

## **40R Zoning Definitions Used in Data Density Spreadsheet**

Gross Acreage: total parcel acreage

### Environmentally Constrained Land

For the purposes of calculating the portion of Gross Acreage that qualifies as Gross Buildable Land, Environmentally Constrained Land generally includes Dedicated Open Space, Future Open Space, areas of state-owned land that contain Prime Farmland Soils, and any other areas exceeding 1/2 acre of contiguous land that are:

1. protected wetland resources (including buffer zones) under federal or state laws plus any additional areas that are protected wetlands resources (including buffer zones) under applicable Additional Municipal Standards, if any, but not federal or state laws;
2. rare species habitat designated under federal or state law, unless granted an exception consistent with requirements established by the Massachusetts Executive Office of Energy and Environmental Affairs and the Department of Fish and Game that all or part of such areas can accommodate development consistent with the proposed 40R Zoning;
3. characterized by steep slopes with an average gradient of at least 15 percent; or
4. subject to any other Municipal ordinance, by-law, or regulation that would prevent the development of residential or Mixed-use Development Projects at the As-of-right residential densities set forth in the 40R Zoning.

### Gross Buildable Land (GBL)

All Developable Land (including Underutilized Land) plus all other buildable (non-environmentally constrained) land that would otherwise qualify as Developable Land but has been deemed Substantially Developed Land. A parcel's Gross Buildable Acreage should generally consist of the Gross Acreage to which the Smart Growth Zoning will apply minus Environmentally Constrained Land.

### Substantially Developed Land (SDL)

760 CMR 59.02: Land within a District that is currently used for commercial, industrial, institutional, or governmental use, or for residential use consistent with or exceeding the densities allowable under the Underlying Zoning, and which does not qualify as UL. Any land located within a Historic District shall be presumed to be Substantially Developed, unless the Municipality can show that all or a portion of such land qualifies as DL.

### Developable Land (DL)

760 CMR 59.02: All land within a District that can be feasibly developed into residential or Mixed-use Development Projects. Developable Land shall not include:

- (a) Substantially Developed Land;
- (b) Dedicated Open Space;
- (c) Future Open Space;
- (d) The rights-of-way of existing public streets, ways, and transit lines and, in a Starter Home Zoning District, new public and private roadways that would be necessary to meet minimum applicable requirements under Municipal law including the proposed

40R Zoning and, to the extent applicable within the proposed District, Municipal subdivision control requirements;

(e) Land currently in use for governmental functions (except to the extent that such land qualifies as Underutilized Land); or

(f) Areas exceeding 1/2 acre of contiguous land that are:

1. protected wetland resources (including buffer zones) under federal or state laws plus any additional areas that are protected wetlands resources (including buffer zones) under applicable Additional Municipal Standards, if any, but not federal or state laws;

2. rare species habitat designated under federal or state law, unless granted an exception consistent with requirements established by the Massachusetts Executive Office of Energy and Environmental Affairs and the Department of Fish and Game that all or part of such areas can accommodate development consistent with the proposed 40R Zoning;

3. characterized by steep slopes with an average gradient of at least 15 percent; or

4. subject to any other Municipal ordinance, by-law, or regulation that would prevent the development of residential or Mixed-use Development Projects at the As-of-right residential densities set forth in the 40R Zoning. (g) Areas of state-owned land that contain Prime Farmland Soils.

#### Underutilized Land (UL)

760 CMR 59.02: Developable Land within a District that would otherwise qualify as Substantially Developed Land, consistent with guidance issued by DHCD, but which:

(a) is characterized by improvements that have a marginal or significantly declining use, as measured by such factors as vacancy rates, extent of operation, current and projected employment levels, market demand for the current uses or the uses to which the existing improvements could readily be converted, low value of improvements in relation to land value, and low floor area ratio in relation to the floor area ratio that would be permitted under the applicable Underlying Zoning;

(b) as demonstrated by existing or anticipated market conditions, may have reasonable potential to be developed, recycled, or converted into residential or Mixed-use Development consistent with Smart Growth; and

(c) for a Starter Home Zoning District, solely for purposes of determining whether the District consists of not less than 3 contiguous acres of Developable Land area, DHCD may also include in the calculation of Underutilized Land certain additional land that would otherwise qualify as Substantially Developed Land, where DHCD determines that there is reasonable potential for such land to be more intensively developed in accordance with Starter Home Zoning.

#### Existing As-of-right Density

The maximum number of units per acre allowed As-of-right under the Underlying Zoning which includes any existing zoning applicable to the parcel.

#### 40R As-of-right Density

The applicable maximum number of units per acre allowable As-of-right on the parcel under the proposed Smart Growth (40R) Zoning.

#### Occupied Existing Units (OEU)

Any existing occupied housing units on the parcel regardless of whether they could be developed As-of-right under currently applicable Underlying Zoning (for example, lawfully nonconforming existing occupied housing units).

#### Total Units Developable As-of- Right Under Existing / Underlying Zoning (UDAUEZ)

The maximum absolute number of units allowable As-of-right on the specific parcel under the Underlying Zoning which includes any other overlay zoning that may exist in addition to the base zoning.

#### Existing Zoned Units (EZU)

The greater of the Occupied Existing Units (OEU) and Total Units Developable As-of-Right Under the Existing / Underlying Zoning (UDAUEZ). See also 760 SMR 59.02: For a given parcel or area of Developable Land within a District, the maximum number of housing units that could feasibly be developed As-of-right under the Underlying Zoning through new development, the substantial rehabilitation of existing residential buildings, or the conversion to residential use of existing buildings. Units that are proposed or developable within the geographic area of a District under a comprehensive permit pursuant to M.G.L. c. 40B for which the project eligibility letter was issued to the developer prior to the Municipality's 40R Zoning Application shall be included as Existing Zoned Units if

(a) the comprehensive permit is issued prior to the date of the Municipality's 40R Zoning Application, or

(b) the subject land makes up all or substantially all of the Developable Land within the proposed 40R District. For purposes of determining the Zoning Incentive Payment and the Bonus Payment,

(1) absent any application of the 40R Zoning to Substantially Developed areas, the Existing Zoned Units within any District or Project site shall be determined upon the basis of the allowable As-of-right residential density per acre shown on the plan submitted under 760 CMR 59.03(1)(c), multiplied by the acreage of Developable Land area, and

(2) Existing Zoned Units shall include any existing occupied housing units within a District regardless of whether they could be developed As-of-right under currently applicable Underlying Zoning (for example, lawfully nonconforming existing occupied housing units).

#### Future Zoned Units (FZU)

For a given parcel, the FZUs are the maximum absolute number of actual units allowed As-of-right under Smart Growth Zoning. See also 760 CMR 59.02: For a given parcel or area of Developable Land within a District, the maximum number of housing units that could be developed As-of-right under the 40R Zoning through new development, the substantial rehabilitation of existing residential buildings, or the conversion to residential use of existing buildings, except that an Accessory Dwelling Unit shall not qualify as a Future Zoned Unit.

### Bonus Units

The net number of new, additional units allowed As-of-right under the Smart Growth Zoning on the parcel after deducting the corresponding number of Existing Zoned Units (i.e., FZU minus EZU on the parcel's GBL). See also 760 CMR 59.02: A housing unit developed as part of a Project within a District, either through new construction, the substantial rehabilitation of an existing residential building, or the conversion to residential use of an existing building, in excess of the number of Existing Zoned Units for the same parcel. Units proposed or developed under a comprehensive permit pursuant to M.G.L. c. 40B for which the project eligibility letter was issued to the developer prior to the Municipality's 40R Zoning Application to DHCD shall not qualify as Bonus Units if the development that is the subject of the comprehensive permit comprises all or substantially all of the Developable Land within the proposed 40R District. Otherwise, units developed within a District under a Comprehensive Permit issued pursuant to M.G.L. c. 40B after the submission of a 40R Zoning Application, in excess of the number of Existing Zoned Units for the same parcel, shall qualify as Bonus Units.

### Incentive Units

On Developable Land only, the Future Zoned Units less the Existing Zoned Units (generally the same as the subset of estimated Bonus Units associated Developable Land). See also 760 CMR 59.02: For a given parcel or area of Developable Land within a District, the number of Future Zoned Units, less the number of Existing Zoned Units for the same parcel or area of land, except that an Accessory Dwelling Unit shall not qualify as an Incentive Unit.

### As-of-Right

760 CMR 59.02: Housing development allowed under the Underlying Zoning or 40R Zoning without recourse to a special permit, variance, zoning amendment, discretionary waiver, or other form of zoning relief. Units that require Plan Review shall be considered As-of-right, subject to review and approval by DHCD of any Municipal 40R regulations, guidelines, forms of application materials, or other requirements applicable to review of Projects by the Plan Approval Authority under 760 CMR 59.00.

### Future Open Space

760 CMR 59.02: Areas within a District which a Municipality may designate or require to be designated to be set aside in the future as Dedicated Open Space through the use of a conservation restriction as defined in M.G.L. c. 184, § 31 or other qualifying means. Such Future Open Space may be subject to requirements under the 40R Zoning for Projects to set aside a fixed percentage of the site area as Dedicated Open Space, and, for Districts other than Starter Home Zoning Districts eligible pursuant to 760 CMR 59.04(1)(a)3., allowing such Projects to deduct the Dedicated Open Space when calculating housing densities. Notwithstanding the foregoing, the total Future Open Space may not exceed 10 percent of what would otherwise be the Developable Land area if the Developable Land would be less than 50 acres; it may not exceed 20 percent of what would otherwise be the Developable Land area if the Developable Land area would be 50 acres or more; and it shall be consistent with the current Municipal Dedicated Open Space plan.

### Dedicated Open Space

760 CMR 59.02: Land dedicated in perpetuity to protect one or more of the following: land for existing and future well fields, aquifers, and recharge areas; watershed land; agricultural land; grasslands; fields; forest land; fresh and salt water marshes and other wetlands; ocean, river, stream, lake and pond frontage; beaches, dunes, and other coastal lands; lands to protect scenic vistas; land for wildlife or nature preserves; land for active or passive recreational use; parklands, plazas, playgrounds, and reservations; and cemeteries. Dedicated Open Space may be in public, private, or non-profit ownership. Any land subject to protection under Article 97 of the Massachusetts Constitution shall be deemed Dedicated Open Space for the purposes of 760 CMR 59.00. In any case where such Dedicated Open Space is not conveyed to the Municipality, a restriction enforceable by the Municipality shall be recorded providing that such land be preserved as Dedicated Open Space pursuant to a conservation restriction as defined in M.G.L. c. 184, § 31.

### Historic District

760 CMR 59.02: A district in a Municipality characterized by the historic and or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law. Within any such Historic District, the provisions and requirements of the Municipal Historic District regulations may apply to existing and proposed buildings. A District may include all or part of one or more existing Historic Districts, and it may be coterminous or non-coterminous with the Historic District. A Municipality may establish or enlarge an Historic District within an Approved District, but whether such Historic District renders the District non-compliant with the provisions of M.G.L. c. 40R and 760 CMR 59.00 shall be subject to DHCD review in accordance with 760 CMR 59.05(5). DHCD's review of such a new or enlarged Historic District shall be limited to compliance with M.G.L. c. 40R and 760 CMR 59.00. See also 760 CMR 59.02: Substantially Developed Land.

### Underlying Zoning

760 CMR 59.02: The Municipal zoning requirements adopted pursuant to M.G.L. c. 40A (or, in the case of the City of Boston, other applicable law) that are otherwise applicable to the geographic area where a District is located or proposed. The Underlying Zoning shall include all zoning and existing overlays applicable to such geographic area and shall not be limited to the base zoning layer. Solely for the purposes of calculating existing residential densities under 760 CMR 59.03(1), the Underlying Zoning shall be deemed to be the zoning which was in effect one year prior to the date upon which the 40R Zoning Application was submitted to DHCD.