

APPRAISAL GUIDELINES

FOR

DETERMINING DEVELOPMENT POTENTIAL

Transfer of Development Rights Program

State Transfer of Development Rights Bank

Adopted April 14, 1999

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STATE TRANSFER OF DEVELOPMENT RIGHTS BANK

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i.

PURPOSE

These guidelines were prepared by Daniel Donovan, Fee Review Appraiser, for the State Transfer of Development Rights Bank to assist the Transfer of Development Rights Bank Board and appraisers in the methods of determining the value of development potential.

ii.

INTRODUCTION

Because it is an innovative program that is in its evolving stages with markets yet to be defined, the TDR Bank valuation guidelines should be considered provisional and subject to modification and revision as experience is gained.

There are very few absolutes in terms of TDR appraisal or value methodology and the few there are have been borrowed from other appraisal applications, or programs. A number of fundamental observations may be made however. An attempt to derive a value for a TDR credit must look at the local market. A method should be contingent on the specific appraisal problem, the locality, the zoning, density, and use of the property to be appraised. To be recognized is the occasional market value of TDR credits that are not yet tied to any particular property site in the Receiving Area. More frequently, it is anticipated, there will be times where the credits are property specific in the Receiving Area as in the Sending Area.

An efficiently operating market will engender a multitude of TDR sales from and with which a relatively simple market sale comparison may be made. Initially, however, the market will be in an embryonic stage with few or no sales, or perhaps later there will be a market which is imbalanced with similar results. These situations will challenge the appraiser. Recognition must also be given to the fact that the value of the TDR credits of a Sending property may not equate to the value of the credits to the Receiving Area property.

The sale and purchase of TDR credits in the private sector market do not necessarily

require an appraisal and probably will not have one unless the sale is financed and then only if the banks require it. In an active market these types of private transactions will constitute the majority of sales.

It is noted that the legislation allows the State TDR Bank Board a few other means in addition to appraisals to determine TDR credit values for its purposes. It is within the TDR Bank Board's discretion to use or not use appraisals for any of its purposes in facilitating the transfer of development credits. When in the course of its duties, it determines to use an appraisal to establish TDR credit value for any of its actions, the appraisal must be in accordance with the instructions contained in the guidelines.

The State Agriculture Development Committee, (SADC) Easement Purchase Program plays an important role in the acquisition of development easements in the same markets as the State TDR Bank Board will operate. It is therefore considered important to distinguish and relate the State TDR Bank's, the SADC's and the County Agriculture Development Board's, (CADB's) roles with respect to the TDR credit market.

In order to comply with the State Constitutional provisions, the State TDR Bank is allocated within the Department of Agriculture, within the office of the State Agriculture Development Committee. The State TDR Bank, however, is independent of any supervision or control by the SADC or the Department of Agriculture or by any employee of either Department or Committee. Upon request by the State TDR Bank Board, the SADC shall provide that appropriate staff be made available to assist and advise the Board.

The SADC enjoys a prominent role in the NJ Farmland Preservation Program. It coordinates with CADBs to purchase development easements on farmlands, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and the SADC's regulations at N.J.A.C. 2:76-1 et seq.

The SADC participates (in procedures, regulations, etc.) with the counties which have initial and significant responsibility for selecting and reviewing applications in the farmland easement purchase approval process. Working closely with the counties the SADC oversees the process. Monitoring county adherence to its procedures, the SADC ultimately certifies or rejects the appraised value for the development easements on each counties' farms in the annual application approval round.

**STATUTORY AUTHORITY & PEROGATIVE OF THE TDR BANK BOARD
DISTINGUISHED FROM THOSE OF APPRAISERS**

The State Transfer of Development Rights Bank Act, P.L. 1993, c.339.1) (N.J.S.A. 4:1C-49) (Appendix A) provides the statutory basis along with the authority provided under P.L. 1989, c.86, (N.J.S.A. 40:55D-113 et seq.) to, among other powers, establish a State TDR Bank.

Collectively these and other similarly enacted laws are intended primarily to support development potential transfers through the purchase, sale, providing of matching funds at 80% of the value for the purchase or the guarantee of loans for the purchase of development potential, and otherwise facilitate development transfers.

The State TDR Bank Board may sell, exchange, or convey by other means, development transfer provided “--the board, shall not substantially impair the private sale, exchange or other method of conveyance of development potential”. The Board may also by its statutory authority and among other enumerated powers provide “--a financial guarantee with respect to any loans to be extended to any person that is secured using development potential as collateral for the loan”. The statute further states the development potential may be determined either by appraisal, municipal averaging based on appraisal data, or by formula supported by appraisal data. The latter two value determinations are available to the Board only, not the appraisal profession members who are bound by the standards of professional practice.

OVERVIEW

DEVELOPMENT CREDIT TRANSFER

Theoretical Basis of TDR Concept

THEORY: The ownership of real property is often referred to as a bundle of rights and may be compared to a bundle of rods wherein each rod represents a distinct and separate right or privilege of ownership. Any or all of the bundle of rights that make up the ownership of real property can be sold, leased, or restricted individually or together (e.g. water rights, mineral rights, right of access, hunting & fishing rights, etc.). Within this concept of ownership, the development rights of a property may be purchased to restrict the use of that property while providing a greater density of use to properties in other areas through the transfer by sale of those rights to properties in areas approved for greater density.

Transfer of Development Rights is a program to encourage the preservation of agricultural or other environmentally sensitive lands. This is accomplished by identifying and quantifying (allocating) Development Potential on designated resource lands for transfer to other properties in areas suitable for more intense development. The devise used is the Development Right Credit. It is a unit of development generally reflecting so many square feet of a residential site for one dwelling unit (D U) or so many square feet of commercial/industrial floor area (FAR). Often each credit is referred to as a "TDR". The method of transfer of the credit is the sale (or donation) of development credits. The transfer is between those owners of properties to be retained for their resource value in a section of the municipality known as a Sending Area to those with an interest in the Receiving Area market, including those whose properties may be developed to a higher density.

Those properties located in the Receiving Area are generally more conducive to higher density development being located nearer a corridor of growth and available infrastructure as well as having suitable soil conditions. The program in reality compensates for purchase and transfer of development potential and in this context is not unlike other development rights purchase programs, for example the NJ Farmland Preservation program. There, however, development rights have been retired, not transferred, and like the TDR Sending properties when credits are sold the lands are permanently restricted by emplacing an easement on the farm property limiting its future use to agriculture or other open space uses.

The TDR program, typically administered locally, is often initiated after the adoption of a municipal ordinance designating and allocating base densities in both Sending and Receiving areas as well as increased limits of densities in the Receiving Area. It is frequently the product of a new master plan contemplating municipal buildout densities for the community (the limit of potential growth). Often accompanying the plan is a revised zoning ordinance which stipulates development regulations that include the designated Receiving Areas, Sending Areas as well as a variety, if any, of density limits within the Receiving Area.

TDR VALUATION APPROACHES

Generally, the market for TDRs should involve primarily the private sector purchase and sale between Sending Area owners/sellers and buyers intending to satisfy the demand market in the Receiving Area. Other than those implicit value explorations that are a by-product of the bargain and sale negotiations in a typical market, private sector participants may deem it unnecessary to have any formal valuation procedures including appraisals.

Consistent with not substantially impairing private sales, however, the state TDR Bank (Board) may sell TDRs, (and buy) or provide matching funds for the purchase of TDRs under ratio formula of up to 80 percent or provide TDR collateralized loan guarantees for the sale or purchase of TDRs. These actions by the Bank Board in conformity with the State Transfer of Development Rights Bank Act occasion a need to determine TDR value.

The determination of value in accordance with enabling legislation stipulations may be (any) one of the following three:

- 1) Municipal Averaging based on appraisal data,
- 2) Formula supported by appraisal data,
- 3) Appraisal.

The State Transfer of Development Rights Bank Board for any of its purposes is free to rely on any one or more of the three in its TDR value determinations. NJ certified appraisers however are restricted to the Appraisal Method in accordance with the Uniform Standard of Professional Appraisal Practice, (USPAP) and NJ Standards for Appraisers requirements. Either of the remaining two determinations of value are not precluded from the appraisal report for purposes of contrast, comparison or correlation but not for appraisal value conclusions or for reliance upon as an indicator of value. Appraisers may of course in conformance with the applicable USPAP standards provide sales data, data research studies and other consulting services to the Board for its value determinations.

APPRAISAL & REVIEW INSTRUCTIONS

Appraisal & Report Standards: In addition to NJ Standards for Appraisers, the appraisal and report must conform to USPAP's applicable provisions of Standards 1 and 2, and depending on the scope of the appraisal (for example it may include a market analysis study) portions of Standards 4 and 5. A borrower seeking a commercial loan with TDR credits as security normally will be required to pay for a bank appraisal as a condition of the loan approval. When the appraisal is being prepared for a commercial bank loan and it is secured by TDR credits as collateral, and the State TDR Bank is requested to guarantee the loan, any lending institution or commercial bank appraisal must comply with the following: In addition to lending institutions' appraisal requirements, the USPAP Advisory Opinion #13 (7/18/95) with all applicable portions is to be mandatorily observed in the report along with the relevant portions of the FDIC's Uniform Appraisal Instructions to Appraisers. Any evaluation is considered to be an appraisal when an estimate of value is requested per USPAP. The only option available is the rendering of a Limited appraisal, rather than a Complete report. The former may only be performed when the value approach used is of primary relevance and market experience supports that approach. Properly invoked departure provisions may exclude non-relevant portions of the Standards otherwise a Complete appraisal is required. Appraisal report forms may either be self-contained and referred to as "Appraisal Report(s)" or "Restricted Use". Additional format and content instructions are included in the appendix.

Subject to the State TDR Bank Board appraisal review and certification, Commercial bank and lending institution appraisals may be acceptable for value estimates of TDR credits provided they

meet TDR Bank appraisal standards for content and format. Loan guarantee applicants should provide through the appropriate person in the lending institution all available data to the appraiser. That would include any project data, market studies, feasibility studies, subdivision plans, land purchase data, numbers and cost of total TDR credits to be purchased, anticipated sales price of finished units, approval status, infrastructure cost estimates, etc. All relevant data received by the bank and appraiser must be included in the TDR appraisal report.

An appraiser may not use “municipal averaging” or a “formula supported by appraisal data” as a relied upon method of valuation but must use a method that is of primary relevance to the market and is reasonably supported by market experience. The method of valuation employed must be a recognized method (technique) producing a credible appraisal consistent with current theory and practice of the main stream of the appraisal profession. The method must be demonstrated and demonstrable, and explained. It must be supported by data and analysis. It is never sufficient to use generalized statements such as “based upon our research, our files, etc” without explicit explanation of that research along with the file data relied upon. Experience or judgement without documentary evidence and supporting analysis is not ever an acceptable substitute. When a Discounted Cash Flow Analysis is used in the appraisal, the appraiser is obligated to recognize all the pertinent requirements of Statement on Appraisal Standards #2 (STM-2) which have the same force as the USPAP Standards.

All TDR appraisals received on behalf of the State TDR Bank will be logged, including date received, appraisal date of value, market value, appraiser, and client if other than the State TDR Bank. Appraisals will be reviewed technically and administratively for their compliance with

USPAP and State Bank TDR guidelines, and in accordance with USPAP Standard 3 which requires reviewer certification. A copy of the appraisal report received will be kept on file for a minimum period of five years or two years after any judicial procedure in which testimony was given or whichever time period is later.

APPRAISERS

Approved Appraisers: Appraisers authorized to conduct appraisals of TDR Credit for the State TDR Bank must be approved by the State TDR Bank Board and re-certified every year.

Inclusion on the State TDR Bank Board approved appraiser list applies to individual appraisers only, not to entire appraisal firms.

Appraisal Methodology

TDR VALUE

There are several techniques or methods of valuation available to appraisers to establish a value of TDRs. There should also be a recognition that a TDR may have one value in a Sending Area and another value in the Receiving Area. It may be that the value is higher in one area and lower in the other, or they may be approximately equal. An appraisal of a TDR may be property specific.

- (1) The best and least complex valuation method is of course The Direct Comparison of sales of TDR credits, when such sales are available. This method applies to both Receiving and Sending Area properties and is the easiest method to apply. Adjusting these sales may only involve a market condition adjustment (if any). Some Receiving Area property purchasers may derive a greater benefit for certain higher levels of density than other Receiving Area TDR property buyers due to zoning density differences, and appraisers may wish to consider this for property specific benefits valuation.
- (2) The measure of value in the Sending Area may be the difference between the property's fee unencumbered value and its restricted value. As such, the Before and After valuation technique may apply. Both unencumbered and restricted sales would be of primary importance in this method.

Most programs have allocated TDR Credits to all Sending Area properties. The allocation is frequently based on the property's soil characteristics. After establishing the unencumbered fee value of the property with reference to similar sales which have been compared and adjusted and correlated to a value, a similar procedure is used to measure its restricted value. By deducting the After (restricted) value from the Before (fee) value, a value for the development potential can be measured. This figure should be converted from the total \$ value of the property's development to a \$ per TDR credit unit price by dividing the total number of previously allocated credits to be transferred into the total development potential value.

This preceding methodology and some of the subsequently enumerated valuation methodology(ies) may apply more readily in an emerging or rudimentary market where few if any TDR sales exist. The appraiser is cautioned to refer to and consider the general theory of TDR market value found later in this section.

- (3) Another Sending area value check is those properties of reasonably similar characteristics from which a development easement has been sold through the Farmland Preservation Program. The provision being that they are reasonably proximate in time/distance and a method is available to compare the development potential on a \$ TDR credit basis. These sales may be used either as a value reference or a Market Approach to value.

A Direct Sales comparison method may be available as an alternate when comparing Farmland Preservation Program development easement purchases to Sending Area properties. The appraiser is reminded to control for all pertinent variables. Soil characteristics, zoning density, location, date of sale, etc. and to equate the value to the relevant unit value mode. (The Sending Area property, under appraisal must closely resemble the easement purchase sale property with which it is being compared.)

- (4) The Before and After technique may not readily apply, or apply as simply to properties in the Receiving Area. In theory, the market value defined would appear to be the value added by the addition of TDR credits to the Receiving Area property's TDR base amount value. This implies an enhanced property value (at the maximum TDR level permitted) minus the base property's value equals the value of the TDR credits to be transferred. It is unlikely that there will be many comparable sales reflecting a base density and/or maximum density, however, even in analogous form (e.g. sales of unimproved subdivisions).
- (5) In addition to the direct TDR sales comparison method (#1), there are methods available for measuring TDR credit values to properties in the Receiving Area market. Subdivision Development Analysis via a Discounted Cash Flow Analysis (Yield Capitalization) 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 being the \$ value measure of the TDRs

addition.

Again, care must be exercised since either or both of the cash flows (as capitalized) may not reflect local market activity (effective demand and rate absorption). These caveats may be eased by a Market Analysis study which includes market area identification, macro/micro economic forecasts, supply and demand and market share studies. It must be noted that this method (all of the subdivision-market analysis) almost invariably applies to specific properties and cannot be readily generalized.

- (6) Other methods include (A) the Linear Regression Method, and (B) Allocation Method where the known total raw land costs proportion can be estimated to the finished product's sale price (provided some means can be found to split off the underlying land value). Other comparative or Income Capitalization methods, or modifications of existing ones may emerge as experience is gained in the TDR credit market and valuation process.

It is suggested any and all of the foregoing value procedures should be reconciled with any historic rates and the price of TDR sales (when available) in the local market. Other value benchmarks to consider when reconciling value are Sending Area development potential appraisals, local preservation easement purchase amounts, total \$ variations in platted (unimproved) recent subdivision sales that have differing densities within the Receiving market area, and ratios of total cost of raw land to finished home prices in Receiving Area markets.

Noted is the similarity of the purchase of development potential in the TDR program to Development Easement Purchase through the Farmland Preservation Program. Both seek to protect high resource lands and purchase development potential. Whereas the Farmland Preservation Program traditionally retires development credits, the TDR program transfers them. Farmland Preservation Program appraisals measure remaining restricted value and deduct it from the “Before” fee value to ascertain the value of development potential to be purchased. The TDR program is concerned with development potential value in the market and that may vary from the Before/After value approach indications that are typically used in the Farmland Preservation Program.

GENERAL THEORY OF TDR MARKET VALUE

There is a significant body of opinion which states when a transfer of development potential program has a well established active market, all TDR credit’s market value ultimately reflects demand in the Receiving Area. Since usually credits have been previously allocated to each and all Sending/Receiving Area properties according to their soil and/or other characteristics, equity parity if not compensation, has already been recognized in the Sending area. The focus then is shifted to the Receiving Area. The TDR credit value therefore represents the increased marginal net profit to the developer/builder of an additional unit sold in a yet to be satisfied receiving

market area. Underlying this is the degree of equilibrium in Supply and Demand, Macro/Micro economic factors and density limits. These in turn are predicated on additional factors such as age disaggregated population growth and migration, household headship size, employment growth, sale prices, community planning facilitation, available infrastructure, competitive markets, planned and approved projects. Any serious study of the demand (receiving) markets considers project area growth, (by age/sex), it references historic rates and projections, demand relative to growth; it employs the use of age specific household headship ratios to growth in age groups; converts into required types of housing/other units; it considers home ownership rates, price ranges for household income groups; focuses on growth, not existing base and is aware there are demand changes to be recognized on existing as well as in net growth area population; and bases estimate of capture rate by surveying and weighing the entire continuum of planned, existing and competitive market area projects.

Despite all of the foregoing, there are several value standard “fixed stars” which immediately or ultimately will influence seller and buyer willingness in the TDR credit market. They are current and historic local TDR credit sale prices, competitive market lot sales, cost of raw land in the market area, market area’s improved property area price levels, and other government agency development potential purchase programs in the trade area.

Any current credit market value estimates should be reconciled with (and perhaps tempered by) these last referenced indications of value and be not too far different from some of them, particularly the development potential purchase programs, at least not without convincing evidence and/or active TDR markets providing ample value indications to the contrary.

OTHER APPRAISAL MATTERS

Infrequently the acquisition of development rights may involve a restriction of tracts of land having unique or rare environmentally sensitive attributes. When a value for such a restriction of development must be determined, the appraiser is reminded to define the appraisal problem. What is being requested is a determination of the value for the restriction of development potential. The value issue concerns the degree of change in the utility (Highest/Best Use) prior to and after restriction of the subject property. This may have already been anticipated. The subject's limited potential for development may have been recognized by the allocation of only one or a few credits. If credits are already allocated the valuation procedure may only involve the use of comparable TDR sales (if available). If not allocated, a Before and After valuation procedure may be the only method available.

Historical encumbrances may require a value of the improvements upon the land as well as the

land. Here the appraiser is reminded to address the Highest and Best use of both the improvement and the land both Before and After in order to determine the loss of development potential and its value.

EXAMPLES OF METHODS TO DERIVE DEVELOPMENT POTENTIAL VALUE AND DISCUSSION

Per legislative direction the Board may avail itself of other means of determining the value of development potential in addition to or in lieu of appraisals.

The alternate means cited are two: 1) “Municipal Averaging” (based on appraisal data); 2) “A Formula” (supported by appraisal data). The terminology and phraseology are general and somewhat lacking as to exactly what the nature of municipal averaging is, or the content of what a formula should be. “Appraisal Data” may mean the sum of all local market appraisal values or those most relevant, or merely portions of those appraisals such as the comparable sales data. It is presumed that the legislative phrasing as to the means to determine value was intentionally left as it is in order to provide the Board with a maximum of latitude and discretion in its determination of the value of development potential.

The following “Averaging/Formula” examples are presented without limiting the Board’s freedom to apply and interpret the statutory mandates as they may wish in the Municipal Averaging and Formula applications. In the alternatives to appraisals, this guideline makes no claim of authority or legitimacy, nor does it imply any limit to the number of ways to apply the two alternate methods, or contain any suggestions as to the primacy of any single application. The Board is free to implement the two alternate value determination methods as it chooses as well as the manner in which it implements them.

In an active market the Board may wish to purchase, sell, guarantee loans, or provide matching funds for TDR credits. In order to reference a market value for a TDR credit, the Board may

look to a recent local market period of TDR sales in order to determine a suitable value.

MUNICIPAL AVERAGING

Method #1

A method to process the local market sales data may employ municipal averaging. Such a procedure is represented as $\bar{x} = \Sigma x/n$, where \bar{x} = the average (or mean), Σx = the sum of all recent market TDR sales, and n = the number of all such sales. The total sum Σx is divided by n (the number of sales) for the average price (represented by \bar{x}). For example: assume there are six recent TDR sales in the local market; 15 TDRs @ \$15,000/TDR, 20 @ \$13,600/TDR; 26 @ \$15,400/TDR; 22 @ \$13,500/TDR; 10 @ \$16,500/TDR; 11 @ \$16,000/TDR. The formula $\bar{x} = \Sigma x/n$ can be demonstrated thusly, $(15,000 + 13,600 + 15,400 + 13,500 + 16,500 + 16,000) \div 6$. The simple unweighted average produces \$15,000/TDR; the weighted average (the total purchase price or the Σ of all 6 sale prices divided by the 6 properties total # of TDR units: 104) is \$14,763/TDR. Either average may be employed. This example is best applied in an active TDR market where there are tight sale price clusters. It usually would be more readily applicable to the Sending area properties as are most Municipal Averaging methods.

Method #2

Another averaging method that may be used is where the municipalities have previously established the market value of the development potential of all Sending Area properties. Here there could be, for example, 36 properties with a total of 2,700 acres having an

aggregate development potential value of \$13,500,000. The total credit allocation for these farms is 675 TDRs (or an average of 1 TDR for every 4 acres). The formula is $\frac{\Sigma x}{n}$ or $\frac{\$13,500,000}{675} = \$20,000/\text{TDR}$ derived value by averaging. Σx represents the sum total of all 36 properties' individual (and probably different) development potential values, and where "n" equals the aggregate total of all properties' individually allocated TDR credits. (An alternate method of demonstrating this TDR credit value is $\frac{\$13,500,000}{2,700 \text{ acres}} = \$5,000/\text{ac.} \times 4 \text{ acres (required for each TDR)} = \$20,000/\text{TDR}$. Where $\Sigma x = \$13,500,000$; $n=2,700$ acres; $\$5,000 = \underline{\hspace{1cm}}$, but this average reflects only \$ per acre, not TDRs unit value. In order to obtain a TDR credit value, multiply the acre unit value by the density factor 4.

Other Averaging Methods

There are other averaging techniques that may avail including but not limited to Farmland Preservation sponsored purchases of development rights' average values within the community. These might reflect typical values if they are

recent, physically comparable and enjoy a similar use density to the subject property under valuation. This method is more applicable to Sending Area properties.

The foregoing averaging examples do not foreclose the possible purchase and sale at a negotiated figure lower (or higher) than the referenced average. They are merely to provide a value benchmark or to be a point of value reference.

Formulas

Formulas can be very elaborate, limited only by one's ability to mathematically abstract and creatively apply them. In the Receiving Area (Demand) market, for example: The multiple linear regression formula with several elements that test value as a function of density has these variables: Raw land value, dwelling unit price, site development costs, construction costs, dwelling size, and other costs.

- A. Raw land value equals $x + \text{Ln Acres} + \text{Ln Density}$;
- B. Dwelling unit price equals $x + \text{density} + \text{unit square feet}$;
- C. Site Development costs equates to cost per unit of density or, $x + \text{density}$;
- D. Construction costs per square foot = $x + \text{square feet}$;
- E. Dwelling unit size equals $\text{SF} = x + \text{Density}$;
- F. Other costs are estimated at $.25 \times \text{unit price value}$.

The above costs are subtracted from the Dwelling Unit Value for the credits value.¹ This operation is so complex, it is usually done with the aid of a computer software program.

The foregoing is too cumbersome to be easily applied but is included as an example of just how complicated formulas can be. There is no intention to propose such complex formulations but rather to provide simple examples. One reason for the uncomplicated formula samples is despite the apparent intimidating complexities of the TDR credit

¹Gottsegen, A., Planning for TDR's, Burlington County Board of Chosen Freeholders, 1992

transfer market, there is in realty only two fundamental concepts to deal with in the determination of value of TDR credits.

- I. That the transfer of development credit concerns itself with a partial interest (less than full fee simple). Therefore, the value will be less than full fee simple value (i.e. a portion or percentage of full value).
- II. Notwithstanding all the activities that involve the program and actual transfer of credits, market value can be viewed as either:
 - A. An enhancing value which occurs when credits are purchased and added to Receiving Area properties; and/or
 - B. The decremental value effect on the seller's property when TDR credits are sold from a Sending property, thereby diminishing value.

In instance "A", there is an incremental value to the Receiving Area property which can be measured by comparing the base value of the Receiving property before its added TDRs with the after enhanced value, the difference reflecting the TDRs contribution to value. In instance "B", similarly the Sending Area, residual (restricted) value can be compared against its fee unencumbered (Before) value for a measure of the loss of value due to the TDR sale.

The following examples reflect the concepts that development potential represents less than full property value (some percentage) because it is a partial interest, and the transfer of TDRs causes a loss of market value to the Sale (Sending) property while producing an increment or enhancement of value to the purchaser's (Receiving) property.

Formulas

The formula applications are less limiting in that there can be great numbers of them. Averaging is itself one formula as cited previously ($\bar{x} = \sum x/n$). It would seem evident that formulas be relatively simple, direct and easily applicable. They should be tied to the local market as is Municipal Averaging. Formulas may depend on ratios (i.e. proportions). For example, in the statute it is stated that the Board provide matching funds at 80% or an .8:1 ratio of the value of development potential; this ratio might, at the Board's discretion, be extended to loan guarantees and even the purchase of TDRs. This is a form of discount. Conversely, the Board may wish to sell (as do other governmental credit bank agencies) TDRs at a 25% premium over its purchase price (i.e. 1.25:1). As an example: the current market price for a TDR is \$10,000/credit, the Board purchases it at 80% (a 20% discount or $.8 \times \$10,000$) or \$8,000; it then sells it at a 25% premium over cost or $\$8,000 \times 1.25 = \$10,000/\text{TDR}$.

The foregoing is illustrative and not a formula to derive potential value, however, it may be incorporated within a formula for purchase, sale, etc.

METHOD 1 (SENDING AREA)

Such a formula would depend on known or ascertainable fee simple property values that could be mathematically manipulated to yield a relationship of the development potential value to the total fee or a component value. An example to illustrate this might begin with the question: What is the relationship of the development potential value to the total fee unencumbered value of a farm? The answer to the question may be expressed as a ratio or percentage. Assume a vacant farm tract has 100 acres and it has a market value of \$1,000,000 total fee unencumbered value (\$10,000/acre). It has been determined that

it has an agricultural restricted value of \$3,000/acre, the value of the development potential is \$700,000 (\$7,000/acre) or 70% of fee value. Suppose further this is in line with the County Agriculture Development Board's easement purchase average of 75% development potential value to fee value for the past 3 years (range 60-80%). The formula that could be employed is $.70 \times \text{fee value}$ ($.70 \times \$10,000$ or \$7,000/acre). Assume the example 100 acre farm had 35 TDR credits allocated. That would be a density of one dwelling site for each 2.857 acres (or $.35/\text{acre}$); therefore: $2.857 \text{ acres} \times \$7,000 = \underline{\$20,000 \text{ per TDR credit}}$.

Alternatively the Board may choose to use the actual average ratio of all county development easement purchases to farm fee values in the past 3 years (or $.75:1$). At 75% it would reflect the following: $.75 \times \$10,000$ or \$7,500/acre $\times 2.857 \text{ acres}$ or \$21,428/TDR credit. Further the Board may wish to discount its purchase. The formula for the Board purchasing a TDR would then be $.80 \times .75$ (fee value); i.e. $.80 \times .75 \times \$10,000 \times 2.857 = \$17,142/\text{TDR purchase price}$. When later selling the credits its sale price could employ the following formula: $1.25 \times \text{cost}$ or $\$17,142 \times 1.25 = \$21,428/\text{TDR}$. This formula can be expressed for the general case: discount (80%) \times county ratio of easement value to fee value (75%) \times the fee unencumbered per acre value (\$10,000) \times the density in number of acres for each residential site (2.857 acres) or DS \times CR \times FV \times DN.

Of course, the formula is dependent either on knowing the average fee value or the subject's fee value and the number of allocated credits as well as the aggregate County fee and development easement values total in order to establish a ratio of development value to Fee value. The ratios

can be developed from the county totals which are available from the SADC or the county (credit allocation can be obtained locally).

METHOD 2 (RECEIVING AREA)

Another method is a variation of the Allocation method which affirms that there is a normal or typical ratio of land value to property value for specific categories of real estate in specific locations.²

For example, it may be the typical total land cost of an unimproved lot, is 20% of total sale price of a \$215,000 single family dwelling on a half acre lot. This translates to \$43,000 per dwelling site cost (exclusive of improvements). As this value represents both TDR and land (site) costs, this cost must be split between the actual physical raw land and the development potential (TDR credit). In the cited example, it is evenly divided at \$21,500 or 10% each. This equal distribution may not always be the case. It may be the land costs are greater and the TDR is less.

In that case it would be split unequally, where the credit was 9,8,7% or even less and the underlying raw land worth up to 13% or more (or the converse could also apply with TDRs worth more than half).

The general case formula is expressed: $\frac{1}{2} (\% \text{ S.P.} \times \text{SP})$.

The formula may be shown as: $.50 (.20 \times \text{average sale price})$. In the above example, it is noted the product of $.50 \times .20$ may vary $\pm .03$ or greater. The 20% total land cost used in the example is only an arbitrary ratio of total land costs to new home sales price used to illustrate the case.

²Appraisal Institute
The Appraisal of Real Estate, 11th Edition, page 326

Ratios of land costs to sale price have varied depending on the market in ranges usually from 10% to 40% of the sale price. (Actual land costs to house prices ratios may be verified with developers in the market area or derived from local assessors' ratios based on mass appraisals.

The preceding example may be applied as: $.50 \times (.20 \times \$215,000)$ or $.50 \times \$43,000 = \$21,500$. Here the TDR's contribution to the unit of development (a single family residence on one-half acre lot) was estimated to be worth half or 50% raw land cost (of unimproved lot or .50). The procedure to derive land costs was assumed to be based on the typical local developer's willingness to spend up to twenty percent (20%) of the retail price of a new home for the buildable site (i.e. \$215,000 dwelling retail price in this case) $.20 \times \$215,000 = \$43,000$ split evenly between land cost and TDR at \$21,500 apiece.

(Another total land cost comparison including TDR's contribution might be the per lot cost of unimproved subdivision tract sales.)

The examples, discussions and suggested methods are available only to the State TDR Bank Board for its consideration (not to appraisers). The Board is, of course, free to reject or use or modify any of the foregoing, or to substitute methods of its own which are in conformity with the statute regarding the determination of development potential values.

APPENDIX

A. Statutes

B. Format/Content/Requirements

C. Definitions

D. References

A.

STATUTES

B.

FORMAT/CONTENT/REQUIREMENTS

APPRAISAL REQUIREMENTS & STANDARDS

The appraiser shall ensure that all appraisals shall, at a minimum:

1. Conform to the current Uniform Standards of Professional Appraisal Practice (“USPAP”) adopted by the Appraisal Standards Board of the Appraisal Foundation which are incorporated herein by reference;
2. Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;
3. Be based upon the definition of market value as set forth below;
4. Be written and presented in narrative format;
5. Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;
6. Provide detail and depth of analysis that reflect the complexity of the real estate appraised;
7. Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time period (5 years);
8. Analyze and report a reasonable marketing period for the subject property;
9. Analyze and report on current market conditions and trends that will affect projected sales income or the absorption period, to the extent they affect the value of the subject property;
10. Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

11. Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;
12. Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used;
13. If information required or deemed pertinent to the completion of an appraisal is unavailable, the appraiser shall disclose and explain that fact in the appraisal.

MARKET VALUE

Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States of America.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollar or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

APPRAISAL FORMAT

APPRAISAL FORMAT

The following appraisal format, which is the standard also utilized in the Farmland Preservation Program, ~~which~~ must be strictly adhered to or the appraisal is at risk of being deemed invalid. All values in the report must be expressed in dollars per acre and \$/TDR credit where appropriate. The final value should be expressed in both dollars per TDR acre and total dollars. Each report will be examined and rejected if not valued or formatted as requested. Any factual or mathematic errors which could result in a value change may be referred to the appraisers for correction and/or clarification.

PART I SUMMARY

Letter of Transmittal.....

Should contain the estimated value per TDR and the total value.

Certification of Appraisal.....

Be sure to include the market value per TDR credit and total value, and market value restricted, if applicable, per acre and total value, if applicable, date of valuation, a statement that the appraisal conforms to USPAP and to the Standards for Appraisals in N.J.A.C. 13:40A-5.1, 6.1 and the signature of the appraiser responsible for the report.

Summary of Salient Facts.....

Include the unrestricted value per TDR and total value and, if applicable, the restricted value per acre and total restricted value. and the easement value both per acre and total. **(See required Format)**

Table of Contents.....(See required Format (B))

PART II GENERAL INFORMATION

Appraisal Purpose: The purpose of the appraisal is to estimate the market value of a TDR Credit.

Estate Appraised: A statement of the rights being valued.

Definitions: Define the legal and technical terms of the report such as, but not limited to, Market Value, Highest and Best Use, etc..

Assumptions and Limiting Conditions: Should be normal, reasonable and not contain hypothetical or extraordinary.

General Property Identification and Description: Identify the subject property, if applicable, by Block/Lot and other means. Briefly describe the property and its current use.

History: Any Title changes in the last 5 years, easements, agreements of sale or options.

Market: Report present market conditions and estimated marketing time.

Zoning and Assessment Information: If applicable.

Community and Neighborhood Data: This should include, but is not limited to, character of the community, land use trends, degree of development pressure in the area, and any other information which may significantly impact the fee simple market value. This section should lay the foundation for the discussion of Highest and Best Use later in the report.

(REQUIRED FORMAT)

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:	_____	_____

When the TDR credit is being appraised via the Direct Comparison Method with other local market TDR sales, there would not normally be a Before and After Partial taking Valuation procedure.

Therefore, only those items I through IV and Relevant portions of Addenda are required. However, all total TDRs value and unit \$/TDR must be expressed in the appropriate value demonstration and conclusions.

(REQUIRED FORMAT)

TABLE OF CONTENTS

PAGE #'S

III. 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

PAGE #'S

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 hydro logically 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.

PART III PROPERTY VALUATION BEFORE DEVELOPMENT & TRANSFER ACQUISITION (A/K/A MARKET VALUE UNRESTRICTED)

(Where applicable)

Subject Property Description: The description of the subject property including all physical attributes and improvements. Comments regarding topography, soils characteristics, hydrologically limited areas, riparian lands (state owned or privately held), frontage, configuration, dwellings, outbuildings, etc. are appropriate. Building sketches are not necessary. Any rejected, approved, or pending subdivision plans, if any, should be noted here. Existing residences should be noted.

Improvements: The appraiser is required to consider the effect value when the subject and/or comparable sale properties contain any improvements. The appraisal shall be a complete self contained report. The extent of describing the improvements in the “Before” and “After” is left to the appraiser’s discretion. Most importantly, the appraiser must determine if there is an increment of value attributed to the land which is independent of the actual value of the physical improvement.

Highest and Best Use: Building on previous sections describing the zoning, community, and the property, discuss in some detail your opinion of the highest and best use which may be defined as the reasonably probably and legal use of property which is, 1) physically possible, 2) appropriately supported, 3) financially feasible and results in the highest value in the TDR marketplace, 4) consistent with the purpose of the appraisal.

Valuation Approaches: The development potential sold or purchased by the TDR Program involve an interest in property only. As a result it is only the value of an interest in property that needs to be derived. As noted in previous discussions, the appraiser must consider if there is an increment of value attributed to the property as a result of transfer of development credits.

- a. **Direct Sales Comparison:** Generally speaking, this method should be based on a comparison of vacant acreage sales to the subject lands. Comparable sale data sheets shall at a minimum include the following information:

- a. Grantor/Grantee
- b. Deed date/ recording date
- c. Deed book/page
- d. Sale price
- e. Property size or number of credits
- f. Location/block/lot, if applicable
- g. Soil types/% tillable, if applicable
- h. Frontage/access, if applicable
- i. Conditions of sale, if applicable
- j. Improvements, if applicable
- k. Utilities, if applicable
- l. Verification, if applicable
- m. Legible copy of tax map, if applicable.

In summary, a description of the sale property shall be thoroughly discussed. An adjustment grid shall be included. **(See Required Format)**

Adjustments should be for salient characteristics in the market which may or may not include soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale, financing, etc. Adjustments must be explained. If a sale is improved, the appraiser must consider making appropriate adjustments when comparing the sale to the subject. The basis for any adjustments should be contained in the report.

The appraiser should utilize sales which most closely resemble the conditions on the subject property (interest). The value conclusion should be expressed as a TDR figure and a total figure for the property. In the reconciliation, discuss sales thoroughly and indicate which were emphasized.

(REQUIRED FORMAT) (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.

It is required that each appraiser express the values on the grid as a VALUE PER ACRE TDR. The total and the summary should also express the VALUE PER ACRE TDR.

- b. Subdivision Method: In certain instances may be applicable to value TDRs contribution in the Receiving area.

- c. Income Capitalization: The appraiser may consider this approach particularly with respect to a DFC and subdivision analysis.

- d. Cost Approach: The appraiser may consider this approach, however, since the TDR incremental value is sought to land only, and infrastructure and land improvement costs may be important, this approach may only apply in certain instances. This method may be used as a means of demonstrating the contributory value of improvements, land and TDR values.

VALUE CONCLUSION: Indicate final value estimate for the land and discuss how this conclusion was reached.

PART IV PROPERTY VALUATION, AFTER DEVELOPMENT

ACQUISITION

(A/K/A MARKET VALUE RESTRICTED), where applicable

Subject Property Description: Without reiterating the entire detailed description set forth earlier in the report, the appraiser should discuss those items which are particularly significant to valuation of the property. Such items include, but are not limited to, a "plain English" discussion of the restrictions/enhancements and their affect on the subject property, the subject's adaptability for agricultural use (or other uses), soils and their classification, etc.

In addition, the impact of the following issues previously identified and discussed in the "Before" valuation shall be identified and discussed in the "After" valuation are:

Highest and Best Use: Comments made earlier in this format for H & B use apply here as well. Careful attention must be paid to the nature of the subject area and the motivating factors typical for buyers in that market for properties of this type.

Traditionally, highest and best use analysis considers the following criteria:

1. Is the use legally possible?
2. Is the use physically possible?
3. Is the use probable or likely?
4. Is the use economically feasible?

5. Of those uses meeting the first four criteria,

which one yields the highest return?

Establishing Highest and Best use sets the basis for the valuation to follow.

Differentiating between agriculture of various types, country estates, oversized homesites, hunting club, or any other use which may be primary in the marketplace, but compatible with agriculture as a secondary use is an essential step of a Highest and Best use analysis for the restricted property. The properties in this program are all subject to the same set of restrictions. However, this does not mean all such properties will be sold to the same kind of buyers who are all motivated in the same way. Location of the property, desires of the buying public, and financial resources of the buying public will determine how a restricted property is utilized. For example, there is nothing to stop a non-farmer purchaser from paying a premium for restricted lands just to have land and space. Such use will still meet the legal requirements of the restriction. In fact, this is surely the kind of buyer that real estate brokers will seek to pay top dollar when restricted properties are placed on the market. Such buyers will be in competition with commercial farmers when such properties are exposed to the market. **THE APPRAISER MUST STUDY THE SUBJECT MARKET AND ASK THE QUESTIONS, "TO WHOM WOULD THIS PROPERTY TYPICALLY BE SOLD, HOW MUCH, AND WHY?"**

Valuation Approaches: 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.

Direct Sales Comparison: The general procedure for estimating restricted value is the same as for estimating unrestricted values. However, sales data is more scarce. The intent of this valuation is to demonstrate value for a land parcel which is limited in utility (by virtue of legal restrictions). The following categories of land sales are recommended as useful value indicators:

1. **DEED RESTRICTED PROPERTIES**:

A property limited in utility by a development easement or conservation easement or other deed restriction placed against the title of the property.

BE SURE TO UNDERSTAND THE NATURE AND LIMITS OF THE RESTRICTIONS ON THE SALE WHEN USING SUCH SALES.

2. **PHYSICALLY LIMITED PROPERTIES**:

By virtue of poor percolation, rocky conditions, limited or R.O.W access, landlocked, steep slopes, poor configuration (such as "flag" parcels with long, narrow access corridors), etc. such properties are limited in utility and certainly limited in their development capability.

3. **FLOOD PLAIN**:

Although this is a physical limitation, such lands may be excellent agricultural properties but may possess no development potential whatsoever by virtue of the flood hazard. Such lands are purchased for agricultural use, add ons, recreational purposes, as buffer for existing residential properties, etc.

4. **LOW DEVELOPMENT PRESSURE:**

Certain areas may be sufficiently lacking in development pressure such that the Market Value of sales may be nearly synonymous with Market Value Restricted of a similar property located in an area with heavier development pressure. Such sales, however, may continue to exhibit an increment of speculative value in anticipation of long term development potential.

Adjustments for this value increment, if measurable in the marketplace, would be needed if such sales are used to demonstrate Market Value Restricted.

Commencing with the 1990/91 group of easement purchase applicants, some measure of negotiation and competition for limited funds was introduced into the easement purchase process by requiring landowners to submit "negotiated relative best buy offers" after they were informed of their SADC certified easement values. To the extent that the landowner offer is less than the certified easement value, the chances of the easement actually being purchased with an SADC cost share grant are improved.

In any event, the easement sales are a useful guide and check but should only be depended on as the sole basis for valuation with caution.

5. **COMPARABLE SALE DATA SHEETS SHALL AT A MINIMUM INCLUDE THE FOLLOWING INFORMATION:**

- a. Grantor/Grantee
- b. Deed date recording date
- c. Deed book/page

- d. Sale price
- e. Property size or number of TDRs
- f. Location/block/lot (including approximate distance to the subject), if applicable
 - g. Soil types/% tillable, if applicable
 - h. Frontage/access, if applicable
 - i. Conditions of sale, if applicable
 - j. Color photograph(s), if applicable
 - k. Improvements, if applicable
 - l. Utilities, if applicable
 - m. Verification, if applicable
 - n. Legible copy of tax map, if applicable

In summary, a description of the sale property shall be thoroughly discussed. An adjustment grid shall be included as per the sample. Adjustments should be for salient characteristics in the market which may or may not include soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale, financing, etc. Adjustments must be explained. If a sale is improved, the improvements should be adjusted accordingly to most closely reflect the conditions on the subject property. The value conclusion should be expressed as a per acre figure and give a total for the property. In the reconciliation discuss sales thoroughly and indicate which were emphasized.

Developing the estimate of Market Value Restricted may require that the appraiser draw upon a variety of data sources. Unlike other types of appraisal assignments in which the market data is more likely to "speak for itself", developing MVR will require considerable discussion and rationale to adequately relate the sale properties to the subject.

PART V FINAL ESTIMATE: The difference between market value and market value restricted of the land represents the value of the development credit (i.e. just compensation). This conclusion must be presented on a per acre basis and as a total dollar figure. 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. In short, the major points of the report should be summarized leading the reader to the same conclusion as the appraiser.

PART VI ADDENDUM: This section of the report should include, but is not limited to, the following items:

1. Subject property and comparable sales location map
2. Subject tax map, if applicable
3. Soils/flood/topographic maps, if applicable
4. 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. Subdivision map, if applicable

8. Appraiser's qualifications

**PLEASE BE SURE THAT ALL MAPS AND DIAGRAMS
ARE CLEARLY AND FULLY LABELED**

C.

DEFINITIONS

Definitions

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.

The right to develop is a specific right of the bundle of rights accruing to real property ownership. It is an interest in real property that is severable, as such for purposes of value estimation, it is considered to be a partial interest in Real Property.

A TDR (transferable development right) is a property use right that can be transferred from one property to another by government created programs. It is a planning tool that allows municipalities to identify rural and agricultural areas for preservation while targeting limited locations for clustered residential and commercial growth. Unlike traditional zoning, however, TDR builds “equity protection” into the planning process by linking new development in the growth area with the preservation of prime farmland and natural areas.

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

The TDR program is designed to encourage a concentration of development in areas designated Receiving areas and away from scarce natural resource areas including agricultural lands designated Sending area (also referred to as protected/preservation areas). The program which may be voluntary balances natural resource protection while financially supporting owners equity through private sector market purchase and sale of the credits; thereby avoiding large expenditures of tax dollars. Rezoning and downzoning are legally available although not a popular means of controlling and directing unwanted growth. As an alternative, the TDR program is often termed an equity mitigation program. It accomplishes this by eluding the harsh and punitive results of downzoning to property owners through the transfer (usually through private sale) of development potential from high resource lands to municipal sectors where more intensive development can be borne and without the use of public funds in the form of equity purchases.

D.

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