## CHAPTER 2

**AN ACT** authorizing the transfer of development rights by municipalities, amending P.L.1993, c.339, P.L.1983, c.32, and amending and supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.40:55D-137 Short title.

1. Sections 1 through 27 of this act shall be known and may be cited as the "State Transfer of Development Rights Act."

C.40:55D-138 Findings, declarations relative to transfer of development rights by municipalities.

2. The Legislature finds and declares that as the most densely populated state in the nation, the State of New Jersey is faced with the challenge of accommodating vital growth while maintaining the environmental integrity, preserving the natural resources, and strengthening the agricultural industry and cultural heritage of the Garden State; that the responsibility for meeting this challenge falls most heavily upon local government to appropriately shape the land use patterns so that growth and preservation become compatible goals; that until now municipalities in most areas of the State have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized; and that the tools necessary to meet the challenge of balanced growth in an equitable manner in New Jersey must be made available to local government as the architects of New Jersey's future.

The Legislature further finds and declares that the "Burlington County Transfer of Development Rights Demonstration Act," P.L.1989, c.86 (C.40:55D-113 et al.), was enacted in 1989 as a pilot transfer of development rights (TDR) program to demonstrate the feasibility of TDR as a land use planning tool; and that the Burlington County pilot program has been a success and should now be expanded to the remainder of the State of New Jersey in a manner that is fair and equitable to all landowners.

The Legislature therefore determines that it is in the public interest to authorize all municipalities in the State to establish and implement TDR programs.

C.40:55D-139 Transfer of development potential within jurisdiction.

3. a. The governing body of any municipality that fulfills the criteria set forth in section 4 of P.L.2004, c.2 (C.40:55D-140) may, by ordinance approved by the county planning board, provide for the transfer of development potential within its jurisdiction. The governing bodies of two or more municipalities that fulfill the criteria set forth in section 4 of P.L.2004, c.2 (C.40:55D-140) may, by substantially similar ordinances approved by their respective county planning boards, provide for a joint program for the transfer of development potential, including transfers from sending zones in one municipality to receiving zones in the other, regardless of whether or not those municipalities are situated within the same county. Any such program shall be carried out by the municipal planning board or boards.

A program may include the designation of one or more sending or receiving zones.

b. The Office of Smart Growth shall provide such technical assistance as may be requested by municipalities or a county planning board, and as may be reasonably within the capacity of the office to provide, in the preparation, implementation or review, as the case may be, of the master plan elements required to have been adopted by the municipality as a condition for adopting a development transfer ordinance pursuant to section 4 of P.L.2004, c.2 (C.40:55D-140), capital improvement program or development transfer ordinance.

C.40:55D-140 Actions prior to adoption, amendment.

4. Prior to the adoption or amendment of any development transfer ordinance, a municipality shall:

a. Adopt a development transfer plan element of its master plan pursuant to paragraph (14) of subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28) in accordance with the requirements of section 5 of P.L.2004, c.2 (C.40:55D-141);

b. Adopt a capital improvement program pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) for the receiving zone, which includes the location and cost of all infrastructure

and a method of cost sharing if any portion of the cost is to be assessed against developers pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42);

c. Adopt a utility service plan element of the master plan pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) that specifically addresses providing necessary utility services within any designated receiving zone within a specified time period so that no development seeking to utilize development potential transfer is unreasonably delayed because utility services are not available;

d. Prepare a real estate market analysis pursuant to section 12 of P.L.2004, c.2 (C.40:55D-148) which examines the relationship between the development rights anticipated to be generated in the sending zones and the capacity of designated receiving zones to accommodate the necessary development; and

e. Either receive approval of: (1) its initial petition for endorsement of its master plan by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted pursuant thereto either individually, or as part of a county or regional plan, provided that the petition included the development transfer ordinance and supporting documentation, or (2) the development transfer ordinance and supporting documentation as an amendment to a previously approved petition for master plan endorsement by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted pursuant thereto.

C.40:55D-141 Development transfer plan element, required inclusions.

5. In order to serve as the basis for a development transfer ordinance pursuant to subsection a. of section 4 of P.L.2004, c.2 (C.40:55D-140), a development transfer plan element of a masterplan shall include:

a. an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;

b. the identification and description of all prospective sending and receiving zones;

c. an analysis of how the anticipated population growth estimated pursuant to subsection a. of this section is to be accommodated within the municipality in general, and the receiving zone or zones in particular;

d. an estimate of existing and proposed infrastructure of the proposed receiving zone;

e. a presentation of the procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone; and

f. explicit planning objectives and design standards to govern the review of applications for development in the receiving zone in order to facilitate their review by the approving authority.

C.40:55D-142 Procedure for municipality located in pinelands area.

6. a. Any municipality located in whole or in part in the pinelands area, as defined in the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall submit the proposed development transfer ordinance, development transfer and utility service plan elements of the master plan, real estate market analysis, and capital improvement program to the Pinelands Commission for review for those areas included in that proposed ordinance that are situated within the pinelands area. The Pinelands Commission shall determine whether the proposed ordinance is compatible with the provisions of the "Pinelands Development Credit Bank Act," P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent with the comprehensive management plan adopted by the Pinelands Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the commission determines that the proposed development transfer ordinance is not compatible or consistent, the commission shall make such recommendations as may be necessary to conform the proposed ordinance with the comprehensive management plan. The municipality shall not adopt the proposed ordinance unless the changes recommended by the Pinelands Commission have been included in the ordinance.

b. No development transfer ordinance that involves land in the pinelands area shall take effect unless it has been certified by the Pinelands Commission pursuant to the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the comprehensive management plan.

C.40:55D-143 Preparation, amendment of development transfer ordinance.

7. A municipality which provides for the transfer of development as set forth in section 3 of P.L.2004, c.2 (C.40:55D-139) shall prepare or amend a development transfer ordinance that designates sending and receiving zones and is substantially consistent with or designed to effectuate the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29). A governing body that chooses to adopt an ordinance or amendment or revision thereto which in whole or in part is inconsistent with the development transfer plan element of the master plan or the capital improvement program may do so only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such an ordinance.

In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number and with such boundaries, densities and permitted uses as may be necessary to carry out the purposes of P.L.2004, c.2 (C.40:55D-137 et al.).

The adoption or amendment of a development transfer ordinance shall be considered a change to the classifications or boundaries of a zoning district and therefore subject to the notification requirements of section 2 of P.L.1995, c.249 (C.40:55D-62.1).

C.40:55D-144 Characteristics of sending zone.

8. a. A sending zone shall be composed predominantly of land having one or more of the following characteristics:

(1) agricultural land, woodland, floodplain, wetlands, threatened or endangered species habitat, aquifer recharge area, recreation or park land, waterfront, steeply sloped land or other lands on which development activities are restricted or precluded by duly enacted local laws or ordinances or by laws or regulations adopted by federal or State agencies;

(2) land substantially improved or developed in a manner so as to present a unique and distinctive aesthetic, architectural, or historical point of interest in the municipality;

(3) other improved or unimproved areas that should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure, or for such other reasons as may be necessary to implement the State Development and Redevelopment Plan adopted pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and local or regional plans.

b. Notwithstanding subsection a. of this section, lands permanently restricted through development easements or conservation easements existing prior to the adoption of a development transfer ordinance may be included in a sending zone upon a finding by the municipal governing body that this inclusion is in the public interest.

c. The development transfer ordinance may assign bonus development potential to specified properties in the sending zone based on specified criteria in order to encourage the permanent protection of those lands pursuant to the development transfer ordinance.

C.40:55D-145 Characteristics of receiving zone.

9. a. A receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential of the sending zone, and at all times there shall be a reasonable likelihood that a balance is maintained between sending zone land values and the value of the transferable development potential.

b. The development potential of the receiving zone shall be realistically achievable, considering: (1) the availability of all necessary infrastructure; (2) all of the provisions of the zoning ordinance including those related to density, lot size and bulk requirements; and (3) given local land market conditions as of the date of the adoption of the development transfer ordinance.

c. The development potential of the receiving zone shall be consistent with the criteria established pursuant to subsection b. of section 13 of P.L.2004, c.2 (C.40:55D-149).

d. All infrastructure necessary to support the development of the receiving zone as set forth

in the zoning ordinance shall either exist or be scheduled to be provided so that no development requiring the purchase of transferable development potential shall be unreasonably delayed because the necessary infrastructure will not be available due to any action or inaction by the municipality.

e. No density increases may be achieved in a receiving zone without the use of appropriate instruments of transfer.

C.40:55D-146 Provisions of development transfer ordinance.

10. Except as otherwise provided in this section, a development transfer ordinance shall provide that, on granting a variance under subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70) that increases the development potential of a parcel of property not in the designated receiving zone for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the amount of development potential required to implement that variance.

This section shall not apply to any development that fulfills the definition of a minor site plan or minor subdivision.

C.40:55D-147 Issuance of instruments, adoption of procedures relative to land use.

11. a. A development transfer ordinance shall provide for the issuance of such instruments as may be necessary and the adoption of procedures for recording the permitted use of the land at the time of the recording, the separation of the development potential from the land, and the recording of the allowable residual use of the land upon separation of the development potential.

b. A development transfer ordinance shall specifically provide that upon the transfer of development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions of the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.

c. The restrictions shall be expressly enforceable by the municipality and the county in which the property is located, any interested party, and the State of New Jersey.

d. All development potential transfers shall be recorded in the manner of a deed in the book of deeds in the office of the county clerk or county register of deeds and mortgages, as appropriate. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

e. All development potential transfers also shall be recorded with the State Transfer of Development Rights Bank in the Development Potential Transfer Registry as required pursuant to section 5 of P.L.1993, c.339 (C.4:1C-53).

C.40:55D-148 Real estate market analysis.

12. a. Prior to the final adoption of a development transfer ordinance or any significant amendment to an existing development transfer ordinance, the planning board shall conduct a real estate market analysis of the current and future land market which examines the relationship between the development rights anticipated to be generated in the sending zone and the likelihood of their utilization in the designated receiving zone. The analysis shall include thorough consideration of the extent of development projected for the receiving zone and the likelihood of its achievement given current and projected market conditions in order to assure that the designated receiving zone has the capacity to accommodate the development rights anticipated to be generated in the sending zone. The real estate market analysis shall conform to rules and regulations adopted pursuant to subsection c. of this section.

b. Upon completion of the real estate market analysis and at a meeting of the planning board held prior to the meeting at which the development transfer ordinance receives first reading, the

planning board shall hold a hearing on the real estate market analysis.

The hearing shall be held in accordance with the provisions of subsections a. through f. of section 6 of P.L.1975, c.291 (C.40:55D-10).

c. The Commissioner of Community Affairs, in consultation with the board of directors of the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51), shall within 180 days of the enactment of P.L.2004, c.2 (C.40:55D-137 et al.), adopt rules and regulations which set forth the required contents of the real estate market analysis.

C.40:55D-149 Submission by municipality prior to adoption of ordinance to county planning board.

13. a. Prior to adoption of a development transfer ordinance or of any amendment of an existing development transfer ordinance, the municipality shall submit a copy of the proposed ordinance, copies of the development transfer and utility service plan elements of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), proposed municipal master plan changes necessary for the enactment of the development transfer ordinance, and the real estate market analysis to the county planning board. If the ordinance and master plan changes involve agricultural land, then the county agriculture development board shall also be provided information identical to that provided to the county planning board.

b. The county planning board, upon receiving the proposed development transfer ordinance and accompanying documentation, shall conduct a review of the proposed ordinance with regard to the following criteria:

(1) consistency with the adopted master plan of the county;

(2) support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation, or the preservation of other public values as enumerated in subsection a. of section 8 of P.L.2004, c.2 (C.40:55D-144);

(3) consistency with reasonable population and economic forecasts for the county; and

(4) sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

C.40:55D-150 Formal comments, recommendation of county planning board.

14. a. Within 60 days after receiving a proposed development transfer ordinance and accompanying documentation transmitted pursuant to section 13 of P.L.2004, c.2 (C.40:55D-149), the county planning board shall submit to the municipality formal comments detailing its review and shall either recommend or not recommend enactment of the proposed development transfer ordinance. If enactment of the proposed ordinance is recommended, the municipality may proceed with adoption of the ordinance. Failure to submit recommendations within the 60-day period shall constitute recommendation of the ordinance.

b. The CADB shall review a proposed development transfer ordinance and accompanying documentation within 30 days of receipt thereof, and shall submit such written recommendations as it deems appropriate, to the county planning board.

c. If the county planning board does not recommend enactment, the reasons therefor shall be clearly stated in the formal comments. If the objections of the county planning board cannot be resolved to the satisfaction of both the municipality and the county planning board within an additional 30 days, the municipality shall petition the Office of Smart Growth to render a final determination pursuant to section 15 of P.L.2004, c.2 (C.40:55D-151).

C.40:55D-151 Review by Office of Smart Growth.

15. When the Office of Smart Growth receives a petition pursuant to subsection c. of section 14 of P.L.2004, c.2 (C.40:55D-150), it shall review the petition, the record of comment of the county planning board, any supporting documentation submitted by the municipality, and any comments received from property owners in the sending or receiving zones and other members of the public. Within 60 days after receipt of the petition, the Office of Smart Growth shall

approve, approve with conditions, or disapprove the proposed development transfer ordinance, stating in writing the reasons therefor. The basis for review by the Office of Smart Growth shall be:

a. compliance of the proposed development transfer ordinance with the provisions of P.L.2004, c.2 (C.40:55D-137 et al.);

b. accuracy of the information developed in the proposed development transfer ordinance, the development transfer and utility service plan elements of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28), the real estate market analysis and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29);

c. an assessment of the potential for successful implementation of the proposed development transfer ordinance; and

d. consistency with any plan that applies to the municipality that has been endorsed by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and its implementing regulations.

C.40:55D-152 Approval of municipal petition; appeal.

16. If the Office of Smart Growth determines, in response to a municipal petition submitted pursuant to subsection c. of section 14 of P.L.2004, c.2 (C.40:55D-150), that the proposed development transfer ordinance may be approved, the municipality may proceed with adoption of the proposed ordinance. If the Office of Smart Growth determines that the proposed ordinance may be approved with conditions, the Office of Smart Growth shall make such recommendations as may be necessary for the proposed ordinance to be approved. The municipality shall not adopt the proposed ordinance unless the changes recommended by the Office of Smart Growth have been included in the proposed ordinance. If the Office of Smart Growth determines that the development transfer ordinance should be disapproved, the municipality may not proceed with adoption of the proposed ordinance.

The decision by the Office of Smart Growth on the petition shall have the effect of a final agency action and any appeal of that decision shall be made directly to the Appellate Division of the Superior Court.

C.40:55D-153 Transmission of record of transfer; assessment; taxation.

17. a. The county clerk or county register of deeds and mortgages, as the case may be, shall transmit to the assessor of the municipality in which a development potential transfer has occurred a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection b. of this section.

b. Property from which and to which development potential has been transferred shall be assessed at its fair market value reflecting the development transfer. Development potential that has been removed from a sending zone but has not yet been employed in a receiving zone shall not be assessed for real property taxation. Nothing in P.L.2004, c.2 (C.40:55D-137 et al.) shall be construed to affect, or in any other way alter, the valuation assessment, or taxation of land that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

c. Property in a sending or receiving zone that has been subject to a development potential transfer shall be newly valued, assessed, and taxed as of October 1 next following the development potential transfer.

d. Development potential that has been conveyed from a property pursuant to P.L.2004, c.2 (C.40:55D-137 et al.) shall not be subject to any fee imposed pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

C.40:55D-154 Rebuttable presumption that development transfer ordinance is no longer reasonable.

18. The absence of either of the following shall constitute a rebuttable presumption that a development transfer ordinance is no longer reasonable:

a. plan endorsement pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) or regulations adopted pursuant thereto is no longer in effect for that municipality; or

b. a sufficient percentage of the development potential has not been transferred in that municipality as provided in section 20 of P.L.2004, c.2 (C.40:55D-156).

If the ordinance of a municipality that is a participant of a joint program pursuant to section 3 of P.L.2004, c.2 (C.40:55D-139) is presumed to be no longer reasonable pursuant to this section, then the ordinances of all participating municipalities also shall be presumed to be no longer reasonable.

C.40:55D-155 Review by planning board, governing body after three years.

19. A development transfer ordinance and real estate market analysis shall be reviewed by the planning board and governing body of the municipality at the end of three years subsequent to its adoption. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), and an assessment of the performance goals of the development transfer program, including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the county planning board, the Office of Smart Growth and, when the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the municipality shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and the development transfer ordinance adopted pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

C.40:55D-156 Review after five years.

20. A development transfer ordinance and the real estate market analysis also shall be reviewed by the planning board and governing body of the municipality at the end of five years subsequent to its adoption. This review shall provide for the examination of the development transfer ordinance and the real estate market analysis to determine whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and, if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If at least 25% of the development potential has not been transferred at the end of this five-year period, the development transfer ordinance shall be presumed to be no longer reasonable, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of the five-year period unless one of the following is met:

a. the municipality immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 25% of the total development transfer potential created in the sending zone under the development transfer ordinance;

b. a majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the development transfer ordinance should remain in effect;

c. the municipality can demonstrate either future success or can demonstrate that low levels of development potential transfer activity are due, not to ordinance failure, but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the Office of Smart Growth, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program; or

d. the municipality can demonstrate that less than 25% of the remaining development potential in the sending zone has been available for sale at market value during the five-year period.

C.40:55D-157 Periodic reviews.

21. Following review of a development transfer ordinance as provided in section 20 of P.L.2004, c.2 (C.40:55D-156), the planning board and the governing body of the municipality shall review the development transfer ordinance and real estate market analysis at least once every five years with every second review occurring in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This review shall provide for the examination of the ordinance and the real estate market analysis to determine whether the program and uses permitted in the sending zone continue to be economically viable and, if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.

If 25% of the remaining development transfer potential at the start of each five-year review period in the sending zone under the development transfer ordinance has not been transferred during the five-year period, the municipal governing body shall repeal the development transfer ordinance, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of that five-year period unless the municipality meets one of the standards established pursuant to section 20 of P.L.2003, c.2 (C.40:55D-156).

C.40:55D-158 Provision for purchase, sale, exchange of development potential.

22. a. The governing body of any municipality that has adopted a development transfer ordinance, or the governing body of any county in which at least one municipality has adopted a development transfer ordinance, may provide for the purchase, sale, or exchange of the development potential that is available for transfer from a sending zone by the establishment of a development transfer bank. Alternatively, the governing body of any municipality which has adopted a development transfer ordinance and has not established a municipal development transfer bank may either utilize the State TDR Bank or a county development transfer bank for these purposes, provided that the county in which the municipality is situated has established such a bank.

b. Any development transfer bank established by a municipality or county shall be governed by a board of directors comprising five members appointed by the governing body of the municipality or county, as the case may be. The members shall have expertise in either banking, law, land use planning, natural resource protection, historic site preservation or agriculture. For the purposes of P.L.2004, c.2 (C.40:55D-137 et al.) and the "Local Bond Law," N.J.S.40A:2-1 et seq., a purchase by the bank shall be considered an acquisition of lands for public purposes.

C.40:55D-159 Purchase by development transfer bank.

23. a. A development transfer bank may purchase property in a sending zone if adequate funds have been provided for these purposes and the person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with P.L.2004, c.2 (C.40:55D-137 et al.), and certifies that the property is not otherwise encumbered or transferred.

b. The development transfer bank may, for the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, which value shall generally reflect market value prior to the effective date of the development transfer ordinance. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer, but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

c. The development transfer bank may sell, exchange, or otherwise convey the development potential of property that it has purchased or otherwise acquired pursuant to the provisions of P.L.2004, c.2 (C.40:55D-137 et al.), but only in a manner that does not substantially impair the private sale or transfer of development potential.

d. When a sending zone includes agricultural land, a development transfer bank shall, when

considering the purchase of development potential based upon values derived by municipal averaging, submit the municipal average arrived at pursuant to subsection b. of this section for review and comment to the CADB. The development transfer bank shall coordinate the development transfer program with the farmland preservation programs established pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.) and the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) to the maximum extent practicable and feasible.

e. A development transfer bank may apply for funds for the purchase of development potential under the provisions of sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), or any other act providing funds for the purpose of acquiring and developing land for recreation and conservation purposes consistent with the provisions and conditions of those acts.

f. A development transfer bank may apply for matching funds for the purchase of development potential under the provisions of the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) for the purpose of farmland preservation and agricultural development consistent with the provisions and conditions of that act and the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.). In addition, a development transfer bank may apply to the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51) for either planning or development potential purchasing funds, or both, as provided pursuant to section 4 of P.L.1993, c.339 (C.4:1C-52).

C.40:55D-160 Sale of development potential associated with development easement.

24. If the governing body of a county provides for the acquisition of a development easement under the provisions of the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.) or the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), it may sell the development potential associated with the development easement subject to the terms and conditions of the development transfer ordinance adopted pursuant to P.L.2004, c.2 (C.40:55D-137 et al.); provided that if the development easement was purchased using moneys provided pursuant to the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), a percentage of all revenues generated through the resale of the development potential shall be refunded to the State in an amount equal to the State's percentage contribution to the original development easement purchase. Notwithstanding the foregoing, such refund shall not be paid to the State in the event the State Treasurer determines that such refund would adversely affect the tax-exempt status of any bonds authorized pursuant to the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.). This repayment shall be made within 90 days after the end of the calendar year in which the sale occurs.

C.40:55D-161 Right to farm benefits.

25. Agricultural land involved in an approved development transfer ordinance shall be provided the right to farm benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.) and other benefits that may be provided pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.).

C.40:55D-162 Annual report by municipality to county; county to State.

26. a. The governing body of a municipality that adopts a development transfer ordinance shall annually prepare and submit a report on activity undertaken pursuant to the development transfer ordinance to the county planning board.

b. The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes of P.L.2004, c.2 (C.40:55D-137 et al.) to the State Planning Commission on July 1 of the third year next following enactment of P.L.2004, c.2 (C.40:55D-137 et al.) and annually thereafter.

C.40:55D-163 Construction of act relative to Burlington County municipalities.

27. a. Except as provided otherwise pursuant to subsections b. and c. of this section, the

provisions of P.L.2004, c.2 (C.40:55D-137 et al.) shall not apply or be construed to nullify any development transfer ordinance adopted by a municipality in Burlington County pursuant to P.L.1989, c.86 (C.40:55D-113 et al.) prior to the effective date of P.L.2004, c.2 (C.40:55D-137 et al.).

b. On or after the effective date of P.L.2004, c.2 (C.40:55D-137 et al.), any municipality in Burlington County may adopt a development transfer ordinance either pursuant to P.L.1989, c.86 (C.40:55D-113 et al.) or P.L.2004, c.2 (C.40:55D-137 et al.).

c. Any municipality in Burlington County may utilize a development transfer bank established by the municipality or county pursuant to P.L.2004, c.2 (C.40:55D-137 et al.), by the municipality or Burlington County pursuant to P.L.1989, c.86 (C.40:55D-113 et al.), or by the State pursuant to P.L.1993, c.339 (C.4:1C-49 et seq.) or P.L.2004, c.2 (C.40:55D-137 et al.).

28. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read as follows:

C.4:1C-31 Development easement purchases.

24. a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of P.L.1983, c.32.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural developmental value} - \text{agricultural value} - \text{landowner's asking price}}{\text{nonagricultural development value} - \text{agricultural value}}$$

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c.86 (C.40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals

conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein or elsewhere where a municipal average has been established under subsection c. of this section, upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b. of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

j. (1) In determining the suitability of land for development easement purchase, the board and the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) The provisions of paragraph (1) of this subsection may also be applied in determining the suitability of land for fee simple purchase for farmland preservation purposes as authorized by P.L.1983, c.31 (C.4:1C-1 et seq.), P.L.1983, c.32 (C.4:1C-11 et seq.), and P.L.1999, c.152 (C.13:8C-1 et seq.).

(3) (a) For the purposes of paragraph (1) of this subsection: "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 2 of P.L.2001, c.405 (C.13:8C-40.2).

(b) For the purposes of paragraph (2) of this subsection, "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

29. Section 2 of P.L.1993, c.339 (C.4:1C-50) is amended to read as follows:

C.4:1C-50 Definitions.

2. As used in this act:

"Board" means the board of directors of the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51);

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

transfer ordinance, and in accordance with recognized environmental constraints;

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

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

"State Transfer of Development Rights Bank," "bank" or "State TDR Bank" means the bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51).

30. Section 4 of P.L.1993, c.339 (C.4:1C-52) is amended to read as follows:

C.4:1C-52 Powers of board.

4. The board shall have the following powers:

a. To purchase, or to provide matching funds for the purchase of 80% of, the value of development potential and to otherwise facilitate development transfers, 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 development potential that is subject to development transfer; provided that, in the case of providing matching funds for the purchase of 80% of the value of development potential, the remaining 20% 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. The remaining 20% 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 to be transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer. The value of development potential may be determined by either appraisal, municipal averaging based upon appraisal data, or by a formula supported by appraisal data. The board may also engage in development transfer by sale, exchange, or other method of conveyance, provided that in doing so, the board shall not substantially impair the private sale, exchange or other method of conveyance of development potential. The board may not, nor shall anything in this act be construed as permitting the board to, engage in development transfer from one municipality to another, which transfer is not in accordance with the ordinances of both municipalities;

b. To adopt and, from time to time, amend or repeal suitable bylaws for the management of its affairs;

c. To adopt and use an official seal and alter that seal at its pleasure;

d. To apply for, receive, and accept, from any federal, State, or other public or private source, grants or loans for, or in aid of, the board's authorized purposes;

e. To enter into any agreement or contract, execute any legal document, and perform any act or thing necessary, convenient, or desirable for the purposes of the board or to carry out any power expressly given in this act;

f. To adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;

g. To call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, commission, or agency as may be required and made available for these purposes;

h. To retain such staff as may be necessary in the career service and to appoint an executive director thereof. The executive director shall serve as a member of the senior executive or unclassified service and may be appointed without regard to the provisions of Title 11A of the New Jersey Statutes;

i. To review and analyze innovative techniques that may be employed to maximize the total acreage reserved through the use of perpetual easements;

j. To provide, through the State TDR Bank, a financial guarantee with respect to any loan to be extended to any person that is secured using development potential as collateral for the loan. Financial guarantees provided under this act shall be in accordance with procedures, terms

and conditions, and requirements, including rights and obligations of the parties in the event of default on any loan secured in whole or in part using development potential as collateral, to be established by rule or regulation adopted by the board pursuant to the "Administrative Procedure Act";

k. To enter into agreement with the State Agriculture Development Committee for the purpose of acquiring development potential through the acquisition of development easements on farmland so that the board may utilize the existing processes, procedures, and capabilities of the State Agriculture Development Committee as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act;

l. To enter into agreements with other State agencies or entities providing services and programs authorized by law so that the board may utilize the existing processes, procedures, and capabilities of those other agencies or entities as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act;

m. To provide planning assistance grants to municipalities for up to 50% 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 section 19 of P.L.1975, c.291 (C.40:55D-28), a real estate market analysis required pursuant to section 12 of P.L.2004, c.2 (C.40:55D-148), and a capital improvement program pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) and incurred by a municipality, or $40,000, whichever is less, which grants shall be made utilizing moneys deposited into the bank pursuant to section 8 of P.L.1993, c.339;

n. To provide funding in the form of grants or loans for the purchase of development potential to development transfer banks established by a municipality or county pursuant to P.L.1989, c.86 (C.40:55D-113 et seq.) or section 22 of P.L.2004, c.2 (C.40:55D-158); and

o. To serve as a development transfer bank designated by the governing body of a municipality or county pursuant to section 22 of P.L.2004, c.2 (C. 40:55D-158).

31. Section 8 of P.L.1993, c.339 is amended to read as follows:

8. a. There is appropriated to the State Transfer of Development Rights Bank from the "1989 Development Potential Transfer Bank Fund" established pursuant to section 23 of P.L.1989, c.183, the sum of $20,000,000 for deposit into the State TDR Bank, which shall be expended in accordance with the provisions of P.L.1993, c.339 (C.4:1C-49 et al.).

b. Of the moneys appropriated pursuant to subsection a. of this section, not more than $400,000 may be expended in total for administrative costs, staff assistance or professional services within the period of four years from the effective date of P.L.1993, c.339 (C.4:1C-49 et al.), and not more than $1,500,000 may be expended for the purposes of subsection m. of section 4 of P.L.1993, c.339 (C.4:1C-52).

32. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to read as follows:

C.40:55D-3 Definitions; shall, may; A to C.

3. For the purposes of this act, unless the context clearly indicates a different meaning:

The term "shall" indicates a mandatory requirement, and the term "may" indicates a permissive action.

"Administrative officer" means the clerk of the municipality, unless a different municipal official or officials are designated by ordinance or statute.

"Agricultural land" means "farmland" as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

"Applicant" means a developer submitting an application for development.

"Application for development" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

"Approving authority" means the planning board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of P.L.1975, c.291

(C.40:55D-1 et seq.).

"Board of adjustment" means the board established pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69).

"Building" means a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof.

"Cable television company" means a cable television company as defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

"Capital improvement" means a governmental acquisition of real property or major construction project.

"Circulation" means systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

"Common open space" means an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

"Conditional use" means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.

"Conventional" means development other than planned development.

"County agriculture development board" or "CADB" means a county agriculture development board established by a county pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-14).

"County master plan" means a composite of the master plan for the physical development of the county in which the municipality is located, with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the county planning board pursuant to R.S.40:27-2 and R.S.40:27-4.

"County planning board" means the county planning board, as defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county in which the land or development is located.

33. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to read as follows:

C.40:55D-4 Definitions; D to L.

3.1. "Days" means calendar days.

"Density" means the permitted number of dwelling units per gross area of land to be developed.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to this act.

"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 regulation" means a zoning ordinance, subdivision ordinance, site plan ordinance, official map ordinance or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to this act.

"Development transfer" or "development potential 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.

"Development transfer bank" means a development transfer bank established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158) or the State TDR Bank.

"Drainage" means the removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding.

"Environmental commission" means a municipal advisory body created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

"Final approval" means the official action of the planning board taken on a preliminarily approved major subdivision or site plan, after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

"Floor area ratio" means the sum of the area of all floors of buildings or structures compared to the total area of the site.

"General development plan" means a comprehensive plan for the development of a planned development, as provided in section 4 of P.L.1987, c.129 (C.40:55D-45.2).

"Governing body" means the chief legislative body of the municipality. In municipalities having a board of public works, "governing body" means such board.

"Historic district" means one or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

"Historic site" means any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance.

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

"Interested party" means: (a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this act, or whose rights to use, acquire, or enjoy property under this act, or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under this act.

"Land" includes improvements and fixtures on, above or below the surface.

"Local utility" means any sewerage authority created pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.); any utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any utility, authority, commission, special district or other corporate entity not regulated by the Board of Regulatory Commissioners under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water or sewer service to a municipality or the residents thereof.

"Lot" means a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit.

34. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to read as follows:

C.40:55D-5 Definitions; M to O.

3.2. "Maintenance guarantee" means any security which may be accepted by a municipality for the maintenance of any improvements required by this act, including but not limited to surety

bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

"Major subdivision" means any subdivision not classified as a minor subdivision.

"Master plan" means a composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

"Mayor" means the chief executive of the municipality, whatever his official designation may be, except that in the case of municipalities governed by municipal council and municipal manager the term "mayor" shall not mean the "municipal manager" but shall mean the mayor of such municipality.

"Minor site plan" means a development plan of one or more lots which (1) proposes new development within the scope of development specifically permitted by ordinance as a minor site plan; (2) does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met.

"Minor subdivision" means a subdivision of land for the creation of a number of lots specifically permitted by ordinance as a minor subdivision; provided that such subdivision does not involve (1) a planned development, (2) any new street or (3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42).

"Municipality" means any city, borough, town, township or village. "Municipal agency" means a municipal planning board or board of adjustment, or a governing body of a municipality when acting pursuant to this act and any agency which is created by or responsible to one or more municipalities when such agency is acting pursuant to this act.

"Municipal resident" means a person who is domiciled in the municipality.

"Nonconforming lot" means a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Nonconforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Office of Smart Growth" means the Office of State Planning established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201).

"Official county map" means the map, with changes and additions thereto, adopted and established, from time to time, by resolution of the board of chosen freeholders of the county pursuant to R.S.40:27-5.

"Official map" means a map adopted by ordinance pursuant to article 5 of P.L.1975, c.291.

"Offsite" means located outside the lot lines of the lot in question but within the property, of which the lot is a part, which is the subject of a development application or the closest half of the street or right-of-way abutting the property of which the lot is a part.

"Off-tract" means not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way.

"Onsite" means located on the lot in question and excluding any abutting street or right-of-way.

"On-tract" means located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way.

"Open-space" means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and

enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

35. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to read as follows:

C.40:55D-6 Definitions; P to R.

3.3. "Party immediately concerned" means for purposes of notice any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

"Performance guarantee" means any security, which may be accepted by a municipality, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

"Planned commercial development" means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate commercial or office uses or both and any residential and other uses incidental to the predominant use as may be permitted by ordinance.

"Planned development" means planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

"Planned industrial development" means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant use as may be permitted by ordinance.

"Planned unit development" means an area with a specified minimum contiguous or noncontiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

"Planned unit residential development" means an area with a specified minimum contiguous or noncontiguous acreage of five acres or more to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial, or public or quasi-public uses all primarily for the benefit of the residential development.

"Planning board" means the municipal planning board established pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

"Plat" means a map or maps of a subdivision or site plan.

"Preliminary approval" means the conferral of certain rights pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46; C.40:55D-48; and C.40:55D-49) prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

"Preliminary floor plans and elevations" means architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

"Public areas" means (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) sites for schools and other public buildings and structures.

"Public development proposal" means a master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

"Public drainage way" means the land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the biological as well as drainage function of the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion and to assure the adequacy

of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, and to lessen nonpoint pollution.

"Public open space" means an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or county agency, or other public body for recreational or conservational uses.

"Public utility" means any public utility regulated by the Board of Regulatory Commissioners and defined pursuant to R.S.48:2-13.

"Quorum" means the majority of the full authorized membership of a municipal agency.

"Receiving zone" means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), within which development may be increased, and which is otherwise consistent with the provisions of section 9 of P.L.2004, c.2 (C.40:55D-145).

"Residential cluster" means a contiguous or noncontiguous area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

"Residential density" means the number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

"Resubdivision" means (1) the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or (2) the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

36. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to read as follows:

C.40:55D-7 Definitions; S to Z.

3.4 "Sedimentation" means the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

"Sending zone" means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), within which development may be restricted and which is otherwise consistent with the provisions of section 8 of P.L.2004, c.2 (C.40:55D-144).

"Site plan" means a development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board adopted pursuant to article 6 of this act.

"Standards of performance" means standards (1) adopted by ordinance pursuant to subsection 52d. regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the municipality or (2) required by applicable federal or State laws or municipal ordinances.

"State Transfer of Development Rights Bank," or "State TDR Bank," means the bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51).

"Street" means any street, avenue, boulevard, road, parkway, viaduct, drive or other way (1) which is an existing State, county or municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action as provided by this act, or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas

and other areas within the street lines.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

"Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: (1) divisions of land found by the planning board or subdivision committee thereof appointed by the chairman to be for agricultural purposes where all resulting parcels are 5 acres or larger in size, (2) divisions of property by testamentary or intestate provisions, (3) divisions of property upon court order, including but not limited to judgments of foreclosure, (4) consolidation of existing lots by deed or other recorded instrument and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term "subdivision" shall also include the term "resubdivision."

"Transcript" means a typed or printed verbatim record of the proceedings or reproduction thereof.

"Variance" means permission to depart from the literal requirements of a zoning ordinance pursuant to sections 47 and subsection 29.2b., 57c. and 57d. of this act.

"Zoning permit" means a document signed by the administrative officer (1) which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and (2) which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency pursuant to sections 47 and 57 of this act.

37. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to read as follows:

C.40:55D-28 Preparation; contents; modification.

19. Preparation; contents; modification.

a. The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (14):

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) A land use plan element (a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (14) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands; (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance; and (c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of the standards of population density and development intensity recommended for the municipality;

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of

transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.). If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

(6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

(9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) A historic preservation plan element: (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or district identification; and (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts;

(11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements;

(12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land;

(13) A farmland preservation plan element, which shall include: an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et al.) through a variety of mechanisms including, but not limited to, utilizing option agreements, installment purchases, and encouraging donations of permanent development easements; and

(14) A development transfer plan element which sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of section 5 of P.L.2004, c.2 (C.40:55D-141).

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master

plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) of the county in which the municipality is located.

38. Section 20 of P.L.1975, c.291 (C.40:55D-29) is amended to read as follows:

C.40:55D-29 Preparation of capital improvement program.

20. a. The governing body may authorize the planning board from time to time to prepare a program of municipal capital improvement projects projected over a term of at least 6 years, and amendments thereto. Such program may encompass major projects being currently undertaken or future projects to be undertaken, with federal, State, county and other public funds or under federal, State or county supervision. The first year of such program shall, upon adoption by the governing body, constitute the capital budget of the municipality as required by N.J.S.40A:4-43 et seq. The program shall classify projects in regard to the urgency and need for realization, and shall recommend a time sequence for their implementation. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall, as far as possible, be based on existing information in the possession of the departments and agencies of the municipality and shall take into account public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls.

In preparing the program, the planning board shall confer, in a manner deemed appropriate by the board, with the mayor, the chief fiscal officer, other municipal officials and agencies, and the school board or boards.

Any such program shall include an estimate of the displacement of persons and establishments caused by each recommended project.

b. In addition to any of the requirements in subsection a. of this section, whenever the planning board is authorized and directed to prepare a capital improvements program, every municipal department, authority or agency shall, upon request of the planning board, transmit to said board a statement of all capital projects proposed to be undertaken by such municipal department, authority or agency, during the term of the program, for study, advice and recommendation by the planning board.

c. In addition to all of the other requirements of this section, any municipality that intends to provide for the transfer of development within its jurisdiction pursuant to section 3 of P.L.2004, c.2 (C.40:55D-139) shall include within its capital improvement program provision for those capital projects to be undertaken in the receiving zone or zones required as a condition for adopting a development transfer ordinance pursuant to subsection b. of section 4 of P.L.2004, c.2 (C.40:55D-140).

39. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to read as follows:

C.40:55D-65 Contents of zoning ordinance.

52. A zoning ordinance may:

a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of P.L.1975, c.291 (C.40:55D-37 et seq.). The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of P.L.1975, c.291 (C.40:55D-53) shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations pursuant to P.L.1972, c.185 or minimum standards for local flood fringe area regulation pursuant to P.L.1972, c.185.

f. Provide for conditional uses pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67).

g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

i. Provide for historic preservation pursuant to section 5 of P.L.1991, c.199 (C.40:55D-65.1).

j. Provide for sending and receiving zones for a development transfer program established pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

40. This act shall take effect 180 days next following enactment, except that section 12 shall take effect immediately.

Approved March 29, 2004.