

**CHAPTER 77**

**TRANSFER OF DEVELOPMENT RIGHTS**

**Authority**

N.J.S.A. 4:1C-49 et seq., specifically 4:1C-52f.

**Source and Effective Date**

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**2:77-1.1 Scope**

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Board of Directors of the State Transfer of Development Rights Bank governing the procedures and standards for carrying out the duties and responsibilities of the Board pursuant to the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et seq., ("Act").

**2:77-1.2 Purpose**

(a) The purpose of this chapter is to:

1. Facilitate the effective operation of the Board, and its participation in the acquisition and transfer of development potential;
2. Establish eligibility standards for the enactment of municipal development transfer ordinances having jurisdiction of lands from which development potential may be conveyed, through sale or loan default, to the Board;
3. Establish procedures for notification to the Board by municipalities of the enactment of viable development transfer ordinances, and subsequent issuance of planning assistance grants;
4. Establish a registry of development potential credits and transfers, and procedures for its operation;
5. Establish procedures for the Board's purchase of development potential;

6. Establish procedures for the Board's approval of loan guarantees secured with development potential as collateral;

7. Establish deed restrictions to be placed on land from which development potential has been transferred to the Board, or on land whose owner defaults on a loan guaranteed by the Board; and

8. Establish procedures by which the Board can convey development potential.

### 2:77-1.3 Applicability

The rules contained in this chapter shall apply to all sales, transfers, conveyances, encumbrances and redemptions of development potential credits, and any loan guarantees provided by the Board which are secured with development potential as collateral, as authorized under P.L. 1989, c.86 (N.J.S.A. 40:55D-113 et seq.)

### 2:77-1.4 Construction

These rules shall be liberally construed to permit the bank to effectuate the purposes of the law.

### 2:77-1.5 Severability

If any section, part, phrase, or provision of these rules or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the validity of the remainder of these rules or the application thereof to other persons.

## SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

### 2:77-2.1 Word usage

(a) In the interpretation of these rules, the provisions of this section shall be observed and applied, except when the context clearly requires otherwise:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.
2. Words in the singular shall include plural and words in the plural shall include the singular.
3. The word "shall" indicates mandatory.
4. The word "may" indicates permissive.
5. In case of any difference of meaning or implication between the text of these rules and any caption, the text shall control.

### 2:77-2.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the State Transfer of Development Rights Bank Act, P.L. 1993, c. 339, N.J.S.A. 4:1C-49 et seq.

"Application," as relates to the purchase of development potential or the securing of a loan using development potential as collateral, means a standard form adopted by the State Transfer of Development Rights Bank.

"Board" means the Board of Directors of the State Transfer of Development Rights Bank established pursuant to P.L. 1993, c.339, N.J.S.A. 4:1C-49 et seq.

"Credit" or "TDR credit" is a measured amount of development potential that allows one or more units of development.

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints.

"Development transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance adopted pursuant to law.

"Instrument" means the easement, credit, or other deed restriction used to record a development transfer.

"Ordinance" means a development transfer ordinance adopted by a municipality that allows for the transfer of development within its jurisdiction.

"Receiving area" means the geographical area to which sending area development potential will be transferred.

"Sending area" means the geographical area from which development potential will be transferred from.

"State Transfer of Development Rights Bank" or "Bank" means the bank established pursuant to the State Transfer of Development Rights Bank Act, P.L. 1993, c.339, N.J.S.A. 4:1C-49 et seq., and shall constitute the development potential transfer bank for the purposes of P.L. 1989, c.183.

"TDR" means transfer of development rights.

**SUBCHAPTER 3. FUNDING ELIGIBILITY  
STANDARDS AND NOTIFICATION OF  
ENACTED DEVELOPMENT TRANSFER  
ORDINANCE**

**2:77-3.1 Ordinance standards**

(a) In order for landowners in municipalities with enacted development transfer ordinances to be eligible to sell development potential to, or have loans guaranteed by, the Board, the municipal ordinance shall conform with, or include, the following:

1. The policies of the State Development and Redevelopment Plan;
2. The adopted master plan of the respective county;
3. The adopted master plan of the municipality;
4. The State Highway Access Code, N.J.A.C. 16:47, including, but not limited to, Desirable Typical Sections (DTS), as set forth in Appendix B thereto;
5. Regional objectives for agricultural land preservation, natural resource management and protection, and historic or architectural conservation;
6. Reasonable population and economic forecasts for the county in which the municipality is located;
7. Justification that there is adequate present or proposed infrastructure for concentrated growth;
8. Justification that there is sufficient space in the receiving area to accommodate the development potential which the municipality has planned for transfer, and a reasonable assurance of marketability of development potential credits;
9. An explanation of the method for determining the allocation of credits to parcels in the sending and receiving areas;
10. For lands in the Pinelands, a determination by the Pinelands Commission that the ordinance is compatible with its comprehensive management plan and/or the Pinelands development credit program;
11. A requirement that no person shall purchase or otherwise acquire, encumber, or utilize any development potential without recording that fact, within 10 business days thereof, with the Board;
12. A requirement that the landowner provides an instrument to the municipality upon enrollment of the land in the TDR program;
13. A requirement that the landowner provides to the municipality proof of clear, valid record title, marketable, and insurable at regular rates by a title company authorized to do business in New Jersey at the time of enrollment of the land in the TDR program.

i. A requirement that the municipality shall advise the landowner of N.J.A.C. 2:77-5.1 et seq., which describes the procedures of the Board for purchasing development potential to, or to have loans guaranteed by, the Board;

14. A description of the specific purpose for which the property is being restricted by the deed of easement:

- i. For farmland preservation purposes, the restrictions shall be consistent with the deed restrictions contained at N.J.A.C. 2:76-6.15;
- ii. For historic preservation purposes, the restrictions shall be consistent with the deed restrictions utilized by the New Jersey Historic Trust;
- iii. For natural resource conservation and outdoor recreation purposes, the restrictions shall be consistent with the deed restrictions used by the New Jersey Department of Environmental Protection;
- iv. For those purposes for which there are no existing rules governing the restrictions of the land for a designated purpose, the Board shall review the restrictions to ensure consistency for the intended preservation purpose; and
- v. The Board may approve other restrictions imposed by the ordinance to determine if they are consistent with the intended purpose for which the property is being restricted;

15. The deed of easement shall be consistent with the Desirable Typical Sections (DTS) (as identified in Appendix B of the Code) of the State Highway Access Code in that State highways that are adjacent to lands being preserved shall have minimum right-of-way set-asides, or areas excluded from the deed of easement, to ensure rights-of-way of at least 12 feet for every additional lane being contemplated for the ultimate build-out of the highway; and

16. Enforcement of the deed of easement by the municipality. In the event that the landowner sells development potential to, or has loans guaranteed by, the Board, the deed of easement shall contain a provision which allows for enforcement of the deed of easement by the Board.

**2:77-3.2 Method of notification**

(a) A municipality which adopts a development transfer ordinance shall provide the following information to the Board:

1. A copy of the adopted ordinance;
2. A copy of the current municipal Master Plan;
3. A map depicting sending and receiving areas affected by the ordinance;
4. A summary identifying the following for sending and receiving areas:

- i. The block and lot numbers of each parcel in both areas;
  - ii. The acreage of each parcel in both areas;
  - iii. The amount of credits assigned to each parcel in both areas;
  - iv. The amount of buildings, if any, on each parcel in both areas;
  - v. The zoning of each parcel in both areas;
5. The evidence that the county planning board has approved the adopted ordinance; and
  6. A sample of the instrument to be recorded on land enrolled in the TDR program.

### **2:77-3.3 Board's review of ordinance and determination of viability**

Upon reviewing the information provided pursuant to N.J.A.C. 2:77-3.2, the Board shall determine if the ordinance is viable based on the standards identified in N.J.A.C. 2:77-3.1. If the Board finds that the ordinance is viable, it shall inform the municipality that development potential within its jurisdiction may be eligible to be transferred to the Board. If the Board finds that the ordinance is not viable, it shall inform the municipality of the deficiencies which must be corrected before the Board shall accept applications for the purchase of development potential.

### **2:77-3.4 Municipality's request for planning assistance grant**

(a) A municipality which adopts a viable development transfer ordinance, as determined by the Board, shall be eligible to receive a planning assistance grant from the Board for up to 50 percent of the cost of planning associated with such an ordinance and incurred by the municipality, or \$10,000, whichever is less, subject to available funds.

(b) In order to be eligible to receive the grant, the municipality shall provide the Board with a summary of the legal, planning and other ancillary costs incurred to adopt the ordinance as certified by the Treasurer or the municipality's Chief Financial Officer.

### **2:77-3.5 Issuance of grant by the Board**

Upon the Board's finding that a municipality's development transfer ordinance is viable and that all costs incurred are associated with the adoption of the ordinance, it shall authorize payment to the municipality for up to 50 percent of the cost of planning associated with the adoption of the ordinance or \$10,000, whichever is less, subject to the availability of funds.

## **SUBCHAPTER 4. REGISTRY OF DEVELOPMENT POTENTIAL CREDITS**

### **2:77-4.1 Registry**

(a) The Board shall establish and maintain a registry of development potential credits containing the following:

1. The issuance of development potential credits;
2. The sale, transfer, conveyance, or encumbrance of development credits;
3. The use of development potential credits as security on loans and other obligations;
4. The redemption and retirement of development potential credits;
5. The name and address of every person to whom and from whom development potential is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefor;

6. The name and address of any person who has utilized development potential, the location of the land to which and from which the development potential was transferred, and the date this transfer was made; and

7. An annual enumeration of the total number of development transfers, listing the municipality or municipalities involved in the transfer and the instrument of transfer.

(b) No person shall purchase or otherwise acquire, encumber, or utilize any development potential without recording that fact, within 10 business days thereof, with the Board.

### **2:77-4.2 Availability of registry and annual report**

(a) The Board shall make available:

1. In the form of an annual report, the information included in the registry to the county and each municipality that has adopted a development transfer ordinance; and
2. Upon request, pertinent information to any other person.

(b) The Board will also provide the information contained in the registry to the Council on New Jersey Outdoors for inclusion in the Garden State Open Space Registry.

## **SUBCHAPTER 5. PURCHASE OF DEVELOPMENT POTENTIAL**

### **2:77-5.1 Applicability**

The Board may purchase development potential from the owner of record of the property from which the development potential is to be transferred or from any person, or entity, public or private, holding the interest in the development potential that is subject to development transfer.

**2:77-5.2 Application process for the Board's purchase of development potential**

(a) Any person or entity holding the interest in development potential that is subject to development transfer in a municipality that has adopted a development transfer ordinance that has been deemed viable by the Board pursuant to N.J.A.C. 2:77-3.3, may apply to sell the development potential to the Board.

(b) The person or entity holding the interest in development potential shall complete an application and submit it to the Board.

(c) At a minimum, the following information shall be included in the application:

1. The applicant's name and mailing address;
2. The name of the person(s) who own(s) the development potential, if different from the applicant and a signed consent to the filing of the application;
3. The county, municipality, and block and lot of the property from which the development potential was transferred;
4. A certification from the municipality that the property is located in the municipality's adopted sending areas, specifying the number of development potential credits allocated to the property as identified in the municipality's adopted ordinance;
5. The number of development potential credits to be sold and the municipality's assigned serial numbers for the credits;
6. A copy of the recorded TDR instrument;
7. A copy of the title search provided to the municipality at the time the property was encumbered by the TDR instrument;
8. If available, a copy of the survey plat and legal metes and bounds description of the property encumbered by the TDR instrument;
9. An offer price for the sale of the development potential; and
10. A determination if any municipal and/or county funds will be provided; and

(d) The Board may require of a particular applicant information and/or documentation in addition to that specified in (c) above, if necessary in order to review and act on the application.

**2:77-5.3 Standards governing the Board's decision to purchase**

(a) The Board shall determine whether to authorize the purchase of all or a portion of the development potential proposed for sale in accordance with the following criteria:

1. The municipal ordinance is deemed to be viable pursuant to N.J.A.C. 2:77-3.3;
2. The purchase results in the protection of property or resources for the intended purpose and that the deed restrictions that run with the land are consistent with that purpose;
3. Whether the purchase is consistent with the objectives of the county's and municipality's master plans;
4. Whether the purchase is consistent with the policies of the State Development and Redevelopment Plan;
5. Verification that the TDR instrument that was conveyed to the municipality was valid and enforceable as evidenced in the title search conducted on the property;
6. The degree to which municipal and county funding will be provided;
7. Consideration of the offer price and the availability of adequate funding for the purchase; and
8. The expenditure of funds does not substantially impair the private sale, exchange or other method of conveyance of the development potential.

**2:77-5.4 Notification to applicant**

Upon the Board's decision to purchase or not purchase the development potential, the Board shall notify the applicant, in writing, setting forth the basis of its decision.

**2:77-5.5 Valuation of development potential**

(a) The Board may determine the fair market value of the development potential by either appraisal, municipal averaging based upon appraisal data, or by a formula supported by appraisal data.

(b) In the event that the Board determines to establish the fair market value of the development potential by appraisal, it shall select two independent professional appraisers from the list of appraisers adopted by the State Agriculture Development Committee pursuant to N.J.A.C. 2:76-6.7.

1. The appraisers shall utilize the standards as described in N.J.A.C. 2:77-8.1 for completing their appraisals.
2. Upon completion of the appraisals, the appraisers shall forward one original and one copy of the appraisal report to the Board.
3. The Board shall appoint a review appraiser to evaluate the two appraisals and establish a recommended fair market value of the development potential of the property.
  - i. The review appraisal shall be done in accordance with the Appraisal Handbook Standards contained at N.J.A.C. 2:77-8.
4. The Board shall have final authority for certifying the fair market value of the development potential.

5. The Board's certified fair market value of the development potential shall not be greater than the highest independent appraised value of the development potential.

6. The Board may find an appraisal invalid if it does not comply with the Appraisal Handbook Standards at N.J.A.C. 2:77-8.

i. If an appraisal is found to be invalid, the Board shall reject the application for which the appraisal was conducted.

ii. If the appraisals are found to be valid, the Board shall certify the fair market value of the development potential.

(c) In the event that the Board determines to establish the fair market value of the development potential of the property by municipal averaging or formula, the Board shall utilize the standards as described in N.J.A.C. 2:77-8.

(d) In the event that a county or municipality has applied to sell development potential to the Board and has conducted a valuation study pursuant to N.J.A.C. 2:77-8 to determine the development potential value, the Board shall review the study to determine if appropriate standards were utilized in establishing the development potential values.

1. If the Board finds that the valuation study was conducted pursuant to N.J.A.C. 2:77-8 and results in justified development potential values, the Board may utilize the study to certify the fair market value of the development potential.

i. The Board may conduct an update to the development potential valuation to establish a certified fair market value if the period between the county's or municipality's acquisition of the development potential and the submission of the application to the Board exceeds one year or if market value fluctuations are evident.

#### **2:77-5.6 Final Board action**

(a) Upon certification of the fair market value of the development potential, the Board shall either:

1. Approve the purchase of the development potential at a maximum purchase price; or
2. Disapprove the application and state the reasons for the denial.

(b) The Board may authorize staff to negotiate with the owner of the development potential for a purchase price less than the certified fair market value of the development potential.

#### **2:77-5.7 Board's financial participation**

(a) The Board may purchase development potential utilizing 100 percent Board funds, or the Board may provide matching funds for the purchase of 80 percent of the value of development potential from the owner of record of the property from which the development potential has been transferred.

1. In the case of providing matching funds for the purchase of 80 percent of the value of development potential, the remaining 20 percent of that value is contributed by the affected municipality or county, or both, after public notice thereof in the New Jersey Register and in one newspaper of general circulation in the area affected by the purchase.

2. The remaining 20 percent of the value of the development potential to be contributed by the affected municipality or county, or both, to match funds provided by the Board, may be obtained by purchase from, or donation by, the owner of record of the property from which the development potential is transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer.

#### **2:77-5.8 Owner decision**

Within 30 days of the Board's offer to purchase the development potential, the owner of the development potential shall accept or reject the offer in writing. Any offer not accepted within that time shall be deemed rejected.

#### **2:77-5.9 Terms, contingencies and conditions of purchase**

(a) Upon the owner's acceptance of an offer, the Board shall complete any and all administrative procedures necessary to consummate the purchase of development potential including, but not limited to, the following:

1. Authorization of an insured title search and a survey be conducted on lands from which the Board determines to purchase development potential; and
2. Execution of a TDR instrument that shall be attached to and recorded with the deed of the land in the same manner as a deed.
  - i. The TDR instrument shall provide the Board with enforcement of the terms of the deed of easement.

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### SUBCHAPTERS 6 THROUGH 7. (RESERVED)

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### SUBCHAPTER 8. APPRAISAL HANDBOOK STANDARDS

#### **2:77-8.1 Applicability**

This subchapter provides the standards established by the Board for independent professional appraisers or the Board to follow when conducting appraisals of land for the purpose of acquiring, or providing a loan guarantee for, development potential pursuant to the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et seq., P.L. 1993, c.339.

**2:77-8.2 Definition of approved appraisers**

As used in this subchapter, "approved appraiser" means an independent State-certified general real estate appraisal approved by the Board and re-approved by the Board annually.

**2:77-8.3 Board approved appraisers**

(a) The Board shall adopt the list of appraisers approved by the State Agriculture Development Committee pursuant to N.J.A.C. 2:76-6.7(a)1 annually.

(b) The Board may remove an appraiser from the adopted list if an appraisal is not conducted in conformance with this subchapter.

**2:77-8.4 Development potential valuation**

(a) There are several methods of valuation available to appraisers to establish a value of development potential credits. Credits in the sending area may have a different value from credits in the receiving area. The methods in (a)1 through 8 below shall be considered by appraisers to determine the valuation of credits. Guidance concerning these methods may be found in the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation (1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005-3517) and in the Board's "Appraisal Guidelines for Determining Development Potential," available in the office of the Bank and at County Agriculture Development Board offices.

1. The Direct Comparison of sales of development potential credits method applies to both receiving and sending area properties;
2. The before and after valuation method takes into consideration a sending area property's fee unencumbered value and its restricted value. Both unencumbered and restricted sales shall be considered;
3. Another sending area valuation method is to look at those properties of reasonably similar characteristics from which a development easement has been sold through the Farmland Preservation Program pursuant to N.J.A.C. 2:76;
4. The Subdivision Development Analysis via a Discounted Cash Flow Analysis is a method of value determination applicable first to the base property without the credits added, and then with them. The difference in the value indications is the value of the credits;
5. The Linear Regression Method and Allocation Methods can be utilized where the total new land costs proportion can be estimated to the finished products' sale price;
6. The Subdivision Method;
7. The Income Capitalization Method; and

**8. The Cost Method.**

(b) The Board, in addition to the methods of valuation described in (a) above, may utilize the following methods for establishing development potential valuations.

1. Municipal averaging, which includes, but is not limited to, the following:
  - i. Utilizing a simple weighted or unweighted average of market sales in the sending area;
  - ii. Utilizing the market value of the development potential of all sending area properties divided by the total number of credits allocated in the sending area;
  - iii. Utilizing the average values of development easements determined pursuant to the farmland preservation program; or
  - iv. Utilizing other similar methods that produce justified value conclusions.
2. Formula valuations, which include, but are not limited to, the following:
  - i. Considering the relationship between the development potential value to total fee unencumbered value of the property in the sending area;
  - ii. Utilizing the average ratio of all county development easement purchases to property fee values for a period of "x" years; and
  - iii. Utilizing other similar methods that produce justified value conclusions.

**2:77-8.5 Appraisal report format**

(a) The appraisal reports prepared by the approved appraiser shall follow the following format. All values in the report shall be expressed in dollars per acre and dollars per TDR credit where appropriate. The final value shall be expressed in both dollars per acre, dollars per TDR credit and total dollars. Each report will be examined and rejected if not valued or formatted as requested. Any factual or mathematical errors which could result in a value change may be referred to the appraisers for correction and/or clarification:

1. A summary;
2. General information;
3. Property valuation before development credit acquisition (market value unrestricted), where applicable;
4. Property valuation after development credit acquisition (market value restricted), if applicable;
5. A final estimate of development potential credits value; and
6. An addendum.

(b) The requirements for each section of the appraisal reports are described in N.J.A.C. 2:77-8.6 through 8.11.

#### 2:77-8.6 Summary

(a) The summary section of the appraisal report shall contain the following:

1. A letter of transmittal which shall contain the estimated value per TDR and the total value;
2. A certification of appraisal which shall include the market value per TDR credit and total value, and market value restricted per acre and total value, date of valuation, a statement that the appraisal conforms to Uniform Standards of Professional Appraisal Practice (USPAP) and to the Standards for Appraisals in N.J.A.C. 13:40A-5.1 and 6.1, and the signature of the approved appraiser responsible for the report;
3. A summary of salient facts which shall include the unrestricted value per TDR and total value and the restricted value per acre and total restricted value, and the easement value both per acre and total. The format shall conform with the sample, Appendix A of this subchapter, incorporated herein by reference; and
4. A table of contents which shall include the topic listings contained in the appraisal report with corresponding page numbers. The format shall conform with the sample, Appendix B of this subchapter, incorporated herein by reference.

#### 2:77-8.7 General information

(a) The general information section of the appraisal report shall contain the following:

1. The purpose of the appraisal is to estimate the market value of a TDR credit;
2. A statement of the rights being valued:
  - i. Market value unrestricted;
  - ii. Market value restricted; and
  - iii. Development credit value;
3. A section defining the legal and technical terms of the report;
4. Any assumptions and limiting conditions;
5. A section identifying the subject property by municipal tax map block and lot or other means. The subject property and its current use shall be briefly described;
6. Any title changes in the last five years, easements, agreements of sale or options;
7. A report on present market conditions and estimated marketing time;
8. Zoning and assessment information; and

9. Information detailing community and neighborhood data. This shall include, but not be limited to, the character of the community, land use trends, the degree of development pressure in the area, and any other information which may significantly impact the fee simple market value.

#### 2:77-8.8 Property valuation before development and transfer acquisition (a/k/a market value unrestricted), where applicable

(a) The property valuation before development easement acquisition (market value unrestricted) section of the appraisal report shall contain a description of the subject property including all physical attributes and improvements which shall include, but not be limited to:

1. A discussion of the topography, soil characteristics, hydrologically limited areas, State owned or privately held riparian lands, frontage, configuration, dwellings, out-buildings, and other appropriate characteristics;
2. Any rejected, approved, or pending subdivision plans; and
3. Any existing residences.

(b) This section of the report shall include a detailed discussion of the subject property's highest and best use based upon its characteristics as set forth in this section.

(c) The development potential sold or purchased by the Board involves an interest in property only. As a result, it is only the value of an interest in property that needs to be derived. The appraiser must consider if there is an increment of value attributed to the property as a result of transfer of development credits.

1. When considering the direct sales comparison method of valuation, the appraiser shall compare vacant acreage sales to the subject property. At a minimum, this section of the report shall address the following for each vacant acreage sale compared:
  - i. The grantor and grantee;
  - ii. The deed date and recording date;
  - iii. The deed book and page;
  - iv. The sale price;
  - v. The property size or number of credits;
  - vi. The location, block and lot, if applicable;
  - vii. The soil types and percent tillable, if applicable;
  - viii. The frontage and access, if applicable;
  - ix. The conditions of sale, if applicable;
  - x. Improvements, if applicable;
  - xi. Utilities, if applicable;
  - xii. Easements;

- xiii. Verification, if applicable; and
- xiv. A legible copy of the tax map, if applicable.

2. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to, the following: soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (State owned or privately held), date of sale, and financing.

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.

ii. The value conclusion shall be expressed as a TDR figure and a total figure for the property.

3. In addition, the appraiser may consider the methods of valuation as described in N.J.A.C. 2:77-8.4(a).

4. The appraiser shall provide a value conclusion which identifies the final market value unrestricted for the subject property and discuss how the conclusion was determined.

**2:77-8.9 Property valuation after development acquisition (a/k/a market value restricted), where applicable**

(a) The property valuation after development easement acquisition (market value restricted) section of the appraisal report shall contain the following:

1. A description of the property in conformance with N.J.A.C. 2:77-8.7(a)1. In addition, a discussion of the restrictions/enhancements and their effect on the subject property, the subject's adaptability for agricultural use (or other uses), soils and their productivity and other items which are significant to the valuation of the subject property shall be included;

2. A detailed description of the subject property's highest and best use. The highest and best use analysis shall consider the following:

- i. The legality of possible use;
- ii. The physical possibility of use;
- iii. The probability or likelihood of use;
- iv. The economic feasibility of use; and
- v. Of those uses meeting the criteria in (a)2i through iv above, the use yielding the highest return;

3. A determination of the subject property's market value restricted. As in the unrestricted situation, the decremental or incremental value to the land is sought as a result of the deduction or addition of TDRs to the property appraised.

i. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the

subject property as unencumbered by deed restrictions. The appraiser shall consider the following types of land sales:

- (1) Deed restricted properties;
- (2) Physically limited properties;
- (3) Flood plain; and
- (4) Low development pressure;

4. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property. At a minimum, this section of the report shall address the following for each vacant acreage sale compared:

- i. The grantor and grantee;
- ii. The deed date and recording date;
- iii. The deed book and page;
- iv. The sale price;
- v. The property size or number of TDRs;
- vi. The location, block and lot (including approximate distance to the subject), if applicable;
- vii. The soil types and percent tillable, if applicable;
- viii. The frontage and access, if applicable;
- ix. The conditions of sale, if applicable;
- x. Color photograph(s), if applicable;
- xi. Improvements, if applicable;
- xii. Utilities, if applicable;
- xiii. Verification, if applicable; and
- xiv. A legible copy of the tax map, if applicable;

5. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to, the soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (State owned or privately held), date of sale and financing.

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.

ii. The final estimate of value shall be expressed as dollars per acre, dollars per TDR credit and total dollars for the property; and

6. In addition, the appraiser may consider the methods of valuation as described in N.J.A.C. 2:77-8.4(a).

**2:77-8.10 Final estimate**

(a) The final estimate of development credit value section of the appraisal report shall contain the following:

1. The estimated development credit value which is arrived at by the difference between the market value and the market value restricted of the land, representing the value of the development credit and reported as a per acre basis and total value of the property;
2. A discussion of the rights represented by this value conclusion should be recapitulated, as well as changes in highest and best use of the unrestricted versus the restricted property; and
3. A summary of the major points of the report should be summarized leading the reader to the same conclusion as the appraiser.

**2:77-8.11 Addendum**

(a) The addendum section of the report shall include, but is not limited to, the following items:

1. A subject property and comparable sales location map;
2. A subject tax map, if applicable;
3. Soils/flood/topographic maps, if applicable;
4. A study of hydrologically limited areas, if applicable;
5. Subject property photos (color), if applicable;
6. Reference materials, studies, articles, or other data considered important by the appraiser;
7. A subdivision map, if applicable; and
8. The appraiser's qualifications.

**APPENDIX A**

**SUMMARY OF SALIENT FACTS AND IMPORTANT CONCLUSIONS**

PROPERTY LOCATION (Including but not limited to Block and Lot)

PROPERTY TYPE

LAND SIZE OR NUMBER OF TDRs

ZONING

HIGHEST AND BEST USE

DATE OF VALUATION

	<u>PER TDR</u>	<u>TOTAL</u>
ESTIMATE OF PROPERTY VALUE "BEFORE":	_____	_____
ESTIMATE OF PROPERTY VALUE "AFTER":	_____	_____
ESTIMATE OF DEVELOPMENT CREDITS VALUE:	_____	_____

**APPENDIX B**

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\* These two maps should be combined.

**APPENDIX C**

**LAND SALE COMPARATIVE RATING GRID\*, if applicable**

	1	2	3		
Sale No.					
Sale Price	\$		\$		\$
Reflects in Units*		/AC		/AC	
Date of Sale					
Conditions of Sale	%	%		%	
Financing	%	%		%	
Time Adjustment	%	%		%	

**TRANSFER OF DEVELOPMENT RIGHTS****2:77-8 App. C**

Total Adjustment	%	%	%
Adjusted Sales Price	\$	\$	\$
Location	%	%	%
Size	%	%	%
Frontage	%	%	%
Topography	%	%	%
Zoning	%	%	%
Easements	%	%	%
Wetlands	%	%	%

Soils	%	%	%
Residential Opportunities	%	%	%
Other	%	%	%
Net Adjustment	%	%	%
Value Indicated to			
Subject by Unit**	\$	/AC	\$ /AC \$ /AC

\* This unit of conveyance may be \$/TDR credit or correctly converted to a \$/TDR credit unit value.

\*\* It is not acceptable to put this grid on more than one page.