## Model Ordinance:

## Transfer of Development Rights

### Hadley, MA

## [Chapter ZB. Zoning Bylaw](http://ecode360.com/print/HA2892?guid=13511544&children=true#13510964)

## [SECTION XVII. Farmland Preservation Bylaw](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511544)

[Added 5-4-2000]

#### [§ 17.1. Purposes.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511478)

The purposes of this bylaw are:

[17.1.1.](http://ecode360.com/print/13511479#13511479)

To permanently protect farmland and agricultural soils in the Town of Hadley.

[17.1.2.](http://ecode360.com/print/13511480#13511480)

To protect farmland property values and provide a fair economic return to owners of property restricted from further development.

[17.1.3.](http://ecode360.com/print/13511481#13511481)

To foster compact commercial and industrial development in central areas served by public infrastructure.

#### [§ 17.2. Definitions.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511482)

[Amended 5-5-2011 ATM by Art. 18]

**"Developable Farmland"** - is defined as land that is enrolled under MGL c. 61A, Assessment and Taxation of Agricultural and Horticultural Land, and is covered by soils in USDA land capability Classes I to IV. Where public sewer service is not immediately available to a lot, only 50% of soils identified by the USDA soils maps as hydric (wetland) within Classes I to IV may be counted as developable farmland. However, a landowner may submit to the Planning Board percolation test data consistent with Title 5 of the State Environmental Code, 310 CMR 15, or a soils test prepared by a registered engineer, to demonstrate that soils should be counted as developable farmland.

#### [§ 17.3. Establishment of Farmland Preservation District and Receiving District.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511483)

The following overlay zoning districts are hereby established:

[17.3.1.](http://ecode360.com/print/13511484#13511484)

Farmland Preservation District: This district shall consist of all land within the Agricultural-Residential Zone. Within the Farmland Preservation District, all parcels of developable farmland, as defined herein, of at least five acres will be eligible for transfer of development rights.

[17.3.2.](http://ecode360.com/print/13511485#13511485)

Receiving District: This district shall consist of all lots within the Business and Industrial Zones with frontage on Route 9, Mill Valley Road or North Maple Street.

#### [§ 17.4. Transfer of development rights.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511486)

Transfer of development rights provides for increased density of commercial or industrial development in the designated Receiving District when suitable open space land in the Farmland Preservation District is permanently preserved from development. The transfer of development rights is accomplished by the execution of an agricultural preservation restriction, and the increased density is permitted by the issuance of a special permit, both as hereinafter provided.

#### [§ 17.5. Eligibility.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511487)

All lots shown on a plan, or described in a deed, recorded at the Registry of Deeds in the Farmland Preservation District and meeting the criteria described in § 17.2 are eligible to apply for a special permit from the Planning Board to transfer all or part of the development rights, certified under § 17.7 of this bylaw, on the lot to a lot in a Receiving District.

#### [§ 17.6. Receiving District regulations.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511488)

[17.6.1.](http://ecode360.com/print/13511489#13511489)

To be eligible for transfer of development rights, a special permit with site plan approval from the Planning Board is required.

[17.6.2.](http://ecode360.com/print/13511490#13511490)

The Planning Board may permit an increased number and density of buildings in the Receiving District as part of a special permit for transfer of development rights, in accordance with § 17.8 of this bylaw.

#### [§ 17.7. Process for certifying development rights.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511491)

[17.7.1.](http://ecode360.com/print/13511492#13511492)

Eligible landowners (individuals that own land in the Farmland Preservation District) may submit an application to the Planning Board for certification of available development rights on their property. The applicant shall determine the number of acres of land eligible for transfer from the parcel in the Farmland Preservation District, using the following process:

[17.7.1.1.](http://ecode360.com/print/13511493#13511493)

Determining the number of acres of developable farmland in the Farmland Preservation District. "Developable farmland" is defined in § 17.2.

[17.7.1.2.](http://ecode360.com/print/13511494#13511494)

After conferring with the Conservation Commission, subtracting all acreage which is identified as wetlands. The Conservation Commission may require the applicant to complete a wetland delineation.

[17.7.1.3.](http://ecode360.com/print/13511495#13511495)

Subtracting 5% of the total remaining parcel acreage to account for land which would be used for roads if the parcel had been developed.

[17.7.2.](http://ecode360.com/print/13511496#13511496)

The Planning Board shall review the applicant's assessment of acreage eligible for transfer and shall make a final determination of such acreage eligible for transfer. Within 45 days of receiving an application, the Planning Board shall issue a TDR certificate to the applicant that states the number of certified development rights that are available for transfer. This certification shall in no way serve as determination of the number of lots in a standard development. Each acre so certified shall constitute one certified development right unit.

#### [§ 17.8. Special permit process for transfer of development rights.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511497)

[17.8.1.](http://ecode360.com/print/13511498#13511498)

The applicant proposing to develop specified land in the Receiving District at a density allowed by this bylaw with a transfer of development rights shall make application to the Planning Board for a special permit with site plan approval. The application shall clearly illustrate a land parcel or parcels in the Farmland Preservation District and a land parcel or parcels in the Receiving District proposed for transfer of development rights and the number and form of development rights proposed for transfer, in accordance with the provisions of § 17.9. The application shall also show that the applicant has an option to purchase certified development rights for the proposed transfer.

[17.8.2.](http://ecode360.com/print/13511499#13511499)

The applicant shall submit to the Planning Board a transaction fee, to be used for the administration, recording and monitoring of the transferred development rights and preserved agricultural preservation restriction. The Planning Board may employ a consultant for these administrative purposes. This fee may be in addition to an application fee.

[17.8.3.](http://ecode360.com/print/13511500#13511500)

The applicant shall also file with the Planning Board a preliminary development plan for the parcel in the Receiving District, illustrating how the transferred development rights will be used.

[17.8.4.](http://ecode360.com/print/13511501#13511501)

Prior to final approval of a special permit, the applicant shall tender to the Planning Board a valid instrument granting to the Town a permanent agricultural preservation restriction for eligible land in the Farmland Preservation District. The developer shall furnish to the Planning Board a certificate of title by a duly licensed attorney and such other evidence or assurance of title as may be satisfactory to the Town Counsel.

[17.8.5.](http://ecode360.com/print/13511502#13511502)

Upon advice of the Town Counsel that the agricultural preservation restriction document is valid and sufficient, there must be a vote by the Board of Selectmen authorizing Conservation Commission acceptance of the agricultural preservation restriction. If the special permit application is valid and sufficient, the Conservation Commission, acting on behalf of the Town, shall accept the agricultural preservation restriction for signature of the Massachusetts Commissioner of Agriculture in the same manner as other APRs and for recording in the County Registry of Deeds. Upon final approval of site plans, the Planning Board shall issue a special permit permitting development of the specified land at the approved density, based on the table in § 17.9.

#### [§ 17.9. Dimensional and density regulations.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511503)

[17.9.1.](http://ecode360.com/print/13511504#13511504)

Each acre of developable farmland within the Farmland Preservation District is equivalent to one of the development rights in the Receiving District shown in the Table of Exchange Standards for Transfer of Development Rights, found below in this section.

[17.9.2.](http://ecode360.com/print/13511505#13511505)

The maximum limits on density, lot coverage, and parking reductions permitted to be developed by special permit in the Receiving District shall be determined by reference to the Table of Exchange Standards for Transfer of Development Rights, found below in this section.

|  | **Table of Exchange Standards for Transfer of Development Rights****[Amended 5-1-2008 ATM by Art. 26; 5-7-2009 ATM by Art. 32]** |
| --- | --- |
|  | **Farmland Preservation District (Sending District)** | **Business and Industrial Zoning (Receiving District)** | **Notes** |
|  | 1 acre of developable farmland1 equals | 2,000 square feet of additional commercial or industrial floor area2 plus a reduction in parking of 20 spaces3 | 1) The Board may allow an increase in lot coverage from the 30% maximum lot coverage required in Section IV of the Hadley Zoning Bylaw up to a maximum 70% lot coverage4 |
|  |  |  | 2) The Planning Board may reduce the parking requirements in § 5.4 of the Zoning Bylaw for off-street parking area which is equal to twice the floor area of any commercial or industrial building to be constructed. The Planning Board may reduce this requirement for off-street parking area to a minimum of 1.5 times the floor area of any commercial or industrial building to be constructed. |
|  | 1 acre of developable farmland1 equals | 2 additional bedrooms | See §§ 27.5.3.1 to 27.5.3.3 of the Hadley Zoning Bylaw |
|  | 1 | "Developable farmland" is defined in § 17.2 |
|  | 2 | "Additional commercial or industrial floor area" shall be defined as floor area above that which would normally be permitted under the Hadley Zoning Bylaw. The increased floor area shall be accommodated through either increased lot coverage or reduced parking requirements as noted in the table above. |
|  | 3 | One parking space is equal to 200 square feet. |
|  | 4 | The requirement in § 5.5 of the Hadley Zoning Bylaw for a minimum of 20% open space on a lot must be maintained. |

[17.9.3.](http://ecode360.com/print/13511506#13511506)

When a landowner wishes to sell less than the total number of development rights available to a tax parcel, he may do so provided that:

[17.9.3.1.](http://ecode360.com/print/13511507#13511507)

The tax parcel is subdivided.

[17.9.3.2.](http://ecode360.com/print/13511508#13511508)

No new parcel less than 10 acres may be created through such subdivision.

[17.9.3.3.](http://ecode360.com/print/13511509#13511509)

The subdivision plan shall specify the agricultural class of all the soils on the site.

[17.9.4.](http://ecode360.com/print/13511510#13511510)

The landowner must sell the development rights from the best agricultural soils first. In no event shall areas of nonbuildable floodplain, wetland, or slope be approved for transfer before all farmland on the tax parcel is first protected.

#### [§ 17.10. Design standards.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511511)

[17.10.1.](http://ecode360.com/print/13511512#13511512)

All uses developed under this bylaw must meet the following standards:

[17.10.1.1.](http://ecode360.com/print/13511513#13511513)

The height of buildings shall not exceed the maximum height allowed in the underlying district.

[17.10.1.2.](http://ecode360.com/print/13511514#13511514)

To the extent feasible, adjacent uses shall utilize shared parking areas and shared curb cuts to minimize vehicular safety impacts on roads.

[17.10.1.3.](http://ecode360.com/print/13511515#13511515)

Pedestrian and bicycle amenities, such as sidewalks, shall be provided.

[17.10.2.](http://ecode360.com/print/13511516#13511516)

The Planning Board may consider, in making its special permit decision, whether the project meets the following design standards:

[17.10.2.1.](http://ecode360.com/print/13511517#13511517)

The exterior facades of buildings shall be constructed of clapboards, brick, stone or other materials, and shall include exterior windows, consistent with the historic character of the Town.

[17.10.2.2.](http://ecode360.com/print/13511518#13511518)

All roofs shall be peaked.

#### [§ 17.11. Special permit criteria.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511519)

The Planning Board shall not grant any special permit for transfer of development rights unless it finds the following criteria are met:

[17.11.1.](http://ecode360.com/print/13511520#13511520)

The proposed use is in harmony with the purposes in § 17.1 of this bylaw.

[17.11.2.](http://ecode360.com/print/13511521#13511521)

The proposed use meets all of the procedural, dimensional and density requirements and design standards in §§ 17.8 to 17.10 of this bylaw.

#### [§ 17.12. Reporting of TDR transactions.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511522)

Buyers and sellers must report all TDR transactions (options, sales, gifts, donations) to the Planning Board within 10 business days.

#### [§ 17.13. Release of agricultural preservation restriction.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511523)

No agricultural preservation restriction which has been conveyed under this bylaw may be released unless the provisions for release of agricultural preservation restrictions in MGL c. 184, § 32 have been met, which include:

[17.13.1.](http://ecode360.com/print/13511524#13511524)

The restriction must be repurchased from the Town by the landowner at its then fair market value, and funds must be returned only to the Town bank for development rights.

[17.13.2.](http://ecode360.com/print/13511525#13511525)

The restriction shall be released by its holder only if the land is no longer deemed suitable for agricultural or horticultural purposes and if approved by a two-thirds vote of both branches of the Massachusetts General Court.

[Amended 5-5-2011 ATM by Art. 18]

#### [§ 17.14. Alternate method for TDR transactions.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511526)

In lieu of transferring development rights using the process described in §§ 17.4 to 17.9 above, an applicant for a special permit in § 17.8 may make a cash contribution to the Town of Hadley to be used for the purpose of purchasing agricultural preservation restrictions. The contribution shall be of a value equal to the value of the required development rights, as determined in the Table of Exchange Standards for Transfer of Development Rights. This value shall be determined by multiplying the number of acres of developable farmland required by the average cost for the purchase of agricultural preservation restrictions in the Town of Hadley over the last three years, as determined by the Conservation Commission.

#### [§ 17.15. Biannual review.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511527)

[Amended 5-2-2014 ATM by Art. 27]

The Planning Board shall conduct a biannual review of this bylaw at an advertised public meeting in order to assess the bylaw. The Planning Board shall make recommendations to the Town for any changes needed in the bylaw structure or process.

#### [§ 17.16. Relationship to Rate of Development Bylaw.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511528)

[17.16.1.](http://ecode360.com/print/13511529#13511529)

Lots in the Farmland Preservation District which receive a special permit for transfer of development rights are exempt from building permit limits in the Zoning Bylaw, Section XV, Rate of Development, only for purposes of a transfer of development rights.

[Amended 5-5-2011 ATM by Art. 18]

[17.16.2.](http://ecode360.com/print/13511530#13511530)

Building permit limits shall remain in effect in the Farmland Preservation District, except for those development rights which are transferred as part of a special permit under this section.

#### [§ 17.17. Bank for development rights.](http://ecode360.com/print/HA2892?guid=13511544&children=true#13511531)

[Amended 5-5-2011 ATM by Art. 18]

The Town may purchase development rights for the purpose of sale or use in the Receiving District, or for retirement, after a vote of Town Meeting.