

CHAPTER 86**TRANSFER OF DEVELOPMENT RIGHTS
REAL ESTATE MARKET ANALYSIS REPORT****Authority**

N.J.S.A. 40:55D-148.c.

Source and Effective DateR.2006 d.18, effective January 3, 2006.
See: 37 N.J.R. 2592(a), 38 N.J.R. 126(b).**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 86, Transfer of Development Rights Real Estate Market Analysis Report, expires on July 2, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 86, Transfer of Development Rights Real Estate Market Analysis Report, was adopted as new rules by R.2006 d.18, effective January 3, 2006. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 86, Transfer of Development Rights Real Estate Market Analysis Report, was scheduled to expire on July 2, 2011. See: 43 N.J.R. 247(a).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 5:86-1.1 Scope and purpose
- 5:86-1.2 Applicability
- 5:86-1.3 Definitions

SUBCHAPTER 2. MARKET ANALYSIS REPORT

- 5:86-2.1 Report required
- 5:86-2.2 Qualifications of analyst
- 5:86-2.3 Required contents
- 5:86-2.4 Summary
- 5:86-2.5 General information
- 5:86-2.6 Receiving zone analysis
- 5:86-2.7 Sending zone analysis
- 5:86-2.8 Viability of transfer of development rights program

SUBCHAPTER 3. REVIEW OF MARKET ANALYSIS REPORT

- 5:86-3.1 Municipal obligation
- 5:86-3.2 Office of Smart Growth
- 5:86-3.3 Pinelands Commission

SUBCHAPTER 4. REAL ESTATE MARKET ANALYSIS IN THE HIGHLANDS

- 5:86-4.1 Applicability

SUBCHAPTER 1. GENERAL PROVISIONS**5:86-1.1 Scope and purpose**

(a) This subchapter sets forth rules for the preparation of the real estate market analysis required prior to the municipal adoption or significant amendment to a transfer of development rights ordinance, pursuant to the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq.

(b) The rules are established to ensure that the required real estate market analysis portrays an accurate picture of the current and future land market, including the relationship between the development rights anticipated to be generated in a sending zone and the likelihood of their utilization in a receiving zone.

(c) The real estate market analysis constitutes a review of the TDR program set forth by a municipality in the development transfer plan element, utility service plan element, capital improvement program and TDR ordinance pursuant to the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq. The municipality is to supply the real estate market analyst with the base information set forth in the State TDR Act and this chapter. The real estate market analysis is intended to confirm development rights and density calculations proposed by a municipality in the development transfer plan element and associated documents or otherwise alert a municipality to issues that may challenge the proposed transfer of development rights program and to give a municipality the opportunity to address said issues at the early stages of the planning process.

(d) The real estate market analysis shall not be construed as a real estate appraisal, nor shall it be construed as establishing real estate market value. Any value estimates made by the real estate market analyst are general in nature. Because the value estimates are not site specific, they cannot be used as a basis for future sales. The purpose of the value estimates is solely to provide a basis for determining whether the TDR program and associated transfer ratio(s) proposed by the municipality are viable.

5:86-1.2 Applicability

The rules contained in this chapter shall apply to any municipality establishing a transfer of development rights ordinance, as authorized under N.J.S.A. 40:55D-137 et seq., except a municipality located in Burlington County choosing to implement a transferable development rights program pursuant to the provisions of N.J.S.A. 40:55D-113 et seq., pursuant to N.J.S.A. 40:55D-163. TDR programs in the Pinelands Area adopted pursuant to N.J.A.C. 7:50-5.41 through 5.50 of the Pinelands Comprehensive Management Plan shall be exempt from this chapter.

5:86-1.3 Definitions

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

“Base zoning” means either the zoning in place as of one year prior to the municipal enactment of a transfer of development rights ordinance or the zoning in place less than one year prior to the municipal enactment of the transfer of development rights ordinance provided that the zoning was adopted by the municipality for purposes of achieving con-

sistency with a master plan that has received initial or advanced plan endorsement from the State Planning Commission pursuant to N.J.A.C. 5:85-7.

"Bonus density" means in a receiving zone either the amount by which development can exceed base zoning or the right to develop a use not permitted under the base zoning with the use of TDR credits.

"Development right" means an interest in land, less than fee simple absolute title, which enables the owner to develop the land for any purpose allowed by ordinance.

"Environmentally constrained area" means an area in which development is precluded or significantly limited by existing environmental statutes or regulations.

"Market value restricted" means the value of a property based on its agricultural, environmental or historical resource and its other remaining inherent property rights, but does not allow the owner to develop the land for any other purpose except as expressly authorized by the transfer of development rights ordinance.

"Real estate market analysis" or "market analysis" means the report required pursuant to N.J.A.C. 5:86-2.

"Receiving zone" means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be increased, and which is otherwise consistent with the provisions of N.J.S.A. 40:55D-145.

"Sending zone" means an area or areas in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be restricted and which is otherwise consistent with the provisions of N.J.S.A. 40:55D-144.

"TDR credit" means the development right that can be utilized in a receiving zone to achieve the bonus density, the number of TDR credits is determined based on the transfer ratio and the number of transferable development rights being conveyed from the sending zone to the receiving zone.

"TDR zoning" means the zoning authorized in the receiving zone when TDR credits are utilized or in the sending zone once development credits have been relinquished.

"Transfer of development rights (TDR)" means the program set forth in N.J.S.A. 40:55D-137 et seq.

"Transferable development right" means a unit of development permitted by the base zoning, considering environmentally constrained areas when deemed appropriate by the municipality, which can be transferred from a property in the sending zone.

"Transfer ratio" means the number of transferable development rights that can be transferred from a sending zone property divided by the units of development that can be built

on the receiving zone property through the use of TDR credits.

"Unit of development" means a right to build on a particular piece of property as determined by zoning ordinance; which may be measured by, but is not limited to acre, square foot, residential unit, floor area ratio, or height.

SUBCHAPTER 2. MARKET ANALYSIS REPORT

5:86-2.1 Report required

(a) Prior to the adoption of or significant amendment to a development transfer ordinance, a real estate market analysis shall be prepared pursuant to this subchapter.

(b) The market analysis shall not be concluded until a draft development transfer plan element, meeting the requirements of N.J.S.A. 40:55D-140 and 141, has been presented at a planning board meeting and made available for public comment for no less than 10 days.

5:86-2.2 Qualifications of analyst

The market analysis shall be performed by a real estate consultant or land economist qualified to conduct economic analyses of the real estate market.

5:86-2.3 Required contents

(a) The market analysis report shall be specific to the proposed transfer of development rights program and shall include at least the following:

1. A summary;
2. General information;
3. An analysis of the receiving zone;
4. An analysis of the sending zone; and
5. A discussion of the viability of the transfer of development rights program.

(b) The requirements for each section of the market analysis report are described in N.J.A.C. 5:86-2.4 through 2.8.

5:86-2.4 Summary

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

1. A letter of transmittal that includes a statement of the value range of development rights expressed as an expected per credit and per unit of development. It shall be clearly stated that the value range is based on current market conditions and may not reflect future values, which can be affected by different market conditions; and