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J. Separability. Should any provision of this section be declared invalid by a final court decision, the same shall not affect the validity of this section as a whole or part thereof, other than the part declared to be invalid.

**170-27.2. Transfer of Development Rights.** [Added 10-31-90 by Ord. No. 16-90; amended 01-22-03 by Ord. 35-02]

- A. Authority. By the authority granted under NH RSA 674:21, this section creates overlay district(s) for the purpose of transferring development rights (TDR) within said districts.
- B. Purpose and Intent. Within the City of Dover there are certain lands that possess significant conservation features, including but not limited to wetlands, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic viewsheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition.
- C. Applicability. Upon request by an applicant for development approval and at the discretion of the Planning Board, the provisions of this subsection may apply to the district(s) defined in this subsection E below.
- D. Definitions.

Development Rights - The legal claim to construct or develop specified land uses within specified densities and/or dimensional limits as granted by the City of Dover Zoning Ordinance.

Landscaped area - An area unoccupied by pavement or structures and open to the sky in either a landscaped or grassed condition. May include recreational fields, lawns, and public parks that do not possess significant conservation features.

Open Space – Land that is not built upon or substantially altered by human activity including open fields, such as meadows and farmland, and forest as well as undeveloped shorelands and waterbodies.

Receiving Area - A defined area within a TDR district to which development rights are transferred resulting in more efficient and intense use of suitable development sites.

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**Sending Area** - A defined area within a TDR district from which development rights are transferred, resulting in the permanent preservation of lands possessing significant conservation features.

**Transfer of Development Rights** - The conveyance of the development rights of a parcel of land by deed or other legal instrument approved by the Planning Board to the developer of another parcel. Said legal instrument shall be recorded at the Strafford County Registry of Deeds.

**TDR District** - An area defined as a zoning overlay district, which includes a sending area and a receiving area for the purpose of transferring development rights from a parcel within the sending area to a parcel within the receiving area.

### E. Districts Defined.

- (1) The Industrial TDR District is hereby determined to be any I-4 or B-4 Zoning districts as shown on the Zoning Map for the City of Dover, New Hampshire, adopted May 25, 1979. The sending Area is defined to be open space and related setbacks as defined by the City of Dover Wetland Protection District, Chapter 170-27.1, which are located in be any I-4 or B-4 Zoning districts. The receiving area is defined to be all remaining land in be any I-4 or B-4 Zoning districts.
- (2) The Residential TDR Districts are hereby determined to be Residential districts as shown on the Zoning Map for the City of Dover, New Hampshire, adopted May 25, 1979. The sending area is defined to be all R-40 or R-20 residential zoning districts. The receiving area is defined to be all non-R-40 or R-20 zoning districts East of the Spaulding Turnpike which allow residential development.

### F. Procedural Requirements.

- (1) At the discretion of the Planning Board, an applicant for development approval within the receiving area of the defined Industrial TDR district may apply the performance standards specified in subsection G below in return for the acquisition of land or development rights from the sending area within the same TDR district. The performance standards for the Residential TDR district are outlined in subsection H below.
- (2) A certified boundary survey of the associated land in the sending area shall be submitted as a supplement to the site plan or subdivision plan for development within the receiving area.

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- (3) The owner of the subject open space within the sending area of the TDR district shall sign all application materials as a co-applicant of the development application.
- (4) A sketch plan estimating layout of the development site and identifying the open space associated with the plan shall be submitted to the Planning Board for review at a regularly scheduled meeting. The Planning Board, within thirty (30) days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections G and H below. Following this decision, a final application is prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section.
- (5) A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated open space within the sending area. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with subsection I below. The designation of the land protection agency to hold the easement shall be approved by the Planning Board.

G. Industrial Performance Standards.

- (1) Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in subsection F above, may be counted for the open space requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the open space requirement for the development site, but in no case be less than one (1) acre. Notwithstanding, development sites within the I-4 and B-4 zoning districts shall maintain open space or landscaped area on at least ten (10) percent of the site. The design of the development site shall locate the open space or landscaped area to maximize the aesthetic value of the site.
- (2) The minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.
- (3) The minimum frontage requirement may be waived by the Planning Board for land subjected to the transfer of development rights provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.

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- (4) Setbacks for parking, paved areas, and buildings may be waived by the Planning Board, and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, buildings shall be at least 150 feet from residential structures that exist on the date of enactment of the I-4 and B-4 Zoning districts, and 75 feet from the lot line of a disagreeing residential abutter.
- (5) The developer shall record covenants that address architectural considerations for structures, signage and lighting, that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or open space around the perimeter of the site, near the proposed buildings, and within the parking lot that promotes the highest possible aesthetic quality of the development.

### H. Residential Performance Standards.

- (1) For land in the sending district to be eligible to transfer development rights, it must be a parcel of at least 5 acres, and developable under the existing land use regulations.
- (2) Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in subsection F above, may be counted for the minimum lot size requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the minimum lot size requirement for the sending site.
- (3) The square footage being transferred shall be divided by the minimum lot size needed in the receiving zone, or by 5000 square feet, whichever is larger to determine the transferred right.
- (4) The minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.
- (5) The minimum frontage requirement may be waived by the Planning Board for land subjected to the transfer of development rights provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.
- (6) Any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity:

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- a. Is consistent with the Master Plan
- b. Is not incompatible with the land uses on neighboring lots

**I. Conditional Uses.**

- (1) The Planning Board may grant conditional use permits to allow streets, roads, utilities, or other infrastructure improvements to cross wetlands within the receiving area of the TDR District, provided said infrastructure is essential to the productive use of land within the receiving area of a TDR District, and further provided that no possible location exists for said infrastructure in non-wetland areas.

**170-28. Urban Renewal District.**

The regulatory provisions contained in the so-called "Land Use Provisions and Building Requirements" for the Downtown Dover Urban Renewal Project No. 1 shall apply to the project area, as approved by the Dover City Council.

**170-28.1. Riverfront Residential Overlay District. [Added 02-17-99 by Ord. No. 25-98]**

- A. Purpose. The purpose of this section is to promote the public health, safety and general welfare by protecting the shorelands which are valuable and fragile natural resources essential to maintain the integrity of public waters. By adopting this section, the City is striving to avoid uncoordinated, unplanned and piecemeal development of shorelands which could significantly impact public waters.
- B. Location of District. The Riverfront Residential Overlay District is an overlay district that includes all land located within two hundred and fifty (250) feet of the reference line (as defined by RSA 483-B:4 – XVII) of any tidal water body or tidal river in a Single Family Residential District (R-12, R-20, and R-40).
- C. Minimum Lot Size Requirement. The minimum lot size for a lot within the Riverfront Residential Overlay District shall be three times the minimum lot size required by Article 170-16 – Applicability of Table of Dimensional Regulations for the underlying zoning district, but land classified as wetlands can be included for up to fifty percent of the minimum lot area required in this district.
- D. Minimum Shoreland Frontage Requirement. Any new lot created within the district shall provide a minimum of 150 feet of river shoreland frontage per dwelling unit for lots dependent on septic systems and a minimum of 100 feet of river shoreland frontage per dwelling unit for lots served by municipal sewer.
- E. Existing Lots. Existing lots of record are exempt from the provisions of this ordinance. Only lots subdivided after the posting of this ordinance shall be subject to its provisions.