

TOWN OF WAREHAM TRANSFER OF DEVELOPMENT RIGHTS (TDR) BYLAW

570.0 Purpose

The purpose of this Bylaw is to allow the development potential from one property (the sending parcel) to be transferred to another property (the receiving parcel) for the preservation of critical open space and natural resource areas within the Town of Wareham while encouraging an efficient pattern of land development and promoting the health, safety and general welfare of the inhabitants of the Town.

570.1 Objectives

The objectives of this Bylaw are:

- To preserve open spaces, historical features, critical environmental resources, and other sensitive features of the sending parcel while providing compensation to the owner, and
- To encourage and revitalize certain village areas by allowing compact development in selected areas containing appropriate infrastructure.

570.2 Powers and Administrative Procedures

The Planning Board is hereby designated as the Special Permit Granting Authority (SPGA) for a transfer of development rights (TDR) special permit pursuant to Section 570, et seq. The Planning Board shall follow the requirements for the review of special permit applications as set forth in G.L. c. 40A, s.9. After notice and public hearing and due consideration of the reports and recommendations of other Town boards, commissions, and/or departments, the Planning Board may grant a special permit in conformance with the provisions of Section 570 et seq. and other applicable provisions of the Wareham Zoning Bylaw. The Planning Board may impose such conditions as it deems appropriate to satisfy the objectives of this Bylaw and the provisions of the Wareham Zoning Bylaw.

570.3 Definitions

Conservation Restriction (CR): A permanent conservation restriction pursuant to G.L. c.184, ss. 31-33. In exchange for the grant of a TDR special permit, the sending area owner shall impose a permanent conservation restriction (CR) on the sending parcels, as defined below and described in detail in section 570.7.

Developed land: The term “developed land” refers to portions of parcels that meet minimum zoning standards and contain a manmade improvement that requires or required a permit or approval from any Town, state and/or federal government agency including, but not limited to

the following: buildings/structures; public or private rights-of-way; utility easements; active or non-remediated areas of excavation or landfills.

Development Rights: The right to develop land by a land owner who maintains fee simple ownership over the land or by a party other than the owner who has obtained the rights to develop. Such rights to develop are determined by application of relevant statutory and regulatory authority, including but not limited to the Zoning Act, Subdivision Control Law, Wetlands Protection Act and Wetland Bylaw, rules and regulations adopted by the Town of Wareham, typically expressed in terms of development density permitted by the Wareham Zoning Bylaw. For example, one development right may equal one unit of housing or may equal a specific number of square feet of gross floor area in one or more specified zoning districts. These rights may be purchased or transferred.

Net Useable Land Area (NULA): The term “net usable land area” or NULA is expressed in acres and refers to the difference between the gross land area of the sending area parcels and those portions thereof falling into one or more of the following resource areas as defined by the Wetland Protection Act, G.L. c. 131, s. 40 and the Wareham Wetlands Bylaw that limit development potential, such as but not limited to: wetlands; bogs; streams; rivers; water bodies; land within thirty (30) feet of a wetland resource area boundary, with the exception of Riverfront Area boundary and land within the boundary of the 100 year floodplain; land within two hundred (200) feet of the waterways protected under the Rivers Protection Act, Chapter 258 of the Acts of 1996; and developed land (see above for definition). Land that falls within more than one of said categories shall only be subtracted once. The remaining undeveloped upland area is the NULA.

Receiving Areas: These areas are land identified on the Wareham Zoning Map and within the Zoning Bylaw to which development rights may be transferred. This land is characterized as being consistent with the Town’s long-term development goals and objectives and is subject to the terms and conditions of any special permit granted by the Planning Board. Land within receiving areas shall possess sufficient size and other characteristics to be capable of supporting development uses and densities beyond those allowed by the underlying zoning. Receiving areas are identified in Section 570.4, below.

Sending Areas: The term “sending areas” refers to the land from which development rights may be severed and transferred. This land is characterized as having special conservation-related importance due to the presence of one or more of the following features: low-density uses, designated resource areas, habitat for endangered species, visual prominence, historical significance, recreational value, necessary for protection of ground water, surface water, and/or other natural resources. Sending areas are identified in Section 570.4, below.

Transfer of Development Rights (TDR): The voluntary exchange of development rights between one or more property owners. Upon receipt of a TDR special permit, designated development

rights may be transferred from one or more sending areas to one or more receiving areas. Once a development right is transferred from a parcel, it is considered to be permanently severed from the sending area property pursuant to a Conservation Restriction or transfer in compliance with the provisions of Section 570.7, below.

Underlying Zoning: The requirements imposed by the Wareham Zoning Bylaw upon both sending and receiving parcels prior to any transfer of development rights therefrom or thereto, including, but not limited to the following: use, density, bulk, height, area, setback and frontage.

570.4 Applicability

The provisions of Section 570 shall apply to parcels contained within designated Sending Areas and parcels contained within designated Receiving Areas identified below and as identified on the Town of Wareham Zoning Map.

Sending Areas:

Any parcel or group of abutting parcels containing five (5) or more acres in size located entirely within one or more of the following Zoning Districts:

Residential 30 (R-30), Multi-Residential (MR-30), Residential (R-43), Residential (R-60), Agricultural Residential (R-130) and Strip Commercial (CS).

Receiving Areas:

Any parcel or group of abutting parcels located entirely within one or more of the following Zoning Districts:

Residential 30 (R-30), Multi-Residential (MR-30), Residential (R-43), Residential (R-60)

570. 5 Determination of Development Rights in Sending Areas and Receiving Areas

Determination of the maximum number of development rights available for transfer from sending areas shall be made by the Planning Board based on the existing by-right underlying zoning of the lot and physical characteristics of the site. Determination of the maximum number of development rights available for transfer to receiving areas shall also be made by the Planning Board based on sending area development rights.

570.5.1. Determination of Net Useable Land Area (NULA)

570.5.1.1 First, from the gross land area of the sending area parcels subtract those areas that fall into one or more of the following resource areas as defined

by the Wetland Protection Act, G.L. c. 131, s. 40 and the Wareham Wetlands Bylaw that limit development potential, such as but not limited to: wetlands; bogs; streams; rivers; water bodies; land within thirty (30) feet of a wetland resource area boundary, with the exception of Riverfront Area boundary and the boundary of the 100 year floodplain; and land within two hundred (200) feet of the waterways protected under the Rivers Protection Act, Chapter 258 of the Acts of 1996;

- 570.5.1.2** Second, subtract those areas that have been developed, meeting the definition of developed land as defined above.
- 570.5.1.3** Land that falls within more than one of said categories shall only be subtracted once. The remaining upland undeveloped area is the NULA.
- 570.5.1.4** This determination shall be determined further through the preparation of a plan or plans prepared by a Registered Professional Engineer and Professional Land Surveyor together with assistance from other professional disciplines as required for the land under consideration.
- 570.5.1.5** The plan shall show as a minimum, metes and bounds, total area, net usable land area including the percentage of gross land area of each of the applicable resource areas described above and the location of each such resource area and developed areas as defined above.
- 570.5.1.6** No approval of the net usable land area (NULA) shall be granted by the SPGA until it has received written confirmation from the Conservation Commission that the NULA calculation reflects an accurate representation of any and all resource areas under Conservation Commission jurisdiction pursuant to the Wetlands Protection Act and/or the Wareham Wetlands Bylaw. Applicants for a special permit pursuant to Section 570 et seq. shall also be responsible for filing an Abbreviated Notice of Resource Area Delineation (ANRAD) to have the boundaries of wetland resource areas reviewed and approved by the Conservation Commission. Unless the Applicant is in possession of a valid ANRAD or Request for Determination of Applicability (RDA) decision, an ANRAD shall be submitted simultaneously with the Applicant's filing for a special permit pursuant to Section 570 et seq. Where the applicant believes that no wetland resource areas are present and in lieu of the filing of an ANRAD, the applicant may file a Request for Determination of Applicability (RDA) and obtain approval of the same from the Conservation Commission. If the SPGA does not receive written confirmation from the Conservation Commission within 45 days of the

filing of the plan with the Planning Board, the Planning Board shall deem the plan to be an accurate representation of the resource areas located on the parcel(s). Notwithstanding the Conservation Commission's failure to provide written confirmation as set forth above, the Planning Board may, at anytime prior to rendering a decision under this Bylaw, request the Conservation Commission's or their agent's evaluation of the NULA calculation submitted by the Applicant.

570.5.2. Determination and Calculation of Development Rights in Sending Areas

To establish the maximum number of development rights available for transfer from the sending area, the applicant shall file a NULA calculation and map, as described in Section 570.5, for each sending area parcel. The NULA calculation and map shall include all supporting information as deemed necessary by the Planning Board. Then, using the NULA calculation, the maximum number of development rights available for transfer shall be determined by dividing the NULA by the minimum lot area requirement for one housing unit as imposed by the Wareham Zoning Bylaw upon the sending area parcels. If a calculation leads to a partial number, the number of development rights will be rounded down to the previous next whole number.

For example and illustrative purposes only:

- 10 acres of Net Useable Land Area x 43,560 s.f./acre = 435,600 s.f.
- The minimum lot size in an R-60 district for a 1-family dwelling is 60,000 s.f.
- Therefore, 435,600 s.f. (sending parcel area in square feet)/60,000 s.f. (minimum lot size) = 7.26 = 7 residential development rights available for transfer.

570.5.3. Determination of Development Rights in Receiving Areas

570.5.3.1 Receiving Area Density

The total number of development rights available for transfer to a Receiving Area shall be the same number as determined in Section 570.5.2, above.

The maximum number of development rights approved for transfer to the receiving area parcels (and therefore the receiving parcel's development density) shall be reduced, if necessary, to comply with the limits set forth below and any conditions imposed by the Planning Board in the Planning Board's grant of a special permit.

In addition, approved development within receiving areas shall be serviced by: (1) public water and (2) public sewer. Where public sewer is not readily available and on-site treatment of wastewater is planned, the SPGA shall impose as a condition of approval, the limitation of significant nitrogen concentrations at the Receiving Area parcel(s).

Stormwater runoff shall be managed and controlled to meet the design requirements for non-point source pollution in compliance with the Planning Board's Rules and Regulations governing the Subdivision of Land, Section V.B Drainage, Section VI.A. Drainage and Appendix 7. Stormwater Management Standards.

570.5.3.2 Limits on Receiving Parcel Housing Density

The number of development rights approved for transfer to a receiving parcel, when added to the number of development rights permitted by the underlying zoning of the receiving parcel, shall not exceed the following on a per acre basis:

570.5.3.2.1 12 dwelling units per acre: 2 or more dwelling units per structure

570.5.3.2.2 8 dwelling units per acre: single-family, detached dwelling units

570.5.3.2.3 Single-family, detached residential structures are permitted according to the following density and dimensional requirements:

Minimum Lot Area	5,000 s.f.
Minimum Lot Frontage	50 feet
Minimum Lot Depth	75 feet
Minimum Front Setback	20 feet
Minimum Side Setback	5 feet
Minimum Rear Setback	10 feet
Maximum % Building Coverage	45%
Maximum % Lot Coverage	75%
Maximum Height	35 feet

570.6 Procedural Requirements

Land within the designated sending and/or receiving areas may either be developed pursuant to underlying zoning regulations or the owner or its agent may petition the Planning Board for a TDR special permit pursuant to the terms and conditions of Section 570 et seq., other applicable provisions of the Wareham Zoning Bylaw and the special permit, if issued by the Planning Board. The special permit approval may allow for development of the receiving parcels pursuant to the combined development rights of the underlying zoning and the development rights permitted to be transferred from the sending parcels. Applicants seeking a TDR special permit shall own in fee simple their respective properties affected by the TDR special permit within the proposed sending areas and the proposed receiving areas; or, be in possession of a valid purchase and sale or option agreement on the parcels not held in fee simple.

Applicants are not required to own both the sending area parcels and receiving area parcels for a TDR special permit. Distinct property owners may enter into a voluntary agreement transferring development rights from one owner to another. The receiving area property owner may compensate the sending area owner with a mutually agreed upon value for each development right transferred from the sending area properties.

Unless and until the transfer of development rights has been approved by the Planning Board pursuant to Section 570 et seq. and said special permit decision has been recorded at the Registry of Deeds or at the Land Court Registry District for Plymouth County, the development rights shall be deemed to be un-severed from the sending parcel(s). After development rights have been transferred, they shall be deemed to be permanently severed from the sending parcel(s) and wholly appurtenant to the receiving parcel(s).

Applicants for a special permit pursuant to Section 570 et seq. shall provide the Planning Board with appropriate consultant review funds as determined by the Planning Board pursuant to the provisions of G.L. c.44, s.53G.

570.7 Permanent Conservation of Sending Area Parcels

In exchange for the grant of a TDR special permit, sending area parcels shall be permanently conserved through a Conservation Restriction (CR), as defined above. This CR shall be recorded either at the Registry of Deeds or at the Land Court Registry District for Plymouth County and shall be in a form acceptable to the Planning Board of the Town of Wareham. Alternatively, in exchange for the grant of a TDR special permit and in lieu of a CR, the sending area owner may transfer fee simple ownership of the sending area parcel(s) to one (or a combination) of the following: (1) the Town of Wareham to be placed under the care, custody and control of the Conservation Commission and accepted by it for park and open space use; (2) a nonprofit organization, the purpose of which is the conservation or preservation of open space and which is acceptable to the Town as a bona fide conservation organization; or (3) the Commonwealth of Massachusetts to be held for conservation purposes pursuant to Article 97 of the Massachusetts Constitution.

The owner of the sending parcels shall record at the Registry of Deeds or at the Land Court Registry District for Plymouth County either the aforementioned CR or the aforementioned deed. Evidence of said recording shall be transmitted to the Planning Board indicating the recording data therefor. The grant of the special permit for the transfer of development rights shall be conditioned upon such CR or deed, and no special permit for the transfer of development rights shall be effective until the CR or deed noted above has been so recorded and proof of recording returned to the Planning Board.

No building permits shall be issued for the receiving area parcels unless and until the special permit has become effective.

570.8 Decision Criteria

The special permit authorizing the transfer of development rights shall reference the Wareham Assessor's map with lot numbers of both the sending parcel(s) and the receiving parcel(s).

Special permits enabling the transfer of development rights and the combination of those rights with development rights pursuant to underlying zoning may be granted by the Planning Board upon its written determination that the benefits of the proposed transfer of development rights and combination of those rights with development rights pursuant to underlying zoning outweighs the detrimental impacts the proposed development would have on abutting lands, neighborhoods or the Town of Wareham. The Planning Board shall review and make determinations on the application for a special permit, including written findings of satisfaction of each of the following criteria:

- 570.8.1.1** The transfer of development rights preserves or provides one or more of the following in the sending areas: open spaces, natural areas, wildlife, flora, and habitats for endangered species; protection of ground water, surface water, drinking water, as well as, other natural resources; visual attributes; historical features, ecological significance; value for recreation and/or future Town water supply;
- 570.8.1.2** The transferred development rights are to be used in a designated receiving area;
- 570.8.1.3** The resulting development permits a development density no greater than that allowed by the combination of underlying zoning and the transferred development rights and that such development is superior to conventional development permitted by the underlying zoning given the enhanced protection of natural resources, availability of parking and other appropriate amenities, stormwater protection and improvements to local community or village features and their respective environments;
- 570.8.1.4** The resulting development complies with the currently adopted versions of the Master Plan, the Housing Production Plan, and the Open Space and Recreation Plan; and
- 570.8.1.5** The resulting development complies with relevant provisions of the Zoning Bylaw, Subdivision Rules and Regulations, and regulations governing wetland protection, wastewater disposal, current and future public water supplies and coastal waters.

570.9 Governance

The filing and public hearing requirements as set forth in G.L., c. 40A, s.9 shall govern special permit applications and decisions. The Planning Board acting as the special permit granting authority shall have the ability to adopt Rules and Regulations for the Transfer of Development Rights (TDR) Special Permit following procedures set forth in G.L., c. 40A. These regulations may include design requirements and standards addressing open space, streets, parking, pedestrian access, infrastructure, and building design standards.

Until such time that these Rules and Regulations are adopted by the Planning Board, the requirements of the *Planning Board Rules and Regulations for Special Permits* shall apply to special permit applications filed and reviewed pursuant to Section 570, et seq.

570.10 Severability

If a Court of competent jurisdiction holds any provision of this Bylaw invalid, the remainder of the Bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this Bylaw shall not affect the validity of the remainder of the Town of Wareham's Zoning Bylaw.