue for residential development. One developer noted that he does not consider suburban projects which require re-zonings (including non-residential) due to the arduous and rarely victorious public process.
- Current demand in the regional market seems to be for mid-level residential units (\$ 299,000-319,000) and a continuing need for suburban medical facilities. Also, many suburban codes limit heights at just below three stories. Changing this could be a plus for office development.

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<sup>39</sup> See appendix for list of interviewees, questions used, and interview summaries.

<sup>40</sup> While 40 R districts must have high density by-right zoning, developers need not necessarily build to that density.

### ***TDR Program for Southeastern Massachusetts***

- One developer suggested that high end waterfront units would be able to command the value necessary to cover the additional cost of development rights, or a modified 40R type district with by-right density above existing (but not too great) and exclusively high end or market rate units. He described this as essentially an exchange of dollars—rather than the developer subsidizing the affordable units in a 40B project, they would use these dollars to purchase the development rights.

Of the six market factors related to a viable TDR program laid out in the opening, the interview information indicates that the urban markets have indications of the first three negative characteristics. There is low demand and developers perceive that it would remain relatively low even with rail, and for the most part existing zoning meets the market demand. Additionally, the cities are willing to negotiate any necessary modifications and 40B can be used effectively to increase density, so “free” density is available. The developers also note the need for incentives and grants to make urban projects work—something that runs counter to adding cost to these projects with the purchase of development rights.

Suburban markets continue to be areas of steady market demand for mid-level residential properties and, as one developer noted, attract the growth sector of medical facilities. While height (allowing three stories) was mentioned as a development commodity some developers seek in suburban areas, for the most part zoning was not cited as a barrier to market driven growth. (The developer specializing in 40B does see the comprehensive permit as necessary to achieve a reasonable housing density, but with it available would not see the purchase of development rights as an economic alternative.)

These opinions tend to reinforce the findings of Walls and McConnell cited in Issue Paper #1—there has been more success with programs that permit TDR between rural areas or towards a greenfield master planned community than into existing urban areas.<sup>41</sup> The professionals interviewed for this project do not see TDR as viable in the struggling urban areas of the South Coast—or at least not for some time—but acknowledge growth in suburban areas is steady and development projects often go through more of a give and take in these areas. Still there was a sense that the overall number of projects where it might work would not be great.

### **Existing Density Bonus Provisions**

Many communities have flexible/alternative zoning provisions and districts that permit alternative housing development designs and structures with higher density multi-family structures or mixed-use development designs. These offer “more dwelling units per acre in developments while encourage(ing) a less sprawling form of development,

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<sup>41</sup> Walls and McConnell (2007)*Transfer of Development Rights in US Communities: Evaluating Program Design, Implementation and Outcomes*, 124.

## ***TDR Program for Southeastern Massachusetts***

shorter network of streets and utilities, more economical development of land with less consumption of open space” (Town of Mattapoissett Zoning Bylaws, section 3.11 Special Residential Development) and lower building and infrastructure costs for the developer. There are also many communities that offer density bonuses as incentives to achieve municipal objectives, such as affordable housing units, over 55 housing units, and open space preservation (see Table Two). These density bonuses offer “free density” to developers that may decrease their interest in using TDR, a mechanism that would require payment for any increased density. These zoning provisions for optional additional density above the base zoning may already meet the market demand and thus make development under existing zoning more attractive than buying development rights. Of course, some of these provisions offer only very modest density increases, so there could be some projects, depending on the site and location, where the market could support a higher density achievable with TDR. In addition, some may be available only through the more uncertain special permit procedure and thus have less appeal than a by-right TDR option. Communities looking to promote TDR should conduct an audit of these provisions, including considering the repeal of provisions, in order to offer a competitive TDR option.

The markets in communities that do not offer density bonuses as incentives have more potential for the incorporation of TDR; however these communities are still faced with the free density offered through state legislation: Chapter 40B and 40R/40S.

### **Conclusions**

It will be challenging to establish a viable TDR program in the South Coast market under present conditions. The very limited exploration completed indicates the urban areas in particular lack the economic vitality needed for a market based program to be effective. Returning to the six market factors identified in the opening, the research and opinions gathered for this exploration indicate five of them (lack of demand; base zoning at market density; free density; density bonuses; and high development rights values) exist in the South Coast region.

This does not mean that intra-municipal, or inter-municipal rural to rural or rural to suburban options, are not feasible. This exploration found some encouraging signs as well, including successful APR transactions and strong suburban growth pressures that offer market/TDR potential. It may be that TDR is as one part of the growth management strategy, plays a more central role in the suburban than urban areas. Issue Paper #3 will evaluate options for a TDR initiative, in light of the research findings of Issue Paper #1 and the Market Indicators explored in Issue Paper #2.

**TDR Program for Southeastern Massachusetts**

<b>Table One: Massachusetts Department of Agricultural Resources: Agricultural Preservation Restriction Program (APR) Data South Coast Region</b>								
<b>Year</b>	<b>Community</b>	<b>Acres</b>	<b>Full FMV</b>	<b>Ag Value</b>	<b>Dev Rights Value</b>	<b>DRV/lot</b>	<b>DRV/acre</b>	<b>Notes</b>
2007	Dartmouth	74.69	1,065,000	70,000	995,000	58,529	13,321	50% wetlands
2005	Dartmouth	43	1,450,000	86,000	1,364,000	NA	29,978	
2005	Rochester	72.5	1,590,000	145,000	1,445,000	96,333	19,931	13 acres are wetlands
2004	Fairhaven	86	2,760,000	200,000	2,560,000	NA	31,549	Unusual configuration- directly on water; 16 acres under CR & 71 acres under APR- but no subdivision- DRV/acre is based only on the 71 APR acres)
2004	Rehoboth	41.13	405,000	28,500	376,500	57,857	9,154	24 acres are wetland
2003	Westport	160.8	1,300,000	112,000	1,156,500	95,833	7,152	Low number of lots due to poor percs.
2000	Dartmouth	119.3	970,000	122,500	647,500	NA	5,556	2.75 acre house lot taken out (200,000 FMV); Dev rights represent remaining 116.55 acres, of which, 45.017 acres are wetlands.
2000	Dartmouth	19.64	450,000	16,703	268,297	29,810	15,072	One house lot taken out of APR (165,000 FMV) leaving 17.8 APR acres
Source: File Review at the Massachusetts Department of Agricultural Resources July 2008.								

**TDR Program for Southeastern Massachusetts**

Table Two: Existing Density Provisions- Potential Competition with TDR		
Regulatory "free" Density - State Legislation		
TYPE	COMMUNITY	Bonus Density
40 R/40 S	<b>Dartmouth:</b> Lincoln Park Smart Growth Overlay District	LPSGOD 40R: 40.65 acres; 319 units; Multi-family Residential density of 20 d.u./acre; Mixed Use; 75% lot coverage; 20% of Residential Uses (Ownership) Affordable; 25% Residential Uses (Rental)
	<b>Lakeville:</b> The Residences at Lakeville Station Smart Growth Overlay District	11 acres with 207 units; 20% of Residential Uses (Ownership Affordable; 25% Residential Uses (Rental) Affordable
40B	<b>All except (as of 9/08): Fall River, Mansfield, New Bedford and Raynham</b>	Bypass local zoning - allow for greater density with a Comprehensive Permit granted by the Zoning Board of Appeals.
Regulatory "free" Density: Municipal Legislation - Density as Incentive		
GOAL	COMMUNITY	Bonus Density/Incentive
Affordable Units	<b>Dartmouth</b>	10% density bonus for affordable units in OSRD
Set Back	<b>Fall River</b>	CBD;MBD: extra 2' height for every foot back from street line
Affordable Units; Open Space	<b>Mansfield</b>	Density Bonus in Cluster Develop for affordable or open space, FAR in I-1 & RD w/ Linkage Special Permit
Affordable Units; Starter Housing	<b>Marion</b>	>2 d.u. in conversion of existing 2nd/3rd stories above comm if 25% are affordable; SP/PB; up to 15% of market rate d.u. if 15% - 30% of units are affordable, independence, starter housing
Affordable Units; Open Space	<b>Mattapoisett</b>	1 additional unit for each affordable unit in Cluster Develop; 2 additional market rate units for each acre of open space above 40%
Historic reuse; Resident right of first refusal	<b>Plainville</b>	Senior Housing Development allows open space to be waived if include rehab of certified, historic or architecturally significant structure for use as SH; for each Affordable unit get 2 addit'l market rate or 2.5 when Plainville residents get right of first refusal on the affordable units.
Senior Housing	<b>Rochester</b>	Special Residential Development: increased density for senior housing developments per formula (could allow 2 d.u./ac)

**TDR Program for Southeastern Massachusetts**

<b>GOAL</b>	<b>COMMUNITY</b>	<b>Bonus Density/Incentive (Cont.)</b>
Affordable Units	<b>Taunton</b>	Density Bonus in Inclusionary Hsg bylaw: 1.75 - 2.75 x base density = max bonus for affordable units; SP/PB or MC. Also have Multi-Fam Res Devel allows 6 d.u./bdbl ac.; Mobile Home Pk, 6 d.u./ac
Affordable Housing; Reduced Traffic; Buffer; Wetland Preservation; Surface Water Protection; Development Phasing	<b>Wareham</b>	Multiple-Residential: density bonus based on tract acreage and bonus points for developments that meet outlined town objectives: up to three times the conventional density
<b>No Density Bonuses, but have Flexible/ Non-Conventional Zoning</b>		
	<b>COMMUNITY</b>	<b>Bonus Density/Flexible /Non-Conventional Zoning</b>
	<b>Attleboro</b>	No density bonus, but have: Mobile Home Park: PUD; Multi-family; OSRD; PURD
	<b>Carver</b>	No density bonus, but have Flex; Cluster; Townhouse; Mobile Home Park
	<b>Freetown</b>	No density bonuses: Multi-family by SP/PB
	<b>Lakeville</b>	No density bonuses: Mixed Use Development District
	<b>Middleborough</b>	No density bonuses; Allow Mobile home parks; 2nd story residential
	<b>New Bedford</b>	No density bonuses; Have a Dwntrn Bus OD-2nd story res, reduced setbacks, density, green space, parking for res dev; reduc of pkg requirements for commerc use of existg or new structures; Multi-Fam Res Devel allows 6 d.u./bdbl ac.; Mobile Home Pk, 6 d.u./ac
	<b>Raynham</b>	No density bonus, have multi-fam, Cluster, ARC w/ 2x density
	<b>Rehoboth</b>	No density bonus; multi-fam w/ multiples of min lot area

**TDR Program for Southeastern Massachusetts**

	Somerset	No density bonuses; Open Space community: max 3 d.u./acre
<b>Standard Development: No Density Bonus or Flexible Zoning</b>		
	<b>COMMUNITY</b>	<b>Bonus Density/Incentive</b>
	Acushnet	No density bonuses
	Berkley	No density bonuses
	Dighton	No density bonuses
	Fairhaven	No density bonuses
	No Attleborough	No density bonuses
	Norton	No density bonuses
	Seekonk	No density bonuses
	Swansea	No density bonuses
	Westport	No density bonuses

**TDR Program for Southeastern Massachusetts**

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**Issue Paper # 3:  
Designing a TDR Approach for the South Coast Region**

In this section, the findings of the literature review on TDR and the brief market description of the South Coast are used to layout an approach to TDR in the South Coast region. Certainly, the many obstacles to implementing TDR in Massachusetts are well documented and the high level of interest in the topic but meager record of successes, attests to the challenges. This section, however, presents a framework for **an effort that targets resources to the types and locations of development that are most likely to succeed under a TDR approach**. In addition, this initiative provides an opportunity to **develop a response with a regional and state level support system**—something not yet attempted in the Commonwealth—that can further the chances of success.

Guiding principles for the framework include:

- **TDR should be part of a larger set of growth management tools.** A comprehensive program for growth management requires a variety of approaches that cover the continuum from education, to regulation, to capital investment, and to preservation and conservation funding. TDR should be one of many approaches; it is not a stand alone panacea.
- The likelihood of TDR success is enhanced when **combined with other growth management initiatives** such as prioritizing infrastructure investments in receiving areas; coordinating state permitting processes; and using state programs to incent TDR choices.
- **TDR is about using the market to achieve objectives.** As such, understanding private sector decision making is critical. TDR programs must provide developers with what they need: **VALUE and CERTAINTY**. In addition, TDR requires good market information. Thus, the **monitoring of market conditions is critical in order to adapt programs to changing conditions**.
- **TDR requires forward thinking at the municipal level.** This is possible and can be achieved by cultivating leadership across constituencies. One of the advantages of TDR is that it can be about communities having more control over their destiny. TDR can be used to re-distribute existing build-out figures (respecting development levels already set by the municipality) rather than convince communities to accept additional development.
- Transfers of growth from rural to urban areas, across municipal lines, are the most difficult transactions to make work. Thus the definition of **a successful TDR program is one that directs growth within the region, and this can happen within communities (intra-municipal), as well as, eventually expand to inter-municipal transactions**.
- **A state supported TDR initiative can more easily overcome some of the challenges individual municipalities face by providing technical assistance, professional expertise, and support for approaches outside of the norm** (such as creating true agricultural zoning tied to TDR compact development; obtaining a MEPA pre-permitted status; or setting defensible commodity conversions).<sup>42</sup>

**A potential South Coast TDR approach would have three major components:**

- 1. Provision of Technical Assistance and Professional Expertise.**
- 2. Targeting of Efforts and Incremental Implementation.**
- 3. Establishment of a Regional Bank.**

These are described below, and an outline of actions to support TDR exchanges between rural and rural/suburban areas and rural and urban areas, listing more specific steps, appears at the end of this section.

### **Provision of Technical Assistance and Professional Expertise**

Many of the communities in this region are small and function with limited staffing. The growth pressure in this region will occur in municipalities that have no professional planning staff, or a staff person that is stretched to cover the current permitting and regulatory review workload. Designing a successful TDR approach requires expertise in real estate transactions, land use law, and private development processes, much of which is not typically readily available within

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<sup>42</sup> See Section One, p.9.

municipal staff. The technical demands of a TDR program are in part responsible for the reluctance of communities to attempt this approach.

The Commonwealth can directly provide a variety of the technical assistance and professional expertise necessary for TDR. Such expertise includes: appraisal and deed research; market analysis and pro forma review; and legal review of land use regulations. In some circumstances, what is needed is grant funding for communities to hire the required professional expertise be it legal assistance or engineering necessary to design the receiving areas for TDR (e.g., engineering review of options for wastewater systems to support compact development in unsewered areas or mechanisms for capturing and treating stormwater in compact areas).

State level involvement can also be used to support pioneering efforts on TDR within Massachusetts. Municipalities are, in general, conservative by nature. Combine this with the increasing pressure to limit the local line item for legal assistance, and innovation in land use (which can increase litigation) is not looked upon favorably. If the state were to carry the burden of vetting new approaches (such as impact fees to create disincentives for development in inappropriate areas, or true agricultural zoning (10+acre lots) in combination with compact TDR receiving areas, or designing a MEPA pre-permitting process) municipalities may be more willing to adopt TDR. The form of this assistance can be direct legal assistance, funds to cover any litigation, or leadership in changing state laws and regulations to explicitly permit the use of some approaches.

The South Coast TDR approach should provide direct technical assistance from state personnel; funding for hiring a variety of necessary professional expertise; coordination among state agencies to facilitate TDR related development; and leadership in designing legally defensible TDR approaches.

### **Targeting of Efforts and Incremental Implementation**

As previously stated, the most difficult TDR exchanges to establish are those that move development across municipal boundaries from rural areas to urban areas. The reasons for this have been covered earlier in Section One.<sup>43</sup> Here, it is recommended that the TDR component of the South Coast growth management effort begin by determining the areas most likely to be successful in a relatively short timeframe. This leads to a focus on intra-municipal programs, characterized as rural to rural/suburban transfers.

A map (at the end) displays the complex relationships among municipalities within this region with regard to water supplies. Many of these communities rely on surface water or aquifers that lie outside their municipal boundaries, and thus they can not directly regulate immediate land uses to protect these supplies. The arrows of the map indicate these relationships with the weight of the arrow indicating the relative amount of water supplied (the percent this supply represents of the receiving community's total water usage) and the arrow direction indicating the direction of water supply. This map was prepared to assess a resource based inter-municipal TDR program.<sup>44</sup> A second phase of TDR within the South Coast could be the development of an inter-municipal program based on the self-interest a municipality has in protecting its water supply.

Finally, using TDR to transfer units into urban areas remains a difficult proposition.<sup>45</sup> Urban areas in this region are zoned at high densities and are eager for all types of development. There is some potential, however, within a reasonable radius of the train stations where property is presently zoned industrial, or some other classification that does not permit residential or mixed use development. Through careful rezoning for TOD, these sites could serve as receiving areas.

It is recommended that the TDR component of the South Coast growth management plan begin by targeting resources to the municipalities assessed as most likely to succeed, and

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<sup>43</sup> See Section One, pp.12, 28.

<sup>44</sup> See Section One, p.6.

<sup>45</sup> See Sections One and Two, pp.12, 28.

expand incrementally, adding program elements to address the additional municipal scenarios presented above, as resources allow and favorable conditions are indicated.

### **Establishment of a Regional Bank**

Given the novelty and complexity of TDR, it is recommended that a Regional TDR Bank be established to facilitate transactions. The Regional TDR Bank would have a professional staff and facilitate a consistent and simplified approach to the development and use of TDR in key municipalities. As noted in Section One, such a bank is also critical to holding development rights when sellers are ready and eager to sell, and matching sending and receiving areas. This takes the pressure off of small municipalities and avoids duplication of staffing functions (especially as what may occur are scattered projects adding up to a substantial number, with some communities having a small number of transactions/projects). A state agency could fulfill this role. It is also recommended that this function be developed under the aegis of an Advisory Board that includes real estate professionals, environmentalists, and others familiar with the region and the development process. Once up and going, the Bank and its successful exchanges can lead to expanded participation as municipalities within the region see how TDR functions.

Whether intra or inter-jurisdictional, success of a TDR approach is more likely when there is an agent to provide the following functions:

1. Buy (and hold) units when property owners want to sell (revolving funds).
2. Set price to stabilize market.
3. Match development with sending units.
4. Conduct Market Analysis in order to assist municipalities in designing TDR options that have actual development value by setting realistic allocation ratios and commodity conversions.<sup>46</sup>
5. Advertise program/conduct outreach activities.
6. Educate about program.
7. Expedite paperwork due to knowledge, expertise and experience – that is providing consistency as agency that has completed prior exchanges (which can also reduce cost and provide more security).
8. Monitor program and suggest modifications as market changes occur.
9. Evaluate on a yearly basis and report to Governor.

A TDR Bank could take on these functions. Initial capitalization of such a bank is recommended with, over time, development right purchases being used to revolve funds back into this account.<sup>47</sup> In 1993, New Jersey capitalized its statewide bank at \$20 million.<sup>48</sup> An amount for the South Coast initiative should reflect current property values and the incremental approach recommended, so the range of \$5-8 million could be a place to start.

### **Additional Recommendations**

The directions given for the preparation of this evaluation were to think creatively about overcoming the challenges to TDR implementation. Below is an outline of actions that could support the two major types of TDR transfers—rural to rural/suburban and rural/suburban to urban. This outline includes some basic program elements that have been presented and some additional steps that should be taken. Some of the ideas listed, however, are more far reaching changes to current regulatory requirements and practices. Not all these suggestions would need to be in place, but it is included as a point of reference for the final design of a TDR program for the South Coast region.

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<sup>46</sup> This would be comparable to the New Jersey requirement that municipalities complete a market analysis before adopting a TDR ordinance. See N.J.A.C. 5:86, Transfer of Development Rights Real Estate Market Analysis Rules, Department of Community Affairs, Office of Smart Growth. Commodity Conversion refers to exchanging residential development potential for such other development items as greater heights in commercial development or increased coverage in office development, etc.

<sup>47</sup> See New Jersey example: State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et seq., and the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq. See <http://www.state.nj.us/agriculture/sadc/tdr/tdrbank/tdrrule277.pdf>

<sup>48</sup> [http://www.njfuture.org/Media/Docs/transfer\\_rights\\_04.pdf](http://www.njfuture.org/Media/Docs/transfer_rights_04.pdf) and the US Census estimates the New Jersey 2008 population at 8.6 million versus Massachusetts' 6.4 million; and New Jersey is 8,721 in total square miles (land and water), compared to Massachusetts' 10,555 square miles.

## **Rural to Rural/Suburban TDR Exchanges: Program Design Considerations**

1. Use PPA/PDA as starting point—build on the public consensus already established. Refine according to:
  - Readiness
  - Amounts (at least 1:1; if not 2:1 receiving: sending)
  - Make sure PPA represent high value opportunities—multi-family or commercial uses in demand but not fully permitted or other unmet growth pressure exists, i.e. "commodity conversion".
  - Think resource based areas – greater public buy-in.
2. State should provide Technical Assistance designing as-of-right bylaw with a standardized and uncomplicated procedure and customized allocations based on local market/political acceptability. Be cognizant of need to monitor market conditions and make adjustments to allocations.
3. Communities should complete review of all Bylaw/Ordinances/Regulations for consistency with TDR (supporting sending/receiving areas)—grant funding may be needed to complete.
4. Communities should eliminate other density bonus provisions in local bylaws/ordinances ("free density") – or at least review and modify to be sure far less attractive. Again, grant funding may be needed to complete.
5. Consider adding substandard lots for TDR infill.
6. Consider designing high value receiving projects (e.g., new waterfront condos/ no affordable requirements/Washington State Seabrook example or New Urbanist Village Centers such as Chesterfield NJ example).
7. Need to Fix Chapter 40A Sect 9.
8. State should provide Technical Assistance for water/wastewater assessment and evaluations to support higher densities in receiving areas (equivalent of prior TOD staffing/TA).
9. Provide targeted infrastructure funding to support receiving areas
10. MEPA pre-permitting for receiving areas – process defined and funding provided to complete.
11. Address permissive sending areas and how to create disincentives for typical development. Consider possible use of impact fees as a disincentive or true agricultural (downzoning) zoning. Here the Commonwealth can provide leadership in precedent setting legal issues, issues which otherwise diminish local enthusiasm for pioneering efforts.
12. Inter-municipal transfers could relate to protection of water supply (see map).
13. Tie requirement for TDR to other funding (such as water/ wastewater). If you get funds under such program, the community must accept a number of transferred units from the community where their water supply is located.
14. 40B exemption in receiving and/or sending areas.

### **Challenges:**

- 40R/ 40B can supply "free density"
- Rights are expensive
- Overall development increase may be challenged (if allocation increased)
- Perceived as increasing housing costs (purchasing density versus a by-right higher density)

**Urban/Large Receiving Areas TDR Exchanges: Program Design Considerations**

1. Rezoning is the commodity with the most potential – rather than density. Some sites have this potential (Fall River riverfront industrial, Raynham Dog track, etc.).
2. Rezoning can happen before market is there – need to get community buy-in for rezoning tied to TDR.
3. Possibility: The Commonwealth purchases critical parcels—package for redevelopment with TDR.
4. Infrastructure Funding—in particular parking garages to cover need for more parking with TDR.
5. MEPA pre-permitted –define process and provide funding to complete.
6. 40R without affordable (especially if already have 10% -- Fall River, Raynham, New Bedford currently meet the 10% standard).
7. Offer 40R type payment for receiving units from another community.
8. For an inter-municipal program, set an upper limit on the number of units allowed to be transferred from outside—in order to gain support.
9. State offers 40S funding.
10. Transfer funds from sending community (CPA) –to be inter-jurisdictional sending must have CPA in place; this gives sending communities incentive to adopt CPA.
11. Be prepared to get exemptions from future fees (stormwater; carbon tax, etc.).

Issues:

- Urban projects already require subsidy – is it more cost effective to just take \$\$ that would be added to make project feasible and spend on open space? Or do TDR projects piggy-back on investments that would be going to urban areas anyway?
- City: Rural/Suburban links are weak in this area.
- 40 R competition
- Other density bonus provisions in place
- Overall development increase may be challenged
- Perceived as increasing housing costs (purchasing density versus a by-right higher density)

