

**CHAPTER 77**  
**TRANSFER OF DEVELOPMENT RIGHTS**  
**SUBCHAPTER I. 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., and the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq.

**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 a registry of development potential credits and transfers, and procedures for its operation;
3. Establish standards and procedures for the Board's purchase of development potential;
4. Establish standards and procedures for the Board's approval of loan guarantees secured with development potential as collateral;
5. Establish standards and procedures by which the Board can convey development potential; and
6. Establish standards and procedures for the application, approval and issuance of planning assistance grants to a municipality by the Board.

**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, any loan guarantees provided by the Board, which are secured with development potential as collateral, and the issuance of planning assistance grants, as authorized under N.J.S.A. 40:55D-113 et seq. and 4:1C-49 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**

In 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.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"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 N.J.S.A. 40:55D-113 et seq. or 40:55D-137 et seq.

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

"Municipal or county development transfer bank" means a development transfer bank established pursuant to N.J.S.A. 40:55D-159.

"Ordinance" means development transfer ordinance adopted by a municipality pursuant to N.J.S.A. 40:55D-113 et seq. or N.J.S.A. 40:55D-137 et seq. that allows for the transfer of development within its jurisdiction.

"Receiving area" or "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 area" or "sending 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 restricted and which is otherwise consistent with the provisions of N.J.S.A. 40:55D-144.

"State Transfer of Development Rights Bank" or "State TDR 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.

"TDR" means transfer of development rights.

### **SUBCHAPTER 3. STANDARDS FOR BOARD'S PURCHASE OF DEVELOPMENT POTENTIAL, ISSUANCE OF MATCHING FUNDS FOR PURCHASE OF DEVELOPMENT POTENTIAL, AND GUARANTEE OF LOANS**

## **2:77-3.1 Board's review of ordinance and determination of viability**

(a) Prior to purchasing development potential, providing matching funds for the purchase of development potential, or guaranteeing loans in a municipality that has adopted a development transfer ordinance, the Board shall determine whether the ordinance is viable.

(b) To be deemed a viable development transfer ordinance pursuant to this subchapter, the Board must find that:

1. The municipality has complied with N.J.S.A. 40:55D-137 et seq. and any rules or regulations promulgated thereunder. Compliance shall be determined upon a showing that the municipality has:

i. Received approvals from the State Planning Commission required by N.J.S.A. 40:55D-137 et seq. and any rules promulgated thereunder;

ii. Received certification by the Pinelands Commission pursuant to N.J.S.A. 40:55d-142, if applicable;

iii. Received recommendation of adoption of ordinance by the respective county planning board pursuant to N.J.S.A. 40:55D-149 or approval of Office of Smart Growth pursuant to N.J.S.A. 40:55D-150 through 152 and provided a statement as to whether such approval has been appealed; and

iv. Submitted information to the respective county agriculture development board pursuant to N.J.S.A. 40:55D-149;

2. The ordinance requires the instrument of transfer to include the following:

i. Restrictions that are consistent with the intended preservation purpose;

ii. A provision stating the restrictions are enforceable by the municipality and the county in which the property is located, any interested party, and the State agency responsible for enforcing the restrictions; and

iii. A provision stating the restrictions are enforceable by the Board if the landowner sells development potential to, or has loans guaranteed by, the Board.

3. The ordinance contains the following provisions:

i. Landowners selling development potential shall establish that they have 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;

ii. 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; and

4. The ordinance is consistent with 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. The municipality has received approval of its initial petition for endorsement of its master plan, including the development transfer ordinance, or approval of the development transfer ordinance as an amendment to a previously approved petition for master plan endorsement, by the State Planning Commission, as required by N.J.S.A. 40:55D-140e; and

6. The municipality has adopted a right-to-farm ordinance that is consistent with, or provides greater protections to commercial farm operators and owners than, the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., as determined by the State Agriculture Development Committee, if the TDR program intends to preserve land for agriculture.

(c) The Board shall review restrictions imposed by the ordinance or contained in an instrument of transfer to determine if they are consistent with the intended purpose for which the property is being restricted prior to purchasing development potential or providing a loan guarantee.

### **2:77-3.2 Procedure for Board's review**

(a) A municipality that 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; including the TDR and utility service elements required pursuant to N.J.S.A. 40:55D-140 and 40:55D-28;
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; and
  - v. The zoning of each parcel in both areas;
5. A sample of the instrument to be recorded on land enrolled in the TDR program;
6. A real estate market analysis prepared pursuant to N.J.S.A. 40:55D-140 and any rules promulgated thereunder.
7. A capital improvement program prepared pursuant to N.J.S.A. 40:55D-140 and 40:55D-29 and any

rules promulgated thereunder; and

8. Documentation showing compliance with N.J.A.C. 2:77-3.1(b)1.

### **2:77-3.3 Notification to municipality**

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, and issuance of loan guarantees.

## **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 therefore;
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. 2:77-3.1 through 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, 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 instrument of transfer;
7. A copy of the title search provided to the municipality at the time the property was encumbered by the instrument of transfer;
8. If available, a copy of the survey plat and legal metes and bounds description of the property encumbered by the instrument of transfer;
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 N.J.A.C. 2:77-3.1 through 3.3;
2. If a municipality has acquired development potential, verification that the instrument of transfer was valid and enforceable as evidenced in the title search conducted on the property;
3. The degree to which municipal and county funding will be provided;
4. Consideration of the offer price and the availability of adequate funding for the purchase; and
5. Whether the expenditure of funds substantially impairs 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 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 to be conducted on lands from which the

Board determines to purchase development potential; and

2. Execution of an instrument of transfer that shall be recorded with the deed of the land in the same manner as a deed, and which shall comply with the requirements set forth in N.J.A.C. 2:77-3.1(b)2i through iii.

## **SUBCHAPTER 6. (RESERVED)**

## **SUBCHAPTER 7. PLANNING ASSISTANCE GRANTS**

### **2:77-7.1 General provisions**

The Board may provide planning assistance grants to municipalities for up to 50 percent of the cost of preparing, for development potential transfer purposes, a utility service plan element or a development transfer plan element of a master plan pursuant to N.J.S.A. 40:55D-28, a real estate market analysis required pursuant to N.J.S.A. 40:55D-148, and a capital improvement program pursuant to N.J.S.A. 40:55D-29 and incurred by a municipality, or \$40,000, whichever is less.

### **2:77-7.2 Allowable costs**

(a) A municipality may use the following for its share of the matching costs associated with the activities set forth in N.J.A.C. 2:77-7.1:

1. Its own funds;
2. In-kind services;
3. Grants from other sources; and
4. Funding from municipal development transfer banks.

(b) Allowable costs include legal, planning and other ancillary costs that the municipality incurs to prepare a transfer of development rights ordinance and associated elements pursuant to N.J.A.C. 2:77-3.

### **2:77-7.3 Eligibility**

(a) In order for a municipality to be eligible to apply for a planning assistance grant, it shall meet the following requirements:

1. A municipality shall adopt a Master Plan pursuant to N.J.S.A. 40:55D-28 and update it according to recommendations from the periodic reexamination report pursuant to N.J.S.A. 40:55D-89;

2. The Master Plan shall include the plan element appropriately corresponding to the type of Transfer of Development Rights (TDR) program being proposed:

- i. Historic Preservation Plan pursuant to N.J.S.A. 40:55D-28b(10);
- ii. Farmland Preservation Plan pursuant to N.J.S.A. 40:55D-28b(13) and N.J.A.C. 2:76-17.6;
- iii. Natural Resource Inventory and Conservation Plan pursuant to N.J.S.A. 40:55D-28b(8);
- iv. Recreation Plan pursuant to N.J.S.A. 40:55D-28b(7);or
- v. Other plan element as appropriate;

3. If a municipality does not have a plan element described in (a)2 above in place at time of application, it shall provide documentation that funding is available for this purpose.

i. The element shall be completed, consistent with the TDR concept plan required in N.J.A.C. 2:77-7.4(a)8, within one year of entering into a grant agreement with the Board.

ii. No grant money shall be disbursed until the municipality has adopted the plan element described in (a)2 above;

4. The municipal governing body shall adopt a resolution supporting the pursuit of a TDR program and authorizing submission of a planning assistance grant application to the Board and execution of a project agreement if the grant is awarded;

5. If the TDR plan involves agricultural land, the municipality shall notify the county agriculture development board of the county in which the municipality is located, in writing, that it is pursuing a TDR program, prior to receipt of the first planning assistance grant installment payment.; and

6. The municipality shall notify in writing the county planning board of the county in which the municipality is located that it is pursuing a TDR program, prior to receipt of the first planning assistance grant installment payment.

#### **2:77-7.4 Application requirements**

(a) A municipality applying to the Board for a planning assistance grant shall submit an application (an original and one copy) containing all of the following:

1. Documentation showing that the municipality has satisfied the requirements set forth in N.J.A.C. 2:77-7.3;

2. Any comments received by the municipality regarding its application for a planning assistance grant as a result of the notification letters required in N.J.A.C. 2:77-7.3.

3. A scope of work including:

i. A description of the following work products the grant will be used for:

(1) A utility service plan element;

(2) A development transfer plan element of a master plan;

(3) A real estate market analysis; and

(4) A capital improvement program;

ii. The timeframes and target completion dates for completing the work products described in (a)3i above; and

iii. A summary of work already completed toward the creation of a TDR ordinance that will be required for its initial petition for master plan endorsement or for an amendment to a previously approved petition for master plan endorsement by the State Planning Commission pursuant to N.J.S.A. 52:18A-196 et seq.;

4. An estimate of the costs of preparing the work products set forth in (a)3 above;

5. A staffing plan indicating what staff resources and/or consultants are to be used in completing the work products funded by the grant;

6. A description of local commitment to preservation and planning;

7. A funding plan for the potential purchase of development rights, if applicable;

8. A TDR concept plan that describes the proposed sending and receiving zones, areas surrounding said zones, including descriptive maps; and

9. A statement explaining whether the municipal master plan is consistent with the State Development and Redevelopment Plan adopted pursuant to N.J.S.A. 52:18A-196 et seq.

(b) If the TDR proposal involves more than one municipality (inter-municipal), the following shall be submitted as one package:

1. A completed application form for each participating municipality;

2. A cooperative TDR concept plan and scope of work;

3. A signed cooperative agreement to pursue the inter-municipal TDR program; and

4. The resolutions and notification letters required in N.J.A.C. 2:77-7.3, which shall address the

proposed cooperative project.

(c) The Board shall send a copy of the application and accompanying documents to the Office of Smart Growth for a 45-day review and comment period.

1. The Board shall consider the comments in the evaluation of the planning assistance grant application.

### **2:77-7.5 Criteria for evaluating planning assistance grant applications**

(a) The Board shall evaluate the applications based on the following criteria:

1. TDR Concept Plan criterion (weight 50):

i. The sending zone shall be evaluated based on the following (25 points):

(1) Quality of resource to be preserved;

(2) Degree to which transfer of development rights program will achieve preservation of resource to be protected; and

(3) Suitability of planning area designation; and

ii. The receiving zone shall be evaluated based on the following (25 points):

(1) Proposed percent increase in development density;

(2) Availability and capacity of required infrastructure, including, but not limited to sewer, water and transportation facilities; and

(3) Suitability of planning area designation.

2. Development pressure on the municipality (weight 15);

3. Inter-municipal (regional) TDR programs (weight 10); and

4. Regional and/or State significance of resource to be protected (weight 25).

### **2:77-7.6 Approval or denial of application and grant agreement**

(a) Upon receipt of an application containing all the information required pursuant to N.J.A.C. 2:77-7.3 and 7.4, the Board shall approve or deny the application based on the requirements set forth in N.J.A.C. 2:77-7.3 and upon a ranking determined pursuant to N.J.A.C. 2:77-7.5 if there is insufficient

funding for all applications.

(b) The Board shall notify the municipality in writing of the decision to approve or deny the application, and in the case of an approval, shall notify the municipality of the amount of the funding award.

(c) After the notification of the funding award under (b) above, the Board shall send the municipality a grant agreement to be approved and executed by the municipal governing body. The grant agreement shall contain at a minimum:

1. The responsibilities of the parties named in the agreement;
2. The awarded grant amount;
3. A schedule of grant disbursement;
4. Accounting and recordkeeping requirements; and
5. The status of the adoption of the plan element described in N.J.A.C. 2:77- 7.3(a)2.

#### **2:77-7.7 Award of funding, disbursements, accounting and recordkeeping requirements**

(a) The Board shall base its award on the "Estimate of Costs" submitted pursuant to N.J.A.C. 2:77-7.4.

(b) In the case of an inter-municipal TDR planning assistance grant request, the Board shall award grants to participating municipalities as follows:

1. Up to 50 percent or \$40,000, whichever is less, for each municipality containing a receiving area(s) that accepts greater or equal to 50 percent of the total credits from the sending area(s); and
2. Up to 50 percent or \$20,000, whichever is less, for each participating municipality without a receiving area(s) or with a receiving area that accepts less than 50 percent of the credits from the sending area(s).

(c) The Board shall disburse the grant as follows:

1. Fifty percent of the awarded amount shall be disbursed after the grant agreement is executed; however, if the municipality has not yet adopted the master plan element required in N.J.A.C. 2:77-7.3(a)2, no grant money shall be disbursed until the plan element has been adopted; and
2. Fifty percent of the awarded amount shall be disbursed upon submission of the TDR ordinance and associated elements to the State Planning Commission as a part of a municipality's initial petition for plan endorsement by the State Planning Commission pursuant to N.J.S.A. 52:18A-196 et seq. or as an amendment to a previously approved petition pursuant to N.J.S.A. 52:18A-196 et seq.

- i. The municipality shall notify and submit a request for payment to the Board when the above requirement has been met.
- ii. The municipality shall submit a letter of receipt from the State Planning Commission;
- iii. The municipality shall submit an itemized statement of the legal, planning and other ancillary costs pursuant to N.J.A.C. 2:77-7.2 incurred to develop the TDR ordinance and associated elements, certified by the municipal treasurer or chief financial officer; and
- iv. The municipality shall submit documentation that it has sufficient funding to provide its 50 percent match of the total planning assistance grants pursuant to N.J.A.C. 2:77-7.2(a).

## **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 Definitions**

As used in this subchapter, "approved appraiser" means an independent State-certified, general real estate appraiser 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) 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 easement 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 that 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 that 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 that 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, outbuildings, 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 must 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 that 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 that 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 that 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.

iii. 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 that 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 should 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

	PER TDR	TOTAL
ESTIMATE OF PROPERTY VALUE "BEFORE":	_____	_____
ESTIMATE OF PROPERTY VALUE "AFTER":	_____	_____
ESTIMATE OF DEVELOPMENT CREDITS VALUE:	_____	_____

**APPENDIX B**

TABLE OF CONTENTS

PAGE #'S

- I. SUMMARY
  - Letter of Transmittal
  - Certification of Appraiser
  - Summary of Salient Facts
  - Table of Contents
- II. GENERAL INFORMATION
  - Appraisal Purpose and Function
  - Estate Appraised (interest)
  - Definitions

Assumptions and Limiting Conditions  
General Property Identification and Description, if applicable  
Zoning  
Community and Neighborhood Data

III. PROPERTY VALUATION, BEFORE DEVELOPMENT (Method is dependent on Appraisal Problem)

EASEMENT ACQUISITION (MARKET VALUE UNRESTRICTED)

Subject Property Description and Adaptability for Development Use

Highest and Best Use

Valuation Method(s)

Sales Grid and/or other value demonstrations (DCF data and Analysis including summary of critical assumptions)

Value Correlation

IV. PROPERTY VALUATION AFTER DEVELOPMENT EASEMENT ACQUISITION (MARKET VALUE RESTRICTED), if applicable

Subject Property Description

Highest and Best Use

Valuation Methods

Sales Grid/other value demonstrations

Value Correlation

V. FINAL ESTIMATE OF DEVELOPMENT POTENTIAL CREDITS (TDR) VALUE

VI. ADDENDUM

Subject property location map \*, if available

Comparable sales location map \*, if applicable

Subject property, subdivision plat, if applicable

Soils/flood/topographic maps and wetlands map, if applicable

Study of hydrologically limited areas, if applicable

Subject property photos, if applicable

Reference materials, etc

Development easement restrictions, if applicable

Appraiser's qualifications

\* These two maps should be combined.

## APPENDIX C

LAND SALE COMPARATIVE RATING GRID \* if applicable

Sale No.                    1    2            3

Sale Price	\$	\$	\$	
Reflects in Units*	\$	/AC	/AC	/AC
Date of Sale				
Conditions of Sale	%	%	%	
Financing	%	%	%	
Time Adjustment	%	%	%	
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.