

LOCAL LAND USE REGULATIONS AND INNOVATIVE PLANNING TECHNIQUES

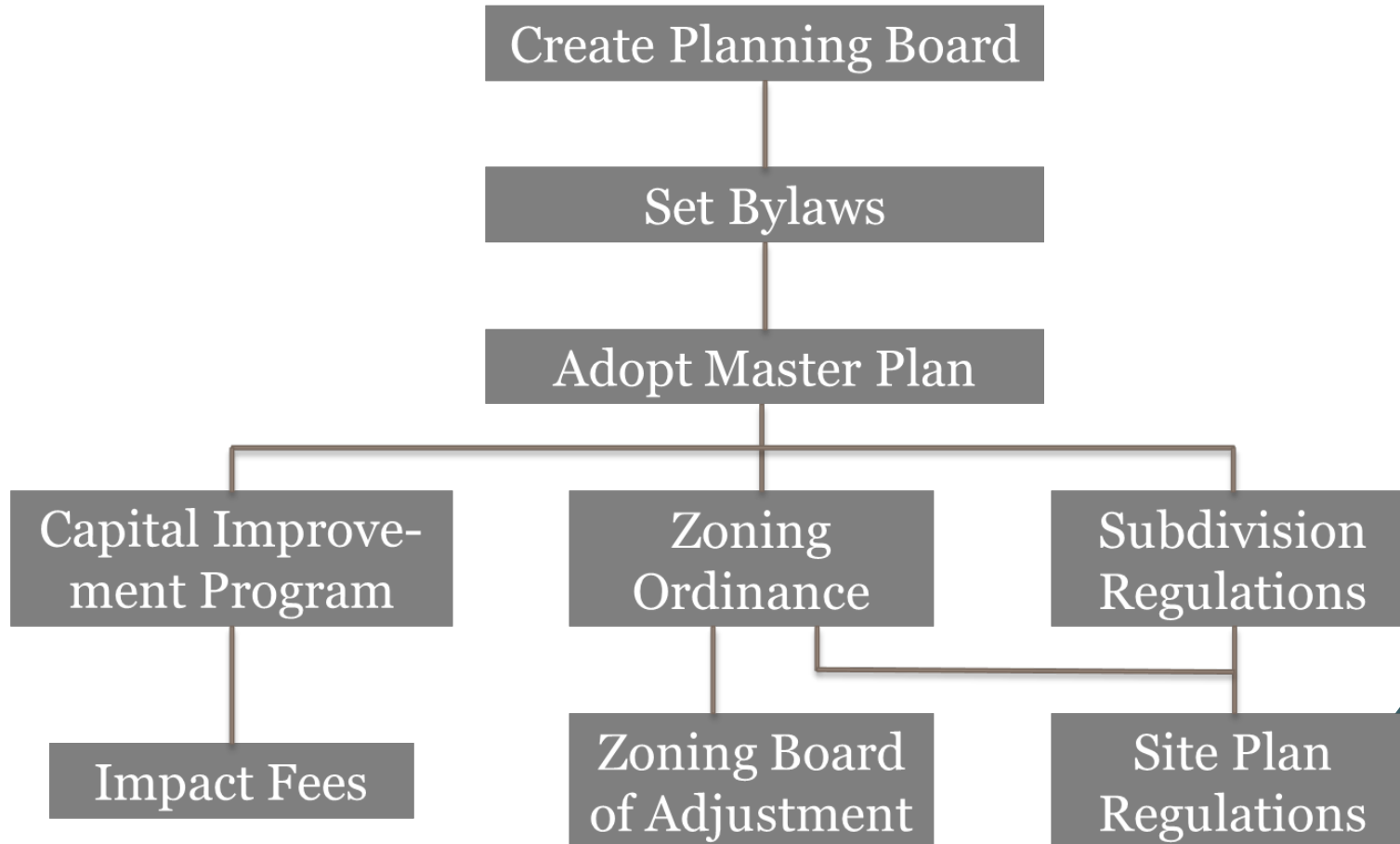
Noah D. Hodgetts, Principal Planner
NH Office of Planning and Development

Alvina Snegach, Assistant Planner
NH Office of Planning and Development

Agenda

- Overview of 2021 Municipal Land Use Regulation Survey Results
- Summary of RSA 674:21 Innovative Land Use Controls Statute
- Adoption and Administration of Innovative Land Use Controls
- Tools to Balance Housing and Conservation
 - Conservation Subdivision/Cluster Development
 - Transfer of Development Rights
- Question and Answer

MUNICIPAL LAND USE REGULATION PROCESS



MUNICIPAL LAND USE REGULATION SURVEY

- ❑ RSA 675:9, which has been in effect since 1983 establishes the New Hampshire Office of Planning and Development (OPD) as the state repository for all local land use regulations and documents
- ❑ RSA 675:9 also authorizes OPD to conduct an annual survey of all municipalities in order to collect information pertaining to new and/or amended land use ordinances.

2021 SURVEY RESULTS

- ❑ Completed by all, but two of the state's **234** municipalities, **9** village districts with zoning authority, Coos County, and Pease Development Authority
- ❑ Coos County has zoning authority over **23** unincorporated places in the North Country
- ❑ **128** jurisdictions submitted zoning amendment updates after their 2021 Annual Town Meeting

MUNICIPAL LAND USE REGULATION SURVEY TOPICS

- ❑ Municipal Planning Organizational Structure
- ❑ Land Use Regulations/Documents
- ❑ Master Plan Topics
- ❑ Housing Information
- ❑ Building Code Information
- ❑ Economic Development
- ❑ Planning & Development Techniques
- ❑ Water & Shoreland Regulations
- ❑ Energy Information

BEA New Hampshire Department of BUSINESS AND ECONOMIC AFFAIRS
 2021 Municipal Land Use Regulation Annual Survey
 New Hampshire Office of Planning and Development
 Note: **highlighted fields** were not included on the 2019-20 survey

PLEASE ONLY MARK CHANGES FROM THE 2019-2020 SURVEY

Municipality Name:	Date:
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Municipality Contact Information - Please enter the contact information for the main person who is completing this survey.

First Name:	Last Name:
Title:	Phone Number:
Email:	Municipality Website:

Municipal Planning Organizational Structure - Please check all boxes applicable to the municipality and enter additional information.

Full-Time Planning Staff	Part-Time Planning Staff
Planning Consultant	The Regional Planning Commission Provides Circuit Rider Planning Assistance To The Municipality
Planning Board (RSA 673:1)	Energy Committee/Commission (RSA 38-D:2)
Zoning Board of Adjustment (RSA 673:1)	Heritage Commission (674:44-a)
Agricultural Commission (RSA 674:44-e)	Historic District Commission (RSA 673:4, 674:46-a)
Broadband Committee	Housing Commission/Committee (RSA 674:44-h)
Conservation Commission (RSA 36-A:2)	Parks/Recreation Commission (RSA 35-B:4)

Land Use Regulations/Documents - Please enter the date last amended of any applicable municipal regulation and its web site link.

Regulation/Document	Date Last Amended (month/day/yr.)	Website Link (if applicable)
Capital Improvements Plan		
Driveway Regulations		
Excavation Regulations		
Historic District Ordinance		
Master Plan		
Site Plan Regulations		
Subdivision Regulations		
Wireless Telecommunications Ordinance		
Zoning Ordinance		

Master Plan Topics - Please check all the boxes of the topics currently in the municipality's Master Plan (RSA 674:2).

Vision (required)	Cultural & Historic Resources	Natural Hazards	Transportation
Land Use (required)	Economic Development	Natural Resources	Utility & Public Service
Coastal Management	Energy	Neighborhood Plan	Other Topics** (i.e. Climate Change/Adaptation, Public Health, etc.)
Community Design	Housing	Recreation	
Community Facilities	Implementation	Regional Concerns	

**Specify:

Housing Information - Please complete all boxes applicable to the municipality.

Accessory Dwelling Unit Ordinance (RSA 674:72)	Are Detached ADU's Permitted? Is Principal Dwelling Unit Or ADU Required To Be Owner-Occupied?	How Are ADUs Permitted? (As Of Right, By Conditional Use Permit Or Special Exception)
Workforce Housing Ordinance (RSA 674:58)	Workforce Housing Multi-Family Overlay District	Inclusionary Zoning (RSA 674:21)
Age-Restricted Housing Regulations	Regulate Short-Term Rentals (i.e. Airbnb)	Regulate Tiny Houses

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2021 Highlights

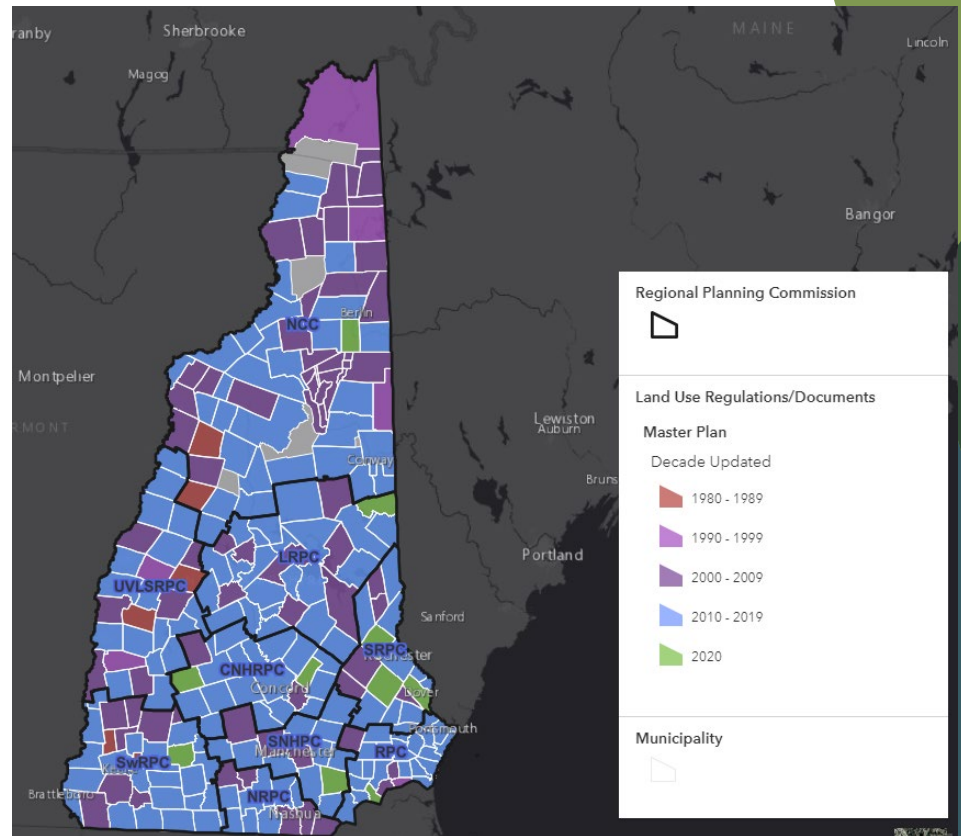
- ❑ **128 jurisdictions** adopted zoning amendment updates
- ❑ **8** communities amended their Accessory Dwelling Unit (ADU) ordinances to allow detached units
- ❑ **5** communities adopted or expanded their workforce housing ordinances
- ❑ **8** communities adopted short-term rental regulations
- ❑ **11** communities adopted definitions for solar arrays or a solar energy systems ordinance
- ❑ **1 community** adopted 79-E, which provides property tax relief to encourage investment in rehabilitation of underutilized buildings in downtowns and town centers

A PATCHWORK OF REGULATIONS & PLANNING CAPACITY

- ❑ **18** communities, located primarily in Grafton and Coos County, do not have traditional zoning ordinances, but **7** of these communities have a Board of Adjustment
- ❑ Only **2** communities at the far northern tip of the state, Pittsburg and Clarksville do not have a Planning Board established under RSA 673:1
- ❑ **57** communities have adopted historic district ordinances, but are all in the southern half of the state
- ❑ **197** communities have adopted a wireless telecommunications ordinance with the only communities that haven't clustered at the northern tip of the state or on the western edge
- ❑ **72** communities have full-time planning staff; **78** communities have part-time planning staff; **38** communities rely on planning consultants; **74** communities have no planning staff
- ❑ Regional Planning Commissions provide circuit rider planning assistance to **33** communities

MASTER PLANS

- ❑ **41** communities have adopted master plan updates since the beginning of 2020
- ❑ An increasing number of communities are adopting master plan chapters which deviate from the master plan chapters enumerated in RSA 674:2

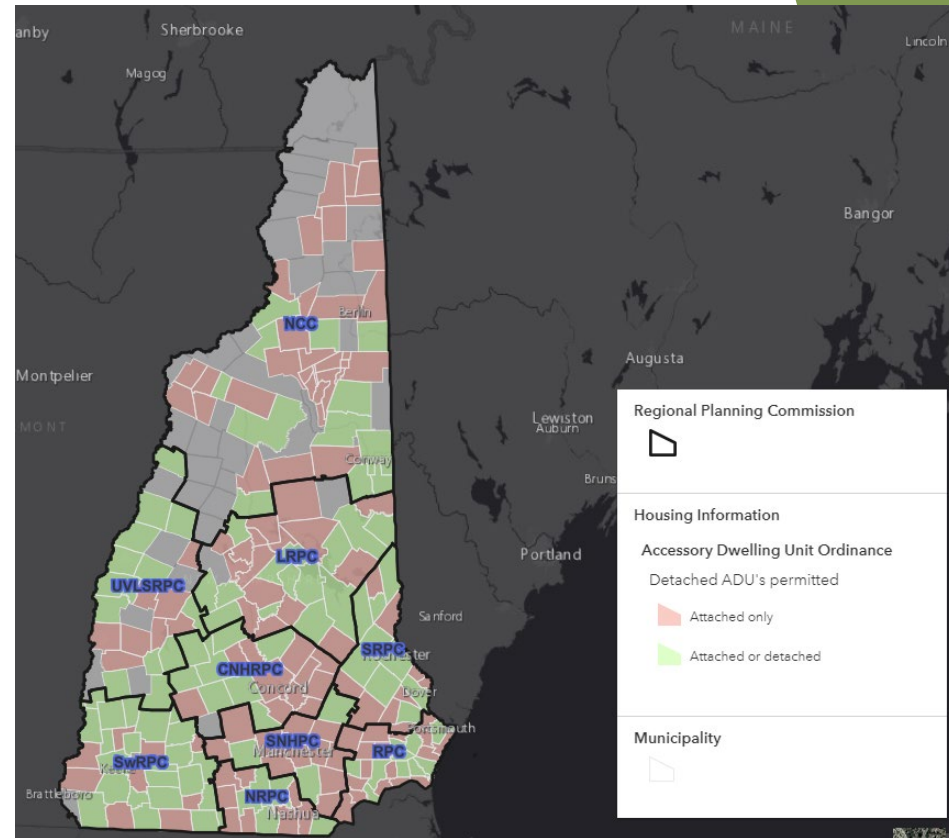


HOUSING DEVELOPMENT ORDINANCES

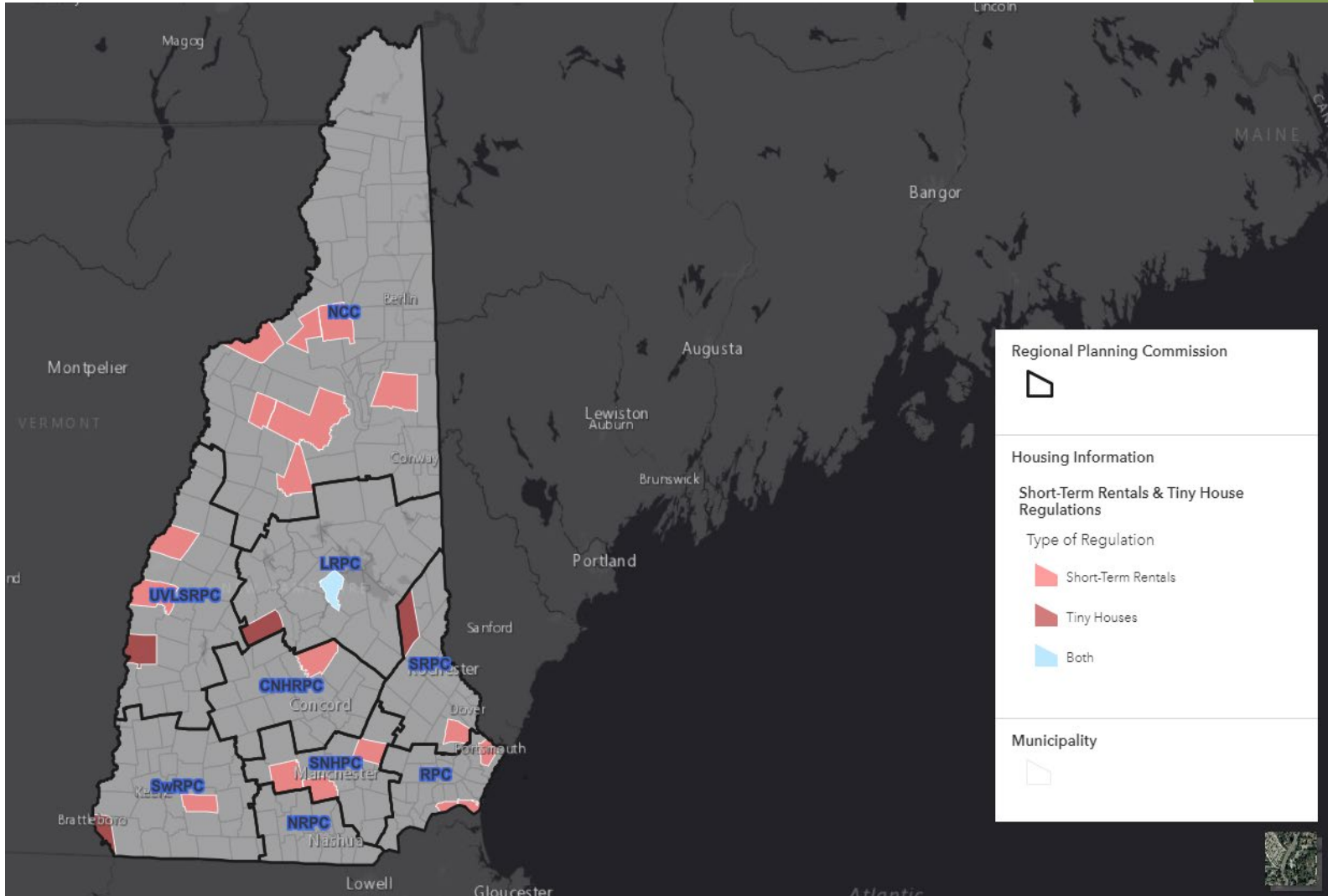
- ❑ **75** communities have a workforce housing ordinance or workforce housing multi-family overlay district in accordance with RSA 674:58-61
- ❑ Only **49** of these communities have an inclusionary zoning provision in their workforce housing ordinance
- ❑ **85** communities also levy impact fees and **22** communities have enacted growth management ordinances
- ❑ **80** communities employ age-restricted housing regulations

ACCESSORY DWELLING UNIT ORDINANCES

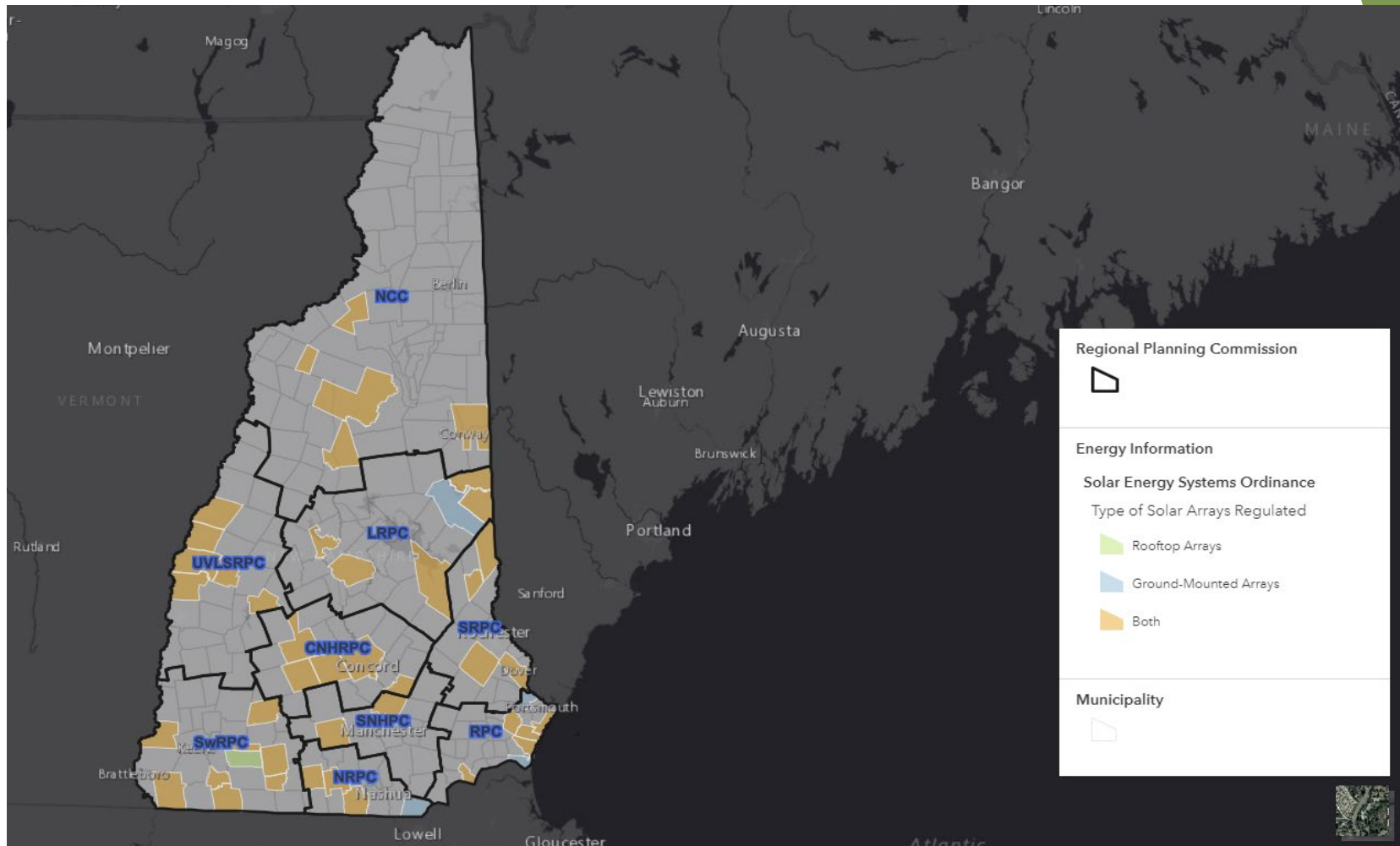
- ❑ **204** communities have adopted an ADU ordinance
- ❑ **173** communities require the principal dwelling unit or the accessory dwelling unit to be owner-occupied
- ❑ **104** communities allow accessory dwelling units in structures which are detached from the principal dwelling unit
- ❑ Just under half of the communities that regulate accessory dwelling units permit them as-of-right, while the other half require obtaining a conditional use permit or special exception



Short-Term Rentals



Solar Energy Ordinances



Innovative Planning Tools

- ❑ Mixed-Use Zoning (143)
- ❑ Inclusionary Zoning (49)
- ❑ Density Bonus (70)
- ❑ Cluster Development (179)
- ❑ Form-Based Code (8)
- ❑ Accessory Dwelling Unit Ordinance – detached (104)
- ❑ Planned Unit Development (43)
- ❑ Transfer of Development Rights (9)
- ❑ Village Plan Alternative Subdivision (5)

INNOVATIVE LAND USE CONTROLS

RSA 674:21

- ❑ Timing incentives
- ❑ Phased Unit Development (50)
- ❑ Intensity and use incentive
- ❑ Transfer of Density and Development Rights (8)
- ❑ Planned Unit Development (43)
- ❑ Cluster Development (179)
- ❑ Impact zoning
- ❑ Performance Standards (165)
- ❑ Flexible and discretionary zoning
- ❑ Environmental characteristics zoning
- ❑ Inclusionary Zoning (49)
- ❑ Impact Fees (85)
- ❑ Village Plan Alternative Subdivision (5)
- ❑ Integrated land development permit option (NOT ACTIVE)

WHY DO WE HAVE INNOVATIVE LAND USE CONTROLS?

- ❑ 1983 Enabling Legislation passed to assist communities with development pressures.
- ❑ Gives the municipalities some techniques and flexibility when drafting regulations to control sprawl and reduce negative impacts of rapid growth.

WHAT ARE INNOVATIVE LAND USE CONTROLS?

- ❑ RSA 674:21.II- “An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance.”

WHAT ARE INNOVATIVE LAND USE CONTROLS? (cont'd)

- ❑ A community that has adopted a master plan can adopt an innovative land use control, if that land use control is supported by the master plan.
- ❑ They shall contain the guidance or standards to guide the board or administrator including special use permits or conditional use permits.

WHO DOES WHAT?

- ❑ Administration of the ordinance can be granted to the PB, BOS, ZBA, or other such person or board according to the ordinance.
- ❑ If administration is not designated to the PB, any proposal under the regulation shall be reviewed by the PB prior to final consideration by the administrator. The PB provides written comments to the administrator who shall utilize the comments either as the conditions of approval or within the conditions of approval.

WHO DOES WHAT? (cont'd)

- ❑ What is the land use board's role?
 - ❑ Research the Master Plan for applicable chapters
 - ❑ Hold Public Hearings
 - ❑ Invite the public's input and participation
 - ❑ Present the ordinance to the legislative body

- ❑ What is the planner's role?
 - ❑ Guide the Planning Board through the goals of the Master Plan and the proposed regulations
 - ❑ Work with the Planning Board to engage the community and invite public input
 - ❑ Could be the administrator of the ordinance

WHERE DO THEY GO?

- ❑ Most ILUC are adopted into the zoning ordinance.
- ❑ Some ILUC may be adopted into the subdivision (674:36) and site plan regulations (674:44).

CONSERVATION SUBDIVISION AS AN INNOVATIVE LAND USE CONTROL

- ❑ Half or more of the buildable land area is designated as permanent open space.
- ❑ Design is based on the natural and/or cultural resources and features of the property.
- ❑ Reflects the broader, long-term environmental and social goals of the community.
- ❑ Allows for greater flexibility in design for housing density.

BENEFITS OF CONSERVATION SUBDIVISION

- ❑ Cost of developing lots can be reduced, which could allow for affordable housing units to be included, providing more housing units for the community.
- ❑ Land Use Board process streamlined.
- ❑ Costs of infrastructure installation is reduced.
- ❑ Cost of infrastructure maintenance is reduced.
- ❑ Property values can appreciate faster than in conventional subdivisions due to the open space and recreation amenities.

BENEFITS OF CONSERVATION SUBDIVISION (cont'd)

- ❑ Can be an important part of long range planning for outdoor recreation.
- ❑ Long range protection of natural resource for the community.
- ❑ Creation of neighborhoods can enhance community pride and safety.

CONVENTIONAL SUBDIVISION



- ❑ More impervious surface
- ❑ Long driveways, wide road, and less open space

CONSERVATION SUBDIVISION

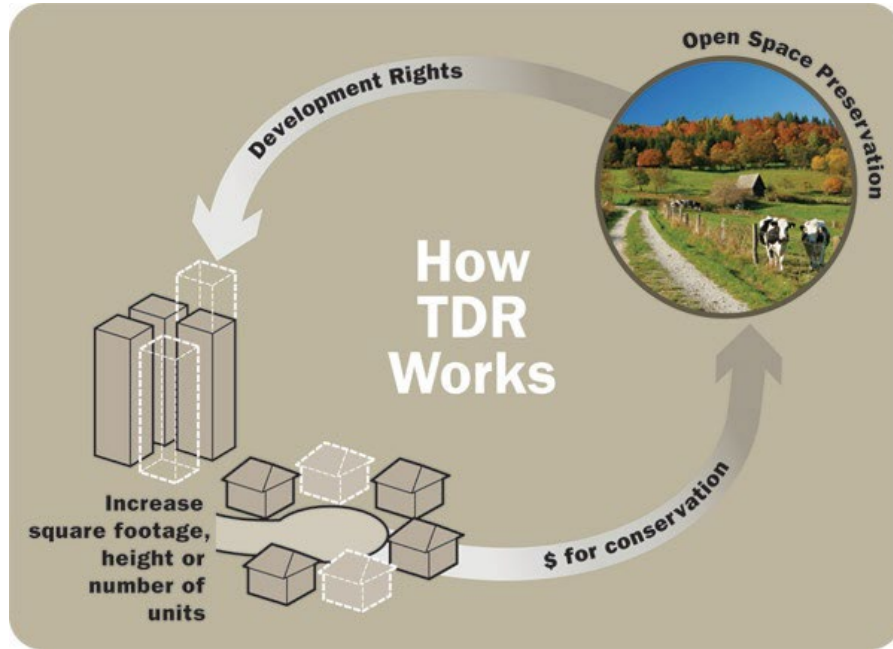
- ❑ Less impervious surface
- ❑ Shorter driveways, narrower road, and more open space



TRANSFER OF DEVELOPMENT RIGHTS AS AN INNOVATIVE LAND USE CONTROL

- ❑ TDR is an innovative land use technique that allows to conserve land by purchasing development rights that would otherwise occur on the land (the sending area) and selling them to a receiving area suitable for denser development.
- ❑ Sending zones cover the land that the community agrees to protect from development, such as conservation and agricultural lands, aquifer protection areas, critical habitat, etc.
- ❑ Receiving zones are within the zones where growth and increased density is welcome by the community. Such areas could be in the mixed-use, new redevelopment, or transit-oriented zones, etc.

TRANSFER OF DEVELOPMENT RIGHTS AS AN INNOVATIVE LAND USE CONTROL (cont'd)



Creating Development Credits

A formula is used to convert development rights into specific development credits based on such factors as the area put under protection, e.g. one credit for every 20 acres protected, or on the cash value of the land, or for every \$1,000 paid to the landowner. The formula also identifies how much you receive for each credit in the receiving area, e.g. one credit allows you to build an additional family unit or increase the floor area ratio of a building by a given percent.

Image source <https://kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights/overview.aspx>

Source of the text
https://www3.uwsp.edu/cnr-ap/clue/Documents/PlanImplementation/Transfer_of_Development_Rights.pdf

CREATING A TDR

- ❑ Refer to or update the Master Plan to support and identify areas to be preserved and areas for development.
- ❑ Designate a preservation zone (Sending Area).
- ❑ Designate areas appropriate for increased density (Receiving Area) where zoning would have to be modified to allow for additional density purchased only through the TRD program.
- ❑ Conduct real estate market analysis to establish the value of density credits.
- ❑ Prepare a density transfer ordinance defining the mechanism.
- ❑ Establish the necessary fund to hold the fees and define the accounting process.
- ❑ Provide adequate staffing capacity to run the program.
- ❑ Public education and outreach are very important to the success of the program.

BENEFITS AND CHALLENGES OF A TDR PROGRAM

Benefits

- ❑ Land preservation without spending tax dollars to purchase it outright.
- ❑ Development and increased density in areas designated and able to handle increased capacity.

Challenges

- ❑ Cumbersome planning and adoption process involves multiple actors and may be faced with opposition.
- ❑ Adds complexity subdivision/site plan review.
- ❑ Increases administrative expenses.

New Hampshire and other examples

❑ Dover

- ❖ <https://www.dover.nh.gov/Assets/government/city-operations/2document/planning/outreach/TDRr.pdf>

❑ Lee

- ❖ https://www.leenh.org/sites/g/files/vyhlf776/f/uploads/2018_final_zoning_regulations_rev_04162018.pdf

❑ King County, WA

- ❖ <https://kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights/overview.aspx>

❑ Pennsylvania

- ❖ <https://conservationtools.org/guides/12-transfer-of-development-rights>

❑ Pinelands, NJ

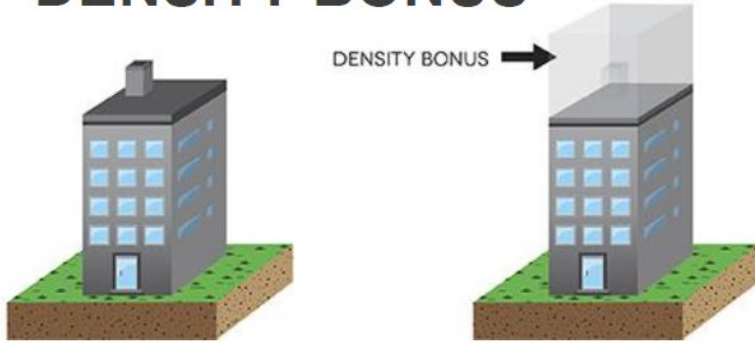
- ❖ <https://www.nj.gov/pinelands/landuse/perm/pdc/index.shtml>

❑ NJ Pinelands Development Credit Bank

- ❖ <https://www.nj.gov/pinelands/pdcbank/>

CITY OF DOVER

DENSITY BONUS



- ▶ Transfer of Development Rights
 - ▶ Allows conservation of land in one portion of Dover, to focus development in the rest
 - ▶ Allows purchase of units to achieve higher density

- ▶ Unrestricted/Multi-family
 - ▶ 1,000 sf homes
 - ▶ 1,400 sf homes
 - ▶ HUD Rent Restricted

ILUC STATUTE FINAL THOUGHTS

- ❑ ILUC can be helpful to address long term housing, conservation, and overall community needs and goals.
- ❑ Reach out to your Regional Planning Commission for assistance
- ❑ Contact OPD
- ❑ Always check with your municipal attorney

CONCLUSIONS

- ❑ Many communities are utilizing innovative planning and zoning approaches
- ❑ Remaining Challenges
 - ❖ Making sure communities are aware that these innovative planning tools exist
 - ❖ Making sure communities have the necessary resources and adequate capacity to adopt and administer these tools
 - ❖ Making the development community aware that a community has adopted particular innovative planning tools
 - ❖ Encouraging the development community to utilize such tools

MUNICIPAL LAND USE REGULATION SURVEY DATA PRODUCTS – COMING SOON

- ❑ All 2021 MLUR survey data, analysis, and maps will be available by the end of 2022 at nheconomy.com
- ❖ The State of Local Land Use Regulations in New Hampshire - 2021 Update
- ❖ Interactive Map
- ❖ Community-By-Community Snapshot
- ❖ Table of Zoning Amendments/Land Use Regulations Adopted in 2021
- ❖ Subject Specific Tables

OTHER RESOURCES...

- ❑ https://www.des.nh.gov/repp/innovative_land_use.htm
- ❑ https://www.researchgate.net/publication/233080169_What_Makes_Transfer_of_Development_Rights_Work_Success_Factors_From_Research_and_Practice
- ❑ <https://njaes.rutgers.edu/highlands/transfer-development-rights.php>
- ❑ https://www3.uwsp.edu/cnr-ap/clue/Documents/PlanImplementation/Transfer_of_Development_Rights.pdf
- ❑ <https://your.kingcounty.gov/dnrp/library/water-and-land/tdr/tdr-brochure-100305.pdf>

Contact Information

Noah Hodgetts, Principal Planner at NH Office of Planning and Development

Noah.D.Hodgetts@livefree.nh.gov

(603) 271-2157

Alvina Snegach, Assistant Planner at NH Office of Planning and Development

Alvina.Snegach@livefree.nh.gov

(603)-271-6651

QUESTIONS?

THANK YOU